



International Disaster Response Law (IDRL) in Mozambique

An analysis of the legal preparedness of Mozambique for facilitating and regulating international disaster response operations - Summary Version

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1. Save lives, protect livelihoods, and strengthen recovery from disaster and crises.
2. Enable healthy and safe living.
3. Promote social inclusion and a culture of non-violence and peace.

About this report

This report was drafted at the request of the IFRC and Mozambique Red Cross Society in consultation with the Instituto Nacional de Gestão de Calamidades, and prepared by Fernanda La-Salette de Vasconcelos Teixeira, a consultant to the Mozambique Red Cross. It analyzes existing laws and procedures in Mozambique related to the receipt of international assistance in disasters.

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About the Disaster Law programme

The IFRC's Disaster Law 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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Web site: <http://www.ifrc.org/dl>

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Introduction

This report is the result of a review of Mozambique's legislative framework pertaining to international disaster response operations. The research process also encompassed a desk study of the recent history of disasters in Mozambique, including those deriving from the impact of climate change, as well as recent practice of facilitation and regulation of international disaster assistance. This review took place in light of the *Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance* (the 'IDRL Guidelines'). The IDRL Guidelines were adopted by the state parties to the Geneva Conventions in 2007 and can be found on the website of the International Federation of Red Cross and Red Crescent Societies (www.ifrc.org/dl).

The report assesses the challenges in terms of legal preparedness for disasters in Mozambique, and proposes a way forward through specific recommendations, bearing in mind that, at the time of writing, a new national disaster management law was under preparation, the adoption of which, in turn, would likely lead to revision of the relevant sectoral legislation.

This is the summary version of the report. The full version is available in English and Portuguese at www.ifrc.org/dl.

Main Findings of the Report

Mozambique is highly vulnerable to natural disasters and has received assistance from external actors on several occasions in the past decade. Therefore, the legal framework for disaster response is of clear importance for the future. This importance is greater yet, when one takes into account the recent studies that indicate Mozambique's particular vulnerability to the impact of climate change, which is considered to have contributed to the increasing number and intensity of natural disasters in the country.

Mozambique has made major advances in the past decade in establishing and modernizing relevant legal, institutional, policy and programme frameworks, in particular with regard to the establishment and operation of the National Disaster Management Institute (*Instituto Nacional de Gestão de Calamidades*, or 'INGC'). The implementation of these frameworks have had a noteworthy role in improving the response to the floods that occurred in Mozambique in the last few years. However, there are few legal instruments that are specifically focused on (international) disaster response; instead, a great deal of 'sectoral' legislation, such as legislation on immigration and on medicines, applies during relief operations without consideration for special requirements during emergencies. As a result of this absence of specific regulations applicable to international disaster response operations, *ad hoc* measures are taken by the authorities to facilitate the entry of international assistance. In addition, the scattered nature of the legislation does not promote awareness of the applicable rules by international actors taking part in disaster operations.

As of the date of this report, a national disaster management law was being drafted. After its adoption, the revision of the various sectoral instruments will likely follow. Some important legal instruments, such as laws on the registration of international organisations and on medicines, are also being revised. This is an excellent opportunity to improve the national legal framework by making use, where necessary, of the IDRL Guidelines and of the recommendations of this report.

In general, the legal framework pertaining to disasters in Mozambique may be summarised as follows:

Government focal point and coordination mechanisms

Mozambique has a clearly defined focal point for dealing with disaster management. The INGC has the legal status and mandate to coordinate every aspect of disaster management. Coordination and information-sharing mechanisms, including with international partners and with civil society organisations, are also clearly defined. Currently, the government works on the basis of annual contingency plans. The preparation of these plans is shared and harmonised between the government and its main partners, particularly within the United Nations system. Since the coordination mechanisms are wide-ranging and both the United Nations and the Mozambique Red Cross Society have seats on the National Disaster Management Technical Council (*Conselho Nacional*

Técnico de Gestão de Calamidades Naturais, or ‘CTGCN’), good information-sharing takes place at the central level.

Warning system

An early warning system is in place in Mozambique. The system has various levels, depending on the severity of the disaster. The red alert, indicative of the highest level of severity, is declared by the prime minister upon the advice of the director general of the INGC, after consulting relevant stakeholders, such as the National Meteorological Institute and the Secretariat for Food Security or the Ministry of Mineral Resources, among other institutions. The data for technical analysis are gathered by the National Emergency Operations Centre and the data is taken for consideration by the National Disaster Management Technical Council.

Request for, initiation and termination of international assistance

Although there are no clear definitions of the criteria for requesting international assistance and for declaring the beginning and end of an international relief operation, practice indicates that international assistance is requested when the needs for addressing the impact of a disaster exceed the national capacity. In past instances, the government had allowed the United Nations or the Mozambique Red Cross Society to launch international appeals, without doing so itself.

Entry of staff

There is no specific legislation on facilitating the entry into the country of foreign staff for relief and initial recovery operations. Hence, such entry is subject to regular immigration legislation. In practice, when the situation called for it, the authorities have, in an *ad hoc* fashion, set up conditions to expedite the granting of entry visas.

Recognition of Professional Qualifications

In accordance with the current legislation, the qualifications of medical professionals need official recognition by the Ministry of Health before they may practice. The procedure for this recognition would be the same in disasters as under normal conditions, thus the time to process a request for recognition could be unduly long in an emergency situation.

Entry of goods and equipment

In recent years, special procedures for importation of relief goods in emergency situations have been developed, as recommended by the IDRL Guidelines. They are contained in an INGC manual on customs clearance procedures for emergency goods, which is still in draft form. According to this manual, exemption from fees and taxes for emergency goods should be requested through the INGC, using a document entitled ‘Emergency Document’. The manual also envisages that the importation of emergency goods should be in line with the previously approved distribution plan, and should be known to the INGC – that is, they should be goods mentioned in the annual contingency plan.

Main Findings of the Report

Eligibility and registration

On the condition that they harmonise with the government's strategies, the current legal framework facilitates the registration of international organisations seeking to enter Mozambique, particularly in the areas of health, education, and water supply, as well as the transfer of knowledge and technology. For the purposes of recognition and registration, organisations must be legally constituted in their country of origin and must prove that they have the resources to undertake the activities that they propose to carry out. Only after they are officially registered, can they legally begin their activities, including opening bank accounts, hiring staff, and signing service provision contracts. International NGOs are subject to supervision or auditing by the relevant bodies and in accordance with the fiscal legislation in force.

Security

Relief operations integrated in the established coordination mechanisms, as well as the staff involved in them, receive due protection from the authorities responsible for law and order.

Minimum quality standards

Mozambique observes international quality standards for emergency operations and the activities undertaken are subject to control and auditing measures.

Transport

The Mozambican government allows for the entry of vehicles, which are proven to be destined for emergency operations, with temporary exemptions from registration requirement as long as they possess a customs licence for this purpose. On the other hand, the INGC procedures manual on customs clearance mentions that the entry of aircraft requires authorisation from the civil aviation authority. Port fees are to be paid, but may be subject to a discount of up to 50% when the importer presents proof that the goods in question are emergency goods.

Freedom of access

Nothing prevents the free circulation of people and goods during relief activities, as long as the appropriate coordination is established through the existing mechanisms, so that security can be guaranteed.

Summary of the Recommendations

Due to the scattered nature of the legislation applicable to disasters and the fact that the applicable rules do not take emergency situations into account, the Mozambican authorities have resorted to applying the law selectively during emergencies, so as to expedite the entry and operations of international disaster response operations on an *ad hoc* basis.

The drafting of a new law on disaster management by the Government of Mozambique is an excellent opportunity to ensure that questions related to the facilitation and regulation of international disaster response operations are comprehensively addressed in the national legal framework. The main recommendation is therefore that said *ad hoc* solutions should be translated into the legal framework, including in the draft disaster management law and through amendments to applicable sectoral laws to incorporate sections on emergency situations.

The disaster management law should set out the broad lines for cooperation with international actors in major disasters. In particular, the law should:

- Address the conditions that determine the declaration of a disaster of an international scale and a clear procedure to request international assistance;
- Set out an inventory of facilities granted to foreign actors providing emergency assistance in Mozambique, and the conditions to which these are subject;
- Recognise the auxiliary role of the Mozambique Red Cross vis à vis the national authorities in the field of humanitarian assistance;
- Define the conditions under which foreign military forces may operate in the country during an emergency operation and the initial recovery from the emergency;
- Address the role of the Mozambican state as a transit country and as an assisting state.

In addition, relevant sectoral legislation should be amended to better account for disaster circumstances. For example:

- Appropriate legislation should facilitate and regulate:
 - Expedited procedures for the granting of visas and temporary work permits for foreign disaster response personnel;
 - Expedited procedures for the temporary recognition of the professional qualifications of foreign disaster response personnel;
- Existing customs and tax legislation (General Customs Clearance Rules, Fiscal Benefits Code and Value Added Tax Code) should be amended to include specific clauses accelerating customs procedures and defining more clearly exemptions in the importation of goods during an emergency situation of international scope, including VAT, employers' tax et cetera, as advocated in the IDRL Guidelines. Additionally, these

Summary of the Recommendations

instruments should address measures for the importation of special emergency goods, such as food items, vehicles, communications equipment and medicines;

- A revision of the legislation on the registration of international organisations should be considered to incorporate aspects that expedite their intervention in the event of an emergency, in accordance with the IDRL Guidelines. This should include accreditation and registration criteria, a simpler registration procedure for temporary interventions in emergencies, fiscal exemption procedures during emergencies, facilities for entry visas and residence cards, among others;
- The Mozambique National Communications Institute should consider the adoption of expeditious and speedy procedures to authorise the use of communications equipment in the country during relief operations and initial recovery;
- Appropriate legislation should grant privileges and immunities to staff who enter the country in order to participate in relief and initial recovery operations, particularly personnel from assisting states and staff of recognised humanitarian organisations;
- Appropriate legislation should provide for facilities and quality control of the private sector or individuals who participate in disaster relief activities, including specific conditions for donations and for profit-making activities.

Finally, for the purpose of enhancing awareness of their responsibilities and rights, it is recommended that existing legal and policy instruments, as well as applicable procedures, are summarised and disseminated amongst all stakeholders involved in disaster management – both within and outside Mozambique.

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.



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