

IDRL & Auxiliary Role Advocacy Fact Sheet, Namibia



17 FEBRUARY 2023 Floods Response

Version 1, 17 February 2023

This document is intended to provide: (i) key information to humanitarian actors (including the Red Cross and Red Crescent Movement network and Operations) relating to the regulatory and policy environment applying to the entry of incoming disaster relief (IDRL) in Namibia to respond to the impact of floods that have been affecting the country since 13 January 2023; (ii) advocacy messages around the special facilities to be requested from the Namibian authorities to enable humanitarian access; and (iii) advocacy messages around the auxiliary role of the Namibia Red Cross Society (NRCS).

Note that a legal mapping was conducted by the IFRC Disaster Law Africa team on [Legal Preparedness for International Disaster Assistance in Namibia](#) (2021). Legal facilities available in [Namibia](#) related to international disaster assistance are also set out on the [International Disaster Response Laws Dashboard](#) on the **GO Platform**.

Legal and institutional framework

- The [Disaster Risk Management Act of 2012](#) (DRM Act) provides the legislative framework for DRM in Namibia.
- The DRM Act outlines the roles and responsibilities of various institutions involved in disaster management as follows:
 - the National Disaster Risk Management Committee (NDRMC), an inter-ministerial governance body responsible for DRM at national level. The NDRMC has the power to establish sub-committees to be responsible for specific DRM topics including health emergency management, drought management, emergency response, recovery, and resource mobilisation;
 - the Directorate: Disaster Risk Management, which is the administrative body responsible for DRM at national level and is established within the [Office of the Prime Minister](#);
 - the Namibia Vulnerability Assessment Committee, which is responsible for a wide range of activities relating to the assessment and monitoring of vulnerability in Namibia;
 - provision is also made for regional, constituency, local and settlement DRM committees to be established, which are charged with coordinating DRM activities within their respective areas of responsibility; and
 - provision is made for the establishment of emergency structures during a state of national and regional disaster, namely a National Crisis Committee and Regional Crisis Committees.
- In addition to the DRM Act, the Namibian Government has published several implementing policies and regulations concerning DRM, including the:
 - [Disaster Risk Management Regulations of 2013](#) (the Regulations);
 - [National Disaster Risk Management Plan \(2011\)](#) (the Plan); and
 - [National Disaster Risk Management Policy \(2009\)](#) (the Policy).

- The Government of Namibia developed a [flood risk management plan in 2011](#). It is not clear whether this plan has been updated in the interim.
- The [Namibia Red Cross Act](#) of 1991 (NRCS Act), provides statutory recognition of NRCS in the country as a voluntary aid society auxiliary to its public authorities.

State of emergency & request of humanitarian aid and assistance

- The Namibian Cabinet on Tuesday, 14 February 2023 [approved an amount of N\\$72 million to fund a flood-relief programme](#) through the Office of the Prime Minister.
- However, from the research conducted, a State of Emergency has not been declared in response to the floods as yet.

Potential issues & recommendations:

- *NO OFFICIAL REQUEST FOR INTERNATIONAL ASSISTANCE OR LIST OF NEEDS* seems to have been issued by the Government as yet. Uncoordinated efforts may lead to the receipt of unsolicited goods (unsolicited bilateral donations or UBD).
 - **Therefore, we recommend IFRC to offer technical support to the Government to prepare a detailed List of Needs and clear processes for the acceptance of international disaster assistance**, based on IDRL best practices.

Legal facilities identified under the Namibian law

<p>Entry of humanitarian personnel</p>	<ul style="list-style-type: none"> • Section 52(3)(a) of the DRM Act provides that the Prime Minister, in consultation with the Minister responsible for immigration, must facilitate the entry and operation of international relief personnel and experts, including the expeditious granting of visas and waiver of work permits for relief personnel and experts. • The DRM Regulations provide further detail in this regard, providing in regulation 13 that: <ul style="list-style-type: none"> ○ A state or international organization that provides international relief personnel or experts must, within 72 hours prior to the arrival of the international relief personnel or experts, provide the Prime Minister with: <ul style="list-style-type: none"> ▪ Full particulars of the international relief personnel or experts; ▪ Letter of appointment of the international relief personnel or experts; ▪ Passport details of the disaster relief personnel or experts. ○ The Director must ensure that: <ul style="list-style-type: none"> ▪ The details are furnished to the Minister responsible for immigration to facilitate the entry of the international relief personnel or experts, including the expeditious granting of visas and waiver of work permits; and ▪ Arrangements are in place for the transportation of international disaster relief personnel or experts as well as disaster relief items donated. ○ The entry and operation of international relief personnel or experts, the granting of visas and waiver of work permits for relief personnel and experts must be made in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993). ○ The international community, civil society organisations, and non-governmental organisations may act as disaster relief organisations under the supervision of the disaster institutions. ○ In addition, the Prime Minister, in consultation with the Minister responsible for finance, must facilitate reduced and simplified customs procedures, exemption from duties, taxes and charges for the possessions of relief personnel.
<p>Registration of International Assisting Actors</p>	<ul style="list-style-type: none"> • Although the DRM Act provides the Prime Minister must facilitate the entry and operation of international relief personnel and experts, this provision appears to apply only to natural and not juristic persons. The law does not contain specific provisions on the registration of disaster assistance providers.

<p>Recognition of professional qualifications</p>	<ul style="list-style-type: none"> • There are no specific provisions in the various professional bodies' regulatory rules of Namibia that provide for expedited recognition of foreign professional qualifications. As stated above, the DRM Act provides that the Prime Minister, in consultation with the Minister responsible for immigration, must facilitate the entry and operation of international relief personnel and experts, including the expeditious granting of visas and waiver of work permits for relief personnel and experts. It is not clear whether this would include simplified procedures for the speedy accreditation of foreign qualifications, but it is arguable that it could.
<p>Freedom of movement of international assisting actors during a disaster response</p>	<ul style="list-style-type: none"> • There do not appear to be any provisions in Namibian law which explicitly ensure the freedom of movement of international assisting actors during a disaster response. • However, the Policy explicitly recognises “the role of the NRCS and facilitates unimpeded access to enable it to deliver humanitarian assistance to those affected by disaster, as well as the vital role it plays in the mobilisation of both internal and external resources for disaster risk management”.

<p>Customs and tax arrangements</p>	<ul style="list-style-type: none"> • Section 52(2) of the DRM Act exempts donations received in kind, materials and equipment donated to the National Disaster Fund during a state of disaster to facilitate disaster response from stakeholders approved by the Prime Minister, including charitable or philanthropic organisations, and development partners from customs duty. • The Prime Minister in consultation with the ministers responsible for finance, must facilitate reduced and simplified customs procedures, exemption from duties, taxes, and charges for donations of equipment and materials, including food, made during disaster situations in terms of section 52(3)(b). • Regulation 12 of the DRM Regulations provides further details on the procedure, providing that a donor must within 48 hours prior to the arrival of the disaster relief item donated, furnish the Prime Minister with a list of items to be donated, and the Director must ensure that a copy of the list is submitted to the Minister responsible for finance for exemption from customs excise duty. In addition, the person receiving donated disaster relief items at a point of entry must ensure that the items donated correspond with the list of items submitted. • It is also worth noting that in terms of Item 412.11 of Schedule 4 to the Customs and Excise Act of 1998, goods imported for the relief of distress of persons in cases of famine or other national disaster, or under any technical assistance agreement, or in terms of an obligation under any multilateral international agreement to which Namibia is a party are admitted subject to a rebate of any customs duties, subject to a certificate issued by the Permanent Secretary: Trade and Industry. Similarly, in terms of Item 412.11 of Schedule V read with section 13 of the Value Added Tax Act of 2000, goods imported for the relief of distress of persons in cases of famine or other national disaster, are exempt from VAT.
<p>Cash</p>	<ul style="list-style-type: none"> • There do not appear to be any provisions within the law on the use of cash in international disaster assistance operations.
<p>Relief flights</p>	<ul style="list-style-type: none"> • Namibian law makes express provision to ensure the landing rights of international disaster assisting actors. • Section 52(3) of the DRM Act stipulates that the Prime Minister, in consultation with the Minister responsible for transport, must facilitate transportation, overflight and similar measures for disaster response.

Advocacy messages and recommendations

- It is clear from the above that Namibian law provides a number of **key legal facilities for international assisting actors.**

- Should the IFRC or the National Society encounter **challenges in accessing the facilities provided within the law, or encounter challenges with respect to issues which are not clearly addressed within the law**, such as:
 - the use of cash in disaster assistance operations;
 - freedom of movement in disaster settings;
 - the recognition of professional qualifications in disaster response operations; or
 - the registration and use of specialised equipment such as vehicles, telecommunications and drones in disaster response operations, we recommend IFRC and the NRCS to request through Office of the Prime Minister a meeting to discuss the challenges and potential ways to work together to resolve them.
- This could be:
 - through the **elaboration of a legal instrument or agreement** in the event that **additional legal facilities** are sought (see below), or
 - if the challenges being faced are with respect to **existing** legal facilities provided within the law, through joint **dissemination and training activities** focussed on ensuring that key stakeholders are aware of their roles and responsibilities and the relevant procedures in relation to legal facilities in disaster settings.

The below outlines:

1. the arguments IFRC and CRCS can use to support their request;
2. how they can approach the Government;
3. how special legal measures can be introduced; and
4. what support is available from the Secretariat.

1. Arguments in support of special legal facilities

IFRC and NRCS will need to support their request for legal facilities with convincing arguments. The following key points can be used.

- i. **Existing provisions in the existing legal and policy framework:** If the IFRC or National Society are encountering challenges in accessing legal facilities **already provided within the law**, pointing out the specific provisions would be a good starting point for the discussion. Should the IFRC or National Society encounter barriers relating to issues which **are not provided for within the law**, it can be pointed out that the DRM Act provides that the Prime Minister may enter into cooperation agreements with any entity or person within or outside Namibia on any matter relating to DRM if the objectives of that entity or person are consistent with the objectives of the DRM Act. This provision can be used to **advocate for an agreement to be entered into to facilitate RCRC assistance in disasters**.
- ii. **Auxiliary Role:** While there do not appear to be any special legal facilities that the NRCS enjoys with respect to carrying out its duties in Namibia, the auxiliary role recognised within the law, and the long-standing and strong relationship between NRCS and the public authorities in the humanitarian space can potentially be leveraged to justify special legal facilities to be granted to the National Society.
- iii. **Speed, effectiveness, and efficiency:** The Red Cross and Red Crescent Movement is working hard to meet the urgent and growing humanitarian needs caused by the floods, and special legal facilities and measures are necessary to ensure that eligible

actors and the Red Cross and Red Crescent Movement can work *as quickly, effectively and efficiently as possible*.

- iv. **Avoiding UBDs:** the development of the instrument relating to the granting of special legal facilities will allow to define (i) the eligibility criteria for those humanitarian actors allowed to benefit from them; (ii) the provisions that will allow the Government to keep control over the aid/assistance coming in to ensure it meets the real needs of the affected populations.

2. How to approach the Government to request special legal facilities

IFRC and CRCS can approach the Government by writing a letter and/or requesting a meeting. A **template letter** is available for this purpose. IFRC Disaster Law can assist in tailoring this letter to the circumstances.

Two different options could be considered to approach the Government:

- i. NRCS can approach Office of the Prime Minister to discuss the existing facilities that it is facing challenges to access/ *all* the new legal measures it needs. It shall be able to instruct all other officials and ministries to provide those special legal measures.
- ii. NRCS can approach each relevant government official or ministry one by one. For example, it could approach the Ministry of Finance in relation to cash transfers, and the Ministry of Transport in relation to priority access for vehicles to cross borders.

If it is feasible, the first option is preferable because it is likely to be more time efficient.

3. How special legal facilities can be introduced

There are different ways that special legal measures not provided for in the existing legislation detailed above can be introduced:

- An **IDRL emergency decree or regulation** could be passed providing the above special legal facilities to **compliment those already provided within the DRM Act**.
- The Government, NRCS and IFRC could enter into an **agreement** providing the special legal facilities to the National Society and IFRC.
- A high-ranking government official could write a **letter** stating that the National Society and IFRC benefit from the special legal measures.
- The DRM law or the NRCS Act could be **reviewed** to guarantee additional legal facilities.

The first three options might be much faster and are therefore favorable. A new law usually takes a significant amount of time and is usually pursued after the initial response phase.

4. Support available from IFRC

IFRC has a dedicated Disaster Law Team with recognized expertise to advocate for the granting of these special legal facilities that need to be quickly adopted.

Disclaimer: Some legislation cited here are publicly available only in Portuguese and have been translated to English unofficially.

For further information on the IDRL Emergency Fact Sheet, please contact:

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