

LEGAL PREPAREDNESS FOR INTERNATIONAL DISASTER ASSISTANCE IN SOUTH AFRICA

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 South Africa (South Africa) as provided in domestic laws and policies, and is the result of a desktop review of information publicly available online. This mapping has been conducted using the ten guiding questions from the [Checklist on the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#) (the IDRL Checklist). The IDRL Checklist is based on the [Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance](#) (the IDRL Guidelines).¹ The IDRL Guidelines, which were unanimously adopted by the 30th International Conference of the Red Cross and Red Crescent in 2007, are a set of recommendations concerning domestic legal preparedness for international disaster assistance.

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¹ IFRC, *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (2008) (IDRL Guidelines). Note that the IDRL Guidelines have been re-issued with new forewords in 2011 and 2017.

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European Union
Civil Protection and
Humanitarian Aid



Federal Ministry
for Economic Cooperation
and Development

South Africa

Political Framework

South Africa is a sovereign, multi-party democratic state.² The President of South Africa is elected as Head of State and Head of the National Executive.³ Elections are held every five years and a person may only serve two terms as President.⁴

Parliament consists of the National Assembly and the National Council of Provinces, which participate in the legislative process in the manner set out in the Constitution.⁵ The National Assembly is elected to represent the people and to ensure government by the people under the Constitution.⁶ The National Council of Provinces represents the provinces to ensure that provincial interests are taken into account in the national sphere of government.⁷ The legislative authority: of the national sphere of government is vested in Parliament; of the provincial sphere of government is vested in the Provincial Legislatures; and of the local sphere of government is vested in the Municipal Councils.⁸

South Africa has a mixed civil, common, and customary legal system. The Constitution is the highest law in the country.⁹ The Constitution sets out the rights and duties of the citizens and the Government of South Africa. The Bill of Rights, contained in section 2 of the Constitution, is a cornerstone of democracy in South Africa, which enshrines the rights of all people in the country and affirms the democratic values of human dignity, equality, and freedom.¹⁰ With regards to international law, South Africa follows a dualist approach as far as treaties are concerned, but a monist approach to customary international law. In terms of section 231 of the Constitution, an international agreement binds South Africa only after it has been approved by resolution in both the National Assembly and the National Council of Provinces and any international agreement becomes law in South Africa when it is enacted into law by national legislation.¹¹

DRM Framework

Since 1994, the South African Government's approach to dealing with disasters has changed significantly. One of the main reasons was the need to modernise the law to be

² Constitution of the Republic of South Africa, 1996, section 1.

³ The Constitution of the Republic of South Africa, section 83. See Chapter 5 of the Constitution of the Republic of South Africa for further details on the powers and functions of the President.

⁴ Constitution of the Republic of South Africa, 1996, section 88.

⁵ Constitution of the Republic of South Africa, 1996, section 42.

⁶ Constitution of the Republic of South Africa, 1996, section 42(2)

⁷ Constitution of the Republic of South Africa, 1996, section 42(3).

⁸ Constitution of the Republic of South Africa, 1996, section 43.

⁹ Constitution of the Republic of South Africa, 1996, section 2.

¹⁰ Constitution of the Republic of South Africa, 1996, Chapter 2.

¹¹ Constitution of the Republic of South Africa, 1996, section 231(2) and (4). However, note that section 231(3) provides that some international agreements, such as those of a technical, administrative, or executive nature, or those which do not require either ratification or accession, bind South Africa without approval by the National Assembly and the National Council of Provinces. Section 232 determines that customary international law is law in South Africa unless it is inconsistent with the Constitution or an act of Parliament.

in line with international best practice in the field of DRM. In addition, the government intended to systematically mainstream DRR into developmental initiatives at national, provincial, and municipal levels.

As a starting point, section 37 of the Constitution, which forms part of the Bill of Rights, provides that a state of emergency may be declared when: “(a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster, or other public emergency; and (b) the declaration is necessary to restore peace and order.” States of Emergency are further governed by the States of Emergency Act, 1997. In addition, the Constitution defines several “functional areas” of state competence and allocates these among the three different spheres of government (national, provincial, and local) in Schedule 4 (areas of concurrent national and provincial competence) and Schedule 5 (areas of exclusive provincial competence) respectively. Each Schedule is divided into two parts. The lists in Part B are also regarded as “local government matters” over which the local sphere of government has administrative powers and the power to develop by-laws. “Disaster management” is listed as a functional area in Part A of Schedule 4. Therefore, both the national and provincial spheres of government are competent to develop and execute laws within this area, but it is not assigned as a local government matter. However, section 156(4) of the Constitution obligates national and provincial governments to assign the administration of matters listed in Part A of Schedule 4 to particular municipalities if that matter would be most effectively administered by that municipality (also taking into account the capacity of the municipality).

It is, however, the Disaster Management Act of 2002, as amended (DMA),¹² that provides the framework for DRM in South Africa. The DMA was enacted to provide for an integrated and coordinated disaster management policy that focuses on preventing and reducing disaster risk, mitigating the severity of disasters, disaster preparedness, and response as well as post-disaster recovery. The DMA recognises the opportunities in the country to avoid and reduce disaster risk through the efforts of all spheres of government, civil society, and the private sector¹³ However, it also acknowledges the need for uniformity in the approach taken by DRM stakeholders and role-players.¹⁴

The DMA sets out the institutional bodies related to DRM in South Africa. In a nutshell, the bodies are:

- in the national sphere: The Inter-Governmental Committee on Disaster Management (ICDM),¹⁵ the National Disaster Management Advisory Forum¹⁶ and the National Disaster Management Centre (NDMC);¹⁷

¹² Disaster Risk Management Act 57 of 2002 as amended by the Disaster Management Amendment Act of 2015 (DMA).

¹³ The Policy Framework for Disaster Risk Management in South Africa, 2005 (the Framework), Introduction.

¹⁴ The Framework, Introduction.

¹⁵ DMA, section 4.

¹⁶ DMA, section 5.

¹⁷ DMA, section 8.

- in the provincial sphere: The Provincial Disaster Management Centres (PDMCs) and the Provincial Disaster Management Advisory forums (PDMAFs);¹⁸ and
- in the local spheres: Municipal Disaster Management Centres (MDMCs)¹⁹ and Municipal Disaster Management Advisory Forums (MDMAFs).²⁰

The ICDM comprises Cabinet Members and the MECs of each province involved in DRM, and members of municipal councils, selected by the South African Local Government Association (SALGA).²¹ The ICDM is mandated to give effect to the principles of cooperative governance; report to Cabinet on the coordination of disaster management among the spheres of government; and generally advise Cabinet on issues relating to disaster management and the establishment of the NDMF. In addition to the ICDM, the DMA establishes disaster management centres within each sphere of governance which play a variety of coordination and monitoring functions. The DMA explicitly requires that these disaster management centres give guidance to organs of state, the private sector, NGOs, communities and individuals to assess and prevent or reduce the risk of disasters and to promote formal and informal initiatives that encourage risk-avoidance behaviour.²² Section 8 of the DMA provides for the establishment of the NDMC, which has the objective to promote an integrated and coordinated system of disaster management, with an emphasis on prevention and mitigation of disasters by national, provincial, and municipal organs of state.

The last pillar of the institutional framework provided in the DMA is the disaster management advisory forums, which serve as spaces for consultation and coordination between state officials from all three spheres of government and a potentially long list of disaster management role-players in civil society including: representatives of organised business; the Chamber of Mines; organised labour; the insurance industry; organised agriculture; traditional leaders; religious and welfare organisations; medical, paramedical and hospital organisations; the disaster management profession; relevant NGOs and inter-governmental organisations and relief agencies; statutory bodies regulating safety standards in particular industries; institutions of higher education or institutions that can provide scientific and technological advice; and disaster management experts.²³ At national level, section 5 of the DMA provides for the establishment of the National Disaster Management Advisory Forum (NDMAF), which is described as “a body in which national, provincial and local government and other disaster management role-players consult one another and coordinate their actions on matters relating to disaster management”.²⁴ The NDMAF is, therefore, responsible for the coordination of disaster management activities across the national, provincial and municipal spheres of government. While the NDMAF must be established, the DMA affords a discretion to the

¹⁸ DMA, section 37(1).

¹⁹ DMA, section 43.

²⁰ DMA, section 51.

²¹ DMA, section 4.

²² DMA, sections 20, 33 and 47.

²³ DMA, section 5(1).

²⁴ DMA, section 5(3)(a).

provincial and municipal spheres of government to establish PDMAFs and MDMAFs for each province and each metropolitan and district municipality respectively.²⁵

In addition to the DMA, the Policy Framework for Disaster Risk Management in South Africa (the Framework) was developed in 2005 to address this need for consistency across multiple stakeholders, by providing “a coherent, transparent and inclusive policy on disaster management appropriate for the Republic as a whole”.²⁶

In South Africa, all national, provincial, and municipal organs of state, municipal entities and other institutional partners identified as key role-players in DRM are required to prepare and complete disaster management plans.²⁷ The Framework adopts a phased approach in this regard to address the wide range of DRM planning and implementation capabilities, comprising of three progressive steps from a Level 1 DRM Plan to a Level 3 DRM Plan.²⁸ Briefly, a Level 1 DRM Plan must be developed by national or provincial organs of state and municipal entities that have not previously developed a coherent DRM plan, focusing primarily on “establishing foundation institutional arrangements for DRM, putting in place contingency plans for responding to known priority threats as identified in the initial stages of the disaster risk assessment, identifying key governmental and other stakeholders, and developing the capability to generate a Level 2 Disaster Risk Management Plan.”²⁹ A Level 2 DRM Plan applies to “national, provincial and municipal organs of state that have established the foundation institutional arrangements, and are building the essential supportive capabilities needed to carry out comprehensive DRM activities. It includes establishing processes for a comprehensive disaster risk assessment, identifying and establishing formal consultative mechanisms for development of DRR projects and introducing a supportive information management and communication system and emergency communications capabilities”.³⁰ Lastly, a Level 3 DRM Plan “applies to national, provincial and municipal organs of state that have established both the foundation institutional arrangements for DRM and essential supportive capabilities.³¹ The plan must specify clear institutional arrangements for coordinating and aligning the plan with other governmental initiatives and plans of institutional role-players. It must also show evidence of informed disaster risk assessment and ongoing disaster risk monitoring capabilities as well as relevant developmental measures that reduce the vulnerability of disaster-prone areas, communities and households.”³² The first two levels therefore deal with establishing mechanisms to ensure that the legislative and policy requirements are implemented

²⁵ DMA, sections 37 and 51.

²⁶ DMA, section 7.

²⁷ The Framework, section 3.1.1.2.

²⁸ The Framework, section 3.1.1.2.

²⁹ The Framework, section 3.1.1.2.

³⁰ The Framework, section 3.1.1.2.

³¹ The Framework, section 3.1.1.2.

³² The Framework, section 3.1.1.2.

whereas the third level focuses on maintaining relevance and applying ongoing DRM best practice.³³

The Local Government: Municipal Systems Act of 2000 (the Systems Act) also mandates the inclusion of applicable DRM plans as core components of municipal Integrated Development Plans (IDPs).³⁴ The requirement for DRM planning and implementation is the starting point of the South African Disaster Risk Management Series, which is an integrated package of handbooks and supporting materials in the form of guidelines, templates and other documents for the implementation of DRM in municipalities and provinces in South Africa.

There are also sectoral laws that deal with specific types of disasters and emergencies in South Africa such as the National Veld and Forest Fire Act,³⁵ the Fire Brigade Services Act,³⁶ and the Safety at Sports and Recreational Events Act;³⁷ as well as several pieces of legislation which regulate different aspects of disaster management within the regulation of broader sectors such as the environment, mine health and safety, and building and construction.³⁸

IDRL Assessment

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

The DMA contains limited provisions relating to international disaster assistance. Section 16 stipulates that the NDMC must establish communication links with foreign disaster management agencies to exchange information and to have access to international expertise in and assistance in respect of disaster management. Although the provisions on IDRL are limited, the DMA makes provision for regulations to be made in this regard in the future, as section 27(2) stipulates that if a national state of disaster has been declared, regulations or directions may be made on *inter alia* steps to facilitate international disaster assistance. In addition, section 7(2) stipulates that the Framework must *inter alia* facilitate South Africa's cooperation in both regional and international disaster management.

The Framework explicitly sets out South Africa's policy on international cooperation during disasters, stating that:

"climatic changes and disasters originating from natural phenomena, environmental degradation and technological developments are becoming global problems, requiring global strategies and solutions. It is essential, therefore, that disaster risk management

³³ The Framework, section 3.1.1.2.

³⁴ Local Government: Municipal Systems Act 32 of 2000, section 26(g).

³⁵ National Veld and Forest Fire Act 101 of 1998.

³⁶ Fire Brigade Services Act 99 of 1987.

³⁷ Safety at Sports and Recreational Events Act 2 of 2010.

³⁸ IFRC, *Analysis of legislation related to disaster risk reduction in South Africa*, Annexe C.

in South Africa is informed by a global perspective. In order for South Africa to remain at the cutting edge of developments, to learn from international best practice, and to be in a position to contribute to global thinking on disaster risk management, South Africa must support and actively participate in the strategies and efforts of the international community to reduce disaster risk. It must associate itself with selected international development protocols, agendas, and commitments, such as the Millennium Development Goals outlined in the United Nations (UN) Millennium Declaration adopted at the UN Millennium Summit in September 2000 (A/RES/55/2).³⁹

A further aspect of South Africa's involvement in the international DRM arena under the Framework is that of humanitarian assistance.⁴⁰ The Framework recognises that there are numerous international relief donor agencies that operate in the wake of disasters and that there is a pressing need for South Africa to strengthen its engagement with these organisations.⁴¹ The Framework states that it is a fundamental objective of effective disaster response and recovery management to collect and channel resources optimally, and South Africa must tap into the expertise and resources of international relief agencies.⁴² The Framework further stipulates that as a matter of priority, appropriate protocols to clarify procedures for requesting external assistance and discouraging *ad hoc* and unsolicited appeals for relief must be established.⁴³ It appears such protocols have not been developed to date.

The Framework also deals with South Africa's capacity to provide assistance in the field of humanitarian aid. The Framework recognises that the country's resources are limited, so capacity is focused on the SADC region, but that appeals for assistance from outside the region will be considered in the context of the circumstances prevailing at the time and that appeals for assistance must be directed to the NDMC, which is also responsible for the facilitation of assistance and mobilisation of resources in response to such requests.⁴⁴

The Framework further states that to keep abreast with international developments, the NDMC must seek membership of international bodies and professional institutes and must establish links with disaster management institutions in other countries.⁴⁵ The Framework provides that the Department of Foreign Affairs (now the Department of International Relations and Cooperation (DIRCO)) is the national department responsible for promoting and facilitating South Africa's role in international cooperation in DRM which must, in liaison with the NDMC and the relevant organs of state, forge links with national agencies that render relief assistance internationally, as well as with international agencies, organisations and institutions involved in DRM, including,

³⁹ The Framework, section 1.4.5.

⁴⁰ The Framework, section 1.4.5.

⁴¹ The Framework, section 1.4.5.

⁴² The Framework, section 1.4.5.

⁴³ The Framework, section 1.4.5.

⁴⁴ The Framework, section 1.4.5.

⁴⁵ The Framework, section 1.4.5.

amongst others the ICRC, Intergovernmental Panel on Climate Change (IPCC), IFRC, UNDP, UN Disaster Management Training Programme (UNDMTP), UN Environment Programme (UNEP), UN High Commissioner for Refugees (UNHCR), and the World Meteorological Organization (WMO).⁴⁶

With respect to regional cooperation, the Framework recognises that measures taken in South Africa have the potential to increase or reduce risk in neighbouring countries and that, conversely, threats in countries beyond South Africa's borders have the potential to increase or reduce South Africa's disaster risk.⁴⁷ The Framework proposes that a consultative process be undertaken to establish a SADC forum for the purpose of DRM cooperation in the region, which, among others, should have the following objectives:

- sharing information on disasters and important DRR issues;
- developing and monitoring early warning systems for the region and issuing advisories so that precautionary measures can be taken timeously in the event of threats due to natural hazards, technological accidents, or environmental degradation;
- establishing strategic communication links and emergency telecommunication procedures and protocols;
- concluding bilateral and multilateral agreements with clearly defined protocols to provide for shared DRR interventions, preparedness and cross-border disaster response and recovery operations;
- sharing expertise in disaster response and recovery, and establishing specialist teams, to assist in response and recovery efforts;
- ensuring the clear definition of responsibilities between the various regional and international role players in cross-border disaster response;
- promoting and facilitating the establishment of joint standards of practice across the region by:
 - developing standards for DRR;
 - developing standards for disaster risk assessment;
 - developing standards for response management systems and the establishment of regional disaster operations centres to ensure the effective coordination of disaster response and recovery management;
 - ensuring uniformity in standards for humanitarian assistance and mitigation interventions; and
 - establishing uniform protocols and clearly defined responsibilities, which differentiate between responsibilities in the event of persons crossing borders in search of humanitarian assistance only and those seeking (political) asylum.⁴⁸

⁴⁶ The Framework, section 1.4.5.

⁴⁷ The Framework, section 1.4.4.

⁴⁸ The Framework, section 1.4.4.

It could not be determined whether or not this has actually consultative process has taken place. The also Framework recognises that arrangements for cooperation in disaster management must be made between the governments of those provinces in South Africa that border neighbouring countries and the governments of those countries, and partnerships must be created within each sphere with the private sector and NGOs through memoranda of understanding.⁴⁹ The parameters of these arrangements must be clearly defined and should include details of financial arrangements, reimbursements and liability, and must be in compliance with the national standard guidelines on mutual assistance agreements developed by the NDMC.⁵⁰

With regards to granting humanitarian assistance in other countries, the Framework recognises that South Africa is well placed to provide technical advice on DRM and humanitarian assistance in the event of a regional disaster.⁵¹ The Framework stipulates that the establishment of structures for regional cooperation as well as the provision of ongoing technical assistance must be funded from the NDMC's budget, therefore the NDMC must have access to emergency funds in the case of regional disasters, while the budgets of PDMCs in provinces that border neighbouring countries must also have allocations for establishing and maintaining structures for inter-regional cooperation.⁵² The Framework also stipulates that national departments that deal with regional and international relief efforts must budget for humanitarian relief.⁵³ The Framework further provides that regulations must be made permitting the speedy withdrawal of funds from the National Revenue Fund for immediate response efforts in the case of a national disaster, and/or to fund rapid emergency interventions in neighbouring countries.⁵⁴ In addition, the budgets of the NDMC and relevant organs of state must include allocations for membership or subscription fees aimed at fostering international cooperation and forging links with international organisations involved in DRM.⁵⁵ The Framework also states that the PDMCs must establish mechanisms to monitor and manage cross-boundary disaster risks within a province and enter into mutual assistance agreements for the purpose of DRM.

Lastly, the Handbooks on Establishing Foundational Institutional Arrangements for DRM at provincial and municipal levels both recognise international cooperation as part of the institutional arrangements necessary for DRM.⁵⁶ In addition, the Framework stipulates

⁴⁹ The Framework, section 1.4.4.

⁵⁰ The Framework, section 1.4.3.

⁵¹ The Framework, section 7.4.1.3.

⁵² The Framework, section 7.4.1.3.

⁵³ The Framework, section 7.4.1.3.

⁵⁴ The Framework, section 7.7.1.2.

⁵⁵ The Framework, section 7.4.1.3.

⁵⁶ South African Disaster Risk Management Handbook Series, Handbook 2: Establishing foundational institutional arrangements for disaster risk management (district municipalities) (available at <http://www.ndmc.gov.za/Guidelines/South%20African%20Risk%20Management%20Handbook%20Series%20for%20District%20Municipalities%20Handbook%202.pdf> (accessed 19 January 2021), page 44; South African Disaster Risk Management Handbook Series, Handbook 2: Establishing foundational institutional arrangements for disaster risk management (provinces) available at

that DRM plans of provincial and municipal DRM centres must be shared with DRM entities in neighbouring countries.⁵⁷

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

As stated above, the Framework explicitly states that the NDMC is the focal point for all appeals for assistance and the mobilisation of resources in respect of requests for assistance from other states, whereas the DIRCO is the lead national department responsible for promoting and facilitating South Africa's role in international cooperation in DRM.⁵⁸ The Framework stipulates that DIRCO must, in liaison with the NDMC and the relevant organs of state, forge links with national agencies that render relief assistance internationally, as well as with international agencies, organisations, and institutions involved in DRM.⁵⁹ In this regard, the Framework specifically states that disaster relief measures need to be coordinated and that the NDMC must initiate the development of regulations to standardise the practice and management of relief operations which must address *inter alia* appeals for donations, standards of relief (in keeping with international standards), the acceptance of international assistance, and South Africa's assistance to other countries.⁶⁰ Such regulations do not appear to have been promulgated to date.

In addition, DIRCO has been tasked with developing a set of measures and guidelines on matters relating to international relations, applicable to international relations practitioners in all three spheres of government. This has resulted in the development of Measures and Guidelines for the Enhanced Coordination of South Africa's International Engagements (the DIRCO Guidelines).⁶¹ The DIRCO Guidelines are part of a composite whole that includes the DMA and the Framework. Together, these legal and policy instruments constitute a bank of knowledge on DRM for South Africa. Although the DIRCO Guidelines do not deal with international disaster assistance directly, they stipulate that DIRCO should be the focal point for all matters relating to international relations of national, provincial, and local government as well as of other institutions of state.⁶² In addition, the DIRCO Guidelines stipulate that DIRCO is and should be the first point of contact between any South African government entity and any foreign mission or international organisation accredited to South Africa.⁶³

The focal point for the coordination of international disaster assistance is, therefore, not entirely clear from a reading of the law alone, but the primary focal points for international disaster assistance would appear to be the NDMC and DIRCO. However, in

<http://www.ndmc.gov.za/Guidelines/South%20African%20Risk%20Management%20Handbook%20Series%20for%20Provinces%20Handbook%202.pdf> (accessed 19 January 2021), page 44.

⁵⁷ The Framework, section 1.2.4.1.

⁵⁸ The Framework, section 1.4.5.

⁵⁹ The Framework, section 1.4.5.

⁶⁰ The Framework, section 4.4.1.

⁶¹ DIRCO, Measures and Guidelines for the Enhanced Coordination of South Africa's International Engagements available at http://www.dirco.gov.za/docs/2013/measures_guidelines_book.pdf (accessed 19 January 2021).

⁶² The DIRCO Guidelines, paragraph 4.2.1.

⁶³ The DIRCO Guidelines, paragraph 4.4.1.

practice, it was found that to ensure effective coordination of disaster response, engagements are undertaken between the Department of Cooperative Governance and Traditional Affairs (CoGTA) and the NDMC to ensure sustainable measures in affected areas are in place and to ensure that the disaster response is coordinated in accordance with the disaster declaration, disaster reports from affected municipalities as well as the post-disaster damage assessments and cost verifications by PMDC and NDMC.

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

The roles and responsibilities of various institutions are outlined in the DMA and the Framework, and the roles of some of these bodies have already been mentioned above. Section 26 of the DMA provides that the National Executive is responsible for the overall coordination and management of national disasters. The DMA also makes provision for other bodies to play a role in the coordination of disasters which may be relevant to the coordination of international disaster assistance. In terms of section 16(3) of the DMA, the NDMC is responsible for making connections with foreign disaster management agencies to exchange information and have access to international expertise and assistance with respect to DRM. In terms of section 17(2)(j), the NDMC must also act as a repository of information concerning disasters and disaster management and must develop an electronic database on disasters including emergency response resources and capacity in neighbouring states and relevant international relief agencies, which must be accessible to all role-players, including NGOs.⁶⁴ The NDMC therefore facilitates the exchange of information and the coordination of disaster relief efforts in South Africa.

With regards to the role of the South African Red Cross Society (SARCS) in DRM, SARCS is statutorily recognised in South Africa through the South African Red Cross Society and Legal Protection of Certain Emblems Act 10 of 2007, which recognises the objects and functions of the society and allows for its medical personnel and resources to be put at the disposal of the state. It also provides legal protection for the emblems of the Red Cross and Red Crescent. There are, however, no explicit references to SARCS in the DMA. The Framework, however, explicitly states that government departments or commissioned agents undertaking disaster risk assessments must *inter alia* consult with SARCS. SARCS is also noted as a source of information for the purpose of disaster event tracking. In addition, SARCS is a member of the NDMAF as well as the Provincial Disaster Management Advisory Forums of all provinces, as well as several Municipal Disaster Management Advisory Forums.

As mentioned above, all national, provincial, and municipal organs of state, municipal entities and other institutional partners identified as key role-players in DRM are required to prepare and complete DRM plans. A study of these plans did not form part of this mapping exercise, but it is possible that the plans of certain national, provincial, and

⁶⁴ The Framework, section 5.2.2.

municipal organs of state, municipal entities and other institutional partners contain elements relevant to international disaster assistance.

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

Neither the DMA nor the Framework provides details as to the procedure to be followed to request, accept, or reject international disaster assistance. Section 27(2) of the DMA does, however, stipulate that if a national state of disaster has been declared, the Minister may make regulations or issue directions on *inter alia* steps to facilitate international disaster assistance, allowing for this issue to be regulated in the future. The Framework provides that all appeals for assistance must be directed to the NDMC and that the mobilisation of resources in response to such requests will be facilitated by the NDMC.⁶⁵ It is also worth noting that the Framework prioritises the establishment of appropriate protocols to clarify procedures for requesting external assistance and to discourage *ad hoc* and unsolicited appeals for relief.⁶⁶ Such regulations or guidelines, once developed, may contain details as to which governmental entity would be responsible for requesting international assistance as well as how offers for international assistance would be facilitated. In practice, at present CoGTA, through the NDMC in consultation with National Treasury, is the governmental entity responsible for requesting international disaster assistance or accepting offers of international assistance.

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

The DRM framework in South Africa 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.

Landing rights

The Civil Aviation Act regulates civil aviation in South Africa.⁶⁷ Although the Civil Aviation Act does not contain any provisions on international disaster assistance, the Chicago Convention has force of law in South Africa in terms of section 5. As mentioned above, Annexe 9 of the Chicago Convention obliges member states to ensure that personnel and articles arriving on relief flights are cleared without delay.

Customs arrangements for specialised goods and equipment

Goods imported for the relief of distress of persons in cases of famine or other national disaster qualify for a rebate of any customs duties, excise duty, fuel levy or Road Accident Fund levy applicable in respect of such goods in terms of Item 412.11 of Schedule 4 of the Customs and Excise Act.⁶⁸ Details are not provided as to what types of goods are contemplated as falling under this item. During the COVID-19 pandemic, "essential

⁶⁵ The Framework, section 1.4.5.

⁶⁶ The Framework, section 1.4.5.

⁶⁷ Civil Aviation Act 13 of 2009.

⁶⁸ Customs and Excise Act 91 of 1964, Schedule 4, item 412.11.

goods” have been defined as food, cleaning and hygiene products, medical supplies and equipment, fuel (including coal and gas), and basic goods (including mobile airtime and electricity).⁶⁹ These goods are subject to a VAT exemption during the COVID-19 pandemic and may be imported under a full rebate of customs duty. However, it is possible that other items may be included in this list, depending on the particular disaster. In addition, under the Customs and Excise Act, special or extra attendance (i.e., attendance where any officer is required to perform customs and excise services outside the prescribed hours of attendance for that office or service) may be applied for and will not be charged in respect of the entry, examination and release of goods imported for the relief and distress of persons in a national disaster.⁷⁰ This may allow for relief goods to be processed expeditiously.

It should be noted, however, that in order to import goods into South Africa, an entity will need to be registered as an importer and, depending on the goods to be imported, apply for, and be issued with a letter of authority and import permit which ensures that the goods intended for import, conform to the safety, quality, environmental, and health requirements of South Africa.⁷¹ There do not appear to be exceptions for international disaster assistance actors. The South African Revenue Service (SARS) also administers certain prohibitions or restrictions on the import of certain items in terms of section 113(8)(a) of the Customs and Excise Act on behalf of a number of government departments, institutions, or bodies, such as the Department of Agriculture, Forestry and Fisheries, National Regulator for Compulsory Specifications, and the South African Reserve Bank (SARB). The prohibitions and restrictions from all different government departments, institutions or bodies are incorporated in the Consolidated List of Prohibited and Restricted Imports and Exports.⁷² An international disaster assistance actor may therefore face delays or challenges, should it wish to import any goods included on this list.

Communications Equipment

It is not clear whether communication equipment would fall under Item 412.11 of the Customs and Excise Act and therefore be exempt from customs duty. In general, no person may transmit any signal by radio or use radio apparatus to receive any signal by radio except under and in accordance with a radio frequency spectrum licence. Exceptions can, however, be made in specific circumstances, such as performing duties in the service of the state, which could potentially be useful to facilitate the use of

⁶⁹ Government Notice 398 in Government Gazette No. 43128 of 25 March 2020.

⁷⁰ See Rule 120.06 read with Rule 120.03.

⁷¹ These requirements are contained within a wide variety of legislation such as the Customs and Excise Act, 1964; the International Trade Administration Act, 2002; the Import Control Regulations, 2012; the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 and the Labelling Regulations, 2010; the Meat Safety Act 40 of 2000, the Medicines and Related Substances Act Regulations, 2017 as well as the standards prescribed by the South African Health Products Regulatory Authority.

⁷² Consolidated List of Prohibited and Restricted Imports and Exports available on the SARS website at <https://www.sars.gov.za/ClientSegments/Customs-Excise/Pages/Prohibited-and-Restricted-goods.aspx> (accessed 21 January 2021).

communications equipment by approved international assisting actors.⁷³ Although they are no specific exemptions in respect of the import and use of communications equipment in disasters, the Radio Frequency Spectrum Regulations, 2015, do prescribe additional exemptions in respect of the use of specific radio apparatus and related radio frequency spectrums.

Rescue dogs

Section 9 of the Animal Health Act⁷⁴ provides that no person may import any animal into South Africa without a permit, except if there is an international agreement stipulating otherwise. Section 28 of the Animal Health Act does, however, provide that regulations may be made regarding the importation and quarantine of animals, including the exemption of persons in respect of prohibitions and restrictions. However, there do not appear to be any regulations made with respect to the importation of rescue dogs which would exempt them from the normal import, testing and quarantine requirements.

Vehicles

It is not clear whether vehicles would fall under Item 412.11 of the Customs and Excise Act and therefore be exempt from customs duty, but it is arguable that they would.

The primary laws regulating the licensing and registration of motor vehicles is the National Road Traffic Act and the National Road Traffic Regulations,⁷⁵ which do not provide any special provisions for the registration of foreign vehicles for disaster relief and recovery work. With regards to the recognition of foreign driver's licences, section 23 of the National Road Traffic Act and regulation 110 of the National Road Traffic Act Regulations provide that a licence authorising the driving of a motor vehicle and which was issued in any other country; and international driving permits are deemed to be valid licences for the period for which they have been issued, provided that it is in an official language of South Africa (or is accompanied by an official translation) and contains a photograph of the holder.

Immigration

The Immigration Act⁷⁶ regulates the admission of persons to, their residence in, and their departure from South Africa. The Immigration Act does not contain any provisions regulating the admission of disaster relief personnel in particular. However, section 31 provides for various exemptions which may be relevant, including exemptions in respect of:

- members of a military force of another state which has been granted consent by the government to enter South Africa; and
- the officers and crew of a public conveyance of a foreign state, while such conveyance is in the port of entry.

⁷³ Electronic Communications Act 36 of 2005, section 31(1).

⁷⁴ Animal Health Act 7 of 2002.

⁷⁵ National Road Traffic Act 93 of 1996 and the National Road Traffic Regulations, 2000.

⁷⁶ Immigration Act 13 of 2002.

In addition, the Minister of Home Affairs has the power in terms of section 31(2) to grant a foreigner or a category of foreigners the rights of permanent residence for a specified or unspecified period when special circumstances exist and may also waive any prescribed requirement under the Immigration Act for good cause. Should no such exemptions be made, types of visas which may be applicable to international humanitarian relief personnel are:

- Volunteer's Visas, which are a type of visitor's visa, that may be issued in terms of section 11(1)(b) of the Immigration Act by the Director General of the Department of Home Affairs for up to three years to a foreigner who is engaged in voluntary or charitable activities;
- Corporate Visas, which may be issued by the Director General to a corporate applicant, to employ foreigners who may conduct work for such corporate applicant in South Africa;⁷⁷ and
- Work Visas, including critical skills visas.⁷⁸

The visa and application requirements and processes for each visa type, as well as the exemption application process and forms are set out in the Immigration Regulations, 2014.⁷⁹

Lastly, members of certain international organisations who travel on a *laissez-passer*, volunteers attached to the UN, persons involved in any UN agency, and persons performing services on behalf of the UN (including their spouses, dependent relatives, and other members of their households) do not require port of entry visas when visiting South Africa for periods up to 90 days, including official visits and transit. Members of foreign military forces attending any military related matters with the South African National Defence Force also do not require port of entry visas, irrespective of their duration of stay, provided that they are in possession of valid passports and letters of invitation by the South African National Defence Force, as well as letters of consent from the military force of which they are members.

With regards to diplomatic privileges and immunities, the Diplomatic Privileges and Immunities Act⁸⁰ makes provision for certain immunities and privileges for diplomatic missions and consular posts and their members, of Heads of States, special envoys and certain representatives, the UN and its specialised agencies, and certain other international organisations. The Diplomatic Privileges and Immunities Act also enacts the Convention on the Privileges and Immunities of the UN, 1946, the Convention on the Privileges and Immunities of the Specialised Agencies, 1947, the Vienna Convention on Diplomatic Relations, 1961, and the Vienna Convention on Consular Relations, 1963 into law.⁸¹

⁷⁷ Immigration Act 13 of 2002, section 21.

⁷⁸ Immigration Act 13 of 2002, section 19.

⁷⁹ Government Notice R413 in Government Gazette 37679 dated 22 May 2014 (as amended).

⁸⁰ Diplomatic Immunities and Privileges Act 37 of 2001.

⁸¹ Diplomatic Immunities and Privileges Act 37 of 2001, section 2.

Registration of international actors

South African law does not contain specific provisions on the registration of disaster assistance providers. An international assisting organisation would generally need to register under specific pieces of legislation to gain access to certain legal facilities in South Africa, such as opening bank accounts. Foreign non-profit entities most commonly register as non-profit companies under the Companies Act⁸² and/or as NGOs under the Non-Profit Organisations Act.⁸³

In terms of section 23 of the Companies Act, an external company must register with the Companies and Intellectual Property Commission (CIPC) within 20 business days after it first begins to conduct non-profit activities within South Africa. A foreign company is regarded as “conducting non-profit activities” in South Africa if that company is a party to one or more employment contracts within South Africa; or “is engaging in a course of conduct, or has engaged in a course or pattern of activities within South Africa over a period of at least six months, such as would lead a person to reasonably conclude that the company intended to continually engage in business or non-profit activities within South Africa”.⁸⁴

Recognition of professional qualifications of foreign personnel

In order to be granted a Work, Critical Skills or Corporate Visa under the Immigration Act, foreign qualifications need to be evaluated by the South African Qualifications Authority (SAQA), which was established under the National Qualifications Framework Act, 2008. It is unclear whether there are simplified procedures in place for the speedy accreditation of qualifications - the SAQA website states that there is no fast-track procedure available.⁸⁵ However, a SAQA directive has been issued outlining the process for fast tracking the evaluation of foreign qualifications.⁸⁶

Doctors and nurses need to be registered with the relevant boards to practise in South Africa, and there are no special provisions in respect of international disaster assistance.⁸⁷ However, the Health Professions Act and the Nursing Act both make provision for regulations to be made on matters relating to these laws, which may allow for the process to be expedited by regulation. With regards to engineers and architects, section 18 of the Engineering Professions Act⁸⁸ makes provision for the registration of qualified engineers with the Engineering Council of South Africa. There are no special provisions in respect of international disaster assistance. It is also illegal to provide architectural services of any nature without being registered with the South African

⁸² Companies Act 71 of 2008.

⁸³ Non-profit Organisations Act 71 of 1997.

⁸⁴ Companies Act 71 of 2008, section 23.

⁸⁵ SAQA, Foreign Qualifications Evaluation and Advisory Services (DFQEAS) available at <https://www.saqa.org.za/foreign-qualifications-evaluation-and-advisory-services-dfqeas> (accessed 21 January 2021).

⁸⁶ SAQA Directive, Client Information: Special Applications for 48-hour processing available at https://www.saqa.org.za/docs/misc/2014/48hour_applications.pdf (accessed 22 January 2021).

⁸⁷ Health Professions Act 56 of 1974, section 25 and the Nursing Act 33 of 2005, section 31.

⁸⁸ Engineering Profession Act 46 of 2000.

Council for the Architectural Profession and there are no special provisions in respect of international disaster assistance.⁸⁹

Tax and Currency Exchange for disaster relief activities

With regards to VAT, Item 412.11 of Schedule 1 of the Value Added Tax Act (VAT Act)⁹⁰ provides that goods imported for the relief of distress of persons in cases of famine or a national disaster will be exempt from VAT on importation.

In terms of income tax, although there do not appear to be specific provisions relating to international disaster assistance, as of 2006, a tax exemption is granted to branches of foreign legal entities operating in South Africa. This is, however, on condition that the entity qualifies for tax exemption in the country in which they were established.⁹¹ The law does not provide specific tax exemptions for the personnel of humanitarian organisations responding to disasters in South Africa. South Africa has a residence-based tax system, which means that, in general, residents are taxed on their worldwide income, irrespective of where their income was earned.⁹² By contrast, non-residents are taxed on their income from a South African source.⁹³ To prevent the levying of income tax on the same income by more than one country (double taxation), the South African Government has entered into double taxation treaties with a number of other countries.⁹⁴ With respect to diplomats, the remuneration of a foreigner working for a foreign diplomatic or consular mission in South Africa or the UN or its specialised agencies are generally exempt from tax.

South Africa is subject to strict exchange control laws which regulate inflows and outflows of capital from South Africa.⁹⁵ While exchange controls do not apply to non-residents, non-residents may be impacted indirectly as acquisitions of South African assets and transactions with residents may require exchange control approval.⁹⁶

Freedom of movement of international assisting actors

South African law does not contain specific provisions on the freedom of movement of international assisting actors during disaster response.

⁸⁹ Architectural Profession Act 44 of 2000, section 18.

⁹⁰ Value Added Tax Act 89 of 1991.

⁹¹ Revenue Laws Amendment Act, 2006, section 24.

⁹² ENS, *Doing Business in South Africa*, available at <https://www.ensafrica.com/doing-business/> (accessed 21 January 2021).

⁹³ ENS, *Doing Business in South Africa*, available at <https://www.ensafrica.com/doing-business/> (accessed 21 January 2021).

⁹⁴ A list of Double Taxation Agreements (DTAs) is available on the SARS website at <https://www.sars.gov.za/Legal/International-Treaties-Agreements/DTA-Protocols/Pages/default.aspx> (accessed 21 January 2021).

⁹⁵ Bowmans, *A Brief Guide to Doing Business in South Africa* (2018), page 18, available at <https://www.bowmanslaw.com/wp-content/uploads/2016/11/Guide-Doing-Business-in-South-Africa-Digital.pdf> (accessed 21 January 2021).

⁹⁶ Bowmans, *A Brief Guide to Doing Business in South Africa* (2018), page 18, available at <https://www.bowmanslaw.com/wp-content/uploads/2016/11/Guide-Doing-Business-in-South-Africa-Digital.pdf> (accessed 21 January 2021).

Safety and security of international assisting actors

South African law does not specifically provide for the safety and security of international assisting actors in disaster response. In general, however, the South African Police force is mandated to ensure the safety and security of all persons and property in the country, which would include international disaster assistance personnel and property.⁹⁷

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

There are no laws which explicitly set out the quality standards for international disaster assistance in South Africa. However, as stated above, section 27(2) of the DMA stipulates that if a national state of emergency has been declared, the Minister may make regulations or issue directions on *inter alia* steps to facilitate international disaster assistance. Such regulations may set out minimum standards for international disaster assistance. In addition, the Framework specifically states that the NDMC must initiate the development of regulations to standardise the practice and management of relief operations which must address standards of relief in keeping with international standards. Such regulations do not appear to have been promulgated to date.

In addition, international assisting actors would need to respect South African laws and standards and will be subject to the criminal law of South Africa (which exists both in common law as well as legislation). In addition, although it is not stipulated in the law, disaster responders in South Africa adhere to the standards set out in the Sphere Handbook, and international assistance providers would be expected to uphold the same standard of humanitarian assistance.

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

South African law does not explicitly set out eligibility requirements for international assisting actors to receive special legal facilities.

In terms of approved actors, section 17(2)(j) of the DMA stipulates that the National Centre must act as a repository of information concerning disasters and disaster management and must develop an electronic database on disasters including emergency response resources and capacity in neighbouring states and relevant international relief agencies. This database may serve as a starting point for developing a list of actors approved to provide international disaster assistance.

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

South Africa's laws and regulations do not establish a specialised unit for expediting the entry of international disaster assistance.

⁹⁷ See the South Africa Police Service Act 68 of 1995, preamble.

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

The Framework recognises that it is vital to strike a balance in the disaster financing framework between the need for adequate financial controls and oversight and the need to ensure that rapid response and recovery are not compromised both in the case of a national disaster, as well as to fund rapid emergency interventions in neighbouring countries.⁹⁸ However, there are no specific provisions on transparency and accountability mechanisms for international disaster assistance in particular.

In terms of transparency and accountability generally, section 34 of the Public Finance Management Act (PFMA),⁹⁹ prescribes the general responsibilities of the accounting officers of each national department, which includes responsibilities with respect to establishing a transparent system of financial management and audit controls. Section 55 of the PFMA requires each governmental department to publish an annual report that fairly presents the state of its affairs, its financial results and position at the end of the financial year, as well as its performance against pre-determined objectives. The annual report must include particulars of any material losses through criminal conduct, and any unauthorised, irregular, fruitless, and wasteful expenditure; together with any criminal or disciplinary steps taken as a result of such losses. The Guide for Accounting officers of the Public Finance Management Act, published by National Treasury in 2000, states that the annual report should also indicate the department's use of any foreign assistance or aid-in-kind.¹⁰⁰ The Prevention and Combatting of Corrupt Activities Act may also be relevant.¹⁰¹ This Act strengthens measures to prevent and combat corruption and corrupt activities, including those committed by public officials, foreign public officials, and agents. In addition, the Financial Intelligence Centre Act¹⁰² was introduced to fight financial crime, such as money laundering, tax evasion, and terrorist financing activities, and may indirectly contribute to increased transparency with regards to international disaster assistance.

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

South Africa's laws and regulations do not outline special or expedited procedures for international disaster assistance personnel sent from and transiting through the country. As such the normal rules and procedures relating to the transit of relief goods and personnel (e.g., the granting of transit visas) and the exportation of goods and equipment would apply.¹⁰³

⁹⁸ DMA, section 7.2.

⁹⁹ Public Finance Management Act 1 of 1999.

¹⁰⁰ National Treasury, Guide for Accounting Officers (October 2000), page 21.

¹⁰¹ Prevention and Combating of Corrupt Activities Act 12 of 2004.

¹⁰² Financial Intelligence Centre Act 38 of 2001.

¹⁰³ The applicable legislation would be Customs and Excise Act 91 of 1964 (particularly Chapter III), Value Added Tax Act 89 of 1991, and the Immigration Act 13 of 2002 (particularly section 24 (cross-border and transit passes)).



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