

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

Mapping of Domestic Laws and Policies

© **International Federation of Red Cross and Red Crescent Societies, Geneva, 2021**

Any part of this publication may be cited, copied, translated into other languages or adapted to meet local needs without prior permission from the International Federation of Red Cross and Red Crescent Societies, provided that the source is clearly stated.

**Contact us:** Requests for commercial reproduction should be directed to the IFRC Secretariat:

**Address:** Chemin des Crêts 17, Petit-Saconnex, 1209 Geneva, Switzerland

**Postal address:** P.O. Box 303, 1211 Geneva 19, Switzerland

**T** +41 (0)22 730 42 22 | **F** +41 (0)22 730 42 00 | **E** [disaster.law@ifrc.org](mailto:disaster.law@ifrc.org) | **W** [ifrc.org](https://www.ifrc.org)

# 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 Republic of Namibia (Namibia) 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 Namibia Red Cross Society and the IFRC who provided technical review and support for the development of this mapping: Bernadette Bock (Namibia Red Cross Society), 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.

---

<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.



European Union  
Civil Protection and  
Humanitarian Aid



Federal Ministry  
for Economic Cooperation  
and Development

# Namibia

## Political Framework

Namibia is a sovereign, secular, democratic and unitary state.<sup>2</sup> The President is elected and serves as Head of State and as Head of the Government as well as the Commander-in-Chief of the Defence Force.<sup>3</sup> The executive power of Namibia vests in the President and the Cabinet.<sup>4</sup> The President's term of office is five years, and a person may not serve more than two terms as President.<sup>5</sup> A Vice President is appointed by the President from the elected members of the National Assembly.<sup>6</sup>

The Prime Minister is appointed by the President and serves as the leader of government business in Parliament and coordinates the work of the Cabinet as head of administration.<sup>7</sup> The Cabinet consists of the President, the Vice President, the Prime Minister, Deputy Prime Minister, and other Ministers as appointed for the purposes of administering and executing the functions of the government.<sup>8</sup>

Parliament is the law-making body of Namibia's legislature. It is composed of the National Council, which consists of 42 representatives of the Regional Councils; and the National Assembly, which comprises 104 members, 96 of which are elected by parliamentary election and eight of which are appointed by the President.<sup>9</sup>

Namibia has a "hybrid" or "mixed" legal system consisting of civil law, common law, and customary law. Namibia is a monist state: article 144 of the Namibian Constitution provides that the general rules of public international law and international agreements binding upon Namibia form part of the law of Namibia.

## DRM Framework

The Disaster Risk Management Act 10 of 2012 (DRM Act) provides the framework for DRM in Namibia. The DRM Act was promulgated to provide for:

- the establishment of institutions for DRM in Namibia;
- an integrated and coordinated DRM approach that focusses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters, and post-disaster recovery;
- declarations of national, regional, and local disasters; and

---

<sup>2</sup> Constitution of Namibia, article 1.

<sup>3</sup> Constitution of Namibia, article 27(1).

<sup>4</sup> Constitution of Namibia, article 27(2).

<sup>5</sup> Constitution of Namibia, article 29.

<sup>6</sup> Constitution of Namibia, article 28(1A).

<sup>7</sup> Constitution of Namibia, article 35 read with article 32(3)(i)(bb).

<sup>8</sup> Constitution of Namibia, article 35.

<sup>9</sup> Constitution of Namibia, articles 46 and 69.

- the establishment of the National Disaster Management Risk Fund (NDRM Fund).

In addition to the DRM Act, the Namibian Government has published several implementing policies and regulations concerning DRM, these include:

- the Namibia National Disaster Risk Management Policy (DRM Policy), adopted in August 2009, which seeks to provide for a “coherent, transparent and inclusive” policy on DRM in Namibia;<sup>10</sup>
- National Disaster Risk Management Plan, adopted in 2011 (DRM Plan), which provides a framework to operationalise the DRM legislation and policy and to provide a framework for sectoral and regional DRM in Namibia;<sup>11</sup> and
- the Disaster Risk Management Regulations (DRM Regulations),<sup>12</sup> introduced in 2013 to provide for the implementation of the DRM Act.

The DRM Act establishes several institutional bodies for the implementation of DRM in Namibia at national level:

- the National Disaster Risk Management Committee (NDRMC), an inter-ministerial governance body responsible for DRM at national level. The NDRMC has the power to establish sub-committees to be responsible for specific DRM topics including health emergency management, drought management, emergency response, recovery, and resource mobilisation;
- the Directorate: Disaster Risk Management, which is the administrative body responsible for DRM at national level; and
- the Namibia Vulnerability Assessment Committee, which is responsible for a wide range of activities relating to the assessment and monitoring of vulnerability in Namibia.<sup>13</sup>

The DRM Act also makes provision for regional, constituency, local and settlement DRM committees to be established, which are charged with coordinating DRM activities within their respective areas of responsibility.<sup>14</sup> In terms of emergency structures, the DRM Act makes provision for the establishment of a National Crisis Committee and a Regional Crisis Committee during a state of national and regional disaster, respectively.<sup>15</sup>

In addition to the bodies listed above, the DRM Act mandates the establishment of a National Focal Person’s Forum for national focal persons.<sup>16</sup> Every permanent secretary or head of a governmental institution, association, organisation, and private institution involved in DRM activities must ensure that, at all times, a focal person from the

---

<sup>10</sup> National Disaster Risk Management Policy, 2009, (DRM Policy), page 1.

<sup>11</sup> National Disaster Risk Management Plan, 2011, (DRM Plan), page 5.

<sup>12</sup> Government Notice 349 of 2013, adopted on 31 December 2013.

<sup>13</sup> Disaster Risk Management Act 10 of 2012 (DRM Act), section 3.

<sup>14</sup> DRM Act, sections 3, 14, 15, 16 and 17.

<sup>15</sup> DRM Act, sections 40(1) and (2).

<sup>16</sup> DRM Act, section 12.

organisation is designated to communicate with the Director: DRM in relation to their respective organisation's disaster management procedures.<sup>17</sup>

The DRM Act provides for civil society participation in DRM. Representatives of NGOs and faith-based organisations as well as traditional leaders and development partners are included as members of Constituency DRM Committees and Settlement DRM Committees.<sup>18</sup> The DRM Act makes provision for a representative of the Namibian Red Cross Society (NRCS) to be included on the Vulnerability Committee, Regional DRM Committees, and the Regional Crisis Committees. NRCS also serves on the DRM committees at national and constituency levels. Additionally, the DRM Policy recognises that NRCS, as auxiliary to the government, is a critical partner in DRM and instrumental in the provision of humanitarian assistance to communities affected by disasters as well as in contributing to DRR and resilience.<sup>19</sup> Representatives from certain UN specialised agencies are also included as members of the Namibia Vulnerability Committee.<sup>20</sup>

## IDRL Assessment

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

In 2012, the IFRC and NRCS collaborated on a research project to examine Namibia's legal preparedness to facilitate and regulate international disaster response operations.<sup>21</sup> The outcomes of the study were included in a detailed report (IDRL in Namibia). This report takes stock of the developments in IDRL since the publication of the IDRL in Namibia report.

The DRM Act contains several provisions on international disaster assistance, which are further detailed in the DRM Regulations. As a starting point, the National Disaster Risk Management Committee is responsible for periodically reviewing policy issues regarding international appeals and the solicitation, acceptance and use of international assistance, including international personnel.<sup>22</sup> More notable is the fact that the DRM Act makes provision for certain legal facilities to be granted to international disaster relief responders, which are discussed in detail in Question 5 below. The DRM Act further provides that the Prime Minister may enter into cooperation agreements with any entity or person within or outside Namibia on any matter relating to DRM if the objectives of that entity or person are consistent with the objectives of the DRM Act.<sup>23</sup> An entity or person that enters into a cooperation agreement with the Government of Namibia is subject to and must respect the sovereignty of Namibia, obey local laws, cooperate with authorities, abstain from political or commercial activities, and ensure that the assistance

---

<sup>17</sup> DRM Act, section 12.

<sup>18</sup> DRM Act, sections 15(2) and 16(2).

<sup>19</sup> DRM Policy, section 9.2.

<sup>20</sup> DRM Act, section 13.

<sup>21</sup> See IFRC and NRCS, *Legal Preparedness for International Disaster Response in Namibia* (2012) (IDRL in Namibia).

<sup>22</sup> DRM Act, section 5(q).

<sup>23</sup> DRM Act, section 54(1).

given is both appropriate to the assessed needs and compliant with domestic quality, health and other standards.<sup>24</sup> The DRM Regulations provide additional information on what is envisaged in terms of these cooperation agreements, providing that such agreements may include provisions:

- for disaster relief personnel and expert, equipment, and materials to be used during a disaster;
- for any service to be rendered before, during and after a disaster;
- to render services on early warning and emergency alert information;
- for the purchasing or leasing of material or equipment to be used during a disaster; or
- for any other matter relating to DRM as the Prime Minister may consider necessary.<sup>25</sup>

The DRM Policy also contains provisions that are relevant to international disaster assistance and recognises that the institutional arrangements for DRM in Namibia must include establishing relationships with neighbouring and other states in both the Southern African region and internationally for the purposes of DRM.<sup>26</sup>

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

The DRM Act provides that the NDRMC is responsible for coordinating and supervising disaster response operations at national level and that the Prime Minister in consultation with the ministers of immigration, finance, and transport (as applicable), must facilitate:

- the entry and operation of international relief personnel and experts, including the expeditious granting of visas and waiver of work permits for relief personnel and experts;
- reduced and simplified customs procedures, exemption from duties, taxes, and charges for donations of equipment and materials, including food, made during disaster situations including possessions of relief personnel; and
- transportation overflight and similar measures.<sup>27</sup>

In addition, the DRM Regulations provides that the international community, civil society organisations, and NGOs may act as disaster relief organisations under the supervision of the disaster institutions, without stipulating whether a particular institution serves as the overall focal point for international responders.<sup>28</sup>

---

<sup>24</sup> DRM Act, section 54(3).

<sup>25</sup> DRM Regulations, regulation 15.

<sup>26</sup> DRM Policy, section 5.4.

<sup>27</sup> DRM Act, section 52.

<sup>28</sup> DRM Regulations, regulation 13.



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

The roles and responsibilities of different governmental institutions relating to international disaster assistance have been outlined above. The legal framework also outlines the role of non-governmental actors in respect of international disaster assistance. For example, the DRM Policy "recognises the role of the NRCS and facilitates unimpeded access to enable it to deliver humanitarian assistance to those affected by disaster, as well as the vital role it plays in the mobilisation of both internal and external resources for disaster risk management."<sup>29</sup> With regards to INGOs, the DRM Policy recognises that cooperation with INGOs is crucial to strengthening capacities for DRM, and that it is important to adopt an inter-agency approach by integrating the individual mandates of the INGOs to avoid gaps and duplications.<sup>30</sup> Further, the DRM Policy recognises the need to coordinate the influx of international aid in the country in times of significant events and disasters in order to effect a fair distribution of capacities and resources, and at the same time to optimise the assistance they have offered for the purposes of DRM.<sup>31</sup> The DRM Policy also "provides mechanisms for the coordination and integration of the contributions of NRCS, UN Agencies, INGOs and other stakeholders such as NGOs, faith and community based organisations with those of other DRM stakeholders in Namibia through the NDRMC and similar multi-stakeholder platforms in the regional and local context."<sup>32</sup> However, the DRM Act appears to have changed the institutional framework for DRM in Namibia - under the DRM Act, the NDRMC is an inter-ministerial committee, although the Prime Minister may appoint representatives of associations, organisations and institutions to serve on the Committee.<sup>33</sup>

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

The DRM Act does not outline a specific process for requesting and terminating international disaster assistance, although it does provide that the NDRMC is responsible for periodically reviewing policy issues regarding international appeals and the solicitation, acceptance and use of international assistance, including international personnel.<sup>34</sup>

The DRM Policy provides that Cabinet, on the advice of the NDRMC, approves the release of monies from the National Disaster Fund to support DRM activities and that Cabinet is responsible for determining the need for international appeals for assistance for disaster relief and the nature of the assistance that is required during a state of disaster.<sup>35</sup> The

---

<sup>29</sup> DRM Policy, section 9.2.

<sup>30</sup> DRM Policy, section 9.3.

<sup>31</sup> DRM Policy, section 9.3.

<sup>32</sup> DRM Policy, section 9.3.

<sup>33</sup> DRM Act, section 4(2)(e).

<sup>34</sup> DRM Act, section 5(q).

<sup>35</sup> DRM Policy, section 5.5.2.

DRM Plan echoes this provision, providing that the need for external and or international appeals and the types of assistance needed during emergency operations will be determined by the Cabinet on the basis of the recommendations of the NDRMC and that the NDRMC will periodically review policy issues regarding international appeals.<sup>36</sup>

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

#### *Landing rights and general customs arrangements*

Namibian law makes express provision to ensure the landing rights of international disaster assisting actors. The DRM Act stipulates that the Prime Minister, in consultation with the Minister responsible for transport, must facilitate transportation, overflight and similar measures for disaster response.<sup>37</sup>

In terms of customs, the DRM Act exempts from customs duty donations received in kind, materials and equipment donated to the National Disaster Fund during a state of disaster to facilitate disaster response from stakeholders approved by the Prime Minister, including charitable or philanthropic organisations, and development partners.<sup>38</sup> The Prime Minister in consultation with the ministers responsible for finance, must also facilitate reduced and simplified customs procedures, exemption from duties, taxes, and charges for donations of equipment and materials, including food, made during disaster situations.<sup>39</sup> The DRM Regulations provide further details on the procedure, providing that a donor must within 48 hours prior to the arrival of the disaster relief item donated, furnish the Prime Minister with a list of items to be donated, and the Director must ensure that a copy of the list is submitted to the Minister responsible for finance for exemption from customs excise duty.<sup>40</sup> In addition, the person receiving donated disaster relief items at a point of entry must ensure that the items donated correspond with the list of items submitted.<sup>41</sup> The exemption of any disaster relief items donated from customs excise duty must be made under the Customs and Excise Act.<sup>42</sup> It is also worth noting that in terms of section 84(1)(b) read with Item 412.11 of Schedule 4 of the Customs and Excise Act,<sup>43</sup> goods imported for the relief of distress of persons in cases of famine or other national disaster, or under any technical assistance agreement, or in terms of an obligation under any multilateral international agreement to which Namibia is a party are admitted subject to a rebate of any customs duties. These provisions are very much in line with the [IDRL Guidelines](#), which stipulate that disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of eligible assisting actors should be exempted from all customs duties, taxes, tariffs or governmental fees as well as export, transit, and import restrictions; and that documentation and inspection

---

<sup>36</sup> DRM Policy, page 22.

<sup>37</sup> DRM Act, section 52(3).

<sup>38</sup> DRM Act, section 52(2).

<sup>39</sup> DRM Act, section 52(3).

<sup>40</sup> DRM Regulations, regulations 12(1) and (2).

<sup>41</sup> DRM Regulations, regulation 12(3).

<sup>42</sup> DRM Regulations, regulation 12(4).

<sup>43</sup> Customs and Excise Act 20 of 1998.

requirements for export, transit and import should be minimised and simplified.<sup>44</sup> They therefore constitute an example of good practice.

The IDRL in Namibia report identifies the following additional facilities which may be relevant to international disaster assistance.<sup>45</sup> Section 31(1) of the Public Service Act,<sup>46</sup> provides that the permanent secretary of any office, ministry or agency may direct any staff member to perform duties or work other than the staff member's ordinary duties or work as long as such other duties or work are appropriate to the grade or designation of the post or rank held by the staff member. This must be read together with the provision that every staff member will place the whole of their time at the disposal of government.<sup>47</sup> This provision may be relevant to international disaster assistance as it may allow international assisting actors to access services that fall within this piece of legislation after normal service hours. This is in line with the IDRL Guidelines, which recommend that affected states should, when necessary, endeavour to ensure that state operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours.<sup>48</sup> In addition, the Airports Company Act, the Namibia Ports Authority Act and the National Transport Services Holding Company Act provide that if the Minister considers it necessary for national security or for the discharge of an international obligation of the state, he or she may issue a direction to the company to perform any function conferred or imposed on the company by or under the relevant legislation.<sup>49</sup> These provisions may be relevant to international disaster assistance as they may allow the relevant Minister to issue directions to the service providers to take steps to facilitate the work of international assisting actors.

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

#### **Communications equipment**

The law does not explicitly make exceptions or simplified procedures to import or export communications equipment in Namibia in disaster situations. However, as stated above, it does provide for the Prime Minister in consultation with the Ministers responsible for finance, to facilitate reduced and simplified customs procedures, exemption from duties, taxes, and charges for donations of equipment and materials made during disaster situations.<sup>50</sup> This would likely include the importation of communications equipment.

With regards to licensing, the Communications Act prescribes the licensing requirements to operate broadcasting services as well as radio equipment.<sup>51</sup> The Communications Act does not make special provision for the speedy licensing or waiver of licensing

---

<sup>44</sup> IDRL Guidelines, paragraph 17.

<sup>45</sup> IDRL in Namibia, pages 66 and 67.

<sup>46</sup> Public Service Act 13 of 1995.

<sup>47</sup> Public Service Act 13 of 1995, section 17(1)(a). See also IDRL in Namibia, page 66.

<sup>48</sup> IDRL Guidelines, paragraph 23.

<sup>49</sup> Airports Company Act 25 of 1998, section 9; the Namibia Ports Authority Act 2 of 1994, section 18; and the National Transport Services Holding Company Act 28 of 1998, section 8.

<sup>50</sup> DRM Act, section 52(3).

<sup>51</sup> Communications Act 8 of 2009, sections 82, 101 and 102.

requirements in disasters, although it does provide for regulations to be made, which may allow for this issue to be regulated in the future.

### Food, medication, and quarantine

Food donated for disaster relief is explicitly mentioned in the DRM Act as being exempted from duties, taxes, and charges. Regulation 14 of the DRM Regulations further provide that a person must not donate food, medicines or other perishable items that are not fit for human consumption or that is closer to its use-by date, and that medical and veterinary medicines donated must comply with the Medicines and Related Substances Control Act<sup>52</sup> and Animal Health Act.<sup>53</sup>

### Vehicles

Although the DRM Act does not explicitly exempt vehicles imported by international assisting actors from customs duties, it is arguable that they would benefit from the reduced and simplified customs procedures, exemption from duties, taxes and charges discussed above.

With regards to licensing and registration of vehicles, the Road Traffic and Transportation Act provides that all vehicles in Namibia must be registered and licensed to operate on public roads.<sup>54</sup> The Road Traffic and Transportation Act does not prescribe any special or simplified provisions for the registration or licensing of foreign vehicles for relief and recovery work. However, the Road Traffic and Transport Regulations contain a provision which may reduce the obligation for international assisting actors to register and license the vehicles that are imported for disaster response operations, providing that a vehicle which is registered and licensed in a foreign country which is a party to the applicable Road Traffic Convention,<sup>55</sup> which enters Namibia temporarily, may be deemed to be registered and licensed in Namibia for up to one year (provided its registration and licence are still valid).<sup>56</sup>

In addition, foreign and international driving permits which were issued to persons while they were not permanent residents of Namibia are recognised in Namibia, but international driving permits do not authorise the driving of a motor vehicle carrying passengers if use of the type of vehicle requires the operator thereof to be registered.<sup>57</sup>

### Immigration

Section 52(3) of the DRM Act provides that the Prime Minister, in consultation with the Minister responsible for immigration, must facilitate the entry and operation of international relief personnel and experts, including the expeditious granting of visas and

---

<sup>52</sup> Medicines and Related Substances Control Act 13 of 2003.

<sup>53</sup> Animal Health Act 1 of 2011.

<sup>54</sup> Road Traffic and Transportation Act 22 of 1999, section 20.

<sup>55</sup> The term "Convention" is defined in section 1 of the Road Traffic and Transport Regulations, 2001, as the International Convention relative to Motor Traffic (Paris, 1926); the UN Convention on Road Traffic (Geneva, 1949); the UN Convention on Road Traffic (Vienna, 1968); or any subsequent related convention ratified by the Government of Namibia.

<sup>56</sup> Road Traffic and Transport Regulations, 2001, regulation 12.

<sup>57</sup> Road Traffic and Transportation Act 22 of 1999, section 41. Further details are provided in regulation 121 of the Road Traffic and Transport Regulations, 2001.

waiver of work permits for relief personnel and experts. The DRM Regulations provide further detail in this regard, providing in regulation 13 that:

1. *A state or international organisation that provides international relief personnel or experts must, within 72 hours prior to the arrival of the international relief personnel or experts, provide the Prime Minister with -*
  - a. *full particulars of the international relief personnel or experts;*
  - b. *letter of appointment of the international relief personnel or experts; and*
  - c. *passport details of the disaster relief personnel or experts.*
2. *The Director must ensure that -*
  - a. *details referred to in sub-regulation (1) are furnished to the Minister responsible for immigration to facilitate the entry of the international relief personnel or experts, including the expeditious granting of visas and waiver of work permits; and*
  - b. *arrangements are in place for the transportation of international disaster relief personnel or experts as well as disaster relief items donated.*
3. *The entry and operation of international relief personnel or experts, the granting of visas and waiver of work permits for relief personnel and experts must be made in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993).*
4. *The international community, civil society organisations, and non-governmental organisations may act as disaster relief organisations under the supervision of the disaster institutions.*

In addition, the Prime Minister, in consultation with the Minister responsible for finance, must facilitate reduced and simplified customs procedures, exemption from duties, taxes and charges for the possessions of relief personnel.<sup>58</sup>

With regards to immunities and privileges, Namibia is a state party to both the Vienna Convention on Diplomatic Relations as well as the Vienna Convention on Consular Relations and the Diplomatic Privileges Act, 1951 provides for certain privileges and immunities for heads of state, diplomatic agents, and certain other persons.

#### *Registration of international assisting actors*

Although the DRM Act provides the Prime Minister must facilitate the entry and operation of international relief personnel and experts, this provision appears to apply only to natural and not juristic persons. Namibia does not have any law dedicated exclusively to the recognition, registration and rules governing the conduct of NGOs and most civil society organisations are registered either as trusts, companies not for gain, or welfare organisations.<sup>59</sup> The law also does not appear to set out a special and simplified system for the registration of international assisting actors in the context of disasters.

---

<sup>58</sup> DRM Act, section 52(3)(b).

<sup>59</sup> IDRL in Namibia, page 38-40.

### *Recognition of professional qualifications of foreign personnel*

There are no specific provisions in the various professional bodies' regulatory rules of Namibia that provide for expedited recognition of foreign professional qualifications.<sup>60</sup> The DRM Act provides that the Prime Minister, in consultation with the Minister responsible for immigration, must facilitate the entry and operation of international relief personnel and experts, including the expeditious granting of visas and waiver of work permits for relief personnel and experts. It is not clear whether this would include simplified procedures for the speedy accreditation of foreign qualifications, but it is arguable that it would.

Both the Medical and Dental Act and the Nursing Act provide that no person is allowed to practise in Namibia unless such person is registered to practise the profession concerned.<sup>61</sup> It is also prohibited to practise as an architect or quantity surveyor in Namibia without being registered under the Architects and Quantity Surveyors Act, although it does provide for the exemption of persons from operation of provisions of the Act, through notice in a Gazette.<sup>62</sup> With regards to engineers, the Engineering Profession Act provides that any person who is not registered as a professional engineer and who performs any work reserved for professional engineers, or who holds himself out or allows himself to be held out as a professional engineer shall be guilty of an offence and liable on conviction to a fine.<sup>63</sup> Any person not ordinarily resident in Namibia and who has been engaged to perform the work of a professional engineer may apply for temporary registration, which may be useful for international assisting actors.<sup>64</sup> In addition, the Minister has the power to exempt any person, or class of such persons from the operation of any or all of the provisions of the Act by notice.<sup>65</sup>

### *Tax and currency exchange for disaster relief activities*

#### *Exchange Control*

Namibia applies a comprehensive regime of exchange control.<sup>66</sup> The function to administer exchange control has generally been assigned by the Bank of Namibia to local commercial banks.<sup>67</sup> Namibia is part of the CMA, and no exchange control restrictions exist between CMA countries, provided that the flows are strictly in local currency.<sup>68</sup>

---

<sup>60</sup> IDRL in Namibia, page 53.

<sup>61</sup> Medical and Dental Act 10 of 2004, section 17 (see section 19 for registration requirements); Nursing Act 8 of 2004, section 17 (see section 18 and 19 for registration requirements).

<sup>62</sup> Architects' and Quantity Surveyors' Act 13 of 1979, section 13 read with section 23.

<sup>63</sup> Engineering Profession Act 18 of 1986, section 16 read with section 7(3)(b).

<sup>64</sup> Engineering Profession Act 18 of 1986, section 11(6).

<sup>65</sup> Engineering Profession Act 18 of 1986, section 28.

<sup>66</sup> ENS, *Doing Business in Namibia*, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

<sup>67</sup> ENS, *Doing Business in Namibia*, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

<sup>68</sup> ENS, *Doing Business in Namibia*, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).



Transactions that involve the transfer of funds to countries outside the CMA are subject to Bank of Namibia approval.<sup>69</sup>

### Income Tax

Namibia has a source-based taxation system in terms of which both residents and non-residents are subject to tax on income earned from a source in Namibia.<sup>70</sup> Under the Income Tax Act, the income of certain organisations or associations, including certain foreign organisations, is exempted from income tax.<sup>71</sup> The Income Tax Act further exempts the income of any organisations or associations, registered or not, including foreign organisations whose sole or principal object is to provide medical, dental, blood transfusion, hospital, or nursing services from taxation.<sup>72</sup>

For individuals, the Income Tax Act exempts the salaries and emoluments payable to any person who holds office in Namibia as an official of any government, other than the Government of Namibia, or any specialised agency of the UN as contemplated in the Convention on the Privileges and Immunities of the Specialised Agencies as approved by the General Assembly of the UN on 21 November 1947, provided such person is stationed in Namibia for that purpose by virtue of an agreement between such government or such a specialised agency and the Government of Namibia, is not a Namibian citizen or ordinarily resident in Namibia, and the salaries and emoluments concerned are paid from a source outside Namibia.<sup>73</sup> The income of any person or organisation entitled to privileges under the Diplomatic Privileges Act is also exempted from income tax.<sup>74</sup> The Income Tax Act also provides for the prevention and relief from double taxation through double taxation agreements.<sup>75</sup> Double taxation agreements have been entered into and are in force with France, Germany, India, Malaysia, Mauritius, Romania, Russia, South Africa, Sweden, and the United Kingdom.<sup>76</sup>

### VAT

Section 52(3) of the DRM Act provides that the Prime Minister, in consultation with the Minister responsible for finance, must facilitate the exemption from taxes and charges for donations of equipment and materials, including food, made during disaster situations. This exemption would likely include VAT, although this is not explicitly stated.

The Value Added Tax Act<sup>77</sup> defines taxable activity as *inter alia* any activity which is carried on continuously or regularly by any person in Namibia or partly in Namibia, whether or not for a pecuniary profit, that involves or is intended to involve, in whole or in part, the

---

<sup>69</sup> ENS, *Doing Business in Namibia*, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

<sup>70</sup> ENS, *Doing Business in Namibia*, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

<sup>71</sup> Income Tax Act 24 of 1981, section 16(1)(e)(i).

<sup>72</sup> Income Tax Act 24 of 1981, section 16(1)(f)(i)(bb).

<sup>73</sup> Income Tax Act 24 of 1981, section 16(1)(c).

<sup>74</sup> Diplomatic Privileges Act 71 of 1951, section 5.

<sup>75</sup> Income Tax Act 24 of 1981, section 100.

<sup>76</sup> ENS, *Doing Business in Namibia*, available at <https://www.ensafrica.com/doing-business/> (accessed 12 February 2021).

<sup>77</sup> Value Added Tax Act 10 of 2000.

supply of goods or services to any other person for consideration. The IDRL in Namibia report notes that: "The activities of international disaster assistance organisations which would operate in Namibia only for the initial response and recovery period would thus fall outside of this definition which refers to continuous or regular activity. However, for any organisation which would be active for longer than maybe three months or possibly 6 months, an unfavourable interpretation may hold that they are continuously or regularly conducting their activities."<sup>78</sup>

The Value Added Tax Act also contains a schedule which lists all the tax-exempt supplies of goods and services and another schedule which lists all tax-exempt imports, which includes the services of various medical practitioners who are registered under the respective Namibian law applicable to their professions, as well as goods imported for the relief of distress of persons in cases of famine or other national disaster, or under any technical assistance agreement, or in terms of an obligation under any multilateral international agreement to which Namibia is a party.<sup>79</sup>

#### *Freedom of movement of international assisting actors during a disaster*

There do not appear to be any provisions in Namibian law which explicitly ensure the freedom of movement of international assisting actors during a disaster response. However, as stated above, regulation 13 of the DRM Regulations provides that international assisting actors may act as disaster relief organisations under the supervision of the disaster institutions. This indicates that such actors may enjoy freedom of movement under the supervision of the national disaster institutions. In addition, the DRM Policy "recognises the role of the NRCS and facilitates unimpeded access to enable it to deliver humanitarian assistance to those affected by disaster, as well as the vital role it plays in the mobilisation of both internal and external resources for disaster risk management."<sup>80</sup>

#### *Safety and Security of international disaster relief*

The law does not appear to make special provision for the safety and security of international assisting actors in Namibia. In general, the Namibian Police Force is responsible for: preserving the internal security of Namibia; maintaining law and order; investigating any offence or alleged offence; preventing crime; and protecting life and property.<sup>81</sup> The Police Act has provisions specifically applicable to emergency situations, providing in section 10 that regulations may be made directing the Police Force to assist in countering any such emergency and may place the Police Force while so employed under the order and directions of a person whom the President appoints for that purpose. Part of the Police Force could, therefore, be placed under the command of a

---

<sup>78</sup> IDRL in Namibia, page 61.

<sup>79</sup> Value Added Tax Act 10 of 2000, sections 10 and 13 read with Schedule IV (Item 2(l)) and Schedule V (Item 412.11).

<sup>80</sup> DRM Policy, section 9.2.

<sup>81</sup> Police Act 19 of 1990, section 13.



member of the relevant DRM committee and be ordered to protect relief personnel and property.<sup>82</sup>

The Defence Act, 2002 provides that the Defence Force or any portion or member thereof may be employed: on service in defense of Namibia; on service in the prevention or suppression of terrorism; on service in the prevention or suppression of internal disorder in Namibia; on service in the preservation of life, health, or property; and on service in the maintenance of essential services.<sup>83</sup> While employed as such, the Defence Force may be used for the police functions listed above.<sup>84</sup>

Therefore, the protection of persons and property in Namibia is the responsibility of the Police Force and Defence Force, and this would include such personnel and property related to international disaster assistance.

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

The DRM Act provides for cooperation agreements to be entered into between the Government of Namibia and other actors. The DRM Act further provides that any person that enters into a cooperation agreement regarding DRM with the Prime Minister must:

- respect the sovereignty of Namibia;
- obey local laws;
- cooperate with authorities;
- abstain from political and commercial activities; and
- ensure that the assistance given is both appropriate to the assessed needs and compliant with domestic quality, health, and other standards.<sup>85</sup>

The DRM Regulations also contain provisions relevant to quality standards, providing that food, medicines or other perishable item that is not fit for human consumption or that is close to its use-by date may not be donated; and that medical and veterinary medicines donated must comply with the Medicines and Related Substances Control Act and Animal Health Act.<sup>86</sup> Furthermore, regulations 17 and 18 provide a code of practice for persons involved in DRM and volunteers, providing that such a person must:

- perform his or her duties with due care, skills, diligence, and professionalism;
- act fairly and unbiased in dealing with people affected by a disaster;
- be familiar with and abide by the DRM Act, regulations, rules, policies, and directives issued under the DRM Act on matters pertaining to DRM;
- promote accountability, efficiency, effectiveness, and transparency in implementing DRM programmes;

---

<sup>82</sup> IDRL in Namibia, page 65.

<sup>83</sup> Defence Act 1 of 2002, section 5(2)(a).

<sup>84</sup> Defence Act 1 of 2002, section 5(2)(b).

<sup>85</sup> DRM Act, section 54.

<sup>86</sup> DRM Regulations, regulation 14.

- report to the Prime Minister or any other relevant authority incidents of fraud, corruption, nepotism, or maladministration which come to his or her knowledge;
- act in a manner that upholds the reputation of the Namibian Government; and
- be honest and accountable in dealing with public funds and disaster relief items and only use such funds or items for their intended purpose.

The DRM Regulations further provide that, where possible, a person involved in DRM should use local persons for activities pertaining to DRM and procure local resources.<sup>87</sup>

In addition, the DRM Policy stipulates that it shall respect the rights of citizens to receive humanitarian assistance and for humanitarian assistance to be offered in accordance with *inter alia* the Sphere Standards and the Red Cross and Red Crescent Societies' Codes of Conduct.<sup>88</sup> The DRM Policy further provides that in rendering humanitarian assistance, persons shall be treated humanely and with respect, irrespective of gender, creed, race, or political affiliation.<sup>89</sup>

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

As stated above, the DRM Act provides that charitable or philanthropic organisations, development partners or other stakeholders in DRM must be approved by the Prime Minister for their donations to be exempt from customs excise duty.<sup>90</sup> However, it does not provide details regarding the process to be followed to gain approval.

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

The DRM Act does not establish a specialised unit for expediting the entry of international disaster assistance, but provision is made for the expedited entry of international relief personnel and experts as well as for the expedited entry of relief goods and equipment through the Prime Minister in consultation with the Ministers responsible for immigration, finance, and transport, respectively.<sup>91</sup>

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

With regards to international disaster assistance in particular, the DRM Regulations stipulate that a person to whom a disaster relief item is entrusted for custody or safekeeping must, from time to time or as the Prime Minister may require, provide the Prime Minister with a report in writing to account for the item.<sup>92</sup> In addition, the Prime

---

<sup>87</sup> DRM Regulations, regulation 17(5).

<sup>88</sup> DRM Policy, section 2.2.

<sup>89</sup> DRM Policy, section 2.2.

<sup>90</sup> DRM Act, section 52(2).

<sup>91</sup> DRM Act, section 52(3).

<sup>92</sup> DRM Regulations, regulation 14.

Minister must give a report or cause a report to be given to a person who donated a disaster relief item received for or on behalf of the Namibian Government.<sup>93</sup>

Several other provisions are also relevant, although they do not explicitly state their applicability to international disaster assistance. As a starting point and as stated above, regulations 17 and 18 of the DRM Regulations provide a code of practice for persons involved in DRM and volunteers. The code of practice includes several obligations related to transparency, including requiring persons involved in DRM and volunteers to:

- promote accountability, efficiency, effectiveness, and transparency in implementing DRM programmes;
- report to the Prime Minister or any other relevant authority incidents of fraud, corruption, nepotism, maladministration which come to his or her knowledge;
- act in a manner that upholds the reputation of the Namibian Government; and
- be honest and accountable in dealing with public funds and disaster relief items and only use the public funds or disaster relief items for the intended purpose.

Furthermore, the DRM Regulations provide that a person may not act in a position where he or she has a personal, financial, or other interest that might influence the way in which he or she exercises power or performs his or her functions.<sup>94</sup> A person involved in DRM also may not: use his or her position to seek or obtain financial or other advantage for himself or herself or his or her family, friends or any other person; or obtain private gifts or benefits for himself or herself when exercising his or her power or performing his or her duty; or accept any gift or benefit without the approval of the Prime Minister.<sup>95</sup> The DRM Regulations further stipulate that persons involved in DRM also have an obligation to share disaster related information in a transparent way in order to promote coordination and more coherent disaster response among every person involved in DRM or affected by disaster.<sup>96</sup> With regards to professional services, regulation 18 provides that a person rendering professional services during a disaster must comply with the ethical rules applicable to his or her respective area of speciality. In addition, regulation 32 provides for several penalties with respect to DRM, including making it an offence for any person:

- who sells, buys, or misuses a disaster relief item;
- whose action or omission endangers life, property, or environment;
- who misrepresents for the purposes of acquiring disaster funds or disaster relief items;
- who fails to return, upon his or her resignation, to the issuing authority the identification card, uniform or equipment issued to him or her for DRM or disaster response;

---

<sup>93</sup> DRM Regulations, regulation 14.

<sup>94</sup> DRM Regulations, regulation 17(2).

<sup>95</sup> DRM Regulations, regulation 17.

<sup>96</sup> DRM Regulations, regulation 17(4).

- who buys for consumption or sale any disaster relief item;
- who diverts the delivery of disaster relief items to a person other than the intended person;
- who uses or disposes of disaster relief items for a purpose other than the intended purpose;
- who misrepresents the source of disaster relief items by:
  - covering, replacing, or defacing the labels of the disaster relief item to make it appear that the disaster relief item is from another person or is not intended for DRM or disaster response;
  - repacking the disaster relief item into a container with different markings to make it appear that the disaster relief item is from another person or is not intended for DRM or disaster response; or
  - substituting or replacing disaster relief items with the same items or of inferior or cheaper quality;
- who uses false information to acquire disaster funding or disaster relief items;
- who steals disaster relief items;
- who distorts or alters evidence or documents given, produced, or provided by the person appointed to conduct investigations;
- who refuses or prevents any other person to be relocated from an area where disaster occurs or is about to occur;
- who tempers with any evidence, document or a report relating to compensation; or
- who claims compensation under the DRM Act in respect of the same event that he or she is entitled under any other law.

In addition, the DRM Act establishes the National Disaster Fund, which consists *inter alia* of moneys from partnerships with stakeholders and development partners.<sup>97</sup> The DRM Act provides a list of uses of the Fund and stipulates that specific donations to the Fund must be utilised in a manner as agreed to between the Fund management and the donor.<sup>98</sup> The Committee is responsible for the administration of the Fund and the Fund is also subject to certain auditing requirements.<sup>99</sup>

Lastly, Namibia passed the Financial Intelligence Act<sup>100</sup> which seeks to regulate all activities, persons and institutions which may be used by money launderers and places obligations on accountable institutions to have certain anti-money-laundering measures in place, including the duty to ascertain: the correct identity of the client; the actual existence of the client if the client is a legal entity; and the authority of the representative of the client to act on behalf of the client.<sup>101</sup> Accountable institutions are also obliged to

---

<sup>97</sup> DRM Act, sections 45 and 46.

<sup>98</sup> DRM Act, section 49(1) and (2).

<sup>99</sup> DRM Act, section 50 and 51.

<sup>100</sup> Financial Intelligence Act 3 of 2007.

<sup>101</sup> Financial Intelligence Act 3 of 2007, section 21.

maintain accounts in the name of the account holder and not to open, operate or maintain any anonymous account or any account in a fictitious, false or incorrect name.<sup>102</sup> Accountable institutions are listed in Schedule 1 of the Financial Intelligence Act and include banks, lawyers and currency exchange dealers, including persons who sell or redeem travellers' cheques, money orders or similar payment instruments. These provisions would appear to apply to assisting organisations in international disaster response operations. Although they may contribute to promoting the transparency of international assisting organisations, it has been noted that these provisions may also impede legitimate international assisting actors from operating efficiently in Namibia as the requirements of such legislation may slow down urgent money transfers to Namibia and the requirements of the Act may also make it difficult for assisting organisations to open bank accounts.<sup>103</sup>

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

Although the DRM Act explicitly contemplates the expedited entry of relief personnel and the reduction of import restrictions, duties or fees on relief goods and equipment entering Namibia, it does not contemplate special or expedited procedures for international disaster assistance sent from and transiting through Namibia and it therefore appears that the normal rules would apply.<sup>104</sup>

---

<sup>102</sup> Financial Intelligence Act 3 of 2007, section 21(4).

<sup>103</sup> IDRL in Namibia, page 59.

<sup>104</sup> DRM Act, section 52(3). See on this IDRL in Namibia, page 71.



**The International Federation of Red Cross and Red Crescent Societies (IFRC)** is the world's largest humanitarian network, with **192 National Red Cross and Red Crescent Societies** and around **14 million volunteers**. Our volunteers are present in communities before, during and after a crisis or disaster. We work in the most hard to reach and complex settings in the world, saving lives and promoting human dignity. We support communities to become stronger and more resilient places where people can live safe and healthy lives, and have opportunities to thrive.