

LEGAL PREPAREDNESS FOR INTERNATIONAL DISASTER ASSISTANCE IN ZAMBIA

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

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

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and Development

Zambia

Political Framework

The Constitution of the Republic of Zambia provides that Zambia is a sovereign republic under a constitutional form of governance; and a unitary, indivisible, multi-ethnic, multi-racial, multi-religious, multi-cultural, and multi-party democratic state.²

Executive power in Zambia rests with the President, who serves as the Head of State, Head of Government, and Commander-in-Chief of the armed forces.³ Elections are held every five years and a person may only serve two terms as President.⁴ Legislative powers are vested in the unicameral Parliament.⁵ Parliament enacts legislation through bills passed by the National Assembly and assented to by the President.⁶ The members of the National Assembly are elected for five year terms using a first-past-the-post electoral system and single member constituencies.⁷ Zambia's legal system is based on English common law and customary law.⁸

DRM Framework

The Disaster Management Act 13 of 2010 (2010 DM Act) provides Zambia's legislative framework for DRM. The 2010 DM Act:

- provides for the maintenance and operation of a system for the anticipation, preparedness, prevention, coordination, mitigation, and management of disaster situations as well as for the organisation of relief and recovery from disasters;
- establishes the National Disaster Management and Mitigation Unit (the Unit) and provides for its powers and functions;
- establishes the National Disaster Relief Trust Fund (NDRT Fund); and
- provides for the responsibilities and involvement of the members of the public in disaster management.

In addition to the 2010 DM Act, the Zambian Government has published several implementing policies and regulations concerning DRM, such as the:

- National Disaster Management Policy (2015) (the NDM Policy), adopted in July 2015;

² Constitution of the Republic of Zambia, article 4.

³ Constitution of the Republic of Zambia, article 91.

⁴ Constitution of the Republic of Zambia, article 106.

⁵ Constitution of the Republic of Zambia, article 62.

⁶ Constitution of the Republic of Zambia, article 63.

⁷ Constitution of the Republic of Zambia, article 47.

⁸ ENS, *Doing Business in Zambia*, available at <https://www.ensafrica.com/doing-business/> (accessed 24 January 2021).

- Disaster Management (National Disaster Management Council) Regulations, adopted on 15 June 2012;
- Disaster Management Operations Manual, adopted in July 2015 (the Manual); and
- Disaster Management (Qualifications of National Coordinator) Regulations, adopted on 22 January 2019.

Under the Constitution of Zambia (amendment) Act, 2016, the management and administration of the political, social, legal, and economic affairs of the state is devolved from the national government level to the local government level, with the concurrent and exclusive functions of the national, provincial, and local government levels listed in the Annexe thereto.⁹ Under the Annexe, disaster management is a function of national level government exclusively.

The 2010 DM Act outlines the roles and responsibilities of various institutions involved in disaster management as follows:

- the Disaster Management and Mitigation Unit (DMMU) is established by section 4 and is responsible for the implementation of the 2010 DM Act, as well as the implementation of all disaster management programmes and activities in the country.¹⁰ The DMMU acts as the central planning, coordinating and monitoring institution for prevention, mitigation, preparedness, response, and post-disaster recovery.¹¹ The National Coordinator for the DMMU is responsible for its day to day running, and is *inter alia* responsible for maintaining a directory of details of UN and other international organisations and voluntary agencies as well as establishing a database containing *inter alia* the emergency response resources and capacity of neighbouring countries and international relief agencies.¹² Provision is also made for the establishment of provincial and district disaster management coordinators;¹³
- the National Disaster Management Council (Zambia NDMC) is established by section 8 of the 2010 DM Act and is responsible for *inter alia* directing Ministries to take up their responsibilities during disasters and to mobilise resources for disaster management;¹⁴ and
- The National Disaster Management Technical Committee (NDM TC), which is established by section 10 of the DM Act, whose functions among others are: (i) to recommend policy and programme direction to the Council; (ii) to coordinate the implementation of decisions of the Council, using the sectoral skills and resources of line Ministries; (iii) to supervise disaster management activities in Zambia and,

⁹ Constitution of the Republic of Zambia, article 147.

¹⁰ Disaster Management Act, 2010 (DM Act), section 5.

¹¹ DM Act, section 15(2)(a).

¹² DM Act, sections 14 and 15.

¹³ DM Act, Part III and IV.

¹⁴ DM Act, section 9.

in particular, to coordinate the disaster management content of development and reconstruction programmes; (iv) to supervise monitoring and review of disaster management plans; and (v) to control disbursements from the Fund created under Part V of the DM Act. The Zambia Red Cross Society (ZRCS) and the UN Resident Coordinator are members of the NDM TC.¹⁵

Provision is also made for the establishment of provincial and district disaster management committees.¹⁶

The Manual further elaborates on the roles and responsibilities of these bodies during all phases of disaster preparedness and response in detail, as well as the responsibilities of other actors such as partner NGOs, community-based organisations (CBOs), religious organisations, the private sector and donor communities.¹⁷ In addition, the NDM Policy describes the role of the National Disaster Management Consultative Forum (NDCF) as a coordination mechanism which operationalises the NDM Policy under stakeholder engagement provided for in the DM Act.¹⁸

IDRL Assessment

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

The DM Act, NDM Policy and Manual contain limited provisions that reference international disaster assistance directly.

One of the few explicit references to international assistance in the 2010 DM Act is in section 37(o), which provides that the President may make regulations on steps to facilitate international assistance once a disaster has been declared. The NDM Policy provides that disasters that have cross border effects will be handled in line with existing bilateral or regional protocols, and that if no such protocols exist, bilateral, tripartite, or regional memoranda of understanding should be entered into. It is further stipulated that these agreements should address issues relating to the establishment of a command post, joint operations, and safe havens for evacuations during disasters.¹⁹ The Manual provides that it is the DMMU's responsibility to notify and initiate cooperation with disaster management authorities in neighbouring countries in the event of a disaster that has cross-border effects.²⁰

¹⁵ DM Act, sections 10(2)(d) and 10(2)(e).

¹⁶ DM Act, Part III and IV.

¹⁷ The Manual, section 3.

¹⁸ The NDM Policy, section 4.2. Stakeholders are identified as NGOs, Donors, UN Disaster Management Country Team and the UN System, the private sector, the church, and the community.

¹⁹ The NDM Policy, section 47.

²⁰ The Manual, page 12.

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

The focal point for coordinating international disaster assistance in Zambia is not explicitly stated in the law, but may be the DMMU, headed by the National Coordinator, which acts as the central planning, coordinating and monitoring institution for prevention, mitigation, preparedness, response, and post-disaster recovery in Zambia.²¹ The 2010 DM Act further stipulates that the DMMU shall "work with authorities in other countries that are responsible for disaster management to exchange information and have access to international expertise and assistance in respect of disaster management".²²

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

The 2010 DM Act outlines the roles and responsibilities of various institutions involved in disaster management, which have been set out above. The roles and responsibilities of different institutions relating to international disaster assistance are not set out in detail in the law, but a number of provisions are indirectly relevant.

As a starting point, the Manual states that during the disaster phase, the Zambia NDMC shall *inter alia* make appeals for assistance from cooperating partners, both local, regional, and international, and that the NDM TC is responsible for coordinating appeals for relief resources from partners as directed by the NDMC.²³ The Manual also provides that when a drought, flood, epidemic or pest related disaster occurs, the President shall make formal appeals for assistance from partners where necessary.²⁴ In the case of droughts or floods, the Manual additionally recognises that food shortages may occur, which will be mitigated through partnerships with the UN system as well as local and international NGOs and the Food Reserve Agency.²⁵

The 2010 DM Act stipulates that the DMMU shall "work with authorities in other countries that are responsible for disaster management to exchange information and have access to international expertise and assistance in respect of disaster management".²⁶ In addition, in the event of a disaster, the DMMU may request from *inter alia* any institution or organisation equipment, materials and supplies necessary to mitigate the disaster.²⁷ However, it is unclear from this provision whether its application is limited to national institutions and organisations.

²¹ DM Act, section 5(2)(a).

²² DM Act, section 5(1)(r).

²³ The Manual, pages 6 and 10.

²⁴ The Manual, pages 28, 31, 35 and 38.

²⁵ The Manual, pages 28 and 31.

²⁶ DM Act, section 5(1)(r).

²⁷ DM Act, section 6(1).

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

Zambian law does not appear to provide detailed processes for requesting/welcoming offers of international disaster assistance, and for terminating international assistance. The provisions which are relevant in this regard have been set out in Question 3 above.

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

The DRM framework in Zambia does not explicitly provide facilities for international assisting actors. Although it does not specify its applicability to international assisting actors, the Manual does provide for Project Implementing Partners (PIPs) to be engaged by the Zambian Government to facilitate the speedy, transparent, and accountable distribution of relief supplies, and for memoranda of understanding (MoUs) to be signed between the DMMU and PIPs.²⁸ Although it is not stated, it is possible that these MoUs may grant legal facilities to PIPs on an *ad hoc* basis.

As the DRM framework in Zambia does not provide specific facilities for international assisting actors, the sections below analyse whether the relevant sectoral laws provide for necessary legal facilities.

Landing rights and customs arrangements

The Civil Aviation Act, 2016, provides the legislative framework in respect of civil aviation in Zambia. No provision is made for the priority landing of airplanes carrying humanitarian supplies, save that section 125(2) provides that during industrial action, the operation of aircraft engaged in humanitarian missions must be ensured. One of the purposes of the Civil Aviation Act is to give effect to the Chicago Convention, which obliges member states to ensure that personnel and articles arriving on relief flights are cleared without delay. The Chicago Convention is domesticated into Zambian law in terms of section 3 of the Civil Aviation Act, which also provides that the Minister may do all things necessary and expedient to give effect to, and for the carrying out of, the Chicago Convention.²⁹ This provision may allow for the Minister to take steps to ensure the landing rights of international disaster assistance providers in Zambia in future.

In terms of customs fees, the Control of Goods Act provides that goods for use in humanitarian aid, when imported by an organisation recognised by the Ministry of Finance and Economic Development, are exempt from the import declaration fees which are imposed on goods imported into Zambia.³⁰ However, the procedure to gain recognition is not provided.

²⁸ The Manual, page 22 - 24.

²⁹ Civil Aviation Act, 2016, section 3(3).

³⁰ See section 3A of the Control of Goods Act [Chapter 421 of the laws of Zambia] read with Item 11 of the First Schedule thereto.

Customs arrangements for specialised goods and equipment

In general, with the exception of certain goods, no person may import goods into Zambia without obtaining a licence for their import from the Ministry of Trade and Industry.³¹ In terms of exports, only goods listed in the First Schedule of the Control of Goods (Export) Open General Licence as well as goods which do not exceed K10,000.00 in value may be exported from Zambia without a licence. In addition to an import/export licence, certain goods also require an import/export permit to be imported or exported from Zambia. This would presumably include certain goods imported/exported by international assisting actors.

Communications equipment

The law does not provide special or expedited procedures for the import and licensing of communications equipment, and therefore it appears that the normal rules would apply. In terms of the importation of electronic equipment, the Information and Communication Technologies Act, 2009 (ICT Act) provides that all importers must register their equipment with the Zambia Information and Communication Technology Authority (ZICTA).³² The licensing and use of communications equipment and radio frequencies is also regulated by the ICT Act. The ICT Act provides that no person may operate an electronic communications network without a licence.³³ In addition, no person may use frequency bands in Zambia without an assignment; unless they have been designated for use without an assignment by ZICTA.³⁴ Furthermore, the ICT Act provides that no person shall use radio communication apparatus unless the equipment has been approved by ZICTA.³⁵ Section 66(2) of the ICT Act also makes provision for the ZICTA to determine which types of equipment do not require approval.³⁶

Finally, the ICT Act does not make special provision for the licensing and use of electronic equipment by international relief personnel, but it does provide that ZICTA may exempt a person or class of persons from licensing requirements,³⁷ which could potentially be applicable in respect of international assisting actors in the context of disaster relief assistance.

³¹ Control of Goods Act [Chapter 421 of the Laws of Zambia] read with the Control of Goods (Import) (Exemptions from Licences) Order (regulation 3 and Schedule 2), available at <http://www.parliament.gov.zm/sites/default/files/documents/acts/Control%20of%20Goods%20Act.pdf> (accessed 8 January 2021).

³² ICT Act, section 64.

³³ ICT Act, section 9.

³⁴ ICT Act, section 53 and 54. See also the ZIGTA Regulatory Guidelines on the Use of ISM Bands for Radiocommunications Services in Zambia, 2013 available at <https://www.zicta.zm/storage/posts/attachments/CgHyPD89rwghfjNM2hgqsallgGDmrcYXzmngRsz.pdf> (accessed 8 January 2021).

³⁵ ICT Act, section 66.

³⁶ The ZICTA Type Approval Guidelines contain detailed information in this regard, including equipment exempt from approval: ZICTA Type Approval Guidelines (August 2011) available at http://onlinesystems.zicta.zm:8585/zers/downloads/New%20Type%20Approval%20Guidelines_Website-Version_Rev3_19-03-2013.pdf (accessed 8 January 2021).

³⁷ ICT Act, section 20.

Food, medication, and quarantine

There do not appear to be any specific provisions in Zambian law that grant legal facilities to international assisting actors in disaster situations with respect to the importation of food, medication, or rescue dogs, and therefore it appears that the normal rules and procedures related to the import and export of these items would apply, which may pose delays or challenges for international assisting actors.

In terms of the applicable laws, the Control of Goods (Import and Export) (Agriculture) Order prescribes foodstuffs which require an import/export permit to be imported and exported from Zambia. The Medicines and Allied Substances Act, 2013, regulates the manufacture, import, export, distribution, and supply of medicines in Zambia. This Act provides that a person may not import or export any medicine or allied substance, including medical devices, without an import permit. In respect of the import and export of narcotics and psychotropics, a person must also obtain additional authorisation from the relevant authority and comply with the Dangerous Drugs and Psychotropic Substances Act.³⁸ Section 39 further provides that a person shall not import or supply medication without a marketing authorisation issued by the Zambia Medicines Regulatory Authority. It is noteworthy that this section does not apply to donated medicines and medicines imported or exported in response to a declared health emergency.³⁹ In addition, regulation 3 of the Control of Goods (Import of Medicinal Substances and Poisons Regulations) provides that only medical practitioners who are registered or exempted from registration may import medicine into Zambia. There do not appear to be any special provisions in respect of the importation of rescue dogs to assist with relief work. Section 27 of the Animal Health Act, 2010, provides that live animals may not be imported to Zambia without an import permit, which will stipulate the conditions under which the importation will be carried out.

Vehicles

The procedure to register vehicles, which includes special requirements applicable to vehicles imported into Zambia, are prescribed in the Road Traffic Act.⁴⁰ The Road Traffic Act does not provide simplified procedures for the registration of foreign vehicles for relief and recovery work. Certain exemptions for the requirements of registration are provided for, however, including for motor vehicles or trailers brought into Zambia by visitors.⁴¹ Although special provision is not made for the importation of vehicles into Zambia for relief and recovery work, the Control of Goods (Import) (Exemptions from Licence Order) provides that an import licence is not required in respect of vehicles, aircraft, and rail trucks used or to be used for the transport of goods or persons to destinations within Zambia or entering Zambia temporarily for such purposes. This provision may be of relevance for the transport of relief supplies and personnel into Zambia.

³⁸ Medicines and Allied Substances Act, 2013, section 26. See also section 35 and 36.

³⁹ Medicines and Allied Substances Act, 2013, section 39(4).

⁴⁰ Road Traffic Act, 2002, sections 10 and 11.

⁴¹ Road Traffic Act, 2002, section 26.

Immigration

The Immigration and Deportation Act, 2011, regulates the entry, exit, and stay of immigrants and visitors in Zambia. The Immigration and Deportation Act does not contain any specific provisions, expedited processes, or waivers for visas for international disaster assistance personnel. Therefore, it appears that the normal rules applicable to the entry of foreign personnel in Zambia would apply, which may pose challenges and delays for international assisting actors. Potential visas or permits which may be applicable to international relief personnel which enable work to be undertaken are:

- Diplomatic Permits, which may be issued to officials or employees of a foreign government or international organisation accepted by the Minister responsible for foreign affairs (note that the holder of a diplomatic permit may not engage in work, unless the diplomatic permit is combined with a separately issued employment permit);⁴²
- Business Permits, which may be issued for a period of not more than 30 days to business visitors, which includes an overseas worker who is paid by an overseas employer and who comes to Zambia for a short period to work.⁴³ A business visitor who intends to stay in Zambia for a period exceeding 30 days may be issued a temporary employment permit for up to six months;⁴⁴ and
- Employment Permits or Temporary Employment Permits, which may also be issued to a volunteer for a period that the Director General of Immigration sees fit, and which are capable of extension for up to five years.⁴⁵

The procedures to apply for the abovementioned permits are set out in the General Regulations to the Immigration and Deportation Act, 2011.

There do not appear to be special or expedited procedures in place for the recognition of foreign/international driver's licences in Zambia or registration of foreign vehicles. The Road Traffic Act makes provision for international driving permits and driving licences issued outside of Zambia to be deemed to have effect in Zambia by regulation.⁴⁶ However, no such regulations could be found for the purposes of this report. In addition, the Road Traffic Act provides that regulations may be made prescribing the procedure to be adopted and the conditions to be observed in connection with the issue of international certificates for motor vehicles and international driving permits,⁴⁷ but it is not clear whether these have been made to date.

Registration of international assisting actors

Zambian law does not provide special procedures or exemptions with regards to the registration of international assisting actors. Therefore, it appears that the normal rules

⁴² Immigration and Deportation Act, 2011, section 22.

⁴³ Immigration and Deportation Act, 2011, section 24.

⁴⁴ Immigration and Deportation Act, 2011, section 28.

⁴⁵ Immigration and Deportation Act, 2011, section 28.

⁴⁶ Road Traffic Act, 2002, section 56.

⁴⁷ Road Traffic Act, 2002, section 233(gg).

applicable to the registration of foreign entities would apply, which may pose challenges and delays for international assisting actors. For example, the Non-Governmental Organisations Act, 2009, prohibits the operation of NGOs, including INGOs, in Zambia unless they are registered with the Non-Governmental Organisations' Registration Board.⁴⁸ Section 11 sets out the registration process and provides that an NGO which has applied for registration may operate until a decision has been made in respect of its registration. The application procedure requires the following information to be specified:

- the office bearers of the NGO;
- the head office and postal address of the organisation;
- the sections of the proposed operations;
- the districts, divisions, and locations of the proposed activities;
- the duration of the activities;
- all proposed sources of funding;
- the national and international affiliation and the relevant certificates of incorporation; and
- such other information as the Minister may prescribe.⁴⁹

Although the Non-Governmental Organisations Act does not provide a special procedure for the registration of international assisting actors in the event of a disaster, section 23 may be relevant as it provides that the Minister may, on the recommendation of the Non-Governmental Organisations Registration Board, exempt any NGO from registration.

Recognition of professional qualifications of foreign personnel

There do not appear to be simplified procedures in place for the speedy accreditation of foreign qualifications in Zambia in respect of relief personnel. In general, the Zambia Qualifications Authority (ZAQA) carries out verification and evaluation of foreign qualifications to their equivalent on the Zambia Qualifications Framework. The verification and evaluation of foreign qualification takes approximately 30 days.⁵⁰

Doctors

The Health Professions Act, 2009, provides that no person may practise as a health practitioner in Zambia unless they are registered with the Health Professions Council of Zambia, and does not provide any exceptions for international disaster relief personnel.⁵¹ Sections 9 and 10 do, however, provide for the provisional and temporary registration of holders of foreign qualifications, which may allow for the registration of international disaster relief personnel who are foreign qualified health practitioners. In addition, section 77 allows for regulations to be made in respect of various aspects of the Act, which may allow for expedited processes or exemptions for the registration of foreign qualified

⁴⁸ Non-Governmental Organisations Act, 2009, section 10.

⁴⁹ Non-Governmental Organisations Act, 2009, section 11(5).

⁵⁰ See the ZAQA website: <https://www.zaqa.gov.zm/learners#services> (accessed 8 January 2021).

⁵¹ Health Professions Act, 2009, section 6.

health practitioners assisting in disaster response operations to be developed in the future.

Nurses

The Nurses and Midwives Act, 2019, provides that no person may practise as a nurse or midwife unless the person is registered with the Nursing and Midwifery Council of Zambia and obtains a certificate to practise, and does not provide any exceptions for international disaster relief personnel.⁵² Section 17 provides for the provisional registration of foreign practitioners in certain circumstances. In addition, section 29 provides that regulations may be made regarding the issuance of practicing certificates and other matters. These provisions may allow nurses working in relief operations to be afforded an expedited registration process or to be exempted from the registration requirements in future.

Engineers

The Engineering Institution of Zambia Act provides for the registration and issuance of practicing certificates to engineers in Zambia.⁵³ In terms of section 32, no person may: establish a practise as an engineer or be a partner in any such practice; accept any appointment which includes the words "engineer" or "engineering" in its title or functions; teach, practise or offer his services as or hold himself out to be a qualified engineer, engineering consultant or adviser; adopt, use or exhibit the titles "engineer", "registered engineer", "project engineer", "consulting engineer" or any other terms of like description; or do anything likely to lead persons to infer that he is a registered engineer. In addition, only residents of Zambia may register as engineers under the Act.⁵⁴ These provisions may make it challenging for international disaster assistance personnel who are foreign qualified engineers to enter and support disaster response operations in the country.

Architects

The Zambia Institute of Architects Act provides for the registration of and issuance of practising certificates to architects.⁵⁵ Section 35 provides that a person not registered shall not: establish a practise as an architect or be a partner in any architectural firm; practise or offer his services as, or hold himself out to be, a qualified architect, consultant, or advisor; adopt, use, or exhibit the titles "architect", "registered architect", "project architect", "consulting architect" or any other term of similar description; or do anything likely to lead persons to infer that he is a registered architect. Only residents of Zambia may be registered as architects.⁵⁶ These provisions may make it challenging for international disaster assistance personnel who are foreign qualified architects to enter and support disaster response operations in the country.

⁵² Nurses and Midwives Act, 2019, section 14.

⁵³ Engineering Institution of Zambia Act [Chapter 432 of the laws of Zambia].

⁵⁴ Engineering Institution of Zambia Act [Chapter 432 of the laws of Zambia], section 29.

⁵⁵ Zambia Institute of Architects Act [Chapter 442 of the laws of Zambia].

⁵⁶ Zambia Institute of Architects Act (Chapter 442 of the laws of Zambia), section 29.

Tax and currency exchange for disaster relief activities

Exchange Control

Zambia does not impose any exchange control restrictions and investors are free to repatriate any funds, whether they are generated from a source in Zambia or not, provided they have been derived from legitimate sources and the necessary taxes and duties have been paid.⁵⁷ However, section 41A of the Customs and Excise Act⁵⁸ provides that any person that imports or exports currency notes in any currency, exceeding in value the equivalent of 5000.00 US Dollars must declare same.

Taxation

Zambia imposes a source-based tax system in terms of which residents as well as non-residents are taxed on income sourced in Zambia as well as certain types of foreign income.⁵⁹ The Income Tax Act, does, however, make provision for the President to enter into double taxation agreements with other states to prevent the double taxation of income.⁶⁰ The Income Tax Act also provides that the following are exempt from tax, which may be relevant to international assisting actors:

- the emoluments payable to any individual who is not a Zambian citizen and who is temporarily employed in Zambia in connection with any technical assistance scheme provided by any foreign country, any international organisation, or agency, any foreign foundation, or any foreign organisation under the terms of an agreement entered into with the Zambian Government;⁶¹
- the emoluments of any individual in respect of service with any international organisation or any agency of a foreign government or any foreign foundation or organisation, which organisation, agency or foundation is approved by the Minister by order, and such individual is not a Zambian citizen and is resident in the Zambia solely for the purpose of rendering the said service or secondment to any Zambia organisation, agency, or foundation;⁶² and
- the income of any international organisation, agency of a foreign government or foreign foundation or organisation as approved by the Minister by order.⁶³

In addition, it is relevant to note that the Diplomatic Privileges and Immunities Act enacts certain provisions of the Vienna Convention on Diplomatic Relations into national law and provides for certain tax exemptions and immunities in respect of diplomats, consular

⁵⁷ ENS, *Doing Business in Zambia*, available at <https://www.ensafrica.com/doing-business/> (accessed 8 January 2021).
⁵⁸ Customs and Excise Act [Chapter 322 of the Laws of Zambia].

⁵⁹ ENS, *Doing Business in Zambia*, available at <https://www.ensafrica.com/doing-business/> (accessed 8 January 2021).
⁶⁰ Income Tax Act [Chapter 323 of the Laws of Zambia], section 74. A list of countries with which Zambia has entered into double taxation agreements is available at <https://www.zra.org.zm/tax-information-details/#1577367497756-ce96c379-3429> (accessed 8 January 2021).

⁶¹ Income Tax Act, Schedule 2, section 3(c).

⁶² Income Tax Act, Schedule 2, section 3(d).

⁶³ Income Tax Act, Schedule 2, section 4.

officials, and officials from certain international organisations such as the UN and the ICRC.⁶⁴

With regards to NGOs generally, the mere fact that an organisation has a non-profit motive, or is registered as an NGO, does not automatically exempt it from income tax under Zambian law.⁶⁵ The organisation will only be exempt from income and related taxes if it is specifically approved for this purpose by the Minister of Finance and National Planning and if it complies with the relevant requirements which includes that it be involved in undertaking one or more Public Benefit Activities.⁶⁶ Public Benefit Organisations (PBOs) are entitled upon application to zero-rating on certain building materials and are entitled to the exemption of VAT at importation for imported goods which enjoy remission, rebate, or refund of duty under the Customs and Excise (General) Regulations subject to same limitations and conditions as pertain to the remission, rebate, or refund of duty, upon application to the Ministry of Finance and National Planning.⁶⁷ If an INGO commences operations in Zambia, it may be approved as a PBO and therefore exempt from income and related taxes on condition that the foreign organisation is exempt from income tax in its country of origin.⁶⁸ The organisation will need to submit this confirmation, together with an undertaking to comply with the provisions of the Income Tax Act, insofar as the governance, funding and activities of the branch are concerned.⁶⁹

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

There are currently no laws which explicitly set out the quality standards for international disaster assistance in Zambia. In general, international assisting actors would need to comply with relevant Zambian laws and standards. In addition, the sections of the Manual which set out the requirements to be a PIP may be relevant and are set out in detail in Question 7 below.

⁶⁴ Diplomatic Privileges and Immunities Act [Chapter 20 of the laws of Zambia].

⁶⁵ See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

⁶⁶ See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

⁶⁷ See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

⁶⁸ See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

⁶⁹ See the Zambia Revenue Authority, Public Benefit Organisation Fact Sheet available at <https://www.zra.org.zm/wp-content/uploads/2020/01/Public-Benefit-Organisation-1.pdf> (accessed 8 January 2021).

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

As no specific legal facilities are provided for international assisting actors under the Zambian DRM Framework, no eligibility requirements exist. However, although it does not specify its applicability to international assisting actors, the Manual does set out eligibility qualifications for PIPs to be engaged by the Zambian Government to facilitate a speedy, transparent, and accountable distribution of relief supplies within areas designated to them by the DDMC or DMMU.⁷⁰ The Manual states that the selected PIP(s) must have the institutional, organisational, and technical capacity to sustainably facilitate relief operations and should:

- have a legal status or be a legal entity capable of entering into contractual obligations with the Zambian Government;
- have demonstrated the capacity (human resource and logistics) to successfully undertake relief operations for DMMU;
- be actively involved in or have been undertaking relief, humanitarian, or development-oriented projects in its operational area;
- preferably have permanent establishment or presence in the operational area; and
- preferably have warehousing capacity to rationalise and optimise logistical arrangements in the event of distribution of relief supplies.⁷¹

In terms of transportation of relief goods, the Manual states that transporters shall be engaged to facilitate a speedy, transparent, and accountable distribution of relief supplies.⁷² Similar to the requirements to be a PIP, the elected transporters should have a positive appraisal in terms of institutional, organisational, and technical capacities to facilitate sustainable relief supply operations.⁷³ The transporters should also:

- have a legal status or be a legal entity capable of entering into contractual obligations;
- be able to demonstrate capacity to successfully transport relief supplies in the past;
- have a well-developed and defined organisational and managerial structure where applicable; and
- be well-versed in clearing, consigning and delivery procedures where applicable.⁷⁴

It is also relevant to mention that the 2010 DM Act stipulates that the National Coordinator is to maintain a directory showing the names, addresses and other details of all UN and other international organisations and voluntary agencies, and that the DMMU

⁷⁰ The Manual, pages 22 - 24.

⁷¹ The Manual, page 23.

⁷² The Manual, page 25.

⁷³ The Manual, page 25.

⁷⁴ The Manual, page 25.

will act as a repository for information concerning disaster management and will develop and maintain an electronic database which must include *inter alia* emergency response resources and capacity in Zambia, neighbouring countries and relevant international relief agencies.⁷⁵ This directory and database contemplated in the 2010 DM Act may be a starting point to develop a list of actors approved to provide international assistance.

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

Zambian law does not establish a specialised unit for expediting the entry of international disaster assistance.

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

The DMA establishes the National Disaster Relief Trust Fund (NDRTF) to be managed and administered by the Unit and used for matters related to the preparedness, prevention, mitigation, and recovery from disasters.⁷⁶ Section 30(2)(c) specifically provides that the NDRTF shall consist of grants mobilised from any source within or outside Zambia for the purpose of disaster management, thus indicating that it will receive funding from international sources. In terms of transparency, the 2010 DM Act stipulates that an annual statement of the income and expenditure of the NDRTF shall be prepared and presented to the National Assembly.⁷⁷ The Manual provides guidelines for the administration of the NDRTF, which stipulates that the DMMU shall ensure that proper books of account and other records relating to their accounts must be kept and updated, and must be audited at least once a year; and that financial reports must be regularly prepared.⁷⁸ Given that the NDRTF appears to be able to accept donations from international assisting actors, international funds provided to the DM Fund would be subject to these transparency and accountability measures. The Manual also provides a reporting mechanism for international assistance, providing that during the post disaster phase the Zambia NDMC shall receive and consider post disaster reports from cooperating local, regional, and international partners.⁷⁹

With regards to the removal of legal facilities, the Manual provides that a renewable MoU setting out the terms on which the PIP is to be engaged must be signed between the Government of the Republic of Zambia through DMMU and the PIP, which should:

- outline circumstances that relate to misuse, abuse or misapplication of relief supplies and provide for penalties;

⁷⁵ DM Act, sections 14 and 15.

⁷⁶ DM Act, section 30.

⁷⁷ DM Act, section 34(2).

⁷⁸ The Manual, pages 50 - 52.

⁷⁹ The Manual, section 6.1.3.

- provide for access through monitoring and evaluation by DMMU to the relief supplies being managed by the PIP; and
- oblige the implementing partner to submit reports fortnightly to DDMC and DMMU on the status of the relief operation under its management.⁸⁰

In terms of transportation of relief goods, the Manual states that transporters shall be engaged to facilitate a speedy, transparent and accountable distribution of relief supplies and a comprehensive MoU shall be signed with the transporter to facilitate the transport of relief supplies to the disaster areas.⁸¹ Similar to the requirements to be a PIP, an MoU setting out terms on which the relief supplies are to be moved by the selected transporter must be signed between the parties which should outline circumstances or conditions that would amount to misuse, abuse, or misapplication of relief supplies by the transporter and provide for the prosecution of the transporter or its employees and provide for transparency of the handling of relief supplies in transit with the transporter.⁸² In addition, the following conditions should be put in place at all levels of transportation:

- the transporter should be obliged to submit a delivery report within 48 hours after the relief supplies have been delivered;
- payment should be effected to the transporter only after proof of delivery;
- the selected transporter should pay for, restore, or otherwise replace any lost, missing, or damaged relief items whilst in his/her custody; and
- the Regional Coordinator should verify the delivery of relief within 48 hours of receiving the delivery report.⁸³

More generally, the Non-Governmental Organisations Act, 2011, provides that a certificate of registration may be cancelled where the organisation misappropriates funds or violates the Code of Conduct (which is to be developed by the Council of NGOs in terms of section 32 of the Act).⁸⁴ The Code of Conduct is unfortunately not available online and therefore could be reviewed for the purposes of this report. Lastly, the Director General of Immigration has the power to revoke any permit issued to foreign personnel if the holder has contravened any law of Zambia in terms of section 34 of the Immigration and Deportation Act, 2010.

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

Zambia's laws and regulations do not outline special procedures for international disaster assistance personnel sent from and transiting through the country, as such the normal

⁸⁰ The Manual, page 23.

⁸¹ The Manual, page 25.

⁸² The Manual, page 25.

⁸³ The Manual, page 25.

⁸⁴ Non-Governmental Organisations Act, 2011, section 17.

rules and procedures relating to the transit of relief goods and personnel and the exportation of goods and equipment⁸⁵ would apply.⁸⁶

⁸⁵ See Part V of the Customs and Excise Act [Chapter 233 of the Laws of Zambia] for the rules on exports.

⁸⁶ Note, however, that the Control of Goods (Import) Exemptions from Licences Order provides that a licence is not required for the importation of goods in transit. In general, goods which are normally subject to an import or export permit are also exempt from requiring such a permit if the goods are in transit through Zambia. See Control of Goods (Import) Exemptions from Licences Order, regulation 3 and Schedule 2. There are certain exceptions. For example, the Control of Goods (Import and Export) (Agriculture) Order specifies that any person importing certain maize products shall require an import permit in relation to goods which are in transit through Zambia. With respect of the transit of personnel, Zambian law does not make any special provision in respect of the transit of relief personnel. The Immigration and Deportation Act, 2010, prescribes that an immigration officer may issue a transit visa authorising a foreigner travelling to a foreign country, to make use of the transit facilities at a port of entry; or to travel from a port of entry through Zambia to a foreign country. Immigration and Deportation Act, 2010, section 32.



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