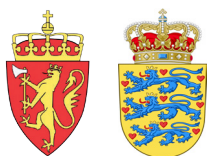




# International Disaster Response Law (IDRL) in Uganda

An analysis of Uganda's legal preparedness for regulatory issues in international disaster response

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## About this report

This report was commissioned by the IFRC and the Uganda Red Cross Society and prepared by Francis Buwule, legal consultant with Buwule & Mayiga Advocates. It analyses Uganda's current legal and policy frameworks for addressing the common issue areas related to receiving international disaster assistance.

## About the IDRL Programme

The IFRC's "International Disaster Response Laws, Rules and Principles" (IDRL) Programme seeks to reduce human vulnerability by promoting legal preparedness for disasters. It works in three areas: (1) collaborating with National Red Cross and Red Crescent Societies and other partners to offer technical assistance to governments on disaster law issues; (2) building the capacity of National Societies and other stakeholders on disaster law; and (3) dissemination, advocacy and research.

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Cover photo: Flooded section signpost in Uganda, September 2007 (Anthony Mwangi/Uganda Red Cross).

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# Executive summary

This report contains a review of Uganda's legal system governing situations of disaster, with the aim of assessing the level to which it facilitates international humanitarian assistance during a disaster, as well as the legal capacity of the government to monitor the quality, coordination and complementarity of such international assistance. In addition, a brief section of the report is dedicated to the potential legal issues were Uganda to provide assistance to another disaster-affected state or serve as a transit country for humanitarian relief goods.

As its primary analytical lens, the study employed the "Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance" (also known as the "IDRL Guidelines") as adopted at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent in 2007. These IDRL Guidelines serve as a practical tool to advise governments on how to prepare their disaster laws and plans for international relief operations. The Guidelines are attached to this report in Annex B. The Guidelines may also be found on [www.ifrc.org/idrl](http://www.ifrc.org/idrl).

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## Findings of the Report

Existing Ugandan legislation covers some of the potential problem areas relevant to cross-border disaster relief, but leaves others unanswered. Uganda does not yet have a comprehensive law to deal with disaster situations, however, the country is currently engaged in the formulation of a National Disaster Preparedness and Management Policy. The Draft Policy seeks to set guidelines for disaster preparedness, mitigation and management. It is also anticipated that it will lay the foundation for the enactment of a disaster management law as a subsequent step.

As for Uganda's international legal obligations; although Uganda has ratified a number of international and regional legal instruments relevant to disaster response, few of them have been domesticated into national legislation.

The following specific findings are of particular note.

## Government Focal Point and Coordination

The Department of Disaster Preparedness and Refugees in the Office of the Prime Minister is the lead agency in disaster preparedness and management in Uganda. The coordination of international and domestic disaster relief is undertaken by this Department through the National Emergency Operations Centre. In addition, the Department is responsible for mobilising resources in collaboration with UN agencies, Uganda Red Cross Society and other humanitarian organisations, to assist disaster victims immediately after a disaster and in the restoration of their lives.

### **Early Warning**

The Department of Meteorology under the Ministry of Environment, the Department of Geological Survey and Mines and the National Environment Management Authority are responsible for monitoring of potential hazards.

### **Requests for and Termination of International Assistance**

It is presumed that the government will request international assistance whenever disasters exceed national coping capacity. This has traditionally been done through appeals. However, there are no legal provisions or set procedures on when and how international assistance should be requested, assessment of what type of assistance is required or how and when it may be terminated.

### **Coordination**

The coordination of international and domestic disaster relief is undertaken by the Department of Disaster Preparedness and Refugees in the Office of the Prime Minister through the National Emergency Coordination and Operations Centre.

### **Entry of Personnel**

There are no special provisions for entry into the country of foreign relief providers. The ordinary documentation and fees are required on application for an entry visa. However, the procedure and time required to process an entry visa at the port of entry are generally quite easy and fast, thus it does not appear likely that they would hinder international relief providers.

### **Recognition of Professional Qualifications**

There are no special provisions or procedures for temporary recognition of foreign professional qualifications. All professional bodies, for instance the medical professional body, require foreign professionals to be subjected to a rigorous process of recognition to be able to practice in the country. This process is not currently adapted to an emergency situation, and the result of this may be that foreign aid workers cannot legally start their activities, or alternatively that they will be practicing their profession unregistered, which in turn may have consequences for liability.

### **Goods and Equipment**

There are no legal provisions for expedited clearance of relief items at customs. Entry of relief goods may be delayed if there is no expedited procedure in place, and depending on the situation this may lead to serious delays for all humanitarian actors at the border. However, it is reported that in practice such goods and equipment have been cleared as fast as possible.

Relief items are exempt from custom duties, but the documentation required for their clearance is the same as for ordinary items. Equipment for temporary use in the country is also exempt from custom duties and may be easily re-exported upon prior notification of the customs officer.

There are no special provisions for the import and use of communication equipment during disaster situations. All such equipment can only be imported under license.



Hence, humanitarian agents may experience (serious) delays at customs, or import of communication equipment may even be prevented.

The same applies to the importation of medicines and food items. Medication can only be imported in Uganda when it is on an approved list of drugs and by holders of a licence. This procedure, however, can be relaxed through exemption by the relevant minister. The importation of food stuffs also requires special clearance from the Ministry of Agriculture and a certificate from the Uganda National Bureau of Standards. This procedure, however, may be relaxed through exemption by the relevant Minister.

### **Eligibility/ Registration**

Legal personality is necessary for humanitarian actors to be able to open bank accounts, employ local personnel and enter into other forms of contracts. There are no expedited provisions to confer legal personality on foreign relief providers apart from the recognized international organisations that are accorded special privileges and immunities under the Diplomatic Privileges Act. All other foreign entities are required to register with the NGO board before they can carry out any operations in the country. This registration is necessary for them to acquire legal personality so as to be able to open bank accounts, employ local personnel and enter into other forms of contracts. Without such registration, they are subject to taxation laws of the country apart from the relief items that are exempt from tax.

### **Security**

The Uganda People's Defence Forces are required by law to provide security to relief providers during disaster situations. Moreover, the Uganda Police Force has a broad mandate to maintain law and order. Specific procedures for security relevant to foreign relief providers in disaster settings do not appear to be in place.

### **Minimum quality standards**

Humanitarian goods and services should adhere to minimum quality standards. In Uganda, samples of relief items are normally transmitted to the relevant government departments and ministries for verification of the quality and suitability before their acceptance. The relevant bodies include the Ministry of Health, Agriculture, the National Drug Authority and the Uganda National Bureau of Standards.

### **Transport**

There are no legal provisions for special clearance of foreign registered vehicles on entry into the country. Likewise, there are no special provisions exempting foreign aircraft from landing fees and other related charges. However, other relief vehicles are exempt from custom duties and are given temporary permits to operate in the country but they are subject to taking out the Third Party Insurance policy.

### **Freedom of access**

Although there are no express legal conditions on this issue, in practice national and international responders are allowed to move freely into disaster areas to distribute relief goods without restrictions in Uganda. However, there are no procedures on identi-

fication and classification of relief providers, which are crucial tools for the government to monitor the quality of the assistance provided.

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## Summary of Recommendations

### Improving the Draft Policy

As can be concluded from the above, some of the important procedures for the facilitation of international humanitarian assistance are arranged for in the draft National Disaster Preparedness and Management Policy. However, other aspects of this facilitation are not yet addressed by this important Policy. These aspects are just as crucial to the effective and efficient delivery of humanitarian relief by foreign humanitarian actors. Therefore, this study advises that the Policy may be improved with regard to the following aspects:

- Within the institutional framework, the procedure for initiating, coordinating and terminating external assistance during disasters and health emergencies
- Acknowledgement of the role of Uganda Red Cross Society as an auxiliary to public authorities in the humanitarian field and other civil organisations
- Clarification of the role of the Disaster Preparedness and Management Commission described by Article 249 of the Constitution in relation to the National Emergency and Operations Centre within the national institutional framework
- A centralized early warning system should be developed to which information from the various surveillance centres is forwarded and processed to support the issuing of early warning alerts and declarations of state of emergency
- Provide formal guarantee for freedom of access to disaster affected communities and the provision of adequate security for relief providers based on prior registration and classification of such providers to ensure quality standards of the relief aid
- A system should be developed which provides basic legal facilities for international responders to facilitate their entry, stay and ease their operations while in the country
- General accountability standards for international relief providers should be developed.

### IDRL Elements for the New Disaster Management Legislation

Currently, Uganda does not have a law dedicated exclusively to disaster management. The enactment of such a law would be of great benefit to the coherence and clarity of competencies and responsibilities in disaster response. In addition, legal provisions may be enforced should that be necessary. A comprehensive law on disaster risk management and health emergencies should be enacted to solidify Uganda's institutional framework for disaster management. This would include the establishment of the Disaster Management Commission as required by the Constitution, as well as operationalising the procedures for a state of emergency. It should also set out the broad outlines of the roles and responsibilities of other governmental divisions, the Uganda Red Cross Society (as auxiliary to public authorities in the humanitarian field) and

other civil society organisations in the full cycle of disaster management (from risk reduction to recovery), for which the Disaster Policy should provide additional details.

With regard to international assistance, the law should also set out procedures for:

- Operating a centralized early warning system to which information from the various surveillance centres is forwarded and processed to support the issuing of early warning alerts and declarations of state of emergency
- Initiating, coordinating, regulating and terminating international responses to disasters and health emergencies
- Registration of foreign humanitarian organisations to enable them to enjoy temporary legal facilities and domestic legal status, contingent on abiding by minimum standards. Those facilities should include, among other things:
  - Expedited customs procedures and waivers of duties on relief goods and equipment
  - Waiver or reduction of restrictions for the importation of food, medications, motor vehicles and telecommunications equipment in the context of a disaster relief operation
  - Exemption from vehicle registration requirements and charges, including for road tolls
  - Priority treatment for landing and overflight for relief flights as well as waiver of landing fees
  - Speedy recognition of foreign professional qualifications of international responders (in particular medical qualifications and driving licenses)
  - Easy and cost free entry and movement of foreign vehicles and aircraft engaged in relief operations
  - Tax exemptions
  - Favourable rights of movement and banking in foreign currencies
- Adequate monitoring and oversight of the quality of international disaster assistance
- The legislation should also provide for facilities for the transit of relief goods and transport when crossing Uganda territory.

### **Amendments to Existing Laws**

In addition to the enactment of a new disaster management law, consideration should be given to amending a number of existing laws. This might be done as part of the same act that adopts the disaster management law. Such amendments will be particularly important if it is considered that certain topics (such as tax exemptions) cannot be governed by disaster management law.

These laws include:

- The Non-Governmental Organisations Law and Regulations should address the temporary registration procedures for international disaster relief organisations to be provided in the new disaster management law. It should also allow NGOs to open bank accounts with any bank they desire.

- The Customs Management Act should condition the waiving of customs duties for foreign humanitarian organisations. The Act should likewise provide for simplified customs documentation and waivers or reductions of inspection requirements. It should also provide for waivers of export duties on relief goods originating in Uganda.
- The National Drug Policy Authority Act, The Food and Drug Act, and the Uganda Communications Act should, where appropriate, refer to legal facilities mentioned in the disaster management law providing for incoming disaster relief goods and equipment.
- The Traffic Control and Road Safety Act should allow for exemptions for vehicle registration and tolls for vehicles employed by approved foreign disaster relief providers.
- Either the Finance Act or the VAT Act should extend exemption of VAT on imports to all approved humanitarian organisations providing relief in disaster and recovery. This exemption should extend to local purchases of goods and services when part of a relief operation. The VAT Act should also provide for speedy registration for approved foreign humanitarian organisation in a disaster operation.
- The Income Tax Act should extend income tax exemptions to the personnel of approved foreign humanitarian organisations, for the duration of the relief and initial recovery period (as determined by the government).

Special attention should be paid to how international instruments relevant to disasters to which Uganda is already a party may be implemented domestically.

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The research was undertaken by Mr. Francis Buwule, a legal consultant with Buwule & Mayiga Advocates and also the national legal adviser to the Uganda Red Cross Society. He was assisted by Ms. Sophia Nakandi, a legal researcher with Imperial Group and Ms Mary Nankabirwa, a senior state attorney with the Ministry of Justice and Constitutional Affairs. Oversight and technical guidance for the project were provided by Eilif Torma, Marta Duro and David Fisher of the IFRC.

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# Abbreviations

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>AU</b>	African Union
<b>DEOC</b>	District Emergency Operations Centres
<b>EACCMA</b>	East African Custom Management Act
<b>GSO</b>	Government Standing Orders
<b>IDRL</b>	International Disaster Response Laws, Rules and Principles
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>IHR</b>	International Health Regulations
<b>MOFA</b>	Ministry of Foreign Affairs
<b>MOU</b>	Memorandum of Understanding
<b>NECOC</b>	National Emergency Coordination and Operations Centre
<b>NGO</b>	Non-governmental organisation
<b>NEMA</b>	National Environment Management Authority
<b>SARS</b>	Severe Acute Respiratory Syndrome
<b>TIN</b>	Tax Identification Number
<b>TT copy</b>	Telegraphic Transfer copy
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Programme
<b>UNISDR</b>	United National International Strategy for Disaster Reduction
<b>UPDF</b>	Uganda Peoples Defence Forces
<b>URA</b>	Uganda Revenue Authority
<b>VAT</b>	Value Added Tax
<b>WFP</b>	World Food Programme
<b>WHO</b>	World Health Organisation

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# Chapter 1

## Introduction to the Project

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## 1.1 Background

In December 2009, the International Federation of Red Cross and Red Crescent Societies (IFRC), in line with its International Disaster Response Laws, Rules and Principles (IDRL) Programme offered technical assistance to support the Uganda Red Cross Society in advising the Government of Uganda on how best to strengthen its legal preparedness for international disaster response. Soon thereafter, the IFRC signed a Memorandum of Understanding with the Government of Uganda, in which the government accepted the technical assistance and appointed a governmental task force to oversee this project.

The project builds on over nine years of global research and consultations undertaken by the IFRC through its IDRL Programme. To date, over two dozen country and regional studies have been commissioned to identify problem areas and best practice in the regulation of international disaster relief. They found a common set of legal problems arising in international operations, due mainly to a lack of legal preparedness at the national level. These include both barriers to access (including issues with visas, customs clearance and duties, taxes and charges and legal personality problems) as well as failures of control over the quality, coordination and complementarity of international relief.

In 2007, the IFRC spearheaded negotiations on the “Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance” (“IDRL Guidelines”) which are based on existing international norms and addressed to the most common problem areas. In 2007, the state parties to the Geneva Conventions, including Uganda, unanimously adopted the IDRL Guidelines at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent.

The project is intended to assist the Uganda Government to make use of the IDRL Guidelines to examine its regulatory framework for international disaster response and to develop practical solutions to the common problems that hamper international disaster response. It does not purport to address all the legal issues that affect disaster response in the country

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## 1.2 Scope

This project is focused on the facilitation and regulation of **international** assistance in disasters. It is not intended as a comprehensive review of law and policy regarding **domestic** disaster response, though some recommendations inevitably touch on domestic issues, due to the many links between systems for regulating international and domestic response.

This report’s references to disasters are intended to include both “natural” and man-made crises, but not to extend to armed conflicts. Communicable disease emergencies are also included as a type of disaster for which international assistance might be sought, but this report does not purport to provide a thorough analysis of law and policy concerning disease surveillance and control.

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## 1.3 Methodology

The project involved comprehensive research and study of the following literature:

- Reports, studies, evaluations and statistics on disasters and health emergency operations in Uganda and other parts of the world



- The Constitution of the Republic of Uganda
- The national, regional and international instruments relevant to disasters and health emergencies in Uganda
- The draft National Disaster Preparedness and Management Policy
- The National Policy for Internally Displaced Persons
- The Guidelines for the Domestic Facilitation and Regulation of International Disaster relief and Initial recovery Assistance
- The IFRC's Desk Study on Law and Legal Issues in International Disaster Response

The researcher also conducted a survey and interviews with the relevant stakeholders from various governmental and non-governmental stakeholders, such as: Department of Disaster Preparedness and Management, Office of the Prime Minister Department of Epidemiology Ministry of Health Customs Department and Taxation Department, Ministry of Finance Department of Immigration, Ministry of Internal Affairs OCHA Doctors Without Borders Uganda Red Cross National Drug Authority and the Uganda National Bureau of Standards.

Additionally, he participated in consultative meetings with the National Platform for Disaster Risk Reduction and helped to organize legal workshops on various drafts of this report with various stakeholders. The Minister for Disaster Preparedness and Management Prof. Tursus Kabwegyere opened and attended one of such workshops held on the 29<sup>th</sup> July 2010 at Hotel Africana in Kampala.

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# Chapter 2

## Country Background and Risk Profile

## 2.1 Country Background

Uganda lies in the East African region. It is land-locked, with Kenya to its east, the Sudan in the north, the Democratic Republic of Congo to the west, Rwanda to the southwest and the Republic of Tanzania to the south. Uganda has one of the largest natural water bodies in the region with Lake Victoria, which it shares with Kenya and Tanzania, Lakes Albert and Edward in the west and a number of rivers crisscrossing the country. The Nile, Africa's longest river, snakes its way from its source in Lake Victoria through northern Uganda to the Sudan on its way to the Mediterranean Sea.

Uganda has a population of approximately thirty million people and has had a troubled history, having experienced a major civil war in the 1980s which led to the displacement of several million persons and brought to power the National Resistance Movement government in 1986. Since 1986, Uganda has experienced an armed rebellion in northern Uganda leading to the further displacement of over 1.3 million people.<sup>1</sup>

Uganda is endowed with significant natural resources, including ample, fertile land, regular rainfall, mineral deposits and oil. It has a very robust economic potential and under the National Resistance Movement government it is making significant economic progress. However, because of its political and economic history, Uganda remains among the very poor countries of the world, with about 39% of the population living below the national poverty line.<sup>2</sup>

## 2.2 Country Risk Profile

For purposes of this study, a disaster is defined as a serious disruption of the functioning of a community or a society, causing widespread human, material, economic or environmental losses that exceed the ability of the affected community or society to cope using its own resources.<sup>3</sup> It causes injury, loss of lives, damage to property and a breakdown of infrastructure.

Disasters in Uganda have been classified as either natural or man made. According to the Uganda National Report and Information on Disaster Risk Reduction Efforts for the World Conference on Disasters Reduction delivered at Kobe – Hyogo, Japan 18-22 January 2005<sup>4</sup>:

“Uganda has experienced a wide range of disasters directly affecting most of the country and the following have been frequent: displacement of persons as a result of civil strife, famine as a result of drought, earthquakes, disease epidemics, livestock and crop disease, flooding and landslides as a result of heavy rains and injudicious environmental management, and technological accidents as a result of inadequate safety procedures. New on the scene and most frightening is the phenomenon of terrorism.”

The emerging dimensions of climate change are likely to result in an increase of weather-related disasters.

<sup>1</sup> UNDP, Northern Uganda Internally Displaced Persons Profiling Study (2005).

<sup>2</sup> UNDP, *idem*.

<sup>3</sup> ISDR, Terminology on Disaster Risk Reduction (2009), available at <http://www.unisdr.org/eng/terminology/terminology-2009-eng.html>.

<sup>4</sup> Available at: <http://www.unisdr.org/eng/country-inform/reports/Uganda-report.pdf>.

### 2.2.1 Drought

More people have been affected by drought in Uganda than by any other kind of natural disaster.<sup>5</sup> Some of the factors that have contributed to Uganda's droughts include deforestation and global warming. Drought normally occurs in the northern and eastern parts of the country, where the land is semi-arid in nature. In 1980, the drought in this region was so severe that the United Nations appealed for funds to finance an urgent food airlift.<sup>6</sup> It is estimated that 1,000 people died of starvation in Karamoja<sup>7</sup> and half a million people suffered from famine.

The northern parts of Uganda also suffered from drought in 1985, 1994, 2000, 2005 and 2006. Drought cycles are now occurring every two years instead of five years in the north-eastern parts of the country.<sup>8</sup> It is also believed that Uganda is under a threat of annual droughts, which is likely to expose a large part of the population to food insecurity and famine.<sup>9</sup>

### 2.2.2 Floods

Floods in Uganda are exacerbated by heavy rains known as El Niño, which swell the many rivers and inundate the relatively low-lying flat areas of the country. The regions which are most prone to floods in Uganda are Kampala in central Uganda, the Lake Victoria basin, and the eastern and northern parts of the country.<sup>10</sup>

Most recently, in November 2007, heavy rains led to flooding in the Teso region particularly affecting Katakwi and Amuria Districts in eastern Uganda. That instance caused loss of livestock, destruction of crops, destruction of infrastructure and landslides in the eastern and the south western parts of Uganda that left 93 people dead, 10,000 homeless and 300 people missing.

### 2.2.3 Landslides

In Uganda, landslides are more frequent in the mountainous regions of Mbale, Kabale, Kisoro, Sironko, Kapchorwa and the districts in the Rwenzori region.<sup>11</sup> Landslides often result from improper land use and management on mountainous slopes, for example, through clearing the slopes of their natural vegetation and over-cultivation due to increase of population. It is estimated that 31% of the total population in Uganda lives in mountainous areas,<sup>12</sup> and is therefore potentially vulnerable to landslides.

<sup>5</sup> UNDAC, Report of the Disaster Response Preparedness Mission (2008), available at <http://www.ugandaclusters.org/disaster.htm>.

<sup>6</sup> "Aid for drought area begged", Ottawa Independent of the 26<sup>th</sup> March 1980.

<sup>7</sup> Ray Moseley, "UN Representative says 136,000 face starvation";, The Evening Independent of the 29<sup>th</sup> March 1980.

<sup>8</sup> Ole Nielsen, "Uganda Drought" Reuters, available at <http://www.alertnet.org/thenews/newsdesk/L12765980.html>.

<sup>9</sup> Gerald Tenywa, "Annual floods threaten Uganda, New Vision of the 27<sup>th</sup> of August 2009, available at <http://www.newvision.co.ug/PA/8/13/692658>.

<sup>10</sup> Draft National Disaster Preparedness and Management Policy (2008) at 1.

<sup>11</sup> Ibid at para 3.

<sup>12</sup> "Disaster Risk Reduction Efforts For the World Conference on Disaster Reduction" (Kobe Hyogo, Japan, 18-22 January 2005), prepared by The Department of Disaster Management and Refugees, Office of the Prime Minister on the 18<sup>th</sup> June 2004.

### Landslides in Bududa, Eastern Uganda March 2010

The recent occurrence of landslides and their devastating effects in Uganda has been documented as follows:

- On the 23<sup>rd</sup> of November 1997, 29 people were killed in Mbale district in Eastern Uganda.<sup>13</sup>
- On the 24<sup>th</sup> of May 1998, 5 people were killed in Bududa, Eastern Uganda.
- On the 9<sup>th</sup> of May 2002, three people were found dead in Mbale after the landslides in Bushenyi, Western Uganda.<sup>14</sup>
- On the 16<sup>th</sup> of May 2003, over 500 people were evacuated from Rwampara Mbarara due to landslides. It is estimated that 250 homes were destroyed, some people were killed and 30 bodies were exhumed from graveyards by the landslides.<sup>15</sup>
- On the 3<sup>rd</sup> of December 2004, over 5 landslides again hit the Western Region.<sup>16</sup>
- On the 3<sup>rd</sup> of June 2007, a landslide killed 2 people in Bududa.<sup>17</sup>
- On the 12<sup>th</sup> of November 2008, governmental authorities warned of landslides in Mbale area and hilly areas of western Uganda.<sup>18</sup>
- On the 1<sup>st</sup> of March 2010, a village in the district of Bududa in Mbale suffered from landslides that left 92 people dead, 300 people missing and 300,000 displaced.
- And on the 4<sup>th</sup> of March 2010, heavy rains caused landslides in Kabale, where hundreds were displaced.

It has been reported that a huge crack has developed on Mt. Elgon in Eastern Uganda and is threatening to displace 8,000 people.<sup>19</sup> It has also been reported that the current eight months torrential rains have weakened the soils in Kabale, which has resulted into mudslides and flooding.<sup>20</sup>

### 2.2.4 Earthquakes

Earthquakes are not common in Uganda. However, the western and the central parts of the country are considered seismically vulnerable.<sup>21</sup>

The biggest earthquake in Uganda was reported in Fort Portal, in the south-western part of the country, on the 21<sup>st</sup> of March 1966, where it is estimated to have killed more than 100 people.<sup>22</sup> It is reported that tremors that reached point 10 on a 12 point Richter

<sup>13</sup> Excerpts from reports by Radio Uganda, available at <http://nl.newbank.com>.

<sup>14</sup> "Three people found dead in Mbale after landslide catastrophe Reported in the New Vision of the 9<sup>th</sup> of May 2002, available at <http://allafrica.com/stories/200205170083.html> .

<sup>15</sup> "Landslides leave 500 homeless in Mbarara", Reported in the New Vision of the 16<sup>th</sup> of May 2003, available at <http://allafrica.com/stories/200305160020>.

<sup>16</sup> Reported in the Monitor of the 3<sup>rd</sup> of December 2004, available at <http://allafrica.com/stories>.

<sup>17</sup> "Landslides kill 2, destroy crops", Reported in the New Vision of the 3<sup>rd</sup> of June 2007, available at <http://www.newvision.co.ug/D/8/13/568610> <http://allafrica.com/stories>.

<sup>18</sup> "Landslides warning for Eastern, Western Uganda", Reported in the New Vision of the 12<sup>th</sup> of November 2008, available at <http://www.newvision.co.ug/D/8/13/659068>.

<sup>19</sup> "Huge cracks form on Mountain Elgon, Reported in the New Vision of the 19<sup>th</sup> of May 2010, available at <http://www.newvision.co.ug/D/8/12/719939>Page 1 to page 2.

<sup>20</sup> Ibidem.

<sup>21</sup> Draft National Disaster Preparedness and Management Policy (2008).

<sup>22</sup> I.S Loupekine, "Earthquake reconnaissance mission, Uganda, the Toro earthquake of 20 march 1966", J. Wohlenberg and Th. Janssen "Preliminary interpretation of seismograms," UNESCO Paris, July 1966 available at <http://unesdoc.unesco.org/images/0000/000077/007799EB.pdf>.

scale, shook the area south of Lake Albert for four hours causing many deaths, injuries and destruction of property.<sup>23</sup>

In 1994, a strong earthquake hit the Rwenzori region, affecting 50,000 people. Moreover, the year 2007 was characterised by numerous waves of earthquakes in most parts of the country.

### **2.2.5 Communicable Diseases**

Communicable diseases are also a significant source of mortality in Uganda. The priority epidemic-prone diseases for the country are Cholera, Meningitis, Hepatitis E, Typhoid, Ebola, Marburg and the Plague. Moreover, concerns remain high about future outbreaks of new strains of Influenza, such as the “bird flu”.

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<sup>23</sup> Ibidem.

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# **Chapter 3**

## Legal Framework for Disaster Management

Currently, Uganda does not have a comprehensive law on disaster management. Instead, the legal framework on disaster management in Uganda is comprised of a combination of domestic policies and laws and regional and international legal instruments. Domestic policies are described in section 3.1 below, while the key legal instruments are described in sections 3.2 and 3.3.

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## **3.1 Domestic Policy**

### **3.1.1 The (Draft) National Disaster Preparedness and Management Policy**

National authorities are currently working on a National Disaster Preparedness and Management Policy (hereinafter, the “Draft Disaster Policy”). Although it will not have the force of law, once adopted, it will lay down the basic principles, strategies and mechanisms for disaster preparedness and management in Uganda.

As of the date of this study, the Draft Policy consisted only of very general provisions regarding international assistance. In particular, it notes the “ongoing initiatives under the African Union, IGAD and East African Community” and commits the Office of the Prime Minister to form partnerships with regional forecast centres.<sup>24</sup> It also notes that the “UN, Red Cross and NGOs have tremendous human and material resources and expertise” and pledges the government to form partnerships with them as well.<sup>25</sup> There have been previous attempts to develop a National Disaster Preparedness Plan as a working document for the department but it was abandoned with reason that one should be developed after the adoption of the policy as the implementation plan.

### **3.1.2 The National Policy for Internally Displaced Persons<sup>26</sup>**

Between 1.7 and 2 million people are estimated to have been displaced by the Lord’s Resistance Army (LRA) armed conflict in northern Uganda since 1986.<sup>27</sup> Further displacement has resulted from the Allied Democratic Forces (ADF) insurgency in western Uganda and Karamoja in eastern Uganda and others through natural disasters such as floods and mudslides in other parts of the country.

This policy was developed in August 2004 to address the needs of those displaced within the country, either by wars (like the conflict with the LRA) or by natural disasters. The policy’s objectives are to minimize internal displacement and its effects by providing an enabling environment for upholding rights and entitlements to affected persons. It aims at promoting integrated and coordinated response mechanisms and addresses both the causes and effects of displacement. The policy is also meant to guide the development of sectoral programs for recovery through rehabilitation and reconstruction of social and economic infrastructure in support of the return and resettlement of the internally displaced.

The Department of Disaster Preparedness and Management in the Office of the Prime Minister is the lead agency for the protection and assistance of the internally displaced

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<sup>24</sup> Draft National Disaster National Disaster Preparedness and Management Policy, at para. 3.1.7.

<sup>25</sup> Ibid at para. 3.1.8

<sup>26</sup> Uganda National Policy for Internally Displaced Persons (2004), at 1.

<sup>27</sup> Background to the National and Regional Laws and Policies on Internal Displacement Uganda 2004 at 1, Francis M.Deng, “Special Groups and Individuals, mass exoduses and internally displaced persons”, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/GO4/115/10/PDF/GO411510.pdf?OpenElement> page 2.



persons.<sup>28</sup> The policy provides for multisectoral planning mechanisms to be established at the National, District and Sub-County level to address the protection and provision of humanitarian assistance to internally displaced persons.<sup>29</sup> Provisions in the policy include the acquisition of property for the well-being of the internally displaced,<sup>30</sup> development of a database, the recognition of the right to voluntary return or resettlement<sup>31</sup> and community involvement in land identification and distribution.<sup>32</sup> This policy provides a clear operational framework for disaster response including international response.

## 3.2 Domestic Law

### 3.2.1 The Constitution of the Republic of Uganda

The 1995 Constitution of the Republic of Uganda makes effective disaster management one of the key “social and economic” objectives of the state. It provides that: “the State shall institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of their normal life”<sup>33</sup>

The Constitution also makes provision for the declaration of a state of emergency by the President in consultation with the Cabinet, if, inter alia, the President is satisfied that the security or economic life of the country or part of it is threatened by man-made or natural disasters. It further provides for parliament to make laws that may be necessary for enabling effective measures to be taken for dealing with any state of emergency that may be declared.<sup>34</sup>

The Constitution also provides for the establishment of a Disaster Preparedness and Management Commission to deal with natural and man-made disasters.<sup>35</sup> It mandates parliament to enact laws to provide for the composition and functioning of this Commission but at the time of this study this is yet to be done.

The provisions of the Constitution are wide enough to allow parliament to adopt enabling laws for the regulation of international assistance in case of major disasters. However, as of the date of this study, it had been fifteen years since the Constitution's promulgation and the relevant provisions of the Constitution on disaster management had yet to be operationalised through legislation

### 3.2.2 The Uganda Red Cross Act

The Uganda Red Cross Act incorporates the Uganda Red Cross Society and recognizes it as the sole National Red Cross Society in the territory of Uganda. It specifies the special status of the Society as auxiliary to the public authorities in the humanitarian field. As a result, it is expected that the Uganda Red Cross Society will play a key role in disaster preparedness and response. However, the Draft Disaster Policy does not

<sup>28</sup> Ibid at section 2.1.

<sup>29</sup> Ibid at section 2.2.

<sup>30</sup> Ibid at section 2.1.1.

<sup>31</sup> Ibid at section 3.4.

<sup>32</sup> Ibid at section 3.6(4).

<sup>33</sup> Constitution of the Republic of Uganda (1995), Objective XXIII.

<sup>34</sup> Ibid at art. 110.

<sup>35</sup> Ibid at art. 249.

currently incorporate that role in its discussion of the national disaster management institutional framework.

### **3.2.3 The Non Governmental Organisations Registration Act**

The international relief organisations can only legally operate in Uganda after duly registering with the National Board of Non -Governmental Organisations. The procedures and the costs involved could significantly impact any prospects of international disaster relief operations.

### **3.2.4 The East African Customs Management Act**

As discussed further below, the East African Customs Management Act has some general provisions related to customs procedures, inspections and charges that would also be relevant to the import of disaster relief items.

### **3.2.5 The Uganda Citizenship and Immigration Control Act**

This law provides, inter alia, for the regulation and control of aliens in Uganda. An "alien" is defined to mean any person who is not a citizen of Uganda. This law is therefore directly relevant to the regulation and control of international responders coming into Uganda.

### **3.2.6 The National Drug Policy and Authority Statute**

The importation and distribution of all drugs in the country is regulated and controlled by this statute. It sets up the regulatory body, the National Drug Authority, which licences and approves any drugs that may be imported and used in the country. The Authority also carries out inspections of all drugs coming into the country to monitor compliance with quality standards and to ensure that measures are in place to guarantee the appropriate use of drugs in the country. This law is therefore relevant to the importation and use of medications in the aftermath of a disaster.

### **3.2.7 The Diplomatic Privileges Act**

The Diplomatic Privileges Act guarantees "privileges and immunities" for diplomatic missions, diplomatic officers and some international organisations, which might well play a role in an international disaster operation.

### **3.2.8 The Civil Aviation Authority Act**

Major relief operations often require especially speedy air transport of relief personnel, goods and equipment. Those flights would be governed by the Civil Aviation Authority pursuant to this Act. The law requires the Civil Aviation Authority to carry out its functions in a manner consistent with the Chicago Convention of Civil Aviation relating to international standards and recommended practices. As noted below, Annex 9 of that Convention includes specific procedures for disaster situations.

### **3.2.9 The Traffic And Road Safety Act**

The movement of international relief vehicles or any foreign vehicle in Uganda would be regulated by the Traffic and Road Safety Act.

### 3.2.10 The Motor Vehicle Insurance (Third Party Risks) Act

It is a legal requirement that for any vehicle to be used on the road it must have a third party insurance policy. The only exceptions are for government owned vehicles. This means that even the foreign relief vehicles must take out this policy and therefore has a cost and other implications for international disaster relief operations.

### 3.2.11 Income Tax Act

Foreign relief providers are generally remunerated for their services. Accordingly, they may be subject to income tax under the Income Tax Act as described further below.

### 3.2.12 Value Added Tax Act

Since disaster response operations involve the supply of goods and services, it is also important to examine how the VAT law affects the importation of relief goods and services and its overall impact on the international disaster relief operations.

### 3.2.13 The Food and Drugs Act

Any food or medications imported to handle humanitarian needs would also be subject to the safeguards contained in the Food and Drugs Act.

### 3.2.14 The Medical and Dental Practitioners Act

In the event that foreign medical practitioners were needed in the case of an emergency, they would be required to comply with the provisions of the Medical and Dental Practitioners Act, in particular with respect to procedures for the recognition of their foreign qualifications.

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## 3.3 Relevant International and Regional Instruments

As noted above, this study has been carried out using the IDRL Guidelines as its primary analytical lens. The IDRL Guidelines were unanimously adopted by the state parties to the Geneva Conventions at the 30<sup>th</sup> International Conference of the Red Cross and Red Crescent in November 2007.<sup>36</sup> Uganda participated in that conference and joined in the resolution adopting the Guidelines and encouraging states to use them.

In addition, Uganda is a party to several treaties that are relevant to international disaster assistance. As described in more detail below, however, not all of these treaties have been “domesticated” into national law. In other words, although Uganda is legally bound to abide by them, it has not yet taken the necessary steps to implement that obligation in its domestic legislation. For the purposes of this study, the following treaties have been examined:

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<sup>36</sup> Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance ( hereinafter, “IDRL Guidelines”), Res. 4, 30<sup>th</sup> International Conference of the Red Cross and Red Crescent, 2007, available at [www.ifrc.org/idrl](http://www.ifrc.org/idrl).

### **3.3.1 The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations**

The Tampere Convention is a treaty aimed at facilitating the importation and use of telecommunication resources and assistance for disaster mitigation and relief. It establishes an international framework for states to cooperate among themselves and with non-state entities and intergovernmental organisations with respect to the telecommunications element of a relief operation. It calls on states to facilitate the provision of prompt telecommunication assistance to mitigate the impact of disasters by removing all the regulatory barriers that impede the use of telecommunications such as licensing and restrictions on the import of telecommunication equipment. Uganda ratified the Tampere Convention on the 5<sup>th</sup> of September 2002.

Some of the provisions of Uganda's telecommunication laws are already in line with the Tampere Convention as they allow for the waiver of license requirement in times of emergency. However, other provisions, such as those related to the importation of telecommunications equipment, have not been incorporated domestically.

### **3.3.2 The International Convention on the Simplification and Harmonization of Customs Procedures ("Kyoto Convention")**

Uganda is a party to the International Convention on the Simplification and Harmonization of Customs Procedures ("Kyoto Convention") of 1974, which was revised in 1999. Specific Annex J.5 of the Kyoto Convention (which Uganda has also accepted) includes provisions concerning how to expedite the import, export and transit relief consignments. These provisions specifically address clearance of relief consignments as a matter of priority, examination and sampling of goods only in exceptional circumstances, waiving of import prohibitions and restrictions.

Some provisions in Uganda's custom laws are in line with the requirements of Specific Annex J.5, such as the exemption of relief goods from import duty. However, other aspects of the custom laws need to be amended to bring them into conformity with all the provisions of the Annex.

### **3.3.3 The Convention on International Civil Aviation ("Chicago Convention")**

Uganda is a party to the Convention on International Civil Aviation ("Chicago Convention") of 1944, the main international treaty regulating civilian flights. Annex 9 of the Chicago Convention calls for specific facilities to be provided to speed the entry of humanitarian relief flights, as well as their crew and cargo.

### **3.3.4 The Agreement Establishing IGAD**

The Intergovernmental Authority on Drought and Development was formed in 1986 by the governments of Djibouti, Eritrea, Somalia, Ethiopia, Sudan and Uganda for the purpose of decreasing cross-border problems of drought and desertification. In 1996, it was reborn as the Intergovernmental Authority on Development (IGAD) and its mandate expanded to include conflict resolution.

Article 13 A of the IGAD Establishing Agreement commits members to respect the fundamental and basic rights of the peoples of the region to benefit from emergency and

other forms of humanitarian assistance and to facilitate the movement of food and emergency supplies in the event of man-made or other disasters.

### 3.3.5 African Union Convention on Internally Displaced Persons

Uganda was the first state to ratify the African Union (AU) Convention on Internally Displaced Persons, which was adopted in 2009. This Convention drew on the well-known UN Guiding Principles on Internal Displacement (1998), as well as other human rights and international humanitarian law. The treaty is not yet in force, pending ratification by 15 AU member states.

Like the Guiding Principles, the Convention defines “internally displaced persons” broadly, to include not only those fleeing persecution or violence, but also those forced to leave their homes due to natural disasters.<sup>37</sup> Also like the Guiding Principles, the Convention requires member states to “allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons.”<sup>38</sup>

Uganda's Policy on Refugees and Internally Displaced Persons are largely in conformity with the Guiding Principles and the AU Convention, though, as described further below, its procedures guaranteeing “rapid and unimpeded passage for relief consignments” need improvement.

### 3.3.6 The Agreement Establishing COMESA

The establishing treaty of the Common Markets for Eastern and Southern Africa (COMESA) commits member states, including Uganda, to cooperation in the area of health including evolving mechanisms for joint action in combating the outbreak of epidemics such as AIDS, Cholera, malaria, hepatitis and yellow fever as well as cooperating in mass immunisation and public health community campaigns.

### 3.3.7 The Hyogo Framework for Action 2005-2015

In addition to legally binding agreements, Uganda has joined a number of other non-binding international standards such as the Hyogo Framework for Action, adopted in 2005 as a 10-year strategy to reduce vulnerabilities to natural hazards. The Hyogo Framework assists the efforts of nations and communities to become more resilient to, and cope better with hazards that threaten their development gains. The HFA offers 5 key priorities for action for achieving disaster resilience for vulnerable communities in the context of sustainable development. The priorities are:

- Ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation
- Identify, assess and monitor disaster risks and enhance early warning
- Use knowledge, innovation and education to build a culture of safety and resilience at all levels
- Reduce the underlying risk factors
- Strengthen disaster preparedness for effective response at all levels

<sup>37</sup> African Union Convention for the Prevention and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009), art. 1.

<sup>38</sup> Ibid at art. 5.

The HFA is the key global instrument for implementing disaster risk reduction. Member countries which have signed the HFA converge every two years at the Global Platform for Disaster Risk Reduction to report on and discuss progress made in the implementation of this strategy. The last Global Platform took place in Geneva in June 2009.

In strengthening the legal and policy frameworks for international disaster response, Uganda would be acting in conformity with priority 5 of the HFA.

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### **3.4 Recommendations**

A comprehensive law on disaster preparedness and management should be enacted to give the necessary legal force to the disaster preparedness and management aspirations in the country. This law should also operationalise the constitutional provisions on the state of emergency and the Disaster Preparedness and Management Commission.

Legislation to domesticate the many international instruments relevant to disasters should be enacted to facilitate their applicability in the country.

This could be an appropriate place to insert a table indicating which of the above mentioned treaties are not (fully) implemented.

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## **Chapter 4**

# Uganda as a Recipient of International Assistance

The IDRL Guidelines recognise that it is first and foremost the responsibility of the government of the affected state to address the humanitarian needs caused by a disaster within its borders.<sup>39</sup> This section examines Uganda's legal preparation for undertaking that responsibility.

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#### **4.1 Institutional Arrangements, Coordination of Relief and Information Exchange**

Under the sixth schedule to the Constitution of the Republic of Uganda, it is stipulated that the primary responsibility for disaster preparedness and management rests with the state. In recognition of this responsibility, the Uganda government created a Department within the Office of the Prime Minister specifically for disaster preparedness and management to address this requirement. Under this ministry, there is the Department for Disaster Preparedness and Management.

This Department is the lead agency within the government in disaster management. It oversees and coordinates all relief efforts in the country. According to the draft Disaster Policy, this Department is responsible for the coordination of risk reduction, prevention, preparedness, mitigation and response actions in consultation with other line ministries, humanitarian and development partners and local governments. To this end, it operates the National Emergency Coordination and Operations Centre (NECOC).

According to the draft policy, the NECOC is to have at its disposal a pool of trained individuals across all ministries who can be easily mobilised and deployed. These trained individuals are drawn from the government, private, civil society organisations and the community. The NECOC is to function 24 hours per day and should be easily accessible for information sharing. The NECOC is to be equipped with the most up-to-date communication technology to make rapid response in emergencies possible. Among the functions of the NECOC, is the coordination of disaster response teams, the coordination of information campaign and linking with District Emergency Operations Centres (DEOC) to provide a coordinated response.

The coordination of international relief efforts with local operations and the coordination of the information campaign as well as the consolidated approach is also among the responsibilities of the NECOC.

At the time of this study, the draft policy provided that NECOC is established under Article 249 of the Constitution. However this seems to be inconsistent with the clear provisions of Article 249, which provides that such a Commission would have its composition, functions and procedures for implementation of its functions prescribed by Parliament. Yet the policy is a cabinet document and it is not prescribed by parliament. In order to avoid this inconsistency, parliament will have to pass a law prescribing the composition, and functions of NECOC.

The Draft Disaster Policy proposes a national structure for dealing with disasters from the national level, to the district, sub-county and village levels. It defines the respective roles and responsibilities at the different levels. If adopted and implemented, this policy will go a long way to provide the necessary policy framework for effectively dealing with disasters domestically in Uganda. However, as noted above, the draft policy does not address the issue of international disaster response.

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<sup>39</sup> IDRL Guidelines at para. 3.1.



### 4.1.1 Recommendations

The Draft Disaster Policy should be finalised and operationalised to provide the necessary guidelines in disaster management in the country. The key institutional aspects of the Draft Disaster Policy should also be reflected in the new disaster management law.

Prior to finalization, the Draft Disaster Policy should be amended to provide for the necessary framework guiding international disaster response, as described below.

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## 4.2 The Role of Civil Society Organisations

### 4.2.1 The Role of the Uganda Red Cross Society

The IDRL Guidelines emphasize the important role of National Red Cross and Red Crescent Societies as auxiliaries to the civil authorities in the humanitarian field, as well as other civil society actors. States are urged to adopt comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take into account of the auxiliary role of the National Red Cross or Red Crescent Society and are inclusive of domestic civil society.<sup>40</sup>

As was described above, the Red Cross Act Cap 57 incorporates the Uganda Red Cross Society as a body corporate with a common seal and perpetual succession.<sup>41</sup> The Act further recognises the Uganda Red Cross Society as the sole Red Cross Society in Uganda<sup>42</sup> The Act mandates the Uganda Red Cross Society to play an auxiliary role to public authorities in the humanitarian field.<sup>43</sup> The Act sets out the objectives of the Society as the improvement of health, the prevention of disease and the mitigation of suffering without any distinction based on race, nationality, class, religion, or political opinion.<sup>44</sup> By now, the Act no longer represents the actual role of the Society, as the Uganda Red Cross has become a major actor alongside the government in disaster situations. An amendment to the Act is advised to reflect the widened scope of the National Society in disaster preparedness and management.

The Draft Disaster Policy does recognise Uganda Red Cross Society's auxiliary role and it is provided for in the institutional framework of the Policy, but this recognition should be complemented by a current outline to reflect the actual role of the Society in disaster management, similar to the Red Cross Act.

In addition, the Uganda Red Cross Society is represented in a multi-sectoral working group known as the National Platform for Disaster Risk Reduction. This is another example of the broad role of Uganda Red Cross, beside its role in disaster response. Other representatives to this platform are the relevant government ministries, the UN, the humanitarian community, the private sector, the scientific and academic community and regional actors. This group is chaired by the Commissioner on behalf of the Permanent Secretary, Office of the Prime Minister and it is very influential in giving technical advice in the field of disaster preparedness and management. It meets once every month, but can be summoned to meet any time should necessity prescribe this. Uganda Red Cross Society is also represented on the various District Disaster Management Committees. In the National Platform for Disaster Risk Reduction, Uganda

<sup>40</sup> Ibid at paras. 3.1, 8.1.

<sup>41</sup> Red Cross Act Cap 57, at S.1(1) (a).

<sup>42</sup> Ibid at S. 1(1 3.1, 8.1. Red Cross Act)(c).

<sup>43</sup> Ibid at S.1(2).

<sup>44</sup> Ibid at S.2(b).

Red Cross Society is recognised as a major player and it is seen as the principle link with the communities.<sup>45</sup>

#### 4.2.2 Role of Other Civil Society Organisations

The Draft Policy recognises the important role of domestic civil society actors other than the Uganda Red Cross in its policy objectives. The Department for Disaster Preparedness and Management is mandated to coordinate their efforts. As noted above, they are also represented on the National Platform.

#### 4.2.3 Recommendations

Both the new Disaster Policy and the new disaster management law could outline the exact nature of this unique auxiliary role of the Uganda Red Cross Society more clearly. The role of other civil society organisations should likewise be recognized.

### 4.3 Early Warning and Preparedness

The IDRL Guidelines recommend that all states have procedures in place to facilitate the expeditious sharing of information about disasters, including emerging hazards that are likely to cause disasters. These information sharing procedures can minimise transboundary impacts and maximise the effectiveness of any international assistance that might be required. The information should be shared with other states and assisting humanitarian organisations as appropriate, including the United Nations Emergency Relief Coordinator.<sup>46</sup>

The National draft Disaster Preparedness and Management Policy does emphasize the importance of providing reliable and timely early warning of communities, which is clearly critical to domestic preparedness. However it does not make any provision for any procedure for informing other governments or the UN about disasters.

Moreover, although a number of ministries and departments, including the Meteorology Department, the Department of Geological Survey and Mines, the National Environment Management Authority, the Ministry of Health and the Ministry of Agriculture, do significant work on disaster risk and monitoring of potential hazards but Uganda lacks a centralized unit where this information can be brought together to determine a multi-hazard risk assessment, look at economic impacts and support the issuing of early warning alerts and declarations of states of emergency. Linkages to regional early warning mechanisms should also be developed.<sup>47</sup>

#### 4.3.1 Surveillance and Notification of Communicable Disease Outbreaks

Uganda has a national task force with experts from the Ministry of Health, partner agencies and the relevant line departments, which is responsible for the surveillance and notification of health emergencies. It is also responsible for the coordination of any responses to health emergencies and develops the relevant plans including resource mobilization at the national level. The Public Health Act is the law dedicated to the control and management of communicable diseases. It is an old law that was enacted

<sup>45</sup> Uganda Disaster Preparedness Plan 2008

<sup>46</sup> IDRL Guidelines, para. 7.

<sup>47</sup> Uganda Disaster Preparedness Plan 2008.

in 1935 and urgently needs a review to bring it in line with contemporary communicable disease control and to give effect to the WHO International Health Regulations.

At the district level there is the district task force chaired by the political leaders like the district chairperson or the resident district commissioner. The district health officer acts as the secretary to the task force and relevant line district departments are members.

The International Health Regulations impose a substantial set of obligations on member states to modernize their institutional frameworks for disease surveillance and control. Moreover, it makes it mandatory for them to inform the World Health Organisation of any “public health emergency of international concern” on its territory, (i.e. any event, such a infectious disease outbreak, which could “constitute a public health risk to other States through the international spread of disease” and could “potentially require a coordinated international response.

#### 4.3.2 Recommendations

The Disaster Policy and the new disaster law should provide for the establishment of coordinated early warning systems. They should also set out procedures of informing other governments, the UN, and other agencies, as appropriate, of disasters.

Attention should also be given to whether Ugandan legislation on health emergencies is consistent with the requirements of the International Health Regulations, including the requirements regarding notice to WHO of developing disease outbreaks.

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### 4.4 Requests for and Termination of External Assistance

#### 4.4.1 Initiation

Where a disaster situation exceeds national coping capacity, the IDRL Guidelines state that the affected state should seek international and regional assistance to address the needs of the affected people.<sup>48</sup> They further recommend that disaster relief or initial recovery assistance should only be initiated with the consent of the affected state.<sup>49</sup> Each country should therefore have a legal and policy framework for initiating or requesting international assistance in case of overwhelming disasters.

Seen as Uganda has no specific law on disasters and the Draft Disaster Policy has no provisions for international disaster response, there is no specific provision on how international assistance can be initiated. However, in practice, the government seeking international assistance does so through the launching of appeals to the international community. This is usually done through the Office of the Prime Minister.

Article 110 of the Constitution empowers the President to declare a state of emergency in the country or any part thereof, if the President is satisfied that circumstances exist in the country or any part thereof in which the security or economic life is threatened by natural disaster. It is not stated whether this declaration is a precondition before an international assistance appeal can be launched.

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<sup>48</sup> IDRL Guidelines para. 3.2.

<sup>49</sup> IDRL Guidelines para. 10.

The Constitution provides for parliament to enact such laws that may be necessary to provide for the procedures and regulation of such a state of emergency but, at the time of this study, such laws had not been enacted.

In a recent example of practice, the government declared a state of emergency in 2007 during the severe floods in eastern Uganda. In that case, the government declared the areas affected by the floods to be in a state of emergency and appealed for international assistance. The Uganda Floods Flash Appeal 2007 was made for USD 41,469,801 out of which USD 20,386,962 was obtained. The countries that made contributions included Egypt, which donated drugs and food, Algeria, which gave food items; the Republic of Israel, which donated assorted drugs and promised to build capacity through staff training; Germany, which sent in a water treatment plant capable of purifying 6000 litres of water per hour; Japan, which provided tents and blankets, in addition to several other countries, which donated funds.<sup>50</sup> All of these donations were channelled through the Office of the Prime Minister and were coordinated by the Department of Disaster Preparedness and Management.

There is currently no legal provision on how the humanitarian community can be contacted and by whom in situations of disaster. In practice, the humanitarian community responds to appeals by the government. The Uganda Red Cross Society has launched its own appeals, for example, in the case of the 2007 floods and, more recently, after the Bududa landslides.

#### 4.4.2 Termination

The IDRL Guidelines provide that, when an affected state or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide appropriate notification. Upon such notification, the affected state and the assisting actor should consult with each other, bearing in mind the impact of such termination on disaster affected communities.<sup>51</sup> Similar language is included in the Tampere Convention, to which Uganda is a party.

In their anxiousness to re-establish a sense of normality and re-assert their own role as main social welfare actor, some governments have imposed premature cut-off dates concerning the access or legal facilities of international disaster responders. Likewise, international actors have sometimes undertaken insufficient planning with local authorities to take up responsibility when they decide to terminate their operations after a disaster.

The Draft National Disaster Preparedness and Management Policy does not provide for initiation and termination of international relief and recovery operations.

#### 4.4.3 Recommendation

A Draft Disaster Policy should be amended to include appropriate procedures for initiation, coordination and termination of international relief with emphasis on sufficient notification and consultations with the relevant stakeholders.

<sup>50</sup> Hon. Musa Ecweru, Minister of State for Relief, Disaster Preparedness & Refugees, A report on the government intervention in flood affected areas.

<sup>51</sup> IDRL Guidelines para. 12.

## 4.5 Legal Status of Foreign Entities Providing Assistance

### 4.5.1 Privileges and Immunities

Privileges and immunities allow the holders to easily enter, exit and operate in a foreign country with minimum interference from domestic authorities. This area of law is not expressly applicable to disasters, but it can be of crucial importance during international disaster response, especially for international organisations involved in disaster response.<sup>52</sup>

#### Privileges and Immunities of Diplomatic and Consular Officials

Key treaties in this area include the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations of 1963. Uganda ratified both these conventions and has domesticated them through the enactment of the Diplomatic Privileges Act Cap 201 of 1965 and the Diplomatic Property and Consular Conventions Act of 1950.

The Diplomatic Privileges Act fully adopts the Vienna Convention on Diplomatic Relations, which is attached as a schedule to the Act. The Act specifically gives the force of law to those articles of the Convention that confer privileges and immunities to diplomatic and consular officials.<sup>53</sup> These include the inviolability of the diplomatic mission premises,<sup>54</sup> freedom of movement,<sup>55</sup> freedom of communication,<sup>56</sup> exemption from tax dues and custom taxes.<sup>57</sup>

These privileges and immunities of the diplomatic and consular officials would greatly facilitate easy access and operation in the country for those covered by them during disaster situations. However, as defined by the conventions, the reach of both diplomatic and consular status is clearly restricted. It does not include all officials from a foreign government, and, in particular, it would generally not extend to civil defence or military officials dispatched to respond to a disaster.

#### Privileges and Immunities of International Organisations

Section 2 of the Diplomatic Privileges Act provides: “The President may, by Statutory instrument, make regulations extending any or all of the immunities and privileges conferred on diplomatic agents by virtue of this Act to prescribed organisations and prescribed representatives and officials, subject to such conditions and limitations as may be prescribed.”

Under the Diplomatic Privileges (Extension to Prescribed Organisations) Regulations, Statutory Instrument No. 201-1, the privileges and immunities conferred on diplomatic agents were extended to the following organisations:

1. the African development Bank
2. the African Development Fund

<sup>52</sup> David Fisher, Law and Legal Issues in International Disaster Response: a Desk Study, (IFRC 2007) (hereinafter, “IDRL Desk Study”), p. 39.

<sup>53</sup> Diplomatic Privileges Act, Section 1.

<sup>54</sup> Ibid at art. 22.

<sup>55</sup> Ibid at art. 26.

<sup>56</sup> Ibid at art. 27.

<sup>57</sup> Ibid at arts. 28, 34, 36.

3. the Desert Locust Control Organisation for eastern Africa
4. and organisations prescribed in the schedule to these regulations. These include:
  - a. African, Caribbean and Pacific Group of States
  - b. Commonwealth
  - c. East African bank
  - d. Eastern and South African Management Institute
  - e. European Union
  - f. Food and Agriculture Organisation of United Nations
  - g. International Civil Aviation Organisation
  - h. International Labour Organisation
  - i. International Monetary Fund
  - j. International Red Locust Control Organisation
  - k. International Telecommunication Union
  - l. Kagera Basin Organisation
  - m. African Union
  - n. Common Market for Eastern and Southern Africa
  - o. United Nations
  - p. United Nations Educational, Scientific and Cultural Organisation
  - q. Universal Postal Union
  - r. World Bank
  - s. World Health Organisation

In addition to this list, there are many other international organisations that enjoy similar privileges and immunities contained in separate bilateral or status agreements the government has with these organisations. These include the ICRC, IFRC, WFP, UNDP, UNICEF and others.

#### **4.5.2 Eligibility/Registration**

Part IV of the IDRL Guidelines recommends that governments put in place an expedited system of registration for foreign humanitarian organisations during disaster situations. Once registered and found eligible, this report recommends that these organisations be provided with a set of legal facilities necessary to do their work, as described elsewhere in this report.

#### **Legal Registration of Non-Governmental Organisations**

In the past, almost all international relief organisations that have offered disaster assistance in Uganda already had a long-term presence in the country. These organisations usually had sister organisations or affiliates through whom they channelled their relief efforts. Consequently, their registration was accomplished in the normal order of business and not during a disaster. However, in recent years, the phenomenon of a large influx of new humanitarian organisations responding to a major disaster has become increasingly common in countries around the world. Thus, while this has not been an issue so far in Uganda, the possibility of large quantities of humanitarian actors causing significant disaster management challenges cannot be ruled out for the future.

In Uganda, no humanitarian organisation, apart from those international organisations on whom privileges and immunities are conferred by the government or by law, can operate unless it has been registered with the National Board for Non-Governmental Organisations (hereinafter, the “NGO Board”) and has received a valid permit.<sup>58</sup> Moreover, no humanitarian organisation can be registered by the NGO Board without having its name registered and approved for registration by the Registrar of Companies.<sup>59</sup> The application for registration has to be accompanied by evidence of statements made in the application and also accompanied by a copy of the organisation’s constitution.<sup>60</sup>

In an emergency, the Minister of Internal Affairs can exempt organisations from any of the requirements needed to accompany the application for registration except the payment of prescribed fees.<sup>61</sup>

This provision can be utilized in disaster situations and therefore provides humanitarian organisations with special procedures for registration. When the Minister exempts an organisation, he must issue a certificate of exemption.<sup>62</sup> The organisation would only be required to reserve and register a name with the Registrar of Companies and then make a simple application with the allowed exceptions.

### Period and Cost of Registration

The NGO registration law does not indicate the amount of time it would take to register a foreign humanitarian organisation in Uganda. According to NGO Board officials however, the time taken to register depends on the ability of the organisation to present the requirements as quickly as possible.

Per the NGO law, foreign humanitarian organisations would be required to pay a prescribed fee of Seventy Five United States dollars US\$ 75 or its equivalent in convertible currency to register with the National Non-Governmental Organisation Board.<sup>63</sup> The organisations are also required to pay a prescribed fee of 25,000.00 Uganda shillings to approve or reserve its name with the Registrar of Companies.<sup>64</sup>

In practice, the cost is much higher, since the organisations are required to fill in a form, which should be signed by at least two lawyers. This per se increases the registration cost over and above that prescribed by the law.

Certificates of registration are valid for a period of 12 months only and therefore require renewal in case the organisation has not accomplished its work by that time.<sup>65</sup>

### Information Requirements for Obtaining/Maintaining Registration

The information required for obtaining registration are: a written work plan for the consideration and approval by the Ministry of Planning and Economic Development;<sup>66</sup> a recommendation by the diplomatic mission in Uganda of the country from which the

<sup>58</sup> Non-Governmental Organisations Registration Amendment Act 2006 at section 4.

<sup>59</sup> Non-Governmental Organisations Registration (Amendment) Act 2006, at section 4 (1b).

<sup>60</sup> Non-Governmental Organisations Registration Act Cap 113 at section 3.

<sup>61</sup> Non-Governmental Organizations Registration (Amendment) Act 2006 at section 5(3).

<sup>62</sup> Statutory instrument SI 113-1, at section 11.

<sup>63</sup> NGO Registration Regulation 113-1, at section 9b).

<sup>64</sup> Second Schedule of the Companies (Fees) Rules 2005 SI 57.

<sup>65</sup> Statutory instrument SI 113-1 at section 7.

<sup>66</sup> Requirements for Registration of Foreign NGOs, The Non-governmental Organisations Board, Ministry of Internal Affairs

organisation originates or by a duly authorised government office in that country;<sup>67</sup> and the constitution of the organisation, which should be authenticated by a certificate of the diplomatic mission in Uganda of the country of origin of the organisation.<sup>68</sup>

In addition, foreign organisations are also required to have a memorandum of understanding with the line ministry concerned with its area of work although there's no legal requirement to this effect, and to submit a chart showing its organisational structure and staffing, which should specify its foreign workforce requirements, the Ugandan counterparts of the foreign employees and the period planned by the organisation for the replacement of its foreign employees with qualified Ugandans.<sup>69</sup>

In case the organisation has a home office in another country, it is required to submit a letter from its headquarters authorising the opening up of such branch in Uganda. And in case the organisation is to employ a person who is a non-citizen of Uganda, it is required to have his or her certificates, credentials and recommendations of his or her professional qualification and proven work experience. The organisation would also be required to have a certificate of clearance of criminal record.<sup>70</sup> In order to maintain registration, an organisation is required to submit a copy of its annual returns to the board, and its estimates of income and expenditures to the District Committee in the area it operates, for consideration and approval.<sup>71</sup>

As noted above, all NGOs that are currently operating in the country have been required to be registered by the NGO Board and their areas of operations are fairly established. This might not be the case of all international responders in case of future disasters. A senior official in the Department of Disaster Preparedness and Refugees explains that Uganda welcomes all humanitarian organisations that respond when we have a disaster. Uganda does not have a prequalified list of international organisations that may offer assistance during disasters and there are accordingly no specific quality requirements along the lines of those recommended by Part I section 3 of the IDRL Guidelines (Responsibilities of Assisting Actors'). It is the government's right and duty to monitor the quality of incoming assistance, but this should not result in undesired delays.

The information requirements for obtaining and maintaining registration are thus fairly comprehensive and will prove a barrier to international relief organisations that come to assist in times of disaster. Memoranda of understanding sometimes take a long time to be signed by the government and this may cause unnecessary delay in providing the relief. Such a requirement would be a hindrance in case of a major disaster where lives are at risk and where time is of essence.

### **Eligibility for Legal Facilities for Relief and Recovery Work**

There is no provision in Ugandan law that determines which organisations may provide assistance during a disaster. Likewise, there is no provision that identifies criteria for assisting organisations to qualify or to access any legal facilities.

An exception may be made to this lack of eligibility for legal facilities. Under international law on privileges and immunities, the United Nations and its specialized agencies should be granted automatic domestic legal status. Article 1 of the 1946 Convention of

<sup>67</sup> Statutory instrument SI 113-1 at section 5b).

<sup>68</sup> Ibid at section 5(3).

<sup>69</sup> Ibid at section 13 (a),

<sup>70</sup> Ibid at section 13 (c),

<sup>71</sup> Ibid at section 15.



the United Nations gives the United Nations legal personality in the territory of member states, it gives it the capacity to contract, to sue and be sued, acquire and dispose of movable and immovable property. In such a case, registration should not be required. However, while the Diplomatic Privileges (Extension to Prescribed Organisations) Regulations SI 201-1 extends diplomatic privileges to prescribed organisations, it does not appear to provide them automatic legal status in Uganda.<sup>72</sup>

## Legal Consequences of Operating as an Unregistered Organisation

### Opening Bank Accounts

An unregistered organisation would not be able to open a bank account in Uganda because banks would require a registration permit or certificate of incorporation which documents can only be acquired after registration. Without registration, foreign organisations would only be left with the alternative of opening their accounts in the individual names of their employees or to carry huge amounts of cash.<sup>73</sup>

### Signing Contracts and Leases

An unregistered organisation would also be unable to sign contracts, as they lack the legal personality status before registration. It is only upon registration that an organisation becomes a body corporate with perpetual succession and with power to sue or be sued.<sup>74</sup> An unregistered foreign organisation would therefore not be able to initiate legal proceedings in Uganda as it would not have *locus standi*.

The Constitution<sup>75</sup> and the Land Act Cap 227 allow a non-citizen to acquire a lease in Uganda.<sup>76</sup> However, according to section 40(7) of the Land Act, a non-citizen is defined as either a person, a corporate body or as a company. Given that, before registration, a foreign organisation doesn't have such a legal capacity, it follows that it would not be legally entitled to sign a lease in its own name.

### Hiring of Local Personnel

As noted above, section 13 of the NGO law in Uganda provides that "an organisation ... shall at the time of applying for registration submit to the board a chart showing its organisation structure and staffing which shall specify its foreign workforce requirements, its requirements of Ugandan counter parts of the foreign employees, the period planned by the organisation of replacement of its foreign employees with qualified Ugandan counterparts"<sup>77</sup>

From this provision, it appears that foreign organisations are expected to declare their local workforce requirements at the time of registration. Arguably, therefore, before registration, such organisations would lack the authority to enter into employment contracts.

### Obtaining Work Permits for Foreign Personnel

<sup>72</sup> Statutory Instrument SI 201-1 at section 2.

<sup>73</sup> David Fisher, *Law and Legal Issues in International Disaster Response: a Desk Study*, (IFRC 2007) (hereinafter, "IDRL Desk Study"), p. 126.

<sup>74</sup> NGO Registration (Amendment) Act 2006 at section 4(3).

<sup>75</sup> Uganda Constitution of 1995, art. 237 (2).

<sup>76</sup> Land Act Cap 227, at section 40.

<sup>77</sup> Non-Governmental Organisations Registration Regulations, SI 113-1, at sections 13 a) (i), (ii), & (iii).

An unregistered organisation would not be empowered to obtain work permits for its foreign personnel. It is at the time of registration that the NGO Board approves the organisation's foreign work force requirement.<sup>78</sup>

### Registration of Foreign Humanitarian Organisations with Other Agencies

There is no legal requirement under the law for foreign humanitarian organisations to register with agencies or ministries other than the NGO Board and the Registrar of Companies, as described above. However in practice, although it is not a legal requirement, it is expected that foreign NGO's should have a memorandum of understanding/agreement with the line ministries under which their activities fall. It is also expected that these organisations will seek guidance from the Ministry of Finance, Planning and Economic Development. This causes delay since signing of a memorandum of understanding normally takes a considerable amount of time.

Foreign humanitarian organisations are required to follow the labour law of Uganda in matters of employment,<sup>79</sup> however no law obliges them to register with the Ministry of Labour.

Foreign NGOs are required to cooperate with local government councils and executive committees in their area of operation.<sup>80</sup> They are also required to give 7 days notice to the local government executive committee and the district administrator of the area before making any direct contact with the people in any rural part of Uganda. This could be considered another kind of registration. In Gulu District, foreign NGOs are required to register with the district but they are not classified against any given criteria.

The registration and classification of NGOs with relevant government structures such as the Office of the Prime Minister or the District Disaster Management Committee could contribute to greater coordination of disaster response activities, not just with regard to government services but also when it comes to local NGOs.

### 4.5.3 Recommendations

- The new Disaster Policy and the new disaster management law should provide for a process of temporary registration for foreign humanitarian organisations in disaster situations, which would entitle them to legal facilities related to visas and customs and transport of humanitarian relief as described below, as well as providing a domestic legal status sufficient for them to enter into contracts, sign leases, hire local personnel, open bank accounts and carry on other activities without delay during relief operations. This registration process should be available as preparatory measure but also in an expedited form after a disaster strikes.
- This registration should be made contingent on abiding by minimum standards as set out in Article 4 of the IDRL Guidelines. The register should be managed and maintained by the designated focal ministry. Once the initial recovery assistance has commenced, that ministry should actively monitor ongoing compliance with eligibility requirements.

<sup>78</sup> Ibid at section 13 (a) (i).

<sup>79</sup> Ibid at section 13 (c).

<sup>80</sup> NGO Registration Regulations 113-1, at section 12 (b).

- The new disaster law should provide for a body of professional standards for assistance by states and foreign humanitarian organisations during disasters to ensure that the disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality.
- The Non-Governmental Organisations Law and regulations may need to be amended to make reference to these new provisions in the disaster management law.

## 4.6 Customs Arrangements for the Arrival of Relief Goods in Disaster Situations

In major disaster situations, there is often a need for rapid importation of relief goods and equipment in order to address critical humanitarian gaps. Standard customs procedures and requirements may delay that importation. At the same time, crises can also be a good opportunity for mal-intentioned actors to seek to bypass normal customs rules in order to import illegal items under the guise of humanitarian assistance. This can create an important dilemma for customs authorities.

The IDRL Guidelines recommend that disaster affected states exempt disaster relief and recovery items imported by approved assisting governments and humanitarian organisations from all customs duties, taxes, tariffs, or governmental fees and exempt them from any restrictions. They also urge that governments simplify and minimize document requirements, waive or reduce inspection requirements and permit re-exportation of any equipment or unused goods which the assisting state or humanitarian organisation owns and wishes to retain.<sup>81</sup>

As mentioned above, Uganda is also a party to the Kyoto Convention on the Harmonization and Simplification of Customs Procedures, and it has accepted Kyoto's special annexes relevant to customs treatment of disaster relief, many of which are similar to the suggestions of the Guidelines.

Inasmuch as Uganda has no disaster law and the draft National Disaster Policy has no provisions on customs, the only domestic laws currently relevant to customs in disasters are the customs laws contained in the Finance Statutes and the East African Community Customs Management Act 2004.

### 4.6.1 Documentation Requirements

The customs laws make no special provision for the documentation required during an emergency. The importer would be expected to provide the following documents:

- a. Bill of lading/Airway bill
- b. Supplier invoices
- c. Packing list
- d. Customs export declaration or export entries from the country of exportation
- e. The Importer's TIN and VAT numbers
- f. Insurance certificate if the goods are insured
- g. Sea freight and inland freight invoices

<sup>81</sup> IDRL Guidelines para. 17 (a-d).

- h. Evidence of payment i.e. TT transfer copy, letter of credit or *pro forma* invoice
- i. Export entries or shipping bills from the country of supply
- j. Duties and tax exemption certificates
- k. Necessary permits or certificates for the importation of restricted goods

For diplomatic goods, the Ministry of Foreign Affairs must approve the importation. The diplomatic officer must present a copy of the bill of lading or airway bill to the Ministry of Foreign Affairs for approval prior to release from customs. To avoid airport storage charges, an inventory should be sent to the Uganda Revenue Authority (URA) at least 10 days prior to dispatch of the goods by the airfreight.

#### 4.6.2 Customs Duty on Relief Goods

Under the East African Customs Management Act, goods and equipment for use in aid-funded projects are exempted from payment of customs duty.<sup>82</sup> Thus, relief organisations would not normally have to pay customs duty in disaster response or recovery operations.

Goods which are imported for temporary use are also exempted from customs duty. This provision would cater for vehicles imported by relief organisations or private persons in disaster situations.

Goods for official use by the United Nations or its specialized agencies or any Commonwealth High Commission or foreign embassy, consulate or diplomatic mission in a partner state and goods for the United Nations or any of its specialized agencies for the support of a project in a partner state are exempted from import duty.<sup>83</sup>

Goods and equipment imported by donor agencies, international and regional organisations with diplomatic accreditation or bilateral or multilateral agreements with a partner state for their official use, are also exempted from import duty.<sup>84</sup>

However, although some local humanitarian organisations, like the Uganda Red Cross Society, fall under the exemption bracket, the exemption does not lead to automatic clearance at customs, since the government of Uganda has to pay taxes on their behalf through the office of the Prime Minister. This is not the case in other countries in the region. For example, in Kenya, the Kenya Red Cross has automatic relief from payment of customs duty, and so all their goods are automatically cleared on arrival.

#### 4.6.3 Overtime Fees and Storage Charges

Goods cleared outside working hours are subject to overtime fees.<sup>85</sup> There is no provision that waives this requirement, which means that relief organisations should pay overtime fees to the Uganda Revenue Authority (URA).

Goods stored in government warehouses are not subject to rent or storage charges.<sup>86</sup> The presumption is that it is only dutiable goods which should be stored in bonded warehouses pending clearance.<sup>87</sup>

<sup>82</sup> Fifth Schedule of the East African Community Customs Management Act 2004, Revised Edition 2009

<sup>83</sup> Fifth Schedule of the East African Community Customs Management Act 2004

<sup>84</sup> Ibid at clause 4

<sup>85</sup> Regulation 5(2) of the EAC Customs Management Regulations 2006

<sup>86</sup> East African Community Customs Management Act No. of 2004, section 68.

<sup>87</sup> Frequently Asked Questions, Financial Year : 2009-10, Issue 1 by Uganda Revenue Authority

Relief organisations are allowed to have their imports cleared in their own warehouses and therefore they would have no need to pay storage charges. Goods may also be examined at private premises.<sup>88</sup> However, there are few organisations in Uganda that have warehouses or private premises big enough to store goods. A major disaster would also attract foreign organisations and companies from abroad, which would have to pay storage charges if their goods were not cleared as soon as possible.

Relief from assisting states is normally handed over to the government and therefore storage charges wouldn't accrue.

#### 4.6.4 Import, Transit, and Export Restrictions in Disaster Settings

There are no laws in Uganda to mitigate import, and export restrictions in disaster settings. The import of animals, drugs, food, used clothes and specialized communication equipment is subject to restrictions in Uganda.<sup>89</sup> Special attention is paid to these restrictions to protect the life and health of human beings and animals. Proof of permission would be therefore required before the restricted goods/animals/equipment can be given entry into Uganda.

In practice, an importer can get permission from the Commissioner of Tax Policy to have these restrictions removed when it comes to taxes. With regard to other custom clearance for relief goods, the Office of the Prime Minister is responsible for removal of any import and export restrictions.

#### 4.6.5 Clearance of Relief Goods and Equipment

There is no law in Uganda that gives priority of clearance to relief goods and equipment. In practice, such goods are cleared as fast as possible. For ordinary imports requiring priority clearance, permission is sought from the Commissioner of Field Services. However, for relief organisations, such permission is sought from the Office of the Prime Minister. After the Bududa landslides in Mbale on the 1<sup>st</sup> of March 2010, it was reported that, for the first time, the Uganda Red Cross Society was able to clear its goods within one day.<sup>90</sup>

In this respect, the IDRL Guidelines recommend that “with regard to disaster relief goods and equipment only... affected states should additionally waive or reduce inspection requirements. Where waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority through a pre-clearance procedure where feasible.”<sup>91</sup>

#### 4.6.6 Pre-Clearance Procedures for Relief Goods and Equipment

The customs laws in Uganda have a general provision that allows goods to be cleared before the entry of the vehicle or vessel on which the goods are loaded. Section 34(3) of the East African Community Customs Management Act provides that:

“[e]ntry for goods to be unloaded may be delivered to the proper officer for checking before the arrival at the port of discharge of aircraft or vessel in which such goods are

<sup>88</sup> Regulation 53 of the EAC Customs Management Regulations 2006

<sup>89</sup> Second schedule of the East African Community Customs Management Act No.2004, part A

<sup>90</sup> Per Officer, Uganda Red Cross Society.

<sup>91</sup> IDRL Guidelines, para. 17(2) (a).

imported and in such case, the commissioner may in his discretion permit any goods to be entered before the arrival of such aircraft.”

Although this provision is available under the law, its application has recently been suspended. Such a provision could be valuable in speeding clearance in a disaster setting.

#### **4.6.7 Inspection Requirements**

In case of ordinary imports, inspection is carried out to prevent smuggling of prohibited and restricted goods. Customs declarations are usually made by means of the red/green channel system. Goods can only be declared through the green channel if they are not prohibited or restricted.

The customs laws have no provision that reduces the inspection of procedural requirements in disaster situations. In practice, it is only the cargo that belongs to the State House that is not inspected, all other cargo has to be physically verified before clearance.

#### **4.6.8 Clearance Outside Normal Business Hours and Outside of Customs Offices**

The law makes provision for the clearance of goods on Sundays and public holidays. The goods may also be cleared outside normal business hours.<sup>92</sup> Organisations that require such service can make a request in a prescribed form to the proper officer at the port or place where such attendance is required.<sup>93</sup>

The law also makes provision for clearance outside customs offices. Section 8(3) of the East African Community Customs Management Act 2004 provides:

“Where any person desires the attendance of any officer at any premises or place at which customs is not normally carried on, then such a person shall make request therefore on the prescribed form to the proper officer and... the grant of such request shall be at the discretion of such officer.”

#### **4.6.9 Re-exportation of Equipment and Unused Goods**

Goods and equipment imported for temporary use are exempted from import duty.<sup>94</sup> This provision will only apply if the proper officer was informed about the re-exportation prior to the importation. The custom laws however do not have any provisions on the re-exportation of unused goods.

#### **4.6.10 Disposal of Unused Humanitarian Goods**

There are no provisions on how unused humanitarian goods should be disposed of. However, the law prohibits dumping and anti-dumping duty can be imposed<sup>95</sup> if goods are dumped in Uganda.

For organisations operating in Uganda, such as *Médecins Sans Frontières*, unused medical goods like drugs are handed over to National Drug Authority, which has the mandate

<sup>92</sup> EAC Regulations, section 4.

<sup>93</sup> East African Community Customs Management Act 2004, section 8(2).

<sup>94</sup> Ibid at section 117.

<sup>95</sup> Ibid at section 137 (1a).

to put them to use or to destroy those that are expired. Other than drugs, there are various procedures and guidelines on how to deal with the unused goods.

#### 4.6.11 Communication Equipment

The IDRL Guidelines recommend that affected states waive or expedite the granting of any licenses and reduce any other barriers to the use, import and export of telecommunications and information technology equipment by assisting states and assisting humanitarian organisations or on their behalf in disaster relief and initial recovery assistance.<sup>96</sup> Likewise, the Tampere Convention, to which Uganda is a signatory, calls on the member states to facilitate the provision of prompt telecommunication assistance to mitigate the impact of disasters by removing all the regulatory barriers such as licenses and restrictions on importation of telecommunication equipment.

The telecommunication laws in Uganda do not provide any exceptions to import or export restriction during disasters or emergencies. These restrictions may include a telecommunications license, frequency spectrum use et cetera. Maintaining import and export restrictions would act as a barrier to importation of telecommunication technology during disasters.

The Uganda Communications Act requires one to have a license in order to operate any radio communication station or radio communication apparatus in Uganda<sup>97</sup> However in a state of emergency, the Commission may waive the requirement of a license and may direct any operator to operate networks in such a manner as appropriate to alleviate the state of emergency for the interest of public safety.<sup>98</sup> A certificate signed by the President is required as proof of a state of emergency.<sup>99</sup> This provision is in line with article 18 of the IDRL Guidelines, which recommends that affected states should waive or expedite the granting of any licenses during disaster relief and initial recovery.

#### 4.6.12 Food

The law relating to food safety does not provide for any special procedures in disaster settings regarding food imports. The only law relating to food in Uganda is the Food and Drug Act Cap 278 which is only concerned with prevention of adulteration of food and drugs. The issue of how food imports are handled in case of disasters is not addressed.

#### 4.6.13 Medicines

Uganda's law regulating medications restricts the importation or exportation of drugs to those bearing specific licenses.<sup>100</sup> It does not include any special rules to facilitate or monitor import and export of medications of disaster relief.

#### 4.6.14 Motor Vehicles

Foreign relief vehicles are exempted from customs duty according to the fifth schedule of the East African Community Customs Management Act of 2004. Goods and equip-

<sup>96</sup> IDRL Guidelines, para. 18 .

<sup>97</sup> Uganda Communications Act Cap 106, sections 23(a) & (c).

<sup>98</sup> Ibid at section 90(1a).

<sup>99</sup> Ibid at section 90(2).

<sup>100</sup> National Drug Policy Authority Act Cap 206 sections 44 & 45.

ment imported for temporary use are also exempted from import duty.<sup>101</sup> Relief vehicles can fall under equipment and so can take benefit of this exemption.

In practice, many organisations that import vehicles for relief and recovery work do not re-export them after use. Such vehicles would therefore be subject to customs duty. The number plates for vehicles that fall under the exempt bracket are embossed in white against a red reflective material which can be easily identified.

Unlike Uganda, Asian countries that have suffered from disasters have done away with the requirement of paying for any license or permit for relief vehicles<sup>102</sup>

#### 4.6.15 Animals

Under the Rabies Act and the Animal diseases Act the Commissioner for livestock and entomology has the authority to allow an animal, such as a rescue dog, to be imported into the country after being satisfied that it is not a suspect diseased animal.

#### 4.6.16 Recommendations

- Either in the text of a new disaster law or in an amendment to existing customs laws, provisions should be included to allow for the following legal facilities for assisting states and approved humanitarian organisations:
  - expedited processes on importation of relief goods and equipment during disasters
  - waiver of import taxes and duties
  - waiver of storage charges
  - simplified documentation requirements
  - priority clearance of relief consignments
  - waiver of examination and sampling of relief goods except in exceptional circumstances
- Either in the text of a new disaster law or through amendments to the relevant statutes, the following additional facilities should be provided:
  - Flexibility for the relevant officials to reduce any restrictions on relief food, medications, telecommunications equipment and vehicles, subject to the requirements of public health and security.

### 4.7 Management of Foreign Personnel during a Disaster

#### 4.7.1 Granting Visas to International Relief Personnel

The IDRL Guidelines recommend that, in case of international disaster response the affected state should waive or expeditiously grant visas and any necessary work permits for the relief and recovery personnel of assisting states and approved humanitarian organisations. Where visas are required, they should ideally be provided without

<sup>101</sup> East African Community Customs Management Act 2004, section 117.

<sup>102</sup> ASEAN Agreement on Disaster and Emergency Response 2005, art. 15(3).



cost and should be renewable within the territory of the affected state for the time required for the response.<sup>103</sup>

Under the Uganda Citizenship and Immigration Control Act, and the regulations made thereunder, there are no specific provisions about visas for international relief personnel. Visas in Uganda can be obtained either from Uganda's diplomatic missions abroad or at the point of entry. Uganda has one international airport at Entebbe but there are other points of entry if one is moving by road or rail from Kenya at the Busia or Malaba border posts, Katuna if one is from Rwanda, Mutukula if one is from Tanzania, and others at the Uganda / Sudan border.

There are no provisions for expedited or visa waivers under the existing regulations<sup>104</sup> but, according to an immigration officer at the Kampala Head Office, this is unnecessary because obtaining a visa at the point of entry ordinarily does not take more than ten minutes. Thus international relief providers should not meet any unnecessary delays in obtaining visas at the point of entry. She did note, however, that many international travellers choose not to travel before obtaining visas at their points of departure and this could result in delays.

Visas at the point of entry are obtainable on filling in one simple entry application form and on payment of USD 50 as visa fees. The payment of visa fees can be waived on a special application to the Permanent Secretary Ministry of Internal Affairs. This can be done through the Office of the Prime Minister and it would reportedly be easier if it involved a large number of relief responders. Prior notification or request to the Office of the Prime Minister before leaving the country of origin would avoid any unnecessary delays in obtaining the visa fee waiver.

A relief provider would be required to obtain a work permit for their operations in Uganda. A work permit takes three weeks to one month to process but on arrival, an international relief provider would be granted a Special Pass that gives immediate but temporary permission to carry out their operations as the work permit is being processed. A work permit is usually granted for a duration between six months to three years and it is renewable.

It would appear, therefore, that while there are no specific provisions about disasters, existing Uganda law and procedures would be adequate to expedite the entry of foreign relief personnel. Nevertheless, it would be helpful if the Disaster Policy could make clear that the fee waiver and "Special Passes" will be provided to relief personnel from approved foreign humanitarian organisations.

#### 4.7.2 Recognition of foreign professional qualifications

The IDRL guidelines recommend that affected states should establish an expedited procedure for temporary recognition of professional qualifications for foreign professional responders, in particular for medical professionals.<sup>105</sup>

There are no specific provisions in the various professional bodies' regulatory rules of Uganda that provide for expedited recognition of foreign professional qualifications. For example, a foreign medical doctor wishing to practice in Uganda, must obtain per-

<sup>103</sup> IDRL Guidelines, para. 16(a) (b).

<sup>104</sup> The Uganda Citizenship and Immigration Control Regulations, 2004

<sup>105</sup> IDRL Guidelines, para. 16(c).

mission as provided for under the Medical and Dental Practitioners Act and would be required to present the following documents:

- A university degree or professional medical qualification certificates<sup>106</sup>
- Academic transcripts<sup>107</sup>
- Evidence of completion of internship<sup>108</sup>
- Current certificate of registration in the country of origin<sup>109</sup>
- Certificate of good standing
- A curriculum vita
- References from three professional associates
- Evidence confirming intended employer/place of work
- For specialists - evidence of postgraduate training for not less than three years and evidence of active practice in the area of specialty for the past 5 years
- Two recent passport photographs
- Duly filled application forms.

The documents above have to be presented to the professional body in original or in copies certified by a notary or academic professional institutions.

Foreign doctors in the public sector pay a temporary registration fee of 200,000 shillings per annum. Once the application has been processed and approved, and a registration fee paid, foreign doctors are issued with a certificate of temporary registration.<sup>110</sup>

For foreign doctors working for an international organisation, the organisation is required to write a cover letter to the registrar introducing the doctors, stating the reason and the period of time they will be working in the country. The application and the supporting documents are required to be sent 3 months in advance to allow for timely processing of request and that it takes 2 weeks to process the application. In emergency situations, these documents are processed as soon as possible.

According to the medical council registration desk officer, no exceptions have been made in the past disaster operations, not even in the case of the Ebola outbreak.

#### **4.7.3 Recommendations**

Either in a new disaster law or in amendment to the Medical and Dental Practitioners Act, provisions should be added to allow for an expedited temporary recognition of the foreign medical qualifications of personnel from assisting states and approved humanitarian organisations in disaster situations.

In practice, relief personnel are given special exemptions, but the rules regulating recognition are silent on this important aspect. The regulations should also be amended to

<sup>106</sup> Medical and Dental practitioners Act Cap 272, section 17(1) (a).

<sup>107</sup> Ibid at section 21 (2).

<sup>108</sup> Ibid at section 17(2).

<sup>109</sup> Ibid at section 17 (3).

<sup>110</sup> Ibid at section 17(4).

provide specifically for situations of international disaster relief providers by codifying what is done in practice to avoid ambiguities.

## 4.8 Transport

The IDRL Guidelines recommend that originating, transit and affected states should not delay permission for the speedy passage of land, marine and air vehicles operated by an assisting state or eligible assisting humanitarian organisation for the purpose of transporting disaster relief or initial assistance recovery and ideally waive the applicable fees.<sup>111</sup>

Relief organisations depend on vehicles to transport relief goods from one area to another. Disasters such as floods, landslides and earthquakes destroy infrastructure and make some areas inaccessible. Specially made motor vehicles, trucks, and aircraft may be needed to reach inaccessible areas. However such vehicles may not be available in the affected states and maybe required to be imported from abroad. Many states have been found to have restrictions on the use of foreign vehicles in their territories which include registration, transport specific charges and operation of certain types of vehicles<sup>112</sup>and these have been a barrier in disasters.

Transporting relief goods by air may also raise legal issues such as obtaining flight permission, landing and departure fees, and other airport fees which may be too expensive for aircraft carrying relief goods.

Annex 9 of the Chicago Convention of 1944 commits member states to facilitate the entry into, departure and transit through their territories of aircraft engaged in relief flights performed by or on behalf of international organisations recognized by the UN or by or on behalf of states themselves as well as to ensure that personnel and articles arriving on relief flights are cleared without delay.

### 4.8.1 Foreign Vehicles in Uganda

The traffic laws in Uganda prohibit possession of a vehicle without being registered except if the vehicle is exempted.<sup>113</sup> The minister responsible for transport has the discretion to make exemption of any class of vehicles or persons from the registration and from any requirement of this law and he can do so either wholly or partially.<sup>114</sup>

Vehicles registered in Kenya and Tanzania are exempted from the requirement of registration while in Uganda if they are driven by:

- A person who is employed by the East African Community organs and institutions
- A person who is employed under a bilateral technical assistance agreement between the government of Uganda and another country
- A person employed by an international organisation which is giving assistance or aid to the government of Uganda<sup>115</sup>

<sup>111</sup> IDRL Guidelines, para. 19(1).

<sup>112</sup> IDRL Desk Study, at 122.

<sup>113</sup> Traffic Control and Road Safety Act Cap 361, section 10.

<sup>114</sup> Traffic Control and Road Safety Act Cap 361, sections 32, and 175.

<sup>115</sup> First schedule of the Traffic and Road Safety (Registration and Licensing) (Exemption) Instrument SI 361-39 .

- A diplomatic or consular officer duly accredited to the government of Kenya or Tanzania
- An employee of the University, scientific, medical or educational institution.<sup>116</sup>

Every person driving a vehicle that is exempted from the registration and licensing requirement is issued with a certificate of exemption<sup>117</sup> which is valid for a period not exceeding one year.<sup>118</sup>

Commercial vehicles or (light) motor omnibuses registered outside Uganda and used for the transportation of goods or persons for remuneration can be used without registration in Uganda for a period of 7 days on payment of freight charges at each entry<sup>119</sup> and shall be issued with a permit.<sup>120</sup>

Motor vehicles whose documents comply with an international convention are not required to be registered while in use in Uganda till the expiry of 90 days after the date of issue of that document.<sup>121</sup> Other foreign relief motor vehicles are required to be registered while in use in Uganda.

The Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief<sup>122</sup> recommend that foreign military and civil defence vehicles should not be subject to registration or licensing by the government of the receiving state provided that all such vehicles shall carry a third party insurance required by the relevant legislation.

#### **4.8.2 Foreign Aircraft in Relief Operations**

The civil aviation law in Uganda has no provisions specifying any landing rights, passage or special entry for foreign aircraft involved in emergency operations. In emergencies however, the Minister responsible for transport, has the power to regulate the navigation of all aircraft over Uganda<sup>123</sup> and can make any orders as he deems fit.

The Minister can also exempt any person, aircraft from the application of any regulations made under the Civil Aviation Act if the exemption is in public interest.<sup>124</sup> Any exemption granted under this section has to be published in the gazette.<sup>125</sup>

Although these provisions are not specifically addressed to foreign aircraft in relief operations, they may be of benefit to such aircraft in relief operations.

There is no provision exempting relief aircraft from payment of fees. However as pointed out above, there is a possibility of ad hoc exemption by order of the Minister.

#### **4.8.3 Trucks Carrying Relief Goods**

Commercial vehicles carrying relief supplies on behalf of Cooperative American Relief Everywhere (CARE) are exempted from freight charges.<sup>126</sup> Other commercial vehicles

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<sup>116</sup> Ibid.

<sup>117</sup> Ibid at section 3.

<sup>118</sup> Ibid at section 4.

<sup>119</sup> Traffic and Road Safety Regulations SI 361-10, section 121 (2).

<sup>120</sup> Ibid at section 121(5).

<sup>121</sup> Ibid at section 122.

<sup>122</sup> Project DPR 213/3 MCDA. May 1994

<sup>123</sup> Section 64 (1a) Civil Aviation Act 354

<sup>124</sup> Section 63 (1) of the Civil Aviation Act 354

<sup>125</sup> Section 63(2) of the Civil Aviation Act 354

<sup>126</sup> Section 2 of the Traffic and Road Safety (Exemption) Regulations SI 361-44

are required to pay freight charges.<sup>127</sup> Since the law does not specify whether non commercial vehicles carrying relief goods of other relief organisations are exempted, they are by implication required to pay freight charges.

Foreign vehicles travelling in Uganda are required to pay road transit charges. For instance, buses are required to pay US\$ 5 per 100 km, trucks with less than 3 axles are required to pay US\$ 6 per 100 km and trucks with more than 3 axles are required to pay US\$ 10 per 100 km.<sup>128</sup>

In addition to the above charges, the law imposes a motor vehicle inspection fee of 25,000/= shillings, which all vehicles carrying goods are required to pay.<sup>129</sup> There is no provision under the law which waives tolls for relief vehicles. However, payment of road tolls has been abandoned in Uganda.

The law does not provide fast clearance of relief vessels. And there is no provision to waive or reduce port demurrage and docking fees.

#### 4.8.4 Insurance

The law on motor vehicle insurance makes it unlawful for a person to use or cause to use a motor vehicle unless it has insurance in respect to third party risks.<sup>130</sup> The only exception mentioned is for motor vehicles which are owned by the government. Accordingly, it can be assumed by inference that other organisations, including relief vehicles, are not exempted and would as such be required to obtain such insurance on the domestic market.

Section 122(4) of the Traffic and Road Safety Regulations SI 361-10 provide that a person in charge of a motor vehicle arriving in Uganda and proposing to use that motor vehicle in Uganda shall produce documents relating to that motor vehicle and shall at the same time produce for examination the certificate of Insurance required by part II of the Motor Vehicle Insurance (Third Party Risks) Act.

Therefore the foreign status of a motor vehicle would not preclude it from the requirement of a third party insurance.

#### 4.8.5 Driving Licenses

The IDRL Guidelines recommend the temporary recognition of foreign driving licenses for relief personnel from assisting states and approved humanitarian organisations.<sup>131</sup> Section 42 (7) of the Traffic and Road Safety Act of 1998 provides that the licensing officer may grant a license to a holder of a valid driver's license issued to him in any part of the Commonwealth or other country where such license is issued after a prescribed test. The licensing officer has to be satisfied that the applicant has been tested and that he has knowledge of the traffic laws of Uganda and the Highway code. This process might be lengthy for relief providers.

<sup>127</sup> Supra Para 40

<sup>128</sup> Finance Act 1993 Cap 181

<sup>129</sup> Finance Act No. 2 of 2005

<sup>130</sup> Motor Vehicle Insurance (Third Party Risks) Act Cap 214, section 2.

<sup>131</sup> IDRL Guidelines, Para. 16(c).

#### 4.8.6 Recommendations

The new Disaster Policy should make clear that the Transport Minister will exercise his legal discretion to prioritise relief flights and waive charges applicable to the entry of relief aircraft and trucks from approved foreign humanitarian organisations and assisting states.

The new disaster law should provide for the freedom of movement of disaster relief providers and waiving restrictions, tolls, fees, charges on land, sea or air and vehicles bearing disaster response personnel, goods and equipment as recommended by the IDRL Guidelines. Alternatively, the existing laws regulating transport in the country should be amended to provide for easy movement without restrictions for relief vessels during emergency operations.

The Traffic and Road safety Act should be amended to provide for automatic recognition of foreign driving licenses for relief providers and dispense with the requirement for a local license.

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### 4.9 Tax, Currency Exchange and Charges

Taxation increases the costs of operation in relief operations. The IDRL Guidelines recommend that affected states should provide exemption to assisting states and approved humanitarian organisations from value added tax and other taxes or duties directly associated with disaster relief and initial recovery assistance.<sup>132</sup>

#### 4.9.1 Income Tax for Humanitarian Organisations and Personnel Providing Relief in Uganda

The Income Tax Act of 2005 provides exemptions for certain organisations, including charitable organisations.<sup>133</sup> The Income Tax Practise Notes of the Uganda Revenue Authority of 2001 explains that an organisation is considered “charitable” if it can prove that it provides services for public benefit in the areas of relief of poverty, advancement of education, advancement of religion, or “other purposes beneficial to the community with the legal understanding of charity.”

It does not appear from these texts that there is a requirement that an organisation be domestically registered in order to be considered “charitable” and receive the exemption. Accordingly, it should arguably apply to foreign humanitarian organisations providing disaster relief, either under the category of “relief of poverty” or “other purposes beneficial to the community.”

#### 4.9.2 Income Tax of Relief Personnel

Non-resident persons are generally exempted from paying employment income tax.<sup>134</sup> Foreign income derived by a short term resident in Uganda is also exempted from income tax.<sup>135</sup> This is premised on the assumption that that person will have to pay income tax in his country of residence.

<sup>132</sup> IDRL Guidelines, para. 21.

<sup>133</sup> Income Tax Act Cap 340, 2005, arts. 2bb et 21.

<sup>134</sup> Ibid at section 21 (f).

<sup>135</sup> Ibid at section 21 (m).

The Income Tax Act defines a resident person as one who has for that year of income been present in Uganda for a period averaging 183 days or more.<sup>136</sup> International relief personnel who are to remain in Uganda for a period which is less than 183 days would benefit from this provision, however those who are to remain for a longer period would not benefit from this exemption. They would therefore be liable to pay employment income tax.

United Nations and its specialised agencies are listed organisations in the first schedule of the Income Tax Act and they are therefore exempted from income tax in accordance with section 21 (a) of that Act.

Income of any person or organisation entitled to privileges under the Diplomatic Privileges Act is also exempted from income tax.<sup>137</sup>

### 4.9.3 VAT

The law provides exemptions from value-added tax (VAT) on the following class of imported goods:

- Goods for the official use of the United Nations or its specialised agencies or a member of the diplomatic staff of any foreign nation where such exemption is made by the Minister for Foreign Affairs<sup>138</sup>
- Goods for the United Nations or its specialised agencies for the support of a project in Uganda<sup>139</sup>
- Goods for the official use of foreign governments or its designated agency for use on a project undertaken by the government in Uganda under an agreement with the Government where such exemption forms part of the contract<sup>140</sup>
- Goods for the use of personnel of foreign governments or its designated agencies undertaking assignments under a bilateral agreement where a specific provision is made in the agreement.<sup>141</sup>

In addition to this, the VAT Act 2005 and the Finance Act 2005<sup>142</sup> provide a list of organisations which are exempted from VAT. These include:

- United Nations Agencies
- International Labour Organisation
- The Food and Agricultural Organisation of the United Nations
- The International Aviation Civil Organisation
- The World Health Organisation
- The World Metrological organisation
- The Universal Postal Union

<sup>136</sup> Ibid at section 9(b)(i).

<sup>137</sup> Ibid at section 21 (b).

<sup>138</sup> Second Schedule of the Finance Act 200, section 2(2).

<sup>139</sup> Ibid at section 2(3).

<sup>140</sup> Ibid at section 3(i).

<sup>141</sup> Ibid at section 3(ii).

<sup>142</sup> Ibid at section 23.

- The International Telecommunication Union
- The International Atomic Energy
- The African Union
- The East African Development Bank
- The International Committee of the Red Cross

This means that not all humanitarian organisations providing relief would be exempted from VAT. The organisations that are not listed above would only receive exemptions for specific goods, which have been provided by the law to be exempted. For instance, the supply of medical dental and nursing services, the supply of medical and veterinary equipment, and the supply of milk are all individually exempted from VAT.<sup>143</sup>

However there are many goods that may be supplied for relief which have not been enumerated in existing law. Foreign relief organisations would be liable to pay VAT on those goods.

On local purchases and transactions, the VAT Act provides a refund of VAT to organisations or any person enjoying full or limited immunity, rights or privileges under local or international law applicable in Uganda or recognised principles of international law.<sup>144</sup> It also provides for a refund to diplomatic missions of a foreign country or to any public international organisation listed in first schedule of the VAT Act.

However as in many other countries,<sup>145</sup> refund procedures in Uganda tend to be quite lengthy and complicated. The fact that many international organisations in Uganda go to important lengths to avoid paying VAT in the first instance is an indication of this difficulty.

#### **4.9.4 VAT and TIN Registration**

Section 50 of the VAT Act provides that, for identification purposes, the Commissioner General shall issue a number to be known as the Tax Identification Number (TIN) to every taxpayer, and he or she may require any person to show his or her TIN in any return. In addition, persons whose services exceed a particular value threshold over a period of three months are required to apply for a VAT registration number.<sup>146</sup>

These requirements will apply equally to foreign humanitarian organisations operating in the country. The law does not have any provision to expedite registration of VAT and TIN numbers. The system in Uganda today is that a TIN number can be applied for online and received immediately. However, without registration of the organisation in Uganda, it would be difficult to register for a VAT number.

#### **4.9.5 Currency Exchange**

The IDRL Guidelines recommend that humanitarian organisations be granted the right to freely bring the necessary funds and currencies in and out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief

<sup>143</sup> Second Schedule of the VAT Act Cap 349

<sup>144</sup> VAT Act Cap 349, section 45 a).

<sup>145</sup> IDRL Desk Study, at 127.

<sup>146</sup> VAT Act Cap 349, at paras 7-8.



or initial recovery assistance.<sup>147</sup> For UN and related organisations, exemptions from currency restrictions are guaranteed by international law.<sup>148</sup>

During disasters, assisting states and eligible humanitarian organisations require finances for their operations in states in which they offer assistance. It has been found that many states regulate the entry and exchange of foreign currency due to concerns of money laundering and terrorism.<sup>149</sup> The Financial Action Task Force on Money Laundering recently recommended to states to tighten their controls on wire transfers as well as on financial transactions of “non-profit organisations.”<sup>150</sup> In times of disaster such regulations and controls affect the operations of foreign humanitarian organisations.

In Uganda, due to the liberal monetary policies, humanitarian organisations can bring foreign currencies in and out of the country for their operations. There is no limit on the amount that can be brought in or the amount that can be taken out of the country

According to Section 14 of NGO Registration regulations SI 113-1, “where an organisation receives money in convertible currency, it shall open an external bank account with Bank of Uganda in which such currency shall be deposited and through which transactions shall be conducted.”

However, the mere fact that these organisations have to open an account in Bank of Uganda and conduct their transactions from there shows that these organisations do not have access to preferential rates of exchange since they are subject to Bank of Uganda foreign exchange rates. In addition, while relief organisations would need to access their money near their areas of operation, Bank of Uganda outlets are limited.

#### 4.9.6 Recommendations

- Either the Finance Act or the VAT Act should be amended to extend exemption of VAT on imports to all approved humanitarian organisations providing relief in disaster and recovery.
- The VAT Act should be amended to waive VAT on local purchases and transactions for approved humanitarian organisations providing relief in disasters.
- The Income Tax Act should be amended to exempt relief personnel of approved humanitarian organisations from employment income tax and the physical presence of these personnel in Uganda should not be taken into account in determining resident status for the purpose of income tax.
- The Income Tax Act should also be amended to extend exemption to income tax to foreign private companies and consultants carrying out aid work on behalf of a foreign government for the period of their assignment.
- A new disaster law should include provisions to allow approved humanitarian organisations to freely bring the necessary funds in and out of the country and to obtain favourable rates of exchange for the purpose of disaster relief and initial assistance recovery.

<sup>147</sup> IDRL Guidelines, para. 20 (2).

<sup>148</sup> Convention on Privileges and Immunities of the United Nations, 1946, arts. 5 (a), (b), & (c).

<sup>149</sup> IDRL Desk Study.

<sup>150</sup> Recommendation 7 and 8 of the Financial Action Task Force on Money Laundering, Special Recommendation on Terrorist Financing (2004), available at <http://www.fatf-gafi.org>.

- The NGO regulations should be amended to allow approved foreign humanitarian organisations open foreign currency bank accounts in any bank of their choice.

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#### **4.10 Freedom of Access and Security**

The IDRL Guidelines recommend that affected states should facilitate freedom of access to and freedom of movement in and from the disaster affected areas, bearing in mind the safety of disaster relief and initial recovery personnel.<sup>151</sup>

Although there are no express legal provisions on this question, in practice relief providers have been given unlimited access and freedom of movement to disaster affected persons. They are free to participate in the relief distribution alongside the government and Uganda Red Cross Society. However, it is also expected that they follow the guidelines provided by the Department of Disaster Preparedness and Management in the Office of the Prime Minister. The Department normally develops distribution procedures depending on the nature of disaster.

The Draft Disaster Policy confirms this practice, mandating the department of Disaster preparedness and Management to coordinate all disaster management and relief actions. The same draft policy empowers the said Department to make guidelines, regulations and prescribe procedures to be adopted in disaster preparedness and management.

The IDRL Guidelines also urge affected states to take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organisations. This also applies to the premises, facilities, means of transport equipment and goods used in connection with their disaster relief or initial recovery assistance. Assisting states and assisting humanitarian organisations should also take appropriate steps in their own planning to mitigate security risks.<sup>152</sup>

Although the issue of security is primarily required in situations of armed conflict or where the disaster occurs amidst ongoing political instability, it remains a potential issue in all other categories of disaster situations. For example, massive disasters can some time provoke civil disturbances and also large relief operations can be a tempting target for criminals. From the regulatory stand point, security raises issues both with regard to the efforts that should be expected of authorities to protect relief operations as well as to the restrictions they might impose on humanitarian access.

The draft National Disaster Policy does not address the issue of security in disasters. However, it does vest general responsibility for coordination relating to disaster preparedness and management in the Department of Disaster Preparedness and Management. It can therefore be deduced that the Department bears some responsibility with regard to the safety of relief personnel, premises, transport, equipment and goods.

According to article 208 of the Uganda Constitution, the Uganda People's Defence Force (UPDF) are charged, among other things, with "cooperat[ing] with the civilian authority in emergency situations and in cases of natural disasters." Moreover, article 212 vests the Uganda Police Force (UPF) with broad mandates to "protect life and property," "pre-

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<sup>151</sup> IDRL Guidelines, para. 16(1)(d).

<sup>152</sup> Ibid at para. 22.

serve law and order,” and to “prevent and detect crime.” Both of these institutions should, therefore, also be involved in guaranteeing the safety of relief providers.

The practice as ascertained from the Department of Disaster Preparedness and Management, Office of the Prime Minister is to the effect that security of relief personnel is categorised into two aspects, namely:

#### **4.10.1 Health security:**

This relates to the health safeguards to protect the relief personnel against health hazards that may arise from the disaster response. The National Emergency Coordination and Operations Centre (NECOC) responding unit is mandated to ensure availability of health tools to the relief personnel.

To achieve this, the NECOC appoints a committee on a case by case basis to determine the necessary health safety gear suitable for the disaster that has happened, together with the requirements for changing the said gear.

The Department noted that the Ministry of Health, the UN and the Uganda Red Cross Society are generally ready to contribute the varying gears for whatever situation and they have always responded quickly by providing the said health gear to the government in case of disasters in Uganda.

#### **4.10.2 Physical security:**

The physical security of relief personnel premises, transport and equipment, the security is assured by the UPF and UPDF.

The NECOC may call upon a special unit from UPDF with trained officers to assist in the disaster operations. However there is no special unit from the UPF for disaster operations. The UPF is called upon whenever need arises and its given terms of reference by the Department regarding the safety of relief goods, equipment, personnel and premises.

The UPF patrol network in conjunction with UPDF ensures safety of transport of the relief personnel and goods and equipment. To support this, the Office of the Prime Minister provides funds through the line ministry for logistical requirements.

#### **4.10.3 Recommendations**

The issue of security and the expectations of the various institutions should be expressly provided for in the National Disaster Policy and the new disaster management law.

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### **4.11 Accountability of Assisting Actors**

The IDRL Guidelines state that assisting actors and their personnel should abide by the laws of the affected state and applicable international instruments, coordinate with domestic authorities and respect the human dignity of disaster affected persons at all times. Part I section 4 of the Guidelines provides that disaster relief and initial recovery assistance should be provided in accordance with the principles of humanity, neutrality

and impartiality and aid priorities should be calculated on the basis of need alone.<sup>153</sup> They also call on international aid providers, to the degree possible in the circumstances, to abide by internationally-accepted standards of quality.

International assistance can be harmful if it delivers the wrong goods and services or delivers the right ones in the wrong way. These include substandard food and expired or inappropriate medication, which could be affirmatively harmful to the health of affected persons. Inappropriate goods and services can be damaging to the dignity of affected persons. Even where the right relief is provided, inappropriate means of delivery can insult and belittle affected persons and their communities.

While there are existing international standards on the quality of international relief, existing mechanisms for enforcement are generally weak. Affected states should therefore be in position to monitor the quality of international relief activities in their territories. Indeed, it is their responsibility to do so in light of their obligation to ensure that the humanitarian needs of persons within their territories are met.

A key gauge of the quality of commercial goods and services is the degree to which consumers decide to purchase them. In the domain of international disaster response, the “consumers” are not the ones who pay for the goods and services they receive and they are usually not in position to “vote with their feet” to find another provider. As a result, many relief providers have found themselves placing great emphasis on responding to reporting requirements of their donors and relatively little on the subjective satisfaction of their beneficiaries.

Under the draft National Disaster Policy, one of the functions of the Department of Disaster Preparedness and Management is to enact guidelines and regulations for disaster preparedness and management. The said guidelines and regulations, together with the standard operational procedures, are supposed to set up minimum standards to be observed in disaster relief and recovery. However, the Department is not expressly mandated to ensure quality and suitability of relief goods, equipment and personnel, and even so this mandate should, only in times of disaster, override the other line ministries.

In addition to these eventual guidelines, regulations and procedures, various aspects of current legislation may also be relevant to ensuring a certain minimum quality. These include, for example:

- Aspects of the Uganda National Bureau of Standards Act, which will be relevant to goods and equipment
- The National Drug Authority Statute, insofar as drugs are concerned

Rules relevant to personnel are set out in the various Acts regulating the different professions, e.g.,

- Advocates are regulated by the Advocates Act
- Engineers are regulated by the Engineers Registration Act
- Medical Officers are regulated by the Medical and Dental Practitioners Act

In practice, samples of relief items are always transmitted to the relevant government departments and ministries for verification of the quality and suitability before

<sup>153</sup> IDRL Guidelines, para. 4

acceptance of the said relief items and personnel. Such departments include the National Drug Authority (for medicines), Uganda National Bureau of Standards (for goods and equipment), and, for personnel, the relevant professional bodies mentioned above.

Regarding quality and quantities of the foods that are supposed to be proved to the affected population, the Department normally seeks guidance from the quality and quantity standards recommended by the UN, in particular WFP.

#### 4.11.1 Recommendations

- The Department of Disaster Preparedness and Management should put in place guidelines, regulations and procedures on disaster management with attention to the issue of quality.
- The granting of legal facilities to assisting humanitarian organisations should be conditional on their compliance with the minimum quality standards stipulated in Article 4 of the IDRL Guidelines.

### 4.12 Additional Facilities for International Disaster Relief Providers

The IDRL Guidelines also recommend that affected states consider, when it is in their power and to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting states and eligible assisting humanitarian organisations. The services envisaged here may include: in-country transport including national airlines, use of buildings and land, use of cargo equipment and loading and offloading.<sup>154</sup>

There is no specific law in place in Uganda that would require provision of these services at a reduced or no cost to assisting states or humanitarian organisations responding to disasters.

It is important to note that most of the envisaged services are offered by the private sector in Uganda, thus the government may not be in position to control their operations and influence them to offer such services at reduced or no cost. For example in Uganda, airlines and cargo handling services are owned and controlled by private companies. The government could consider entering into agreements with the private sector concerning disaster management.

However services within the control of government could be offered to relief providers as a matter of policy. Currently, the Department receives relief after it has gone through all clearing procedures, including payment for cargo equipment, loading and offloading fees. The only assistance that the department assists the responders with, is obtaining tax waivers from URA for the relief goods and equipment.

Use of government buildings and land could be granted free of charge if available. In fact, it is current practice for the Department, in coordination with Red Cross and UN, to set up an office in the vicinity of the disaster site for the purpose of conducting coordination meetings. All the actors use the said office freely for their disaster response operations.

<sup>154</sup> IDRL Guidelines, para 24.

#### 4.12.1 Recommendation

The Disaster Policy and the new disaster management law should provide for the possibility of government intervening to ensure that relief related services are provided to the responders at reduced prices and where possible at no cost.

#### 4.13 Extended Working Hours

The IDRL Guidelines encourage affected states to endeavour to ensure, when necessary, that State operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours.<sup>155</sup>

The Uganda Government Standing Orders (GSOs), Chapter 1 (F-c), paragraph 10, regulates government offices' working hour as follows: "Government offices are open during the following hours except where otherwise specifically stated in Standing Orders:

Monday to Friday – 8.00 am to 12.45 pm – 2.00 pm to 5.00 pm."

GSOs Chapter 1 (F-c) paragraph 1, states that unless it is otherwise provided in the terms of his or her appointment, every public officer is employed on the understanding that the whole of his or her time is at the disposal of the Government and if the usual office hours are insufficient to deal with the pressure of work, it is his or her duty whenever it becomes necessary to do so, to work outside office hours without extra remuneration.

Moreover, Chapter 1 (B-h) provides as follows:

- Para – 1 – The salary of a public officer holding an established office is fixed on the assumption that his or her whole time is at the disposal of the Government and if the usual office hours are insufficient to deal with a pressure of work, it is his or her duty when called upon to do so to work overtime without extra remuneration.
- Para – 2 – There are however, special circumstances in which it is not reasonable to apply Para 1 above strictly and overtime payments may be made but these can be made only on the authority of the responsibility Permanent Secretary.
- Para – 3 – These circumstances usually arise when there is work to be done by staff graded in offices in the U4 rung of the grading ladder and below (see A-g) outside the normal time of duty and responsible officers should seek the advice of the responsible Permanent Secretary about whether overtime payments will be made and at what rates, before they commit their staff on such work.

From the above provisions, it is apparent that government officers can be asked to extend their working hours beyond the stipulated time of "5.00 pm" in case need arises without extra remuneration unless otherwise decided by the responsible Permanent Secretary.

The draft Disaster Policy provides for the establishment of the National Disaster Preparedness and Management Centre which shall be responsible for saving lives and property. As was outlined above, among other tasks, the centre is to maintain a pool of trained individuals like mobile medical officers, public health teams, fire brigades, police, community volunteers, evacuation teams, relief supply teams, and persons capable of debris and garbage collection, all of whom can be deployed in case of need.

<sup>155</sup> Ibid at para. 23.

The Policy further states that the centre shall operate 24 hours per day, however, there is no specific mention that the above individuals shall also work 24 hours. Thus there appears to be a need either in the Policy itself or other prior arrangements to ensure that systems are in place to guarantee personnel at the centre around the clock, at least in the aftermath of disasters.

The practice as ascertained from the Department of Relief, Disaster Preparedness and Management, Office of the Prime Minister, is to the effect that, where need be, the officers involved in disaster response may be required to work 24 hours. Normally, the officers are deployed in shifts to ensure that at all times relevant officers are available to attend to any situations falling within their area of expertise. However this spirit of working 24 hours is sometimes curtailed by lack of logistics and facilities at the disaster sites, such as lighting, machines, communication equipment etc. Because of these limitations, work may only be able to continue up to sunset.

#### 4.13.1 Recommendation

The Disaster Policy or some equivalently formal arrangement should provide for extension of hours of work for relevant government offices in disaster situations and make provision for payment of such allowances and overtime fees prescribed under government regulations.

5.1 Uganda as an Assisting State

According to the information obtained from the Department of Disaster Preparedness and Refugees, Uganda has never participated as an assisting state in any disaster stricken state and therefore has no practical experience to share. This non-participation is attributed to the country's small economy and lack of resources.

However, the Uganda Red Cross Society has participated in disaster assistance beyond the boundaries of this country. For example, it offered assistance to affected persons in the Republic of Tanzania during recent floods. Its aid consisted of a team of technical experts sent to assist the Tanzania Red Cross. The Uganda Red Cross also collaborated with Kenya Red Cross in extending assistance to Kenya during the civil strife arising from the 2007 presidential elections and in work related to avian flu.

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# Chapter 5

## Uganda as an Assisting/ Transit State



## 5.1 Uganda as an assisting state

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However, the Uganda Red Cross Society has participated in disaster assistance beyond the boundaries of this country. For example, it offered assistance to affected persons in the Republic of Tanzania during recent floods. Its aid consisted of a team of technical experts sent to assist the Tanzania Red Cross. The Uganda Red Cross also collaborated with Kenya Red Cross in extending assistance to Kenya during the civil strife arising from the 2007 presidential elections and in work related to avian flu.

### 5.1.1 Exit Visas for Relief Personnel

Uganda has no system of exit visas. Ugandan citizens can travel out of the country without first obtaining official permission from Ugandan authorities. This is in line with Article 13 of the Universal Declaration of Human rights which provides that "every one has a right to leave any country including his own and to return to his country."

### 5.1.2 Export Duty

Section 82(2) of the Customs Act provides that goods liable to export duty shall not be exported until export duty has been paid on them or security given.

Unlike for imports, the law gives no exemption or waiver of export duty on relief goods. However, in practice, these have been exempted upon approval from the Department of Disaster Preparedness and Management.

### 5.1.3 Departure of Relief Flights, Trucks and Ships

It is mandatory for persons departing over land if in possession of goods to produce all documents requested by the proper customs officer before crossing the frontier.<sup>156</sup> Some of the documents that may be required, depending on the type of export:

- a. Bill of lading/airway bill
- b. Certificate of origin
- c. Customs export declaration
- d. Technical standard/health certificate
- e. Transit document
- f. Packing list
- g. Invoice
- h. Customs bill of entry

Other documents include relevant certificates such as fumigation certificate for clothes, livestock certificate, movement permit, animal health certificate, depending on the goods to be exported.

<sup>156</sup> EAC Customs Management Act (Revision 2009), sections 84(1d) & 83(1d).

From the provision above, all the stated documents would be required at the point of exit before the vessel will be allowed to cross the border.

The law has no provisions reducing the export restrictions on vessels carrying relief goods. However, the commissioner may on such terms and conditions exempt any person or class of persons from the provisions of this section.<sup>157</sup>

An aircraft or vessel may not depart to any foreign port unless a certificate of clearance has been granted in respect of such aircraft or vehicle.<sup>158</sup>

### 5.1.4 Recommendation

The customs and transport laws should be amended to allow for simplification of documentation requirements and for waiver of export duties on outgoing relief materials.

## 5.2 Uganda as a Transit State

### 5.2.1 Visas for Transit of Relief Personnel

Persons passing through Uganda are issued with a transit pass on satisfying the responsible officer that they desire to enter Uganda for the purpose of passing through to a destination outside Uganda and that they are in possession of valid documents that permit him or her to enter the country of destination.<sup>159</sup> A transit pass entitles a person to enter Uganda and remain in Uganda for a period of 7 days as maybe stated in the pass.<sup>160</sup>

The law has no special provisions on transit pass for relief personnel and there is no reduction of restriction on the number of days that relief personnel can remain in Uganda during transit.

However, according to an official from the Ministry of foreign Affairs, an exemption can be given to relief personnel on application to stay for as many days as required during transit in emergency situations.

Although there is no legal provision in place, the practice is in line with the Guidelines, which recommend that originating and transit states should waive or promptly issue without cost exit or transit visas as appropriate for the disaster relief and initial recovery personnel of eligible assisting humanitarian organisations.<sup>161</sup>

### 5.2.2 Restrictions on Transit of Relief Goods

Provisions that relate to restricted goods do not apply to goods in transit in Uganda.<sup>162</sup> There are, therefore, no restrictions on relief goods in transit. Moreover, section 72 (1) of the East African Customs Management Act provides that goods in transit are not subject to import or export restrictions, even if such goods fall under the restricted goods in part B of the third schedule.

<sup>157</sup> Ibid at section 84(4).

<sup>158</sup> Ibid at section 88.

<sup>159</sup> The Immigration (No.1) Regulations, Statutory Instrument 63-1, section 7(1).

<sup>160</sup> Ibid at section 7(2).

<sup>161</sup> IDRL Guidelines, para. 16(d).

<sup>162</sup> EAC Customs Management Act (Revised 2009), section 20.

### 5.2.3 Duties and Fees on Transit Relief Goods

According to the Customs Management Act, goods in transit are liable to import duty.<sup>163</sup> There are no provisions which waive import duties on relief goods in transit. However goods which remain on board and exported on the aircraft or vessel in which they were imported are exempted from import or export duty.<sup>164</sup>

### 5.2.4 Inspection Requirement for Relief Goods in Transit

Under the laws of Uganda, goods in transit are subject to examination and inspection as goods for export and import.<sup>165</sup> There are no provisions under the law to reduce inspection requirements for transiting relief goods and equipment.

### 5.2.5 Transit Restrictions for Relief Trucks

Foreign vehicles travelling in Uganda are required to pay road transit charges. For instance buses are required to pay US\$ 5 per 100 km, trucks with less than 3 axles are required to pay US\$ 6 per 100 km and trucks with more than 3 axles are required to pay US\$ 10 per 100 km.<sup>166</sup>

In addition to the above charges, the law imposes a motor vehicle inspection fee of 25,000.00 Uganda shillings,<sup>167</sup> which all vehicles carrying goods are required to pay.

The law does not provide for quick clearance of relief vessels. And there's no provision to waive or reduce port demurrage and docking fees.

### 5.2.6 Recommendation

The customs, transport and finance laws should be amended to provide waivers or reduced inspections and waivers of applicable fees for relief goods in transit through Ugandan territory.

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<sup>163</sup> Ibid at section 85 (1).

<sup>164</sup> Ibid at section 113.

<sup>165</sup> Ibid at section 85(4).

<sup>166</sup> Finance Act 1993 Cap 181.

<sup>167</sup> Finance Act No. 2 of 2005.

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# **Chapter 6**

## Summary of Key Findings and Recommendations

## 6.1 Summary of the Key Findings

Like many other countries, Uganda is prone to disasters and has had occasion in the past to seek outside support. It is reasonable to assume that this remains a possibility for the future. It has also ratified a number of relevant international treaties and participated in the international consensus on key non-binding international standards, however not all of their provisions have been implemented in domestic law.

There are some areas of existing Ugandan law that already appear adequate to respond to common regulatory problems in international assistance. For example:

- Uganda's immigration law and practice allows for rapid granting of visas at the point of entry. Work permits are required, but practice indicates that a temporary permit is easily granted. There should therefore be no delay in the entry of foreign relief personnel in future disasters.
- Privileges and immunities are available to listed international organisations and organisations which have signed bilateral agreements with the government of Uganda. For these organisations, there should be fewer delays related to the importation of relief goods and transport.
- Relief goods, and goods imported for temporary use such as motor vehicles are already exempted from import duties. Likewise, registered non-governmental organisations are exempted from payment on VAT on incoming goods.
- Both the law and practice allows for extended work hours for key governmental officers (e.g. for customs clearance outside office hours).

However, there are also a number of gaps that could delay aid in the future and make it less effective. For example:

- There is currently no system for distinguishing between competent and equipped international relief providers and those who are not capable to provide relief according to minimum international standards of humanitarian quality.
- There are currently no express exemptions to import restrictions related to food, medications, and telecommunications equipment. Moreover, there are no specific procedures provided for simplifying customs documentation for relief consignments.
- The process of registration of non-governmental organisations is long and costly. Unregistered organisations would find it hard to operate in Uganda since they could not open bank accounts, hire local personnel or obtain visas for their foreign professionals. Moreover, they would not benefit from VAT exemptions.
- There are no emergency-related exceptions to rules of the various professional bodies for quickly assessing foreign qualifications of international medical personnel.

## 6.2 Summary of the Recommendations

Uganda is currently on the cusp of adopting its new Disaster Policy and will reportedly soon begin working on a comprehensive disaster management law. Both will be critical steps for improving its domestic disaster management capacity and should be pursued without delay. Moreover, the government should also take this opportunity to include provisions relating to the most common regulatory problems in receiving

international disaster assistance. Many of the gaps noted here can be addressed in these two instruments, while others will likely require amendments to existing laws.

### 6.2.1 Improving the Draft Policy

The draft National Disaster Preparedness and Management Policy should be improved to provide:

- Within the institutional framework, the procedure for initiating, coordinating and terminating external assistance during disasters and health emergencies.
- For the role of Uganda Red Cross Society as an auxiliary to public authorities in the humanitarian field and other civil organisations.
- Clarification of the role of the Disaster Preparedness and Management Commission described by Article 249 of the Constitution as distinguished from the National Emergency and Operations Centre within the national institutional framework.
- A centralized early warning system to which information from the various surveillance centres is forwarded and processed to support the issuing of early warning alerts and declarations of state of emergency.
- A description of how visa waivers and customs arrangements can be arranged for foreign relief personnel, goods and equipment for assisting states and approved humanitarian organisations (including how existing discretionary legal powers will be exercised in their favour).
- Freedom of access to disaster affected communities and the provision of adequate security for relief providers based on prior registration and classification of such providers to ensure quality standards of the relief aid.
- A process for managing the grant of basic legal facilities for international responders to facilitate their entry, stay and ease their operations while in the country.
- General accountability standards for international relief providers.

### 6.2.2 IDRL Elements for the New Disaster Management Legislation

A comprehensive law on disaster risk management and health emergencies should be enacted to solidify Uganda's institutional framework for disaster management. This would include the establishment of the Disaster Management Commission as required by the Constitution as well as operationalising the procedures for state of emergency. It should also set out the roles and responsibilities of other governmental divisions, the Uganda Red Cross Society (as auxiliary to public authorities in the humanitarian field) and other civil society organisations in the full cycle of disaster management (from risk reduction to recovery).

With regard to international assistance, the law should also set out procedures for:

- Operating a centralized early warning system to which information from the various surveillance centres is forwarded and processed to support the issuing of early warning alerts and declarations of state of emergency.
- Initiating, coordinating, regulating and terminating international responses to disasters and health emergencies.

- Registration of foreign humanitarian organisations for temporary legal facilities and domestic legal status, contingent on abiding by minimum standards. Those facilities should include, among other things:
  - Expedited customs procedures and waivers of duties on relief goods and equipment.
  - Waiver or reduction of restrictions for the importation of food, medications, motor vehicle and telecommunications equipment in the context of a disaster relief operation.
  - Exemption from vehicle registration requirements and charges, including for road tolls.
  - Priority treatment for landing and overflight for relief flights as well as waiver of landing fees.
  - Speedy recognition of foreign professional qualifications of international responders (in particular medical qualifications and driving licenses).
  - Easy and cost free entry and movement of foreign vehicles and aircraft engaged in relief operations
  - Tax exemptions.
  - Favourable rights of movement and banking in foreign currencies.
- Adequate monitoring and oversight of the quality of international disaster assistance.
- The legislation should also provide for facilities for the transit of relief goods and transport when crossing Uganda territory.

### 6.2.3 Amendments to Existing Laws

In addition to provisions in a new disaster management law, consideration should be given to amending a number of existing laws. This might be done as part of the same act that adopts the disaster management law. Such amendments will be particularly important if it is considered that certain topics (such as tax exemptions) cannot be governed from the disaster management law.

These laws include:

- The Non-Governmental Organisations Law and Regulations, to refer to the temporary registration procedures for international disaster relief organisations to be provided in the new disaster management law. It should also allow NGOs to open bank accounts with any bank they desire.
- The East African Community Customs Management Act, to condition to grant of customs duties waivers for foreign humanitarian organisations on eligibility under the disaster management law (or separate agreement with the government). The Act should likewise provide for simplified customs documentation and waivers or reductions of inspection requirements. It should also provide for waivers of export duties on relief goods originating in Uganda.
- The National Drug Policy and Authority Statute, The Food and Drug Act, and the Uganda Communications Act, to refer to legal facilities mentioned in the disaster management law, if appropriate, for incoming disaster relief goods and equipment.

## Summary of Key Findings and Recommendations

- The Traffic Control and Road Safety Act, to allow for exemptions for vehicle registration and tolls for vehicles employed by approved foreign disaster relief providers.
- Either the Finance Act or the VAT Act, to extend exemption of VAT on imports to all approved humanitarian organisations providing relief in disaster and recovery. This exemption should extend to local purchases of goods and services when part of a relief operation. The VAT Act should also for speedy registration for approved foreign humanitarian organisation in a disaster operation.
- The Income Tax Act, to extend income tax exemptions to the personnel of approved foreign humanitarian organisations, for the duration of the relief and initial recovery period (as determined by the government).

Special attention should also be paid that Uganda's obligations under international and regional treaties to which it is a party are domesticated in domestic law.



# Annex A

## List of References

### National Laws, Policies and Regulations

- The Constitution of the Republic of Uganda (1995)
- National Policy for Internally Displaced Persons (2004)
- Draft National Disaster Preparedness and Management Policy (2010)
- Medical and Dental Practitioners Act Cap 272 (1998)
- East African Community Customs Management Act (2004)
- National Drug Policy and Authority Act Cap 206 (1993)
- Animal Breeding Act 11 (2001)
- Uganda Communications Act Cap 106 (1997)
- The Uganda Citizenship and Immigration Control Regulations (2004)
- Traffic Control and Road Safety Act Cap 361 (1998)
- Diplomatic Privileges Act Cap 201 (1965)
- Civil Aviation Act (1994)
- Finance Act (2005)
- Finance Act No. 2 of 2005
- Non-Governmental Organisations Registration (Amendment) Act (2006)
- Non-Governmental Organisations Registration Act Cap 113 (1989)
- Land Act Cap 227 (1998)
- Income Tax Act (1967)
- VAT Act Cap 349 (1997)
- Red Cross Act Cap 57 (1964)
- Motor Vehicle Insurance (Third Party Risks) Act Cap 214 (1989)
- EAC Customs Management Regulations (2006)
- Traffic and Road Safety (Registration and Licensing) (Exemption) Instrument SI 361-39
- Traffic and Road Safety Regulations SI 361-10
- Traffic and Road Safety (Exemption) Regulations SI 361-44

Diplomatic privileges (Extension to prescribed organisations) Regulations SI 201-1

Nongovernmental Organisations Registration Regulations SI 113-1

### Regional and Global Treaties and International Norms

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations (1998)

Hyogo Framework for Action 2005-2015 (2005)

International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) (as amended in 1999)

IGAD initiatives on drought and desertification

Sphere Project, Humanitarian Charter and Minimum Standards in Disaster Response (2004)

UN Guiding Principles on Internal Displacement (1998)

International Covenant on Civil and Political Rights (1966)

African Union Regional Strategy for Disaster Reduction (2004)

COMESA (Common Markets for Eastern and Southern Africa) Agreement

ASEAN Agreement on Disaster Management and Emergency Response (2005)

Convention on Temporary Admission (Istanbul Convention) of 1990

Oslo Guidelines on the Use of Military and Civil Defence Assets in Disaster Relief (1994)

Convention on the Privileges and Immunities of the United Nations (1946)

Vienna Convention on Diplomatic Relations (1961)

Convention on Civil Aviation (Chicago Convention) (1944)

Code of Conduct of the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief (1994)

Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines) (2007)

# Annex B

## **Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance ('IDRL Guidelines')**

### **Introduction**

#### **1. Purpose and Scope**

1. These Guidelines are non-binding. While it is hoped that States will make use of them to strengthen their laws, policies and/or procedures related to international disaster response, as appropriate, the Guidelines do not have a direct effect on any existing rights or obligations under domestic law.

2. They draw from many existing international instruments, including United Nations General Assembly Resolutions 46/182 of 1991 and 57/150 of 2002, the Measures to Expedite International Relief of 1977 and the Hyogo Framework for Action of 2005.

3. Their purpose is to contribute to national legal preparedness by providing guidance to States interested in improving their domestic legal, policy and institutional frameworks concerning international disaster relief and initial recovery assistance. While affirming the principal role of domestic authorities and actors, they recommend minimum legal facilities to be provided to assisting States and to assisting humanitarian organizations that are willing and able to comply with minimum standards of coordination, quality and accountability. It is hoped that the use of these Guidelines will enhance the quality and efficiency of international disaster relief and initial recovery assistance in order to better serve disaster-affected communities.

4. These Guidelines are not intended to apply to situations of armed conflict or disasters that occur during armed conflicts, or to imply changes in any rules governing relief in those contexts. They are also not intended to recommend any changes to, or affect the meaning or implementation of, any existing international law or agreements, including but not limited to:

(a) International humanitarian, human rights and refugee law;

(b) The legal personality and status of States, inter-governmental organizations, the

International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross;

(c) International law related to privileges and immunities;

(d) The Statutes and regulations of the International Red Cross and Red Crescent Movement and existing legal arrangements between the individual components of the Movement and States; and

(e) Existing agreements between States or between States and assisting actors.

## 2. Definitions

For the purposes of these Guidelines,

1. **“Disaster”** means a serious disruption of the functioning of society, which poses a significant, widespread threat to human life, health, property or the environment, whether arising from accident, nature or human activity, whether developing suddenly or as the result of long-term processes, but excluding armed conflict.
2. **“Disaster relief”** means goods and services provided to meet the immediate needs of disaster-affected communities.
3. **“Initial recovery assistance”** means goods and services intended to restore or improve the pre-disaster living conditions of disaster-affected communities, including initiatives to increase resilience and reduce risk, provided for an initial period of time, as determined by the affected State, after the immediate needs of disaster-affected communities have been met.
4. **“Goods”** means the supplies intended to be provided to disaster-affected communities for their relief or initial recovery.
5. **“Services”** means activities (such as rescue and medical care) undertaken by disaster relief and initial recovery personnel to assist disaster-affected communities.
6. **“Equipment”** means physical items, other than goods, that are necessary for disaster relief or initial recovery assistance, such as vehicles and radios.
7. **“Personnel”** means the staff and volunteers providing disaster relief or initial recovery assistance.
8. **“Affected State”** means the State upon whose territory persons or property are affected by a disaster.
9. **“Assisting State”** means a State providing disaster relief or initial recovery assistance, whether through civil or military components.
10. **“Originating State”** means the State from which disaster relief and initial recovery personnel, goods and equipment begin travel to the affected State.
11. **“Transit State”** means the State through whose territorial jurisdiction disaster relief or initial recovery assistance has received permission to pass on its way to or from the affected State in connection with disaster relief or initial recovery assistance.
12. **“Assisting humanitarian organization”** means a foreign, regional, intergovernmental or international non-profit entity whose mandate and activities are primarily focused on humanitarian relief, recovery or development.
13. **“Eligible assisting humanitarian organization”** means an assisting humanitarian organization determined to be eligible to receive legal facilities pursuant to Part V by the originating, transit or affected State, as applicable.
14. **“Assisting actor”** means any assisting humanitarian organization, assisting State, foreign individual, foreign private company providing charitable relief or other foreign entity responding to a disaster on the territory of the affected State or sending in-kind or cash donations.

## **Part I: Core Responsibilities**

### **3. Responsibilities of Affected States**

1. Affected States have the primary responsibility to ensure disaster risk reduction, relief and recovery assistance in their territory. National Red Cross and Red Crescent Societies, as auxiliaries to the public authorities in the humanitarian field, and domestic civil society actors play a key supporting role at the domestic level.
2. If an affected State determines that a disaster situation exceeds national coping capacities, it should seek international and/or regional assistance to address the needs of affected persons.
3. Affected States have the sovereign right to coordinate, regulate and monitor, disaster relief and recovery assistance provided by assisting actors on their territory, consistent with international law.

### **4. Responsibilities of Assisting Actors**

1. Assisting actors and their personnel should abide by the laws of the affected State and applicable international law, coordinate with domestic authorities, and respect the human dignity of disaster-affected persons at all times.
2. Assisting actors should ensure that their disaster relief and initial recovery assistance is provided in accordance with the principles of humanity, neutrality and impartiality, and in particular:
  - (a) Aid priorities are calculated on the basis of need alone;
  - (b) Provided without any adverse distinction (such as in regards to nationality, race, ethnicity, religious beliefs, class, gender, disability, age and political opinions) to disaster-affected persons;
  - (c) Provided without seeking to further a particular political or religious standpoint, intervene in the internal affairs of the affected State, or obtain commercial gain from charitable assistance;
  - (d) Not used as a means to gather sensitive information of a political, economic or military nature that is irrelevant to disaster relief or initial recovery assistance.
3. To the greatest extent practicable, their disaster relief and initial recovery assistance should also be:
  - (a) Responsive to the special needs, if any, of women and particularly vulnerable groups, which may include children, displaced persons, the elderly, persons with disabilities, and persons living with HIV and other debilitating illnesses;
  - (b) Adequate for the needs of affected persons and consistent with any applicable international standards of quality;
  - (c) Coordinated with other relevant domestic and assisting actors;
  - (d) Provided and conducted in a manner that is sensitive to cultural, social and religious customs and traditions;
  - (e) Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;

- (f) Provided by competent and adequately trained personnel;
- (g) Commensurate with their organisational capacities;
- (h) Building upon and conducted in a manner that strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters;
- (i) Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the environment; and
- (j) Provided in a transparent manner, sharing appropriate information on activities and funding.

### **5. Additional Responsibilities of All States**

1. States providing funding to other assisting actors should encourage them to act in a manner consistent with the provisions of paragraph 4.
2. All States should actively encourage members of the public interested in contributing to international disaster relief or initial recovery to make financial donations where possible or otherwise donate only those types of relief goods expressly requested by the affected State.

### **6. Responsibilities Concerning Diversion and the Intended Use of Resources**

1. States and assisting humanitarian organizations should cooperate to prevent unlawful diversion, misappropriation, or fraud concerning disaster relief or initial recovery goods, equipment or resources and initiate proceedings as appropriate.
2. Affected States should use funds and relief goods donated to them, and which they have accepted in relation to a disaster, in a manner consistent with the expressed intent with which they were given.

## **Part II: Early Warning and Preparedness**

### **7. Early Warning**

In order to minimize transboundary impacts and maximize the effectiveness of any international assistance that might be required, all States should have procedures in place to facilitate the expeditious sharing of information about disasters, including emerging hazards that are likely to cause disasters, with other States and assisting humanitarian organizations as appropriate, including the United Nations' Emergency Relief Coordinator.

### **8. Legal, Policy and Institutional Frameworks**

1. As an essential element of a larger disaster risk reduction programme, States should adopt comprehensive legal, policy, and institutional frameworks and planning for disaster prevention, mitigation, preparedness, relief and recovery which take full account of the auxiliary role of their National Red Cross or Red Crescent Society, are inclusive of domestic civil society, and empower communities to enhance their own safety and resilience. States, with the support, as appropriate, of relevant regional and international organizations, should devote adequate resources to ensure the effectiveness of these frameworks.

2. These frameworks should also adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance consistent with these Guidelines. They should allow for effective coordination of international disaster relief and initial recovery assistance, taking into account the role of the United Nations Emergency Relief Coordinator as central focal point with States and assisting humanitarian organizations concerning United Nations emergency relief operations. They should also clearly designate domestic governmental entities with responsibility and authority in these areas. Consideration should be given to establishing a national focal point to liaise between international and government actors at all levels.

3. Where necessary and appropriate, national governments should encourage other domestic actors with authority over areas of law or policy pertinent to international disaster relief or initial recovery assistance, such as provincial or local governments and private regulatory bodies, to take the necessary steps at their level to implement the Guidelines.

### **9. Regional and International Support for Domestic Capacity**

1. With a view to increasing resilience and reducing the need for international disaster relief and initial recovery assistance, the international community, including donors, regional and other relevant actors, should support developing States, domestic civil society actors and National Red Cross and Red Crescent Societies to build their capacities to prevent, mitigate, prepare for and respond to disasters domestically.

2. The international community should also support developing States to build the capacity to adequately implement legal, policy and institutional frameworks to facilitate international relief and initial recovery assistance. This support should be provided to States in a coordinated manner among the relevant actors.

## **Part III: Initiation and Termination of International Disaster Relief and Initial Recovery Assistance**

### **10. Initiation**

1. Disaster relief or initial recovery assistance should be initiated only with the consent of the affected State and in principle, on the basis of an appeal. The affected State should decide in a timely manner whether or not to request disaster relief or initial recovery assistance and communicate its decision promptly. In order to make this decision, the affected State should promptly assess needs. Consideration should be given to undertaking joint needs assessments with the United Nations and other assisting humanitarian organisations.

2. Requests and offers for assistance should be as specific as possible as to the types and amounts of goods as well as the services and expertise available or required, respectively. Affected States may also wish to indicate particular types of goods and services likely to be offered that are not needed.

3. Affected States should make available to assisting actors adequate information about domestic laws and regulations of particular relevance to the entry and operation of disaster relief or initial recovery assistance.

### **11. Initiation of Military Relief**

Military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of the affected State, after having considered comparable civilian alternatives. Prior to any such deployment, terms and conditions (including such issues as the duration of deployment, whether they must be unarmed or may be armed the use of their national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed by the affected and assisting States.

### **12. Termination**

When an affected State or an assisting actor wishes to terminate disaster relief or initial recovery assistance, it should provide appropriate notification. Upon such notification, the affected State and the assisting actor should consult with each other, bearing in mind the impact of such termination on disaster-affected communities.

## **Part IV: Eligibility for Legal Facilities**

### **13. Facilities for Assisting States**

It is recommended that transit and affected States grant, at a minimum, the legal facilities described in Part V to assisting States with respect to their disaster relief or initial recovery assistance.

### **14. Facilities for Assisting Humanitarian Organizations**

1. Subject to existing international law, it is the prerogative of originating, transit and affected States to determine which assisting humanitarian organizations will be eligible to receive the legal facilities described in Part V with respect to their disaster relief or initial recovery assistance.
2. It is recommended that States establish criteria for assisting humanitarian organizations seeking eligibility for legal facilities. These criteria should include a showing by the organization of its willingness and capacity to act in accordance with the responsibilities described in paragraph 4 of these Guidelines.
3. Any additional requirements imposed on assisting humanitarian organizations should not unduly burden the provision of appropriate disaster relief and initial recovery assistance.
4. Determination of eligibility by the State granting the facilities should be possible in advance of a disaster, or as soon as possible after its onset. Applicable procedures and mechanisms should be as simple and expeditious as possible. They should be clearly described and information about them should be made freely available. They might include the use of a national roster, bilateral agreements or reliance upon international or regional systems of accreditation, if available.
5. Retention of the legal facilities in Part V should be made dependent on ongoing compliance with the provisions of subsection 2 of this paragraph. However, entitlement to legal facilities should not be changed arbitrarily, retroactively or without notice appropriate to the circumstances.



## 15. Facilities for Other Assisting Actors

Affected States may also wish to extend, upon request, some of the legal facilities in Part V to assisting actors other than those covered by paragraphs 13 and 14, such as private companies providing charitable relief, provided this does not negatively affect operations of assisting humanitarian organizations or assisting States. Any actor receiving such facilities should be required to abide, at a minimum, by the same conditions described in paragraph 14.

## Part V: Legal Facilities for Entry and Operations

*It is recommended that States provide the legal facilities described in paragraphs 16-24 to assisting States and eligible assisting humanitarian organizations. It is understood that the granting of these facilities will be subject to the interests of national security, public order, public and environmental health, and public morals of the concerned affected, originating and transit States. Measures to protect such interests should be tailored to the exigencies of the specific disaster and consistent with the humanitarian imperative of addressing the needs of affected communities.*

*Where specific facilities recommended here are within the competence of authorities other than the national government, the national government should, where possible and appropriate, encourage those authorities to provide the relevant facilities to assisting States and eligible assisting humanitarian organizations.*

## 16. Personnel

1. With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:

(a) Grant visas and any necessary work permits, ideally without cost, renewable within their territory, for the time necessary to carry out disaster relief or initial recovery activities;

(b) In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;

(c) Establish expedited procedures for temporary recognition of professional qualifications of foreign medical personnel, architects, and engineers, drivers licences and other types of licenses and certificates that are necessary for the performance of disaster relief or initial recovery functions and that have been certified as genuine by the concerned assisting State or eligible assisting humanitarian organization, for the time necessary to carry out disaster relief or initial recovery activities;

(d) Facilitate freedom of access to and freedom of movement in and from the disaster-affected area, bearing in mind the safety of disaster relief and initial recovery personnel.

2. Upon request, originating and transit States should likewise waive or promptly issue, ideally without cost, exit or transit visas, as appropriate, for the disaster relief and initial recovery personnel of eligible assisting humanitarian organizations.

3. Assisting States and eligible assisting humanitarian organizations should consider to what degree disaster relief and initial recovery objectives can be met through hiring local staff.

### 17. Goods and Equipment

1. With regard to disaster relief and initial recovery goods and equipment exported or imported by, or on behalf of, assisting States and eligible assisting humanitarian organizations, originating, transit and affected States should:

- (a) Exempt them from all customs duties, taxes, tariffs or governmental fees;
- (b) Exempt them from all export, transit, and import restrictions;
- (c) Simplify and minimize documentation requirements for export, transit and import;
- (d) Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.

2. With regard to disaster relief goods and equipment only, originating, transit and affected States should additionally:

- (a) Waive or reduce inspection requirements. Where waiver is not possible, clear relief goods and equipment rapidly and as a matter of priority, through a “preclearance” process where feasible; and
- (b) Arrange for inspection and release outside business hours and/or at a place other than a customs office as necessary to minimize delay, in accordance with the safety regulations of the affected State. Assisting States and eligible assisting humanitarian organizations should respect any routes and delivery points prescribed by the affected State.

3. In order to benefit from the facilities above, assisting States and assisting humanitarian organizations should, in accordance with agreed international standards, appropriately pack, classify and mark disaster relief and initial recovery goods and equipment, and include detailed manifests with each shipment. They should additionally inspect all such goods and equipment to ensure their quality, appropriateness for the needs in the affected State, and conformity with the national law of the affected State and international standards.

4. Assisting States and eligible assisting humanitarian organizations should assume responsibility for removing or disposing of any unwanted and unused relief and initial recovery goods, particularly if they may pose a threat to human health or safety, or the environment.

### 18. Special Goods and Equipment

In addition to the facilities described in paragraph 17:

1. Affected States should grant temporary recognition to foreign registration and plates with regard to vehicles imported by assisting States and eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance.

2. Affected States should waive or expedite the granting of any applicable licenses and reduce any other barriers to the use, import or export of telecommunications and information technology equipment by assisting States and assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance. Without discrimination against or negative impact to domestic relief actors, affected States should also grant (or where, appropriate, encourage other domestic actors to grant) assisting States and eligible assisting humanitarian organizations priority access to

bandwidth, frequencies and satellite use for telecommunications and data transfer associated with disaster relief operations.

3. Originating, transit and affected States should reduce legal and administrative barriers to the exportation, transit, importation and re-exportation of medications and medical equipment by assisting States and eligible assisting humanitarian organizations or on their behalf in disaster relief and initial recovery assistance, to the extent consistent with public safety and international law. Assisting States and eligible assisting humanitarian organizations should take all reasonable steps to ensure the quality, appropriateness and safety of any such medications and equipment and in particular:

(a) Any medications they import should be approved for use in the originating and affected State;

(b) Medications they use in their own operations should be:

(i) transported and maintained in appropriate conditions to ensure their quality and;

(ii) guarded against misappropriation and abuse.

(c) Any medications they donate for use by others in the affected State should be:

(i) at least twelve months from their expiration date upon arrival, unless otherwise agreed by receiving authorities;

(ii) transported and maintained in appropriate conditions to ensure their quality until they reach the affected State; and

(iii) appropriately labelled in a language understood in the affected State with the International Nonproprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

4. Originating, transit and affected States should consider whether normal requirements regarding fumigation and prohibitions and restrictions on food imports and exports by assisting States and eligible assisting humanitarian organizations in disaster relief operations can be modified or reduced.

## **19. Transport**

1. Originating, transit and affected States should grant, without undue delay, permission for the speedy passage of land, marine and air vehicles operated by an assisting State or eligible assisting humanitarian organization or on its behalf, for the purpose of transporting disaster relief or initial recovery assistance and, ideally, waive applicable fees.

2. In particular, permission should be granted for overflight, landing and departure of aircraft. Such aircraft should also be authorized to operate within the territory of the affected State as required for the delivery of assistance.

3. Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

## 20. Temporary Domestic Legal Status

1. Affected States should grant relevant entities of assisting States and eligible assisting humanitarian organizations, upon entry or as soon as possible thereafter, at least a temporary authorization to legally operate on their territory so as to enjoy the rights, *inter alia*, to open bank accounts, enter into contracts and leases, acquire and dispose of property and instigate legal proceedings, for the purpose of providing disaster relief and initial recovery assistance.
2. Assisting States and eligible assisting humanitarian organizations should also be granted the right to freely bring the necessary funds and currencies in or out of the country through legal means and to obtain legal exchange rates in connection with their disaster relief or initial recovery assistance.
3. Affected States should allow assisting States and eligible assisting humanitarian organizations to legally hire and terminate the contracts of local personnel.

## 21. Taxation

Affected States should provide exemptions to assisting States and eligible assisting humanitarian organizations from value-added and other taxes or duties directly associated with disaster relief and initial recovery assistance.

## 22. Security

Affected States should take appropriate measures to address the safety and security of disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations and of the premises, facilities, means of transport, equipment and goods used in connection with their disaster relief or initial recovery assistance. Assisting States and assisting humanitarian organizations should also take appropriate steps in their own planning and operations to mitigate security risks.

## 23. Extended Hours

Affected States should endeavour to ensure, when necessary, that State-operated offices and services essential to the timely delivery of international disaster relief function outside of normal business hours.

## 24. Costs

1. The costs of providing international disaster relief or initial recovery assistance pursuant to these Guidelines should normally be borne by the assisting State or assisting humanitarian organization. However, assisting States may agree in advance with the affected State for the reimbursement of certain costs and fees, or for the temporary loan of equipment.
2. Affected States should consider, when it is in their power and to the extent possible under the circumstances, providing certain services at reduced or no cost to assisting States and eligible assisting humanitarian organizations, which may include:
  - a. In-country transport, including by national airlines;
  - b. Use of buildings and land for office and warehouse space; and
  - c. Use of cargo handling equipment and logistic support.

# The Fundamental Principles of the International Red Cross and Red Crescent Movement

**Humanity** / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

**Impartiality** / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

**Neutrality** / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

**Independence** / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

**Voluntary service** / It is a voluntary relief movement not prompted in any manner by desire for gain.

**Unity** / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

**Universality** / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



International Federation  
of Red Cross and Red Crescent Societies  
[www.ifrc.org](http://www.ifrc.org) **Saving lives, changing minds.**