

LEGAL PREPAREDNESS FOR INTERNATIONAL DISASTER ASSISTANCE IN MALAWI

Mapping of Domestic Laws and Policies

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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 Republic of Malawi (Malawi) 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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and Development

Malawi

Political Framework

Malawi is a multi-party republic. The Constitution of Malawi provides for the election of a President, who serves as Head of State and Government and Commander in Chief of the Defence Force of Malawi.² The Constitution also makes provision for up to two Vice Presidents to hold office. The first Vice President is elected concurrently with the President, and the President may appoint a second Vice President at the time of taking oath or any time thereafter.³ The President and Vice Presidents are limited to serving no more than two five-year terms.⁴ The Cabinet, consists of the President, Vice Presidents and Ministers and Deputy Ministers appointed by the President.⁵ The legislature, the National Assembly, is unicameral.⁶

Malawi has a mixed legal system, which incorporates statutory law, common law, and customary law. Malawi adopts a dualist approach to international law in terms of which any international agreement entered into only forms part of the law if provided by an Act of Parliament.⁷

DRM Framework

The Disaster Preparedness and Relief Act of 1991 (the DPR Act)⁸ provides the legislative framework for DRM in Malawi. The principal aims of the DPR Act are to provide for: the coordination and implementation of measures to alleviate the effects of disasters; and the establishment of the Office of the Commissioner for Disaster Preparedness and Relief and the National Disaster Preparedness and Relief Committee (NDPRC) of Malawi. The government is, however, currently in the process of developing a new DRM law (the draft DRM Bill), which aims to replace the DPR Act. A study of the draft DRM Bill is not included in this report as it is yet to be passed into law.

In addition to the DPR Act, the government developed the Disaster Risk Management Policy of 2015 (the Policy). The Policy has a broad objective: to create an enabling framework for the establishment of a comprehensive DRM system for Malawi; as well as six specific objectives,⁹ which are to:

- facilitate the mainstreaming of DRM into sustainable development policies and planning processes at all levels;

² Constitution of Malawi, sections 78 and 80.

³ Constitution of Malawi, section 80.

⁴ Constitution of Malawi, section 83.

⁵ Constitution of Malawi, section 92.

⁶ Constitution of Malawi, Chapter VI.

⁷ Constitution of Malawi, section 211.

⁸ Disaster Preparedness and Relief Act [Chapter 33:05 of the Laws of Malawi] (DPR Act).

⁹ Disaster Risk Management Policy of 2015 (the Policy), page 5.

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

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

- directing the establishment of civil protection organisations and civil protection areas;
- controlling and directing personnel, materials, and services for the purposes of the DPR Act;
- directing and assisting regional civil protection officers and area civil protection officers in the performance of their duties under the DPR Act;
- coordinating the training of personnel for civil protection purposes;
- generally coordinating the planning and execution of civil protection;
- promoting research in matters relating to civil protection and disseminating information on matters of civil protection and on activities in civil protection regions and civil protection areas;
- advising the Minister on all matters relating to civil protection; and
- performing any other functions relating to civil protection that may be assigned to him by the Committee or by the Minister under the DPR Act.¹⁰

The NDPRC consists of governmental representatives such as the Chief Secretary to the President, the Secretaries for Health, Community Services, Local Government, Treasury, Economic Planning, Works, Agriculture, Forestry and Natural Resources, Transport and Communications, and Youth and Culture, and the inspector of Police, and the Army Commander, as well as three to five members representing the non-governmental sector.¹¹ The NDPRC is responsible for coordinating the implementation of measures to alleviate disasters in Malawi.¹² The DPR Act also provides for the establishment of sub-committees to the NDPRC.¹³

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

¹⁰ DPR Act, section 4.

¹¹ DPR Act, sections 5 and 6.

¹² DPR Act, section 13.

¹³ DPR Act, section 14.

- acts as an advocate for DRM;
- provides advice and technical support; and
- acts as the coordinating mechanism for mainstreaming DRM into sustainable development policies, planning, and programmes.¹⁴

The NDRM TC is chaired by the Secretary and Commissioner of the Department of Disaster Management Affairs (DoDMA), and is composed of designated senior representatives who are formally appointed to serve on the NDRM TC as the DRM focal points for their government line ministries and departments, civil society organisations, scientific and academic institutions, the private sector, UN agencies, donor community, and the mass media.¹⁵ The Policy further provides that the Disaster Risk Management Committees (DRMC) are responsible for implementing the Policy at city, municipal, district, area and village levels.¹⁶ Therefore, while the NDPRC coordinates all DRM activities, the NDRM TC implements the various policies with the district, area and village protection committees supplementing its activities. The DoDMA serves as the Secretariat for the NDPRC and the NDRM TC.¹⁷

The Policy also recognises the critical role of civil society organisations, the private sector, development partners, media academia and research institutions in DRM from the national to community levels.¹⁸ The Policy also recognises development partners as being able to assist in funding DRM programmes at all levels, as well as in providing technical support.¹⁹

IDRL Assessment

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

As stated above, Malawi's main national legal, policy and institutional framework for DRM is contained in the DPR Act and the Policy. The DPR Act does not make explicit provision for international disaster assistance, nor does it specify a procedure to report to other governments, regional organisations, or the UN about emerging hazards that could lead to disasters and/or emergencies in the country and/or in a neighbouring country. However, the DPR Act provides that regulations necessary or expedient to give effect to the DPR Act may be promulgated, which could potentially include regulations on international disaster assistance.²⁰ The Policy also does not regulate international assistance comprehensively. Strengthening preparedness is, however, recognised as key to ensuring rapid and effective disaster response.²¹ To this end, the Policy states that the

¹⁴ The Policy, page 10.

¹⁵ The Policy, page 10.

¹⁶ The Policy, page 11.

¹⁷ The Policy, page 11.

¹⁸ The Policy, page 11.

¹⁹ The Policy, pages 11-12.

²⁰ DPR Act, section 47.

²¹ The Policy, page 8.

Government of Malawi will ensure that mechanisms are put in place for the receipt and accounting of international assistance during disasters.²²

As mentioned above, Malawi is currently in the process of revising its DRM legislation. Once enacted, the DRM Bill will replace the DPR Act. The draft DRM Bill includes provisions on the facilitation and regulation of international disaster assistance.²³ This assessment, however, is based only on the law currently in force in Malawi and does not include an analysis of the draft DRM Bill.

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

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

In practice, however, international assisting actors make requests for entry through DoDMA, which then formally applies to the Treasury Department in the Ministry of Finance, which in turn submits the application to the Malawi Revenue Authority to clear the relief items.²⁴

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

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

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

The DPR Act does not provide for the process of requesting and terminating international disaster assistance. At present, this appears to be regulated on an *ad hoc* basis.²⁵

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

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

²² The Policy, statement 3.6.1.6.

²³ Disaster Law in Action – Case Study: Leveraging the Auxiliary Role to Effect Legislative Changes available at <https://media.ifrc.org/ifrc/wp-content/uploads/sites/5/2019/05/CaseStudy- Malawi.pdf> accessed 3 March 2021.

²⁴ See Malawi Red Cross Society and IFRC, *International Disaster Response Law (IDRL) in Malawi* (2015) (IDRL in Malawi), page 31.

²⁵ IDRL in Malawi, page 31.

Landing rights and general customs arrangements

Section 19 of the Aviation Act²⁶ provides that regulations giving effect to, and carrying out the provisions of, the Chicago Convention, and any annexe thereto relating to international standards and recommended practices, may be developed. However, the Aviation Act does not make special provision for aircraft carrying relief supplies. Regulation 3 of the Air Transport Licensing Regulations²⁷ does, however exempt rescue and ambulance services, as well as aircrafts carrying emergency food or emergency medical supplies from requiring a licence by agreement with the government. In addition, the Minister has been given extensive powers to formulate regulations and policies, including waiving fees as he deems fit under the Aviation Act, which means that more detailed regulations on international disaster assistance may be developed in the future. It should also be noted that Malawi passed a new Aviation Act in 2017, but to the authors' knowledge it is not available online and, therefore, could not be reviewed for this report.

The Customs and Excise Act²⁸ is the main customs law in Malawi. The Customs and Excise Act does not provide for any exemptions for humanitarian goods. However, the Seventh Schedule provides that a refund of the duty paid shall be granted in respect of any goods where such refund is required in terms of an agreement between the government and any other government, organisation, institution, body, or person. This provision could potentially be utilised by humanitarian organisations, but agreements would first need to be concluded with the Government of Malawi. In terms of hours of service, the Customs and Excise Act provides that where any person requests the attendance of an officer outside the hours for service of the public such a request shall be dealt with in accordance with specified conditions and upon the payment of fees as may be prescribed.²⁹ This may allow international assisting actors to access customs services after normal hours.

Customs arrangements for specialised goods and equipment

Communications equipment

There do not appear to be provisions in the law that explicitly allow for the expedited import and use of communications equipment for international disaster assistance providers, and therefore it appears that the normal rules would apply to such actors. Under the Communications Act,³⁰ a person shall not provide electronic communications services except in accordance with a licence issued by the Malawi Communications Regulatory Authority (MCRA), and a frequency spectrum licence shall be required in addition to any electronic communications licence where the operation of an electronic communications network or the provision of an electronic communications service entails the use of radio frequency. It is also noteworthy that the MCRA will not issue a licence unless the applicant for the licence is duly registered under the relevant laws of

²⁶ Aviation Act [Chapter 70:01 of the Laws of Malawi].

²⁷ Aviation (Air Transport Licensing) Regulations made under the Aviation Act [Chapter 70:01 of the Laws of Malawi].

²⁸ Customs and Excise Act [Chapter 42:01 of the Laws of Malawi].

²⁹ Customs and Excise Act [Chapter 42:01 of the Laws of Malawi], section 12.

³⁰ Communications Act 34 of 2016, section 31.

Malawi.³¹ The Minister responsible for telecommunications does have the power to exempt the requirement for licences for certain kinds of telecommunications by regulation. However, from the information currently available online, no regulations which pertain to international disaster assistance appear to have been developed to date. Additionally, a licensee may not use any equipment for connection to an electronic communications network without the prior approval by the MCRA of the type of equipment to be used and communications equipment imported would need to comply with the technical and performance standards for equipment.³²

Food, medicine, and quarantine

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

In general, an importer wishing to import goods into Malawi must register with the Malawi Revenue Authority for a Tax Payer Identification Number (TPIN).³³ The importation of certain items, including certain foods is further prohibited or controlled and an import permit may be required.³⁴ In terms of the importation of medication, the Pharmacy, Medicines and Poisons Act provides that a product licence is required for selling, supplying, exporting, or importing any medicinal product.³⁵ The importation of animals in Malawi is strictly regulated and the law does not make special provision for the importation of rescue dogs. An import permit is required to import any animals into Malawi³⁶ and any animals imported may be placed in quarantine stations and be subjected to tests, as may be directed.³⁷

Vehicles

The law does not provide special or simplified procedures for the importation and registration of vehicles for disaster relief and recovery.³⁸ Therefore, it appears that the normal rules and procedures would apply.

The Road Traffic Act provides that all importers must apply for registration as an importer.³⁹ Furthermore, no person may operate any motor vehicle in Malawi which is

³¹ Communications Act 34 of 2016, section 34.

³² Communications Act 34 of 2016, sections 95 and 96.

³³ See IDRL in Malawi, Chapter 5 for more detail. Further information and a list of prohibited and restricted imports is available on the Malawi Trade Portal available at <https://www.malawitradeportal.gov.mw/> (accessed 12 February 2021).

³⁴ See the Control of Goods Act [Chapter 18:08 of the Laws of Malawi]; Biosafety Act [Chapter 60:03 of the Laws of Malawi]; Milk and Milk Products Act 43 of 1971; and the Meat and Meat Products Act 3 of 1975.

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

³⁶ Animal (Import) Rules, regulation 3.

³⁷ Control and Diseases of Animals Act [Chapter 66:02 of the Laws of Malawi], section 7.

³⁸ IDRL in Malawi, page 48.

³⁹ Road Traffic Act [Chapter 69:01 of the Laws of Malawi], section 13. The procedure for registration is set out in Part VII of the Road Traffic (Registration and Licensing) Regulations made under the Road Traffic Act.

not registered and licensed.⁴⁰ However, motor vehicles of which the owner is a foreign government, a diplomat representing a foreign country an international or intergovernmental organisation, or any person or class of persons as the Minister of Foreign Affairs and International Cooperation may determine are excluded from the payment of registration and licence fee.⁴¹ It is notable that the Road Traffic (Registration and Licensing) Regulations provide that motor vehicles used solely for charitable purposes or which are designed or adapted for fighting fires are exempt from registration.⁴²

The Road Traffic (International Circulation) Regulations made under the Road Traffic Act provides that any motor vehicle brought into Malawi by a non-resident under the authority of an international certificate or registration certificate and vehicle licence issued elsewhere than in Malawi, may be used in Malawi for up to one year or until the expiry of its international certificate or registration certificate or vehicle licence, or up to 30 days after the date when such person becomes resident in Malawi, whichever is the shortest, without the need to be registered or licensed.⁴³ This provision appears to apply to both natural as well as juristic persons. Lastly, the Road Traffic (Miscellaneous Fees) Regulations made under the Road Traffic Act provide for temporary recognition of foreign registrations and plates through a “short-term service permit” issued in respect of foreign registered vehicles at prescribed fees. These provisions, although not directly related to international disaster assistance, may allow for the prompt registration and use of vehicles in disaster assistance operations in Malawi.

Immigration

Immigration in Malawi is regulated by the Immigration Act, as amended, and the Immigration Regulations.⁴⁴ The Immigration Act does not make special provision for the granting of expedited visas and work permits for international disaster assistance personnel. In terms of visas, only nationals from the countries listed in Schedule 2 of the Immigration Regulations are exempted from requiring a visa to enter Malawi. In practice, however, in emergency situations the Department of Immigration issues “facilitation letters” for persons to travel to a port of entry in Malawi for the issuance of the visa on entry.⁴⁵

The Immigration Act and Immigration Regulations do not make special provision for expedited or special work permits to be issued to disaster relief personnel. For relief work requiring a stay not exceeding six months, a temporary residence permit would be required.⁴⁶ This permit can be used for work if, at the time of application, the applicant

⁴⁰ In terms of section 11 of the Road Traffic Act read with regulation 7 of the Road Traffic (Registration and Licensing) Regulations. The requirements for registration of motor vehicles which have previously been registered outside Malawi are provided in regulation 9,10 and 15.

⁴¹ Road Traffic (Registration and Licensing) Regulations, regulation 66.

⁴² Road Traffic (Registration and Licensing) Regulations, regulation 23.

⁴³ Road Traffic (Registration and Licensing) Regulations, regulation 9.

⁴⁴ Immigration Act of 1964 and Immigration Regulations of 1968.

⁴⁵ IDRL in Malawi, page 54.

⁴⁶ Immigration Act of 1964, section 25, read with Immigration Regulations of 1968, section 24.

specifically indicated an intention to work temporarily and is renewable within Malawi for a further period of six months. For relief work requiring a stay exceeding six months and up to two years, a Temporary Employment Permit (TEP) would be required.⁴⁷ This permit is renewable within Malawi. However, in general, all applications for a TEP should indicate that the post was advertised locally and that it was not possible to identify a suitably qualified person locally and include details of a qualified Malawian who will understudy the expatriate and eventually take over the position.⁴⁸

The Immunities and Privileges Act⁴⁹ enacts certain provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations into law and provides certain immunities and privileges to states, diplomats, consular officials, as well as certain international organisations, which are also deemed to have the legal capacities of a body corporate in terms of section 24, and the staff of such organisations, which are exempt from both suit and legal process, immigration restrictions and income tax.⁵⁰ The following international organisations are listed in the Fourth Schedule:

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

⁴⁷ Immigration Act of 1964, section 25.

⁴⁸ ENS, *Doing Business in Malawi*, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

⁴⁹ Immunities and Privileges Act 12 of 1984.

⁵⁰ Immunities and Privileges Act 12 of 1984, Parts II-V.

Goods imported by diplomatic missions and the listed international organisations for official use are exempt from taxes. However, section 31 of the Immunities and Privileges Act provides that the Controller of Customs and Excise may require customs duties to be paid on goods that were imported free from customs duties, if they are disposed of to a person who is not entitled to customs privileges. The Immunities and Privileges Act allows for privileges and immunity to be afforded to other external agencies through agreement and by declaration, which may allow disaster relief organisations to be afforded such privileges, which may facilitate their work in the country.⁵¹

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

Registration of international assisting actors

The law does not provide a special procedure for the registration of international assisting actors in disaster relief. Foreign humanitarian organisations can establish their legal identity in Malawi through registration: as a trust (charity or association) under the Trustees Incorporation Act;⁵² as a local company limited by guarantee under the Companies Act, as amended;⁵³ or as an external company under the Companies Act.⁵⁴ If the applying organisation is classified as an INGO, it will be required to apply for and meet the requirements for registration as an NGO with the NGO Board, pursuant to the NGO Act,⁵⁵ unless it is exempted from the requirement of registering in terms of section 5. It will also be required to register with the Council for NGOs in Malawi, obtain approval from the line Ministry responsible for the activities to be undertaken by the organisation and register with the Board of NGOs.⁵⁶ There is also a possibility for a humanitarian organisation to establish its legal entity through an agreement entered into with the Malawi Government.⁵⁷

Recognition of professional qualification of foreign personnel

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

Medical Personnel

The medical profession in Malawi is regulated by the Medical Practitioners and Dentists Act⁵⁸ and the Nurses and Midwives Act.⁵⁹

⁵¹ Immunities and Privileges Act 12 of 1984, section 26.

⁵² Trustees Incorporation Act [Chapter 5:03 of the Laws of Malawi], section 3.

⁵³ Companies Act [Chapter 46:03 of the Laws of Malawi], sections 23 and 26.

⁵⁴ See the Companies (Amendment) Act, 1971, section 273. Section 274A provides the procedure and documents required to register as an external company in Malawi. In terms of section 275, an external company has the power to hold land in Malawi.

⁵⁵ NGO Act, sections 20 and 21. See also IDRL in Malawi, pages 40-42.

⁵⁶ IDRL in Malawi, page 42.

⁵⁷ IDRL in Malawi, page 42, read with section 24 (1) (a) of the Immunities and Privileges Act.

⁵⁸ Medical Practitioners and Dentists Act 17 of 1987.

⁵⁹ IDRL in Malawi, page 56.

The recognition of medical qualifications for doctors is regulated at the national level by the Medical Council of Malawi, which is established under the Medical Practitioners and Dentists Act.⁶⁰ The Medical Practitioners and Dentists Act does not have any specific provisions for expedited review of foreign qualifications for the purpose of providing assistance in disasters. All applicants for registration are to meet the certain requirements, including a residential requirement, although there are exceptions to this requirement.⁶¹

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

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

Engineers

The engineering profession is regulated by the Malawi Engineering Institution Act, which provides that all engineers must be registered to practise in Malawi.⁶³ In terms of section 41, the registration Council may register a person who is not a citizen of Malawi. The same section further provides that an immigration officer shall not issue an employment or other permit to a person on the basis that he intends to practise as an engineer in Malawi without the approval of the registration Council. This requirement may pose delays for international disaster assisting personnel who are foreign qualified engineers.

Architects

The architectural profession is regulated by the Architects and Quantity Surveyors Act,⁶⁴ which does not make special provision for the registration of architects providing disaster relief assistance. In terms of section 23, no person may engage in the practice of architecture or quantity surveying in Malawi or hold himself out as being entitled to do so, unless he is registered. It is not clear how long registration takes to complete, but it is foreseeable that without expedited processes in place, international disaster assisting personnel who are foreign qualified architects may face delays in their ability to conduct work in the country.

⁶⁰ Medical Practitioners and Dentist Act, section 3.

⁶¹ Medical Practitioners and Dentist Act, sections 25 and 29.

⁶² Medical Practitioners and Dentist Act, section 33.

⁶³ Malawi Engineering Institution Act 13 of 2019, section 25.

⁶⁴ Architects and Quantity Surveyors Act [Chapter 53:02 of the Laws of Malawi].

Tax and currency exchange for disaster relief activities

VAT is generally chargeable on the supply and import of goods in Malawi under the Value Added Tax Act.⁶⁵ However, section 4 of the Third Schedule of the Value Added Tax Act states that certain goods are exempted from VAT, including goods for use by diplomatic staff, as well as goods for the use of international agencies or technical assistance schemes where the terms of an agreement made with the Malawi Government include such exemption from taxes. This means that international humanitarian organisations assisting in disaster relief would either need recognition under the Immunities and Privileges Act, as described above, or would need to enter into an agreement with the Government of Malawi to benefit from the exemption of VAT.

As for income tax, section 76A of the Taxation Act⁶⁶ provides that any income payable to a person, not being resident in Malawi, arising from a source within Malawi and not attributable to a permanent establishment of that person in Malawi shall be liable to a final tax at the rate of 15% of the gross amount of such income. However, the First Schedule of the Taxation Act provides for an exemption that may apply to international disaster response actors. The Schedule stipulates that income payable to any person pursuant to any arrangement agreed to be exempted is excluded from the application of the Taxation Act.⁶⁷ The nature of such an arrangement is defined in the same section to mean “any arrangement between the government and any other government, or any international organisation, institution or body, or any person”. Any assisting actor would, therefore, need to enter into an arrangement with the Government of Malawi for the exemption of income tax. It is also worth noting that Malawi has entered into a number of double taxation agreements with a view to the prevention, mitigation, or discontinuance of the levying under the laws of Malawi and of another country of taxes with respect to the same income.⁶⁸

Exchange control is strictly regulated in Malawi.⁶⁹ The Exchange Control Regulations provide that a person is not allowed to be in possession of foreign currency in Malawi without the consent of the Minister and it is an offence for a person to exchange currency with any person other than a bank.⁷⁰ It is not permissible for any person (including humanitarian organisations) to take currencies in and out of Malawi without the authority of the central government bank.⁷¹ However, regulation 11(3) provides that this does not apply in relation to a person: who is not resident in Malawi; and who takes or sends out of Malawi an amount of foreign exchange which is not in excess of the amount of foreign currency brought or sent by him into Malawi.

⁶⁵ Value Added Tax Act 7 of 2005.

⁶⁶ Taxation Act [Chapter 41:01 of the Laws of Malawi].

⁶⁷ Taxation Act [Chapter 41:01 of the Laws of Malawi], First Schedule, paragraph (i)(m).

⁶⁸ Taxation Act, section 122.

⁶⁹ IDRL in Malawi, page 50.

⁷⁰ Exchange Control Regulations made under the Exchange Control Act [Chapter 45:01 of the Laws of Malawi], regulations 10 and 25.

⁷¹ Exchange Control Regulations made under the Exchange Control Act [Chapter 45:01 of the Laws of Malawi], regulation 11.

Freedom of movement of international assisting actors during a disaster response

The law does not make specific provision for the freedom of movement of international assisting actors in disaster relief.⁷²

Safety and security of international assisting actors

There are no specific provisions on ensuring the safety of international assisting actors in disaster relief under Malawian law. The police service is mandated to provide protection of property and facilitate enforcement of all laws and regulations.⁷³

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

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

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

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

The IDRL in Malawi report highlights that failure by an organisation to establish recognition under the laws of Malawi will result in it not being recognised as a body corporate with powers to make business transactions or pursue its humanitarian objectives (unless the provisions of the Immunities and Privileges Act apply).⁷⁴ An unregistered organisation would also not be permitted to open bank accounts with any of the registered commercial banks in Malawi since the showing of a certificate of registration/incorporation is one of the prerequisites to benefit from such rights.⁷⁵ They are not prohibited from signing contracts and entering into lease agreements although these may be unenforceable in case of breach as they were entered in the absence of the legal capacity.⁷⁶

The Employment Act defines an employer as any person, body corporate, undertaking, public authority or bodies of persons who or which employs an employee and includes heirs, successors, and assignees of the employer.⁷⁷ Based on this definition, there are no legal barriers for an unregistered organisation to legally hire local personnel, but they may face challenges in paying benefits as it would not have an operating bank account.⁷⁸ Regarding the employment of non-nationals, the Immigration Act does not specifically prohibit unregistered organisations from sponsoring entry visa for its foreign

⁷² IDRL in Malawi, page 63.

⁷³ IDRL in Malawi, page 63. See also the Police Act [Chapter 7:01 of the Laws of Malawi].

⁷⁴ IDRL In Malawi, page 40.

⁷⁵ IDRL in Malawi, page 40.

⁷⁶ IDRL in Malawi, page 40.

⁷⁷ Employment Act, 1999, section 3.

⁷⁸ IDRL in Malawi, page 40.

employees.⁷⁹ However, in practice, the Immigration Department would require a sponsoring letter from a registered organisation and therefore an unregistered organisation would not be able to obtain permits for its employees.⁸⁰

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

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

Malawian law does not currently establish a specialised unit for expediting the entry of international disaster assistance. As a result, expediting entrance of international disaster assistance appears, in practice, to have been occurring on an *ad hoc* basis.⁸¹

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

Part X of the DPR Act establishes the National Preparedness and Relief Fund (the NPR Fund), which consists of *inter alia* sums or assets donated by any foreign government, international agency, or foreign institution and which has the object of developing, promoting, managing, and administering civil protection. The DPR Act also sets out a list of specific purposes for which the NPR Fund may be used.⁸² The administration of the NPR Fund is vested in the Minister.⁸³ In terms of transparency and accounting, section 39 of the DPR Act provides that:

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

In addition, all sums received for the purposes of the NPR Fund will be paid into a banking account and will not be withdrawn except by means of cheques signed by persons authorised by the Minister.⁸⁴ Given that the that the NPR Fund is able to accept donations from international assisting actors, international funds provided to the NPR Fund would be subject to these transparency and accountability measures.

⁷⁹ Immigration Act, 1964.

⁸⁰ IDRL in Malawi, page 40. See regulation 25 of the Immigration Regulations, 1968, read with Form 21.

⁸¹ IDRL in Malawi, page 31.

⁸² DPR Act, section 37.

⁸³ DPR Act, section 35.

⁸⁴ DPR Act, section 40.

Lastly, financial crimes such as money laundering and corruption are regulated by specific legislation, including the Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act⁸⁵ and the Corrupt Practices Act, which may indirectly promote transparency and accountability with respect to international disaster relief operations.⁸⁶

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

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

⁸⁵ Money Laundering and Proceeds of Serious Crime and Terrorist Financing Act, 2006.

⁸⁶ Corrupt Practices Act [Chapter 7:04 of the Laws of Malawi].



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