



# International Disaster Response Law (IDRL) in Tonga

A study on legal preparedness for facilitating and regulating international disaster assistance

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## About this report

This report was commissioned by the International Federation of Red Cross and Red Crescent Societies (IFRC) and the Tonga Red Cross Society (TRCS), and prepared by Rosamond Bing, legal researcher. It analyses Tonga's current legal and policy frameworks for addressing the issues related to receiving international disaster assistance.

## About the Disaster Law Programme

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# Acronyms and Abbreviations

<b>CCA</b>	Climate Change Adaptation
<b>CCG</b>	Central Control Group
<b>CEO</b>	Chief Executive Officer
<b>CT</b>	Consumption Tax
<b>DEMC</b>	District Emergency Management Committee
<b>DM</b>	Disaster Management
<b>DRM</b>	Disaster Risk Management
<b>DRR</b>	Disaster Risk Reduction
<b>EM</b>	Emergency Management
<b>EMA</b>	Emergency Management Act 2007
<b>EMR</b>	Emergency Management (Facilitation and Regulation of International Emergency Relief and Initial Recovery Assistance) Regulations
<b>EMS</b>	Emergency Management System
<b>FNP</b>	Finance and National Planning
<b>GSD</b>	Geoscience Division, Secretariat of the Pacific Community
<b>GSU</b>	Geological Services Unit
<b>HFA</b>	Hyogo Framework for Action 2005-2015
<b>ICAO</b>	International Civil Aviation Authority
<b>ICRC</b>	International Committee of the Red Cross
<b>IDRL</b>	International Disaster Response Laws, Rules & Principles
<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>INN</b>	International Non-Proprietary Name
<b>JNAP-CCDRM</b>	Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management 2010-2015
<b>MEC</b>	Ministry of Environment and Communications
<b>MFAT</b>	Ministry of Foreign Affairs and Trade
<b>MFNP</b>	Ministry of Finance and National Planning
<b>NDMO</b>	National Disaster Management Office
<b>NDMP</b>	National Disaster Management Plan and Emergency Procedures 1999
<b>NEMC</b>	National Emergency Management Committee
<b>NEMP</b>	National Emergency Management Plan 2009 NEMO National Emergency Management Office

<b>NEOC</b>	National Emergency Operations Committee
<b>NERC</b>	National Emergency Recovery Committee
<b>NGO</b>	Non-governmental Organisation
<b>PFM</b>	Public Finance Management
<b>PHT</b>	Pacific Humanitarian Team
<b>PIF</b>	Pacific Islands Forum
<b>PIFACC</b>	Pacific Islands Framework for Action on Climate Change 2006-2015 (PIFACC)
<b>RCRC</b>	Red Cross Red Crescent
<b>RFA</b>	Regional Framework for Action “An investment for sustainable development in the pacific island countries – disaster risk reduction and disaster management, a framework for action 2005-2015
<b>SIDS</b>	Small Island Developing States
<b>SOPs</b>	Standard Operating Procedures
<b>SPC</b>	Secretariat of the Pacific Community
<b>TC</b>	Tropical Cyclone
<b>TMS</b>	Tonga Meteorological Services
<b>TSDF</b>	Tonga Strategic Development Framework 2011 – 2014
<b>TRCS</b>	Tonga Red Cross Society
<b>UN</b>	United Nations
<b>UNDAC</b>	United Nations Disaster Assessment and Coordination
<b>UNOCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>VERC</b>	Village Emergency Management Committee
<b>WHO</b>	World Health Organization



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Insightful commentary, discussion and perspectives of officials representing the Tongan Government, private organisations and civil society brought to life the operational aspects of the legislative and policy framework for emergency management in Tonga (Annex A). These comments underpin the substance of this study. Stakeholders were most accommodating in making time available to meet and in responding to ongoing enquiries. Participants at the National Stakeholders Workshop held in October 2014 offered their astute and judicious comments to the first draft of the report.

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Faka'apa'apa atu,

**Rosamond C. Bing**

*Legal Researcher*

# Executive Summary

This report was commissioned to examine Tonga's legal and policy frameworks relating to disaster response, in particular the effectiveness of these frameworks in facilitating the smooth entry of international humanitarian assistance into Tonga during a disaster.

This report aims to examine the relevant legal and policy frameworks in Tonga against the recommendations contained in the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (also known as the "IDRL Guidelines"), which were adopted by the state parties to the Geneva Conventions at the 30th International Conference of the Red Cross and Red Crescent in 2007. The IDRL Guidelines are the outcome of nearly a decade of global research and consultations undertaken by the International Federation of Red Cross and Red Crescent Societies (IFRC) and serve as a practical set of recommendations to governments on how to prepare their relevant legal and policy frameworks to facilitate and receive international humanitarian assistance in to a country, in response to a disaster. These recommendations can be adopted in part or in whole and can be adapted to suit each country's unique context. This report is only the third of its kind to be undertaken in the Pacific region, the first having been completed by the Vanuatu Red Cross Society in 2011 and the second by the Cook Islands Red Cross Society in 2012. However, National Red Cross and Red Crescent Societies have supported governments to undertake similar reports in over 40 countries around the world since 2007, and 18 countries have already adopted new laws or rules drawing on the Guidelines while a dozen others have bills pending. Of particular importance to the Pacific region is the outcome statement by Pacific Islands Forum Leaders in 2012 endorsing the use of the Guidelines, referenced below in Chapter 1.

This report also uses the IFRC's Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Model Act) as a guidance tool. The Model Act serves as an example of how States can integrate the recommendations of the IDRL Guidelines into their national laws. The Model Act was developed over a two-year period as a collaboration between the IFRC, the United Nations Office of the Coordination of Humanitarian Assistance (UNOCHA) and the Inter-Parliamentary Union (IPU).

Tonga has been beset by numerous natural and man-made disasters in recent years and the intensity and devastation of these disasters has forced all stakeholders, both domestic and international, to reflect on the nation's responsiveness and to review the efficacy and effectiveness of the emergency management structures. With several stakeholders mandated with some form of authority and directive in emergency planning and response, clarity in the roles and responsibilities between stakeholders themselves is a primary issue, as was highlighted in the aftermath of Tropical Cyclone Ian (TC Ian).

The Category 5 cyclone, which struck Tonga on the 2nd January 2014, was the most powerful storm ever recorded in Tonga and had devastating impacts on the Ha'apai

### Executive Summary

island group. An estimated 5,500 people, approximately 70% of the Ha'apai population, were affected. Approximately 1,100 houses and many of the public facilities were damaged or destroyed. Fourteen people were injured and one person died. The estimated cost of immediate needs for the first 3 months following the cyclone was TOP28.4 million. The World Bank funded the key recovery project and has committed USD15.89 million to Ha'apai's rehabilitation through its Tonga Cyclone Ian Reconstruction and Climate Resilience Project.<sup>1</sup>

The devastation caused by TC Ian revealed the existing limitations in the nation's readiness and preparedness. The event highlighted clearly the need to seal the gaps in the existing legal and policy frameworks with a number of core changes implemented particularly to the institutional organization and administration of disaster response.

Legal issues are often overlooked as part of preparedness planning for disasters. This is particularly so for situations where international assistance may be needed, which has traditionally been dealt with on an ad hoc basis. For over a decade Red Cross and Red Crescent National Societies with the support and partnership of the IFRC<sup>2</sup> has been researching large scale disaster response operations. Research in this area has demonstrated that vital international support can be hampered by issues such as: a lack of legal recognition for foreign relief providers; customs delays and tax requirements for medication, relief goods and equipment; complications with visas for relief personnel; and a lack of recognition of foreign professional qualifications in emergency situations. It has also been found that unclear standards and mechanisms for the oversight of international assistance can impair domestic authorities' ability to take a leading role in an international relief operation.

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<sup>1</sup> <http://www.worldbank.org/projects/P150113?lang=en>

<sup>2</sup> Further information on this programme is available at: <http://ifrc.org/idrl>

<sup>3</sup> These documents include the National Emergency Management Plan 2009, National Tsunami Plan 2012, Standard Operating Procedures for Relief Consignments 2013 and Tonga Red Cross Society Disaster Management Plan 2013.

# Key Findings

The aim of this report is to examine how these issues are currently addressed in the context of Tonga's legal and policy frameworks, identify areas of good practice and consider measures that may help to minimise legal risks and legal barriers that could inhibit effective national and international disaster response. Tonga's overarching national legal framework for disaster management is found in the Emergency Management Act (EMA) 2007. This Act was the outcome of a major international aid project, the Cyclone Emergency Recovery and Management Project, which provided technical assistance for its drafting. The EMA is supported by the National Emergency Management Plan (NEMP) 2008.

The first key finding of this study is that the primary legislation, the EMA, does not provide a specific legal and policy framework for international assistance in the immediate aftermath of a disaster. The EMA sets out a framework for regarding domestic emergency management practices with little reference to international assistance, and with a number of enforcement and implementation challenges. On the other hand, there are various aspects relating to the receipt of international assistance that are stipulated in a plethora of other national legislation and formal documentation.<sup>3</sup> The fact that provisions dealing with international assistance are not centralized but fragmented across several different documents, poses a significant challenge for the coordination and facilitation of international assistance into Tonga.

The second key finding of this study is that there are disparities between international best practices and the Tongan system for facilitating the receipt of international assistance during emergency periods. The potential consequence of these disparities might be that “[a]d hoc approaches, hastily devised in the wake of a catastrophic disaster, [lead] to a loss of state control and the arrival of inappropriate or poor quality relief. They [might] also... result in unnecessary restrictions, delays and expenses hampering the right aid, just when it is most urgently needed.”<sup>4</sup> Therefore, recommendations are made for specific legal enhancements to address these disparities.

It is recommended that the Government of Tonga consider the adoption of relevant provisions of the Model Act through the formulation of an emergency management regulation on the facilitation and regulation of international emergency relief and initial recovery assistance. Pursuant to the EMA<sup>5</sup> the Minister responsible for emergency management “...may, with the consent of Cabinet make regulations generally for carrying into effect the provisions of this Act.” As yet, no regulations have been promulgated under the EMA. The introduction and formulation of a regulation specifically related to international disaster assistance would represent a milestone in Tonga's disaster management.

<sup>3</sup> These documents include the National Emergency Management Plan 2009, National Tsunami Plan 2012, Standard Operating Procedures for Relief Consignments 2013 and Tonga Red Cross Society Disaster Management Plan 2013.

<sup>4</sup> Model Act, page 6.

<sup>5</sup> EM Act, section 43.

## Key Findings

In conjunction with an updated NEMP, such a regulation could be expected to form a solid foundation for Tonga's emergency management.

During stakeholder meetings and the National Stakeholder Workshop conducted as part of the study it was emphasised that the key challenge in dealing with international disaster response and relief is the lack of a distinct and specific reference document. Stakeholders recognised the ever-increasing regularity of Tonga being a recipient of international assistance, and concluded it was only logical that clear and appropriate measures are documented and formalised for this purpose.

On that basis, the National Stakeholders Workshop resolved as follows –

1. The workshop stakeholders recommend to the Government of Tonga that the Tonga IDRL report and its recommendations be endorsed; and
2. The Model Act be incorporated by way of regulations to be appropriately drafted in accordance with Tongan laws and the Tongan context and conditions.

The IDRL Study presents a timely opportunity for Tonga to review its ability to request and facilitate international disaster relief and assistance. The principles and standards espoused by the IDRL Guidelines provide excellent guidance for Tonga to strengthen its regulatory regime. In particular, to facilitate the mobilising of international assistance in a timely, effective and efficient manner to ensure that when disasters occur, the welfare of the affected communities are met.

# Key Observations

Although the observations below are outside the scope of this particular study, stakeholders felt it was important enough to warrant mention in this report as follows:

- There was strong feedback received recommending that the Government of Tonga consider the formulation of a new NEMP to give full effect to the EMA.
- It is also recommended that adequate funding be targeted towards the administration of the National Emergency Management Committee (NEMC) and the National Emergency Management Office (NEMO). The NEMC is the primary policy and planning agency for emergency management with functions and powers conferred by the EMA. The NEMO is the operational and administrative arm of the emergency management system with primary responsibility to execute the directions of the NEMC. A recurring concern voiced during the consultations is the acknowledgement that unless appropriate resources are directed to NEMO, the emergency management system is at risk of disintegration with dire consequences.



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# **Chapter 1**

## Introduction to the project and its methodology

## 1.1 Background to the Study

Like most Pacific island countries, The Kingdom of Tonga (Tonga) is no stranger to natural disaster. Not only is Tonga located in the Asia Pacific region – the most disaster prone region in the world – but Tonga is also consistently identified in the annually published World Risk Index, as being the second most vulnerable country in the world to natural disasters.<sup>6</sup>

The need to address the vulnerability of the Pacific to natural and man-made disasters was reflected by the regional commitment that Pacific Islands Forum (PIF) Leaders made to strengthening legal preparedness at the annual PIF meeting in the Cook Islands in August 2012. During this meeting, Pacific Leaders discussed the issue of legal preparedness and the role of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (also referred to as the IDRL Guidelines) and presented a statement as part of the 2012 Forum Leaders' Communiqué encouraging Forum member countries to “consider the International Disaster Response Law Guidelines developed by the International Federation of the Red Cross (IFRC) and to take appropriate measures to strengthen their national policy, and institutional and legal frameworks in collaboration with their National Red Cross Societies, IFRC, the United Nations and other relevant partners.”<sup>7</sup>

The IDRL Guidelines<sup>8</sup> and the Model Act were developed by the IFRC to assist states to proactively prepare their disaster laws and plans for the common regulatory problems in disaster relief operations. They advise them as to the minimum quality standards they should insist upon in humanitarian assistance as well as the kinds of legal facilities aid providers need to do their work effectively. While responding to today's common problems, they are based on existing international legal and policy documents.”<sup>9</sup> The Model Act is based on the IDRL Guidelines and is intended as a “reference tool for voluntary use by disaster management officials and/or legislators who wish to develop domestic legislation, regulation, and/or procedures in their countries for managing potential future international disaster assistance.”<sup>10</sup> The Model Act provides an enabling environment for the “the entry and operation of assisting international actors, and also to the coordination of their assistance, especially in the relief and initial recovery period.”<sup>11</sup> These key international documents are the outcome of nearly a decade of global research and consultation with governments, humanitarian organizations and other stakeholders.

In November 2012, the Tonga Red Cross Society (TRCS) organized a Red Cross Red Crescent Movement high-level dissemination seminar for parliamentarians and senior government officials. The objective was to present on legal issues of special concern to the Red Cross: TRCS presented on the Tonga Red Cross Act; the International Committee of the Red Cross (ICRC) was invited to present on International Humanitarian Law

<sup>6</sup> The World Risk Index is calculated by the United Nations University for Environment and Human Security

<sup>7</sup> (UNU-EHS) and featured in the 2013 World Risk Report (WRR 2013) published by the Alliance Development Works/Bundnis Entwicklung Hilft (BEH). The report systematically considers a country's vulnerability, and its exposure to national hazards to determine a ranking of countries around the world based on their disaster risk. [http://collections.unu.edu/eserv/UNU:2018/WorldRiskReport\\_2013\\_online\\_01.pdf](http://collections.unu.edu/eserv/UNU:2018/WorldRiskReport_2013_online_01.pdf)

<sup>8</sup> Forty-Third Pacific Islands Forum, Rarotonga, Cook Islands, 28 – 30 August 2012, Forum Communiqué, para. 73.

<sup>9</sup> Introduction to IDRL (2011), page 6.

<sup>10</sup> Model Act, page 6.

<sup>11</sup> Model Act, page 8.

and the IFRC presented on International Disaster Response Laws, Rules and Principles (IDRL) and the benefits for Tonga in undertaking an IDRL Study. Shortly thereafter, the Government requested the submission of a cabinet paper proposing that an IDRL study be undertaken.

In December 2012, the Kingdom of Tonga's Cabinet formally approved the review of Tonga's disaster related legal frameworks by way of an IDRL Study. This Report is therefore the culmination of Government and stakeholder recognition and support for taking definitive steps in strengthening legal preparedness.

This study was commissioned by the Government of the Kingdom of Tonga, in partnership with the Tonga Red Cross Society and supported by the IFRC.

## 1.2 Scope and Methodology

The IDRL study commenced in April 2013 and was completed in January 2015. It was managed by the Tonga Red Cross Society, which hired a legal consultant to undertake the research with oversight from IFRC.

The timely completion of the study was severely impacted by two national disaster responses over the course of some 10 – 12 months. Tropical Cyclone Ian made landfall in northern Tonga on 11 January 2014. It was the most powerful storm ever recorded in Tonga and devastated the Ha'apai Island group affecting an estimated 5,500 people, over 70% of the total population. Fourteen people were injured and one person died. Approximately 2,300 people were left homeless.

In September of the same year, the Ha'apai Islands found themselves responding to drought conditions associated with the El Niño event. Low rainfall in Tonga over recent months resulted in extremely low water levels, particularly in the Ha'apai Islands, which were still recovering from Tropical Cyclone Ian, which damaged water tanks and water collection systems. The drought continued through to the beginning of 2015.

The terms of reference for this study were to:

- map legal instruments relevant to response in case of international disasters
- identify gaps and areas of good practice in addressing legal issues and implementing the key regional and international instruments relevant to disaster in Tonga
- recommend measures to minimise legal barriers and encourage effective national and international responses to disasters in Tonga

This Study was informed by :

- a desk-top study and literature review of relevant legislation, policies/plans/reports and articles
- the IDRL Guidelines (**Annex B**) and Model Act
- consultation through individual meetings (focusing on knowledge and application of emergency management system and perspectives on emergency management issues)
- dissemination of a draft report to stakeholders
- a national stakeholder workshop on the draft report
- participation in a disaster simulation exercise
- national responses to Tropical Cyclone Ian (January 2014) and the Ha'apai Drought (end 2014/start of 2015)

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## **Chapter 2**

Overview of relevant  
regional and international  
disaster risk management  
(DRM) laws and policies

Tonga is party to a number of international and regional instruments that influence its national disaster risk management (DRM) laws and policies. The study has identified a series of treaties and agreements that are specifically relevant to international disaster assistance. Tonga has yet to ratify many of these treaties. However, as this report will illustrate, Tonga has promulgated in domestic legislation some of the key principles relevant to international disaster assistance. This section lists the international and regional instruments relevant to international disaster assistance with an overview of Tonga's endorsement and ratification status.

## 2.1 Relevant International instruments

### 2.1.1 The IDRL Guidelines

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 address the most common problem areas. In 2007, the states parties to the Geneva Conventions unanimously adopted the IDRL Guidelines at the 30th International Conference of the Red Cross and Red Crescent, and they were welcomed by UN General Assembly resolutions<sup>12</sup>.

At the 31st International Conference, which convened all 187 National Societies and all States party to the Geneva Conventions, a resolution was adopted on “strengthening normative frameworks and addressing regulatory barriers concerning disaster mitigation, response and recovery,” which reiterated the urgency for States to be prepared to facilitate and regulate any international disaster assistance they may require in order to ensure that affected persons receive timely and effective relief.<sup>13</sup>

The IDRL Guidelines are a set of recommendations to governments on how to prepare their existing legal framework to address any regulatory problems during an international disaster relief operation. In particular, they provide recommendations for removing legal barriers and unnecessary red tape, which can compromise the timely and effective delivery of international aid. At the same time, the Guidelines also encourage governments to regulate incoming assistance to ensure that it meets minimum standards.

The IDRL Guidelines embody the following key concepts:

1. **Domestic actors have the primary role** – Recognition that it is the responsibility of the government of the affected state to address the humanitarian needs caused by a disaster.
2. **International relief providers have responsibilities** – The guidelines stipulate that international providers of relief also have to abide by minimum standards of humanitarian assistance, and quality of relief goods. These include the principles of humanity, neutrality, and impartiality.
3. **International actors need legal facilities** – The Guidelines set out specific types of legal facilities or accommodations that the governments should provide to

<sup>12</sup> A/RES/66/227; A/RES/66/119; A/RES/65/264; A/RES/65/133; A/RES/64/251; A/RES/64/76; A/RES/63/141; A/RES/63/139; A/RES/63/137.

<sup>13</sup> 31st International Conference Red Cross Red Crescent, Resolution 31IC/11/R7 (2011).

## Overview of relevant regional and international disaster risk management (DRM) laws and policies

international relief organizations to facilitate an effective response to a request for disaster relief. These include expedited visa processing, customs clearance of goods and equipment, facilitation of logistics, exemptions from taxes, and a simplified means of obtaining temporary legal personality to operate within the country.

4. **Some legal facilities should be conditional** – In order to lend weight to the responsibilities of assisting humanitarian organizations, the Guidelines encourage governments to condition the granting of legal facilities to these organizations on their commitment to, and on-going compliance with minimum standards described above. The Guidelines provide suggestions on how this could be implemented.

### 2.1.2 Sendai Framework for Disaster Risk Reduction 2015 – 2030

On 18 March 2015, the Sendai Framework for Disaster Risk Reduction 2015-2030 (SFDDR) was adopted by the UN Member States at the Third United Nations World Conference on Disaster Risk Reduction. Attending on behalf of the Government of Tonga, the Deputy Prime Minister (and Minister responsible for emergency management) has confirmed the Government's commitment to the applicable Guiding Principles (a) and (b) that –

- a. *Each State has the primary responsibility to prevent and reduce disaster risk, including through international, regional, subregional, transboundary and bilateral cooperation. The reduction of disaster risk is a common concern for all States and the extent to which developing countries are able to effectively enhance and implement national disaster risk reduction policies and measures in the context of their respective circumstances and capabilities can be further enhanced through the provision of sustainable international cooperation.*<sup>14</sup>
- b. *Disaster risk reduction requires that responsibilities be shared by central Governments and relevant national authorities, sectors and stakeholders, as appropriate to their national circumstances and systems of governance;*<sup>15</sup>

Priority 4 of the framework strengthens the role of international assistance in disasters by expressing that –

*“Enhancing disaster preparedness for effective response, and to “Build Back Better” in recovery, rehabilitation and reconstruction.”*<sup>16</sup>

For the purposes of the IDRL study, the highlight of the framework is the particular attention accorded to disaster preparedness for effective response as enunciated in the responsibilities at the national and local levels to –

- a. *Adopt public policies and actions that support the role of public service workers to establish or strengthen coordination and funding mechanisms and procedures for relief assistance and to plan and prepare for post-disaster recovery and reconstruction;*<sup>17</sup> and
- b. *Review and strengthen, as appropriate, national laws and procedures on international cooperation, based on the guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance.*<sup>18</sup>

This is strengthened by the implementation measures, under the heading of international cooperation and global partnerships, of international organizations whereby –

<sup>14</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, paragraph 19(a).

<sup>15</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, paragraph 19(b).

<sup>16</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, paragraph 20(4).

<sup>17</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, paragraph 33(e).

<sup>18</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, paragraph 33(p).



*“Other international organizations and treaty bodies, including the Conference of the Parties to the United Nations Framework Convention on Climate Change, international financial institutions at the global and regional levels, and the International Red Cross and the Red Crescent Movement to support developing countries, at their request, in the implementation of this frame work, in coordination with other relevant frameworks.”<sup>19</sup>*

This Sendai framework succeeds the Hyogo Framework for Action<sup>20</sup> in which the lessons learned included that –

*“International, regional, subregional and transboundary cooperation remains pivotal in supporting the efforts of States, their national and local authorities, as well as communities and businesses, to reduce disaster risk. Existing mechanisms may require strengthening in order to provide effective support and achieve better implementation. Developing countries, in particular the least developed countries, small island developing States, landlocked developing countries and African countries, as well as middle-income countries facing specific challenges, need special attention and support to augment domestic resources and capabilities through bilateral and multilateral channels in order to ensure adequate, sustainable, and timely means of implementation in capacity-building, financial and technical assistance and technology transfer, in accordance with international commitments.”<sup>21</sup>*

Therefore, the goal of the Hyogo Framework, which was to build resilience of nations and communities to disasters, has formed the basis for political commitment and acted as a catalyst for focused, targeted action by stakeholders. The express reference and commitments in the Sendai Framework enhances the Government’s promotion and commitment to the IDRL guidelines.

Although both frameworks are non-binding, Tonga has already taken solid action in the –

- a. Hyogo framework through the formulation and implementation of its Joint National Action Plan on Climate Change and Disaster Risk Management (JNAP-CCDRM); and
- b. Sendai framework through its commitment to this Study and report.

### 2.1.3 Chicago Convention

The Convention on International Civil Aviation, also known as the Chicago Convention, established the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations charged with coordinating and regulation international air travel.<sup>22</sup> The Convention establishes rules of airspace, aircraft registration and safety, and details the rights of the signatories in relation to air travel. The Convention also exempts commercial air fuels from tax.

Annex 9 of the Convention calls for specific facilities to be provided to speed the entry of humanitarian relief flights, as well as their crew and cargo, which can be applied to situations of disaster. Tonga ratified this Convention on 2 November 1984 and adopted it into domestic law.

<sup>19</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, paragraph 48(e).

<sup>20</sup> Hyogo Framework for Action (HFA) 2005–2015: Building the Resilience of Nations and Communities to Disaster 2005

<sup>21</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, paragraph 48(e).

<sup>22</sup> International Civil Aviation Organization website: <http://www.icao.int/Pages/default.aspx>

### 2.1.4 Convention on the Facilitation of Maritime Traffic 1965

The Convention's main objectives are to prevent unnecessary delays in maritime traffic, to aid co-operation between Governments, and to secure the highest practicable degree of uniformity in formalities and other procedures. The Convention calls for specific facilities to be provided to speed the entry of humanitarian relief shipments, as well as their crew and cargo.<sup>23</sup> Tonga ratified this Convention on 17 November 2003 but has yet to expressly adopt it into domestic law.

### 2.1.5 Customs Law

Although, Tonga became a Contracting Party to the Convention Establishing a Customs Cooperation Council (1 July 2005), it has yet to accede to those instruments that are relevant to expediting the importation of goods for humanitarian purposes such as the Kyoto Specific Annex J.5 (International Customs Agreement in re Relief Consignments) November 2011 and Convention on Temporary Admission 1990 (Istanbul Annex B.9 – Concerning Goods Imported for Humanitarian Purposes). As discussed below, elements of these Conventions have been reflected in domestic customs legislation and procedures.

## 2.2 Relevant Regional Instruments and arrangements

### 2.2.1 The Pacific Plan and the Kalibobo Roadmap

Tonga is one of the seven founding members of the Pacific Islands Forum.

The Pacific Plan, endorsed by Forum Leaders at the Pacific Islands Forum meeting in Port Moresby in 2005, is a document designed to strengthen Pacific regional integration and cooperation.<sup>24</sup> It identifies four key objectives:

1. Economic growth;
2. Sustainable development;
3. Good governance; and,
4. Security.

The Kalibobo Roadmap is the initial 3-year implementation mechanism for the Pacific Plan. It states: "Another important dimension of the security and sustainable development environment relates to prevention, mitigation and adaptation with regard to natural disasters, pollution (through waste management) and climate variability and change and sea level rise."<sup>25</sup> The Kalibobo Roadmap further identified as one of the initiatives for immediate implementation: "[the] [d]evelopment and implementation of policies and plans for the mitigation and management of natural disasters."<sup>26</sup>

<sup>23</sup> International Maritime Organization website: <http://www.imo.org/About/Conventions/ListOf-Conventions/Pages/Convention-on-Facilitation-of-International-Maritime-Traffic-%28FAL%29.aspx>

<sup>24</sup> Pacific Islands Forum Secretariat website: <http://www.forumsec.org>

<sup>25</sup> Pacific Islands Forum Secretariat website: [http://www.forumsec.org/resources/uploads/attachments/documents/Pacific\\_Plan\\_Nov\\_2007\\_version1.pdf](http://www.forumsec.org/resources/uploads/attachments/documents/Pacific_Plan_Nov_2007_version1.pdf), pg 38.

<sup>26</sup> Ibid; pg 39.

### 2.2.2 Pacific Disaster Risk Reduction and Disaster Management Regional Framework for Action 2005 (RFA)

The HFA was adapted in the Pacific as a regional DRM policy document entitled “An Investment for Sustainable Development in the Pacific Island Countries – Disaster Risk Reduction and Disaster Management A Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters” (RFA). The RFA directly supports the development and implementation of policies and plans for the mitigation and management of natural disasters, which is one of the key initiatives of the Kalibobo Roadmap, that reinforces the objectives of the Pacific Plan<sup>27</sup>.

The RFA has six themes as follows:

1. Governance – Organisational, Institutional, Policy and Decision-Making Framework;
2. Knowledge, Information, Public Awareness and Education;
3. Analysis and Evaluation of Hazards, Vulnerabilities and Elements at Risks;
4. Planning for effective Preparedness, Response and Recovery;
5. Effective, Integrated and People-Focused Early Warning Systems; and
6. Reduction of Underlying Risk Factors

### 2.2.3 Pacific Islands Framework for Action on Climate Change (PIFACC) 2006 – 2015

PIFACC is a regional framework which lays the foundation for improved coordination and collaboration at the national and regional level. The Framework’s vision is “Pacific island people, their livelihoods and the environment resilient to the risks and impacts of climate change”. The PIFACC was endorsed by Pacific island leaders in 2005 and is composed of expected outcomes aligned to the following six themes<sup>28</sup>:

1. Implementing tangible on the ground adaptation measures,
2. Governance and decision making,
3. Improving our understanding of climate change,
4. Education training and awareness,
5. Mitigation of global greenhouse gas emissions,
6. Partnerships and cooperation.

Tonga has adopted these Frameworks for Action through its Joint National Action Plan (JNAP) on Climate Change Adaptation (CCA) and Disaster Risk Management (DRM) 2010-2015. Tonga is the first Pacific nation to have completed its Action Plan. The objectives of this Plan with relevance to international disaster assistance are –

<sup>27</sup> Secretariat of the Pacific Community Geoscience Division website: <http://www.sopac.org/index.php/framework>

<sup>28</sup> Secretariat of the Pacific Regional Environment Programme website: [http://www.sprep.org/climate\\_change/pycc/documents/PIFACC.pdf](http://www.sprep.org/climate_change/pycc/documents/PIFACC.pdf)

## Overview of relevant regional and international disaster risk management (DRM) laws and policies

- improved governance for climate change adaptation and disaster risk management (mainstreaming, decision making, organizational and institutional policy frameworks)
- enhancing community preparedness and resilience related to disasters
- strong partnerships, cooperation and collaboration within government agencies and with civil societies, non-government organisations and the private sector

## 2.3 Regional organizations and mechanisms

### 2.3.1 Pacific Islands Forum

The Pacific Islands Forum is the region's most influential political grouping comprising of 16 independent and self-governing states of which Tonga is a founding member. Its Secretariat is based in Suva, Fiji and the Secretariat's mandate is delivered through the annual Leaders Communiqués and high level minister meeting decisions<sup>29</sup>.

In 2012, Leaders of the Pacific Islands Forum encouraged Forum members to consider the IDRL Guidelines and to take appropriate measures to strengthen their national policy, and institutional and legal frameworks in collaboration with their National Red Cross Societies, the IFRC, the UN and other relevant partners<sup>30</sup>. A Memorandum of Understanding (MOU) with the Forum Secretariat was signed in 2014 to ensure continued momentum toward the Pacific region's implementation of the IDRL Guidelines. The MOU will provide a platform for joint activities between the IFRC and Forum Secretariat to promote awareness and encourage implementation of the IDRL Guidelines, including the development of IDRL-related laws and policies.

### 2.3.2 Secretariat of the Pacific Community (SPC) and the Geoscience Division (GSD) formerly known as SOPAC

SPC is the Pacific Island region's principal technical and scientific organisation. It delivers technical, scientific, research, policy and training support to Pacific Island countries and territories in fisheries, agriculture, forestry, water resources, geoscience, transport, energy, disaster risk management, public health, statistics, education, human rights, gender, youth and culture. SPC is owned and governed by its 26 members including all 22 Pacific Island countries and territories.<sup>31</sup>

The SPC Geoscience Division (GSD) covers any science concerned with the Earth. This includes geological, physical, chemical and biological processes that occur at the earth's surface or in its interior. It includes the tools used in SOPAC to assess whether the use of resources is viable, and to study natural disasters and their impact on island communities.<sup>32</sup> It is the focal regional agency for the region's Disaster Risk Reduction Programme which is implemented through the RFA.

<sup>29</sup> Pacific Islands Forum Secretariat website: <http://www.forumsec.org/>

<sup>30</sup> Forty-Third Pacific Islands Forum, Rarotonga, Cook Islands, 28 – 30 August 2012, Forum Communiqué, para. 73.

<sup>31</sup> Secretariat of the Pacific Community website: <http://www.spc.int/>

<sup>32</sup> Secretariat of the Pacific Community, Geoscience Division website: <http://www.sopac.org/>

### 2.3.3 Pacific Humanitarian Team (PHT)

Organized by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), the annual PHT Regional Meeting promotes international and regional best practice in humanitarian action across the Pacific Islands. The aim of the Regional Meeting is to strengthen dialogue and partnership between NDMOs and the PHT. Tonga's National Disaster Management Office is regularly represented at the annual meeting and during the response to TC Ian last year, requested the assistance of the PHT.

**International Disaster Response Law (IDRL) in Tonga**  
A study on legal preparedness for facilitating and regulating  
international disaster assistance

# **Chapter 3**

## Overview of Tonga's institutional arrangements for disaster management



This section outlines the existing rules and principles in Tonga for international emergency/humanitarian assistance in disasters.

IDRL Guidelines Article 8	Legal, policy and institutional frameworks
IDRL Guidelines Article 8(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.
IDRL Guidelines Article 8(2)	The legal, policy and institutional frameworks should adequately address the initiation, facilitation, transit and regulation of international disaster relief and initial recovery assistance consistent with the 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 points with States and assisting humanitarian organisations concerning United Nations emergency relief operations. They should also clearly designate 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.
IDRL Guidelines Article 8(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.

### 3.1 Legal and institutional frameworks

This study has ascertained a range of legislation and policies relevant to international disaster relief and initial recovery. In reviewing these, it is evident that Tonga is not in full compliance with the benchmark set in Articles 8(2) and 8(3) of the IDRL guidelines.

#### 3.1.1 Emergency Management Act (EMA) 2007

The Emergency Management Act 2007 (EMA) is the principal disaster management legislation in Tonga. It establishes the structures, functions and powers supporting Tonga’s disaster management system (**Annex C**). It is founded on a three-tiered, bottom-up structure being that local level is the basic unit to be supported by district and then national levels. The underlying conceptual foundation encourages “the effective utilization and coordination of government, non-governmental organisations (NGO’s), private industries and donor resources in support of disaster management

## Overview of Tonga's institutional arrangements for disaster management

programming.”<sup>33</sup> The powers conferred under the Act are in addition to, and do not limit the use of powers and the exercise of duties and functions, pursuant to other legislation.<sup>34</sup> However, where the exercise of powers under any other Act is inconsistent with the exercise of emergency powers, the EMA prevails.<sup>35</sup>

### 5 Effect on powers in other Acts

1. This section applies when a state of emergency has been declared under any other Act.
2. Where the exercise of powers under any other Act is inconsistent with the exercise of emergency powers under this Act, the emergency powers shall prevail over the powers under the other Act.

There has yet to be an occasion where the application of the EMA has been formally challenged by other regulatory authorities. However, as discussed below, the reality is that stakeholders have occasionally questioned the application of the EMA to specific procedures and aligning those procedures to the EMA has been ad hoc and time consuming. During the national consultation workshop, it was emphasized that there be full consultation in the drafting of the recommended Regulations to avoid any conflict of legal authority and mandates.

Tonga's legal framework is couched in terms of “emergency management” rather than “disaster management” although the latter has been formalized through the broader application of disaster risk management and disaster risk reduction. The terminology of “emergency” was adopted in the EMA and is reflective of a situation where “normal procedures are suspended and extraordinary measures are taken in order to avert a disaster”<sup>36</sup> and emphasizes “organisation and management of resources and responsibilities for addressing all aspects of emergencies, in particular preparedness, response and initial recovery steps.”<sup>37</sup> The EMA encompasses the key components of: emergency management governance structures and institutions (Part II); emergency management plans (Part III); and declaration of a state of emergency (Part IV).

However, the EMA does not adequately incorporate the salient provisions relating to international emergency assistance such as defining relevant phases, periods and time-frames, setting out the special measures to expedite assistance, specifying the applicable organizations and persons, regulating the nature of goods and services, describing the rules and obligations and the effect of non-compliance.

*It is recommended that additional measures are drafted to bridge these gaps in accordance with the principles contained in the IDRL guidelines and that these measures are augmented with the force of law into a set of regulations.*

### 3.1.2 Other relevant legislation

Over twenty other statutes define specific emergency situations and these include – outbreak of a serious animal disease;<sup>38</sup> unintentional release or trans-boundary movement

<sup>33</sup> National Disaster Management Plan & Emergency Procedures, p. 8.

<sup>34</sup> EMA, section 4(2)

<sup>35</sup> EMA, section 5(2)

<sup>36</sup> “Disasters and Emergencies – Definitions” at [www.who.int/disasters/repo/7656.pdf](http://www.who.int/disasters/repo/7656.pdf)

<sup>37</sup> “UNISDR Terminology” at [www.unisdr.org/we/inform/terminology](http://www.unisdr.org/we/inform/terminology)

<sup>38</sup> Animal Diseases Act 1978

of a living modified organism;<sup>39</sup> aircraft accidents and incidents;<sup>40</sup> environmental impacts – hazardous and radioactive wastes and chemicals,<sup>41</sup> environmental impacts such as drought, protection of wetlands and coastal areas and biodiversity protection;<sup>42</sup> explosions;<sup>43</sup> fire and dangerous goods;<sup>44</sup> public health emergencies;<sup>45</sup> marine pollution and dumping of wastes and other matter;<sup>46</sup> pesticides disposal;<sup>47</sup> storage and handling of petroleum;<sup>48</sup> plant pest emergency;<sup>49</sup> fire or security emergency at ports;<sup>50</sup> maritime recovery of vessels or property;<sup>51</sup> shipping accident;<sup>52</sup> port security and emergencies (bomb search, evacuation and security equipment failure);<sup>53</sup> civil emergency (earthquake, tidal wave, fire, flood, hurricane, famine or shortage of food, epidemic or outbreak of disease, shipping or aircraft disaster or any other disaster);<sup>54</sup> land and marine search and rescue operations;<sup>55</sup> and water pollution.<sup>56</sup> The Tonga Fire and Emergency Services Act 2014 came into force in November adding a further layer of authority and responsibility under the Tonga Fire and Emergency Services.

The EMA and the other relevant legislation already include some key legal principles relevant to international disaster assistance promulgated by statute or regulations. However there are still significant gaps in terms of IDRL. There is no distinct and specific instrument in Tonga that collates and enforces all the issues outlined in the IDRL Guidelines. These are instead scattered amongst a range of legal instruments.

### Recommendation 1: Focal Legislation on Emergency Management

- That the Government of Tonga articulates and promulgates under a single instrument the procedures, roles and responsibilities related to the facilitation and regulation of international disaster assistance in the event of a disaster in Tonga
- That the Minister responsible for Emergency Management exercises his regulation-making power pursuant to section 43 of the EMA to bring into force new emergency management regulations entitled the Emergency Management (Facilitation and Regulation of International Emergency Relief and Initial Recovery Assistance) Regulations (EMR)
- That the said EMR be formulated according to the Model Act for the Facilitation and Regulation of International Emergency Relief and Initial Recovery Assistance (“the Model Act”) with the appropriate amendments to align with the national legislation and regulations.

<sup>39</sup> Biosafety Act 2009

<sup>40</sup> Civil Aviation Act 2014

<sup>41</sup> Hazardous Wastes and Chemicals Act 2010 and Waste Management Act 2005

<sup>42</sup> Environment Management Act 2010

<sup>43</sup> Explosives Act 1972

<sup>44</sup> Tonga Fire and Emergency Services Act 2014

<sup>45</sup> Health Services Act 1991 and Public Health Act 2008

<sup>46</sup> Marine Pollution Prevention Act 2002

<sup>47</sup> Pesticides Act 2001

<sup>48</sup> Petroleum Act 1959

<sup>49</sup> Plant Quarantine Act 1982

<sup>50</sup> Ports Management Act 2001

<sup>51</sup> Ports Management Act 2001

<sup>52</sup> Shipping Act 1972

<sup>53</sup> Shipping (International Ship and Port Facility Security) Regulations 2004

<sup>54</sup> Tonga Defence Services Act 1992

<sup>55</sup> Tonga Police Act 2010

<sup>56</sup> Tonga Water Board Act 2000

## Overview of Tonga's institutional arrangements for disaster management

- That the EMR incorporate the relevant aspects of the General Provisions (Short Title, Purpose and Scope of the Regulations, Definitions and Existing Rights, Privileges and Immunities) to be modelled on Chapter 1 (Articles 1 to 4) of the Model Act.
- That section 5(2) of the EMA is amended to strengthen the application of the Act and recommended Regulations so that where there is inconsistency with other existing legislation, the EMA and the Regulations will prevail.

## 3.2 Policy and Regulatory Framework

### 3.2.1 Tonga Strategic Development Framework II (2015 – 2025)

The Government has recently delivered its second Tonga Strategic Development Framework for 2015-2025 entitled “A more progressive Tonga: enhancing Our Inheritance” with one of the key outcomes being inclusive, sustainable and effective resilience to climate and risk with a focus on –

#### **Outcome 3.6: Improved collaboration with development partners**

*As a small developing economy, we have access to a range of development assistance from bilateral and multilateral development partners. We appreciate this support, both in terms of financing and advice; however, it is not always easy to manage this support to ensure effective aid and development support. Improved coordination, alignment and harmonization of external aid and development support, along with an equitable usage across the Kingdom, is critical for improving the contribution this makes to our vision.*

**Organizational Outcome:** *Improved collaboration and dialogue with our development partners to ensure that their support is consistent with our needs and better meet the international standards set out in the various international Declarations and Accords.*

#### **Outcome 5.4: Improved resilience to natural disasters and impact of climate change**

*We are one of the most vulnerable countries to natural disasters in the form of earthquakes, tsunamis, hurricanes and general flooding. Future climate change is only likely to make some of these events more serious. The potential for damage can be lessened by the application of better technologies, more inclusive education and response awareness, and more appropriate infrastructure as well as limiting building on more disaster prone areas. Once a natural disaster has happened it is necessary to be able to move quickly into action to help communities avoid further death, ill health and damage. These services are particular important for more vulnerable and isolated groups.*

**Organizational Outcome:** *Improved national and community resilience to the potential disruption and damage to wellbeing, growth and development from climate change and natural disasters, including extreme weather, climate and ocean events, with particular focus on the likely increase in such events with climate change.*

### 3.2.2 Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management 2010 – 2015 (JNAP – CCDRM)

Tonga is the first of the Pacific Island nations to complete, endorse and implement its JNAP-CCDRM – an integrated approach to development needs through climate change

adaptation and disaster risk management. This action plan provides a strong impetus for implementing programs and activities to enhance Tonga's ability to anticipate and respond to disasters. A key aspect of the JNAP is to strengthen the National Emergency Management Plan 2009 (NEMP) as a coordinating tool for Tonga's emergency response mechanisms. Whilst there are broad references to strengthening the legal and policy framework and enhancing coordinating efforts amongst stakeholders, there is no specific reference to international assistance in the event of a disaster.

### 3.2.3 National Emergency Management Plan (NEMP) 2009

The NEMP was formulated under the EMA which directs the National Emergency Management Committee (NEMC) to prepare a National Emergency Management Plan (NEMP)<sup>57</sup>, to include provision for the following –

- a. mitigation, preparedness, response and recovery, based on a risk management process;
- b. specific events under this Act;
- c. the roles and responsibilities of relevant bodies;
- d. priorities for disaster risk reduction;
- e. arrangements of provision of support from other nations and donor agencies;
- f. support and coordinate the District Emergency Management Committees; and
- g. any other matter it considers appropriate.

The NEMP is the key reference document and planning tool for disaster management, and is a core guiding document for Tonga's National Emergency Management Office. The principles of mitigation, preparedness, response and recovery are outlined in the NEMP with descriptions of structures and measures to give effect to each principle. The NEMP details the government policy and management strategies for the design, development and implementation of effective disaster management programmes and activities, and includes the operational procedures for effective response to designated high risk hazards.<sup>58</sup> Although the concepts and principles of the Plan provide a useful guideline for domestic response, the references to international assistance are minimal. Those references are –

- a. that it is the function of the National Emergency to have in place arrangements with other nations and relevant bodies to provide support to the Kingdom during major emergencies;<sup>59</sup>
- b. that it is the function of the Ministry of Foreign Affairs to – 1) provide the link between the National Emergency Management Committee and the Diplomatic Corps in Tonga and 2) Coordinate the Kingdom's external relations, and liaise with overseas countries/agencies on aid issues;<sup>60</sup>
- c. that in the post-impact period (within 24-48 hours) an Initial National Situation Report is to be distributed to international actors such as UNOCHA, SOPAC and diplomatic corps;<sup>61</sup>

<sup>57</sup> EM Act, section 28.

<sup>58</sup> NEMP (2009) – Annexure A – Operational Support Functions.

<sup>59</sup> NEMP (2009), pages 15 and 49.

<sup>60</sup> NEMP (2009), page 56.

<sup>61</sup> NEMP (2009), page 61.

## Overview of Tonga's institutional arrangements for disaster management

- d. that in the post-impact period (within 48-72 hours) a formal National Situation Report is to be distributed to international actors such as UNOCHA, SOPAC and diplomatic corps;<sup>62</sup> and
- e. that in the post-impact period (within 48-72 hours) the Ministry of Foreign Affairs on overseas emergency relief as required.<sup>63</sup>

A matrix of stakeholders is set out in **Annex D** that describes roles and responsibilities of public and private agencies as well as the national resource base during “emergency operations”.<sup>64</sup> These stakeholders are either mandated by legislation or described in the NEMP. The key players being – Over the course of this study a number of concerns

Prime Minister	His Majesty's Armed Forces (HMAF)	Ministry of Revenue Services
Cabinet	Tonga Police Force	Ministry of Agriculture, Forestry, Fisheries and Food
Chief Secretary and Secretary to Cabinet	Tonga Fire and Emergency Service	Broadcasting Services
Ministry of Infrastructure	Ministry of Foreign Affairs and Trade	Tonga Power Ltd
Tonga Meteorological Service	Ministry of Lands and Natural Resources	Essential Public Services and Utilities
Manager (National Emergency Management Office)	Ministry of Health	Private Sector – Businesses and Tonga Chamber of Commerce and Industries
National Emergency Management Office	Ministry of Environment and Communication	Non-Government Organisations and Community Based Organisations
National Emergency Management Committee	Ministry of Internal Affairs	Tonga Red Cross Society
National Emergency Operations Committee	Local Government	
National Emergency Recovery Committee	Ministry of Education and Training	

were expressed by stakeholders regarding the relevance and application of the NEMP to international assistance in emergency situations. Concerns voiced included, inter alia, that:

- it does not adequately establish a national framework to guide and direct other policies and plans as it does not set standard procedures for international assistance;
- it is fundamentally inconsistent with the EMA as it does not articulate the operational aspects that are relevant to international assistance;
- it is outdated and in many parts redundant as it does not reflect developments in public sector reform, technological advances, national policy framework and international frameworks (disaster risk management, disaster risk reduction and land use planning and management) or stakeholder capacities;

<sup>62</sup> NEMP (2009), page 61.

<sup>63</sup> NEMP (2009), page 61.

<sup>64</sup> EM Act, section 2, “**Emergency operations**” means activities undertaken before, during or after an event happens to help reduce loss of human life, illness or injury to humans, property loss or damage or damage to the environment.



- it does not inform emergency management responses at national, district and village levels;
- it is inconsistent with emergent international best practices in disaster management such as the IDRL Guidelines for example and needs to be re-aligned to national DRM and DRR policies such as the JNAP-CGDRM;
- it does not provide a sound basis for effective liaison between government and other agencies involved in disaster management because the emergency management system outlined in the NEMP does not detail the flow of support and information in an emergency period;
- it does not adequately assign roles and responsibilities, processes and resources required to prepare for, respond to, and recover from the disasters that may impact on the community
- it does not incorporate any standard operating procedures to guide and direct the operational actions and decisions; and
- there has been no review or evaluation of the plan's procedures and arrangements to ensure they remain relevant, efficient, effective and flexible.

The scope and variety of disaster related actions that should be incorporated into the NEMP as a means of identifying and allocating responsibilities and tasks to relevant agencies and organizations underline the need for a carefully organized and systematic approach to all aspects of disaster management.<sup>65</sup>

### Recommendation 2 – National Emergency Preparedness and Planning

- That the NEMP be reviewed with a view to formulating a new plan that is founded on: a clear and coherent approach to dealing with emergencies; a common reference for all departments and authorities which have roles in emergency response activities; incorporating linkages with all lead agencies who have control over specific emergency events; a basis for coordinated action through partnerships amongst stakeholders; a clear allocation of responsibilities; a robust communications strategy; a focus on emergency-related training; a basis to review and evaluate current and future disaster management requirements; and sustained community engagement and participation.
- In addition, the NEMP should include standard operating procedures on operational matters, including but not limited to – direction and coordination of emergency-related actions; emergency operations center activities; alerting and activating the emergency management system; communications; warning; survey and assessment; information management; emergency logistics and be aligned to the recommended EMR.
- The EMR should incorporate a provision modelled on Chapter II of the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Model Act) detailing the following - Assessment of the Need for International Disaster Assistance; Requests for International Disaster

<sup>65</sup> Referred to in Recommendation 1



## Overview of Tonga's institutional arrangements for disaster management

Assistance; Offers and Acceptance of International Assistance; International Disaster Relief and Initial Recovery Periods; Termination of the International Disaster Relief Period; Termination of the International Initial Recovery Period and International support for the Tonga Red Cross Society.

### 3.3 Tonga's national response: roles and responsibilities

The relevant stakeholders in Tonga's emergency management framework are tasked with ensuring that coordinated and collaborative arrangements are in place to manage the potential adverse effects of an event, including mitigating community risk, preparing for and responding to threatening events and recovering from an emergency.<sup>67</sup> However, coordination efforts are inadequate and the Tongan experience in recent major natural disasters has indicated that there is a need to clarify the roles and responsibilities of stakeholders to ensure that the tasks assigned to them are executed effectively.

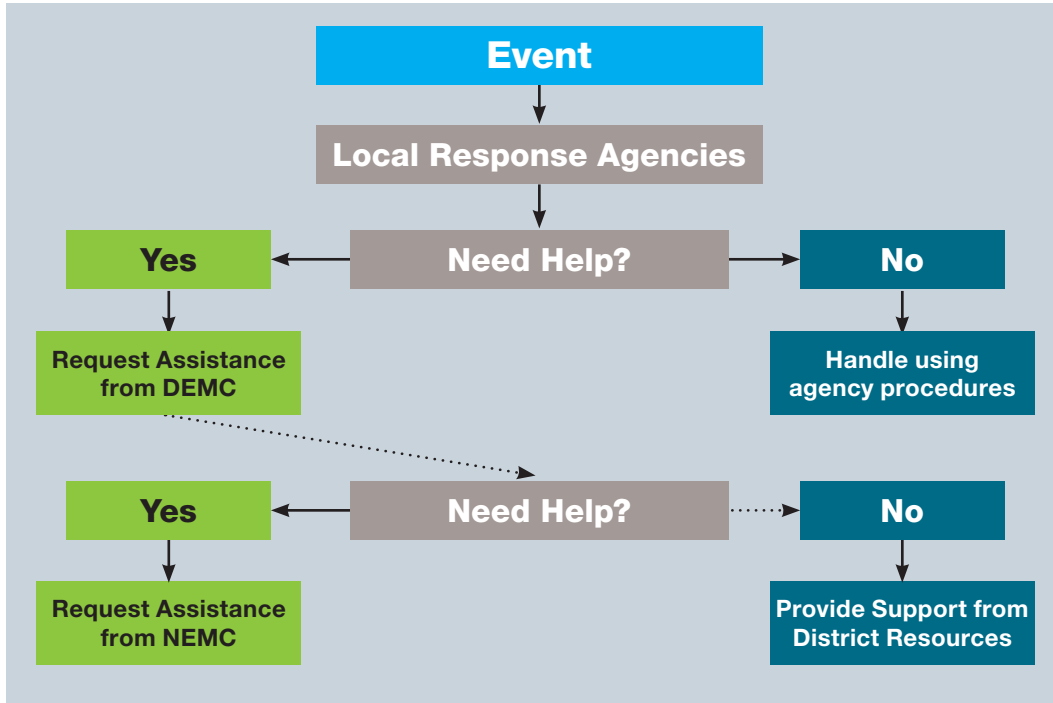
#### 3.3.1 National governance structure

The national governance structure comprises of the following –

1. Prime Minister who is allocated the power to declare a state of emergency for the Kingdom.
2. Cabinet (referred to in the NEMP as the National Disaster Council), which has state executive oversight of matters that may affect national interest.
3. Minister responsible for emergency management (currently the Minister for Environment and Communications (MEC))
4. Chief Executive Officer of MEC, who has executive and administrative responsibility for the operations of the National Emergency Management Office (NEMO).
5. Manager of the NEMO, who is responsible for the daily operations and administration of NEMO.
6. NEMO, which is established under the Act as a Division of the MEC.
7. National Emergency Management Committee.
8. National Controller and National Emergency Operations Committee (NEOC).
9. National Emergency Recovery Committee (NERC).
10. District Emergency Management Committees (DEMC).
11. Village Emergency Management Committees (VEMC).

<sup>67</sup> EM Act, section 2.

Diagram of EM System



In the course of this study, one of the key issues highlighted by stakeholders was NEMO’s severe capacity constraints, including limitations in funding and human resources, which is impacting on its ability to act effectively as the central agency for emergency management. Although this study’s primary focus is on international assistance during time of disaster, in the course of stakeholder interviews it was clear that stakeholders considered it a priority that immediate attention and remedial measures are put into place to build and maintain NEMO’s capability as the national agency for emergency management. It was suggested by NEMO that these constraints may be identified and addressed with the development of a resource framework.

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# Chapter 4

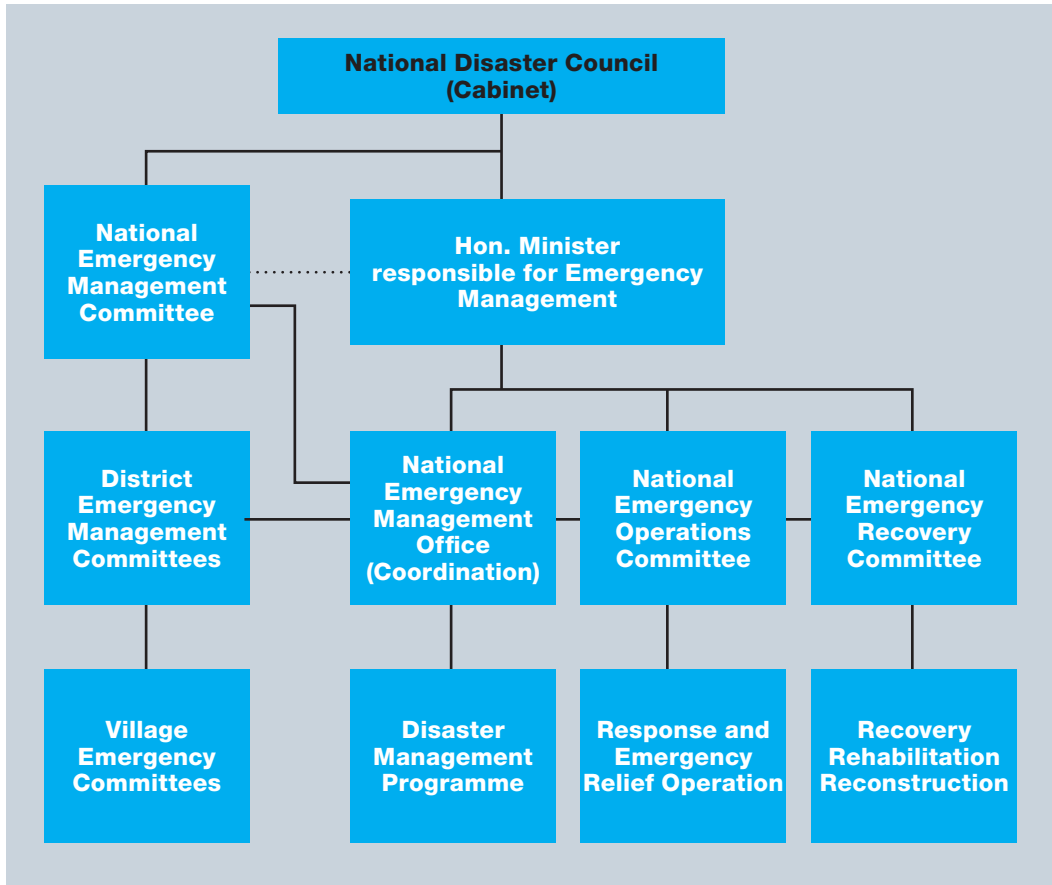
## Tonga as a recipient of international assistance

## 4.1 Lead Agency Response and Assessment for the Need of International Assistance

IDRL Guidelines Article 3(2)	Legal, policy and institutional frameworks
IDRL Guidelines Article 8(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.

The EMA entrenches an All Hazards or Functional approach which is described in the NEMP “...the focus is on emergency support function to be performed, rather than the specific hazard being prepared for or responded to.”<sup>68</sup> This means that where the operational event can be readily dealt with by the responding agencies, using the resources available to them, then it is not necessary to activate the emergency management system operationally.<sup>69</sup>

### Emergency System in Operation



<sup>68</sup> NEMP (2009), page 44.

<sup>69</sup> NEMP (2009), page 46.

## Tonga as a recipient of international assistance

The following table sets out the present Operational Lead Agencies for co-ordination of emergency operations, as described in the NEMP.<sup>70</sup>

Event	Coordinating Agency
Emergency Animal or Plant Disease	Ministry of Agriculture, Forestry, Fisheries and Food
Fire and Flammable Hazards	Tonga Fire and Emergency Service
Cyclone/Storm/Flood/Landslip/ Earthquake/Volcanic Eruption/Tsunami	National Emergency Management Office (on behalf of the National Emergency Management Committee)
Hazardous Material Event	Tonga Fire and Emergency Service
Human Epidemic	Ministry of Health
Major Infrastructure Failure	Tonga Power Ltd Communications: Ministry of Environment and Communications, Prime Minister's Office and Tonga Communications Corporation
Major Transportation Event	Tonga Police Force
Terrorist Activity	Tonga Police Force His Majesty's Armed Forces
Water Contamination	Ministry of Health
Oil Spill	Ministry of Infrastructure (Marine Division) Tonga Ports Authority
Plane Crash	Tonga Police Force His Majesty's Armed Forces

The practice over the years (which was reinforced with the passage of the EMA) is for lead agencies with statutory mandate to respond to emergency events and to request the activation of the EMA when the lead agency's resources are exhausted and national response and/or international assistance is required.<sup>71</sup> This is described in the NEMP (and confirmed by the Manager of NEMO) as activation of the emergency management system when there is a need to<sup>72</sup> –

- a. monitor potential threats or response operations;
- b. coordination of support to response operations being conducted by a response agency; and
- c. coordination of resources in support of emergency response and recovery operations.

Despite this practice, a strong sense of uncertainty was expressed by many stakeholders as to when and how, the EMA should come in to force in order to activate the national response and recovery system, particularly where international assistance is a critical element to the response operations. There are no prescribed or recognizable protocols to define the shift and transition from Responding Agency response to National Emergency Management level.

**Recommendation 3:** That the process of executing the All-Hazards approach should be further clarified and addressed in the formulation of a new NEMP.

<sup>70</sup> NEMP (2009), page 58

<sup>71</sup> NEMP (2009), page 45.

<sup>72</sup> NEMP (2009), page 46.

## 4.2 Early Warning Systems and Activating the Emergency Management System (EMS)

IDRL Guidelines Article 7(1)	In order to minimize trans boundary 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.
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There are two main agencies with roles in early warning systems. However, there is some duplication of activities and both are lacking in legislative authority and mandate<sup>73</sup> which needs to be urgently addressed. The Tonga Meteorological Services (TMS) is responsible for weather-related information and warnings but there is no enabling legislation to authorise and regulate this service. The TMS relies on the regulation-making powers of the recently repealed Civil Aviation Act 1990 where regulations can be made for the provision of meteorological information for the purposes of civil aviation<sup>74</sup>. The Geological Services Unit (GSU) is responsible for seismic/volcanic activity, tsunami-watch and coastal inundation. However the GSU has no resources to operate on a 24-hour shift and therefore it relies heavily on the capacity of TMS to operate 24 hours. The GSU also has no legislative authority to carry out its functions. There are operational procedures in place including information flow. However, it is still considered by both agencies to be an ineffective early warning system as both agencies may activate a warning alert in certain circumstances but each agency reports to a different Minister. The GSU reports to the Minister for Lands and Natural Resources, whilst the TMS reports to the Minister for Environment and Communications (and responsible for Emergency Management). The crucial question for these two agencies is certainty in what action is required and what discretion, if any, can they exercise to activate the emergency management system – given that there are no express legal mandates.

Tonga's EMS is activated according to the stages established by the previous National Disaster Management Plan<sup>75</sup> and which the Legal Researcher has confirmed through her participation in a simulation exercise:-

### • Stage One – Readiness

This stage comes into effect when some form of information is received which indicates that the provisions of the NEMP, and/or associated plans, may be invoked. There is no protocol as to the type of information that will invoke the plan. That information includes meteorological information from TMS office, geo-hazard information from the Geological Services Unit or notification from Response Agencies. The Chairman of the NEMC will declare this stage in force and alert appropriate organizations of such action.

### • Stage Two – Standby

This stage comes into effect when it is established that a threat exists to all or part of the Kingdom. It requires that all relevant organizations and personnel are placed

<sup>73</sup> National Tsunami Plan (2012), page 11.

<sup>74</sup> Section 7(2)(i).

<sup>75</sup> NDMP, page 25.

## Tonga as a recipient of international assistance

on standby to begin operations or actions immediately as they are called upon. The NEMC in consultation with the NEMO and National Controller will determine when this stage becomes operative. In some circumstances there may be no warning or insufficient warning of an impending threat and therefore it may not be possible to progress through stages one and two in a normal fashion nor will it be possible for consultation to occur. In such circumstances, it is unclear as to which entity holds the primary authority and responsibility to activate those stages

### • Stage Three – Activation

This stage comes into effect when the threat is imminent; or in an impact situation where a disaster or emergency has already occurred. The National Controller will activate this stage and call upon participating organizations to take action in accordance with planned procedures and/or as directed by the National Controller.

### • Stage Four – Stand Down

The order/directive for agencies and organizations to stand down will be given by the Minister in consultation with the National Controller once a full assessment has been made, the threat has abated, and/or disaster relief operations are well advanced. This will be a gradual process with organizations whose operational responsibility is diminished over time being stood down in stages.

The description and implementation of these four stages does not specify when and how international actors are to be informed and the requested for international assistance activated. The resident diplomatic corps expressed disquiet that such uncertainty hinders effective and timely dialogue and response and heightens sensitivities and tensions in times of emergencies. The lack of clear information sharing protocols means that international actors are compelled to be proactive and gather information informally which means its accuracy and reliability may be questionable.

An important aspect of activating the EMS is the mobilisation of the National Emergency Operations Center (NEOC) – the hub of any emergency operation. No reference is made in the EMA regarding this crucial operational component. The NEMP makes reference to the NEOC as the responsibility of NEMO to maintain and operate a NEOC including the training of personnel to operate the Centre.<sup>76</sup> However, the Legal Researcher has observed that the National Emergency Operations Committee (National Controller) seems to be primarily responsible for the Center during emergency periods. It is a responsibility that ultimately the NEMO assumes under its mandate to support the NEMC and NEOC, coordinate EM activities and manage effective communication with all EM stakeholders. Standard Operating Procedures (SOPs) for the NEOC were drafted in 2011 but have not been endorsed nor implemented. The delay in endorsement appears to be related to the plans to review the NEMP and incorporate these SOPs into a new NEMP. During a simulation exercise<sup>77</sup> hosted by NEMO and in the aftermath of TC Ian, a major concern expressed by key actors was the absence of SOPs which was viewed as a key weakness in the national emergency response mechanisms.

The process outlined above does not contain provisions for international assistance or information to international actors. There is a need to strengthen the procedures

<sup>76</sup> NEMP, page 49.

<sup>77</sup> Disaster Simulation Exercise – Tsunami (Tonga, Samoa and Fiji), UNOCHA, World Food Program and Adventist Development and Relief Agency (ADRA).



for activating the different stages of the EMS so that it is clear as to when a request for international disaster assistance will be initiated, deployed and terminated and by whom.

### 4.3 Declaration of an Emergency Situation

Pursuant to the EMA, the Prime Minister may declare a state of emergency for the Kingdom, or a part of the Kingdom, if satisfied that — (a) an emergency has happened, is happening or may happen in the Kingdom; and (b) it is necessary for emergency powers to be exercised to prevent or minimise – loss of human life; illness or injury to humans; property loss or damage; or damage to the environment. Such declaration is area specific and remains in force for 28 days.<sup>79</sup> That period may be terminated earlier,<sup>80</sup> it may be renewed<sup>81</sup> or it may simply expire.<sup>82</sup>

The EMA does not specifically require a declaration of emergency to be made before an official request for international assistance is made.

Entrenched conventional practice maintains that a declaration of a state of emergency is required in order to activate the initial protocols and procedures for requesting international assistance, though this is nowhere stated in the EMA or NEMP. That is, formal notification to donor partners and partner organisations of an event requiring emergency response and action. Tropical Cyclone Ian hit Tonga on 11 January 2014 and on 21 January, the Government of Tonga formally accepted the offer for international assistance from the Pacific Humanitarian Team.

A declaration of emergency may also be made by other authorities under separate enabling legislation. For example, declarations of emergency may be made by the:

- CEO of Agriculture, Forestry, Fisheries and Food for animal disease and plant pest emergency;
- Minister of Health – public health emergency;
- CEO of Environment and Communications – environmental disasters;
- Minister for Infrastructure – transport sector emergencies; or
- Commissioner of Fire and Emergency Services – fire and emergencies

The consequences of these states of emergencies include extensive powers to act in response to an emergency (quarantine or cordon off an emergency area, authorises access to premises, assume control of property and impose restrictions on personal liberties), primary authority over the emergency response and recovery, impose penalties and fines for non-compliance and immunity of authorised persons from liability or prosecution for acts or omissions in the exercise of emergency powers.

In these circumstances, there is no prescribed protocol for lead agencies to notify or consult with the Minister responsible for Emergency Management on the occurrence of these emergency incidents.

<sup>78</sup> EM Act, section 32(1).

<sup>79</sup> EM Act, section 32(2).

<sup>80</sup> EM Act, section 33.

<sup>81</sup> EM Act, section 34.

<sup>82</sup> EM Act, section 35.

## Tonga as a recipient of international assistance

There have been occasions where international assistance has been rendered without an official declaration having been made. For instance, in discussions following Tropical Cyclone Ian last year, the resident diplomatic corps initiated assistance from their respective countries for immediate needs such as tents, blankets, hygiene kits and water. Through the defence cooperation program the Orion aerial surveillance was requested overseas prior to the declaration being made. However, because international assistance is based on the conclusion that domestic resources have been overwhelmed, a proper disaster assessment will be required to justify the request made. Therefore, the activation of the emergency management system should ensure that appropriate phases and procedures are triggered to direct the provision of necessary information to inform an official request for international assistance.

Tonga's Cabinet has historically played, and continues to play, an active, hands-on operational role in national affairs. Therefore, conventionally all emergencies are matters that must be brought to the Cabinet's attention before any further action is taken. In the absence of documented protocols, the procedure and specific agency responsibilities are unclear. Thus, there are no safeguards against delay and in extreme circumstances Cabinet may be forced to take over certain aspects of EM to deal with the urgency and exigency of the circumstances. For example, in 2009 Cabinet directed a Cabinet Minister to act as National Controller in a devastating tsunami event in Tonga's most northern island group. The Minister responsible for Emergency Management remained at the capital to enable timely and effective response from NEMO. Whilst this proved to be an effective decision from many perspectives, other challenges were presented which impacted on the proper operation of the EM system. One of the main challenges was the collapse in the lines of communications affecting coordination efforts.

A procedure for making the emergency declaration is specified in the EMA. A declaration of emergency activates the EM system imposed by the EMA. The statutory authorities, powers, functions and duties of the EM system are triggered and operations commence as directed by the appropriate committees. A critical aspect in the emergency operations is the activation of the Emergency Fund Act and access to these contingency and financial resources for relief and reconstruction. In the aftermath of TC Ian, the initial tranches of external financial assistance were deposited to the Emergency Fund shortly after the emergency declaration was announced by the Tongan Government.

### **Recommendation 4: Early Warning Systems and Activating the Emergency Management System (EMS)**

- That the elements of international disaster assistance within Tonga's emergency management system be strengthened through defined stages of initiating, facilitating and terminating international assistance, with distinct periods for international disaster relief and initial recovery.
- That EMR sections responding to this recommendation be modelled on Chapter II (Articles 8 to 10) of the Model Act.

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# **Chapter 5**

## Role of civil society organizations

## Role of civil society organizations

IDRL Guidelines Article 3(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.
IDRL Guidelines Article 4(3)(c)	To the greatest extent practicable, the disaster relief and initial recovery of assisting actors should also be coordinated with other relevant domestic and assisting actors.
IDRL Guidelines Article 8(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 organisations should devote adequate resources to ensure the effectiveness of these frameworks.

Civil society organisations form a dynamic component of Tonga’s development framework and are active participants in implementing development activities. The NSDF recognises the role of civil societies in building strong resilient communities.

## 5.1 Role of Tonga Red Cross Society (TRCS)

The Tonga Red Cross Society Act 1972 states that the objective of the society “...shall be to carry on and assist in the work for...the mitigation of suffering throughout the world in times of peace and war.” The Society’s mission in the Kingdom is “to prevent and alleviate human suffering in Tonga focusing on disaster management, persons with disabilities, health promotion and humanitarian laws and values.” Notwithstanding the esteemed position held by the Society in emergency and disaster response, there is no express reference of the Society in the EMA.

Section 5 of the Tonga Red Cross Society Act states that “[t]he Society is hereby recognized by the Government of the Kingdom of Tonga as a Voluntary Aid Society auxiliary to the public authorities both for the purpose of the said Geneva Conventions and otherwise...” while section 6 goes on to say “The independent and voluntary nature of the Society shall at all times be respected in accordance with the resolution relative to National Red Cross Societies adopted by the General Assembly of the United Nations on November 19th, 1946”. These two provisions entrench the legal foundation for the recognition, operation and function of the TRCS today. TRCS is mandated by an Act of Parliament – which means it cannot be legally described as an NGO. TRCS is a recognized “auxiliary” to the public authorities – hence, it is an extension of the arm of the government and works to substitute or supplement government activities in times of disasters. At the same time, TRCS is also accorded independence allowing it to freely act according to the Fundamental Principles of the Red Cross and Red Crescent Movement. The Tonga Red Cross thus has a unique legal structure among Tongan civil society organizations.

The NEMP describes the role of the Society as –

- providing a representative to the National Emergency Recovery Committee (NERC)
- assisting in public awareness campaigns and disaster management training activities through national headquarters and branch officials
- assisting in damage assessment and post operation review
- providing relief goods, emergency shelter, and first aid service for disaster victims as appropriate in co-ordination with NEMC
- seeking assistance from the International Federation of Red Cross and Red Crescent Societies (IFRC) for international relief when required
- ensuring adequate supply of blood is available
- assisting in the tracing of missing persons

The EMA provides for the co-opting of an NGO representative in the NERC, and despite the express provision in the NEMP that the TRCS is to provide a representative to the NERC, the TRCS has not been part of this formal disaster management structure for over 6 years now. The pre-existing 1999 National Disaster Management Plan prescribed the TRCS as a member of the NDMC and the National Disaster Working Group and the TRCS was an active participant in the emergency management system. However, the latter version of the NDMP excludes TRCS and this makes Tonga one of the only countries in the region to omit the National Red Cross Society as a member of its national disaster management committee. The NEMP defines a role for the TRCS as a major stakeholder and as a member of the NERC. However, this does not reflect the critical role played by TRCS in initial relief operations or the role it plays in community training and preparedness. This disengagement has been viewed with considerable concern and steps have been taken to express these concerns through a written submission to responsible Minister. The experiences of the TRCS following TC Ian suggest that the disconnection has yet to be satisfactorily resolved, as consultation and dialogue with the TRCS at this event was intermittent. However, the TRCS continues to demonstrate its ability to play a crucial role in disaster response with its resources called upon frequently by Government during the disaster response phase.

At a meeting of the TRCS management and staff held in Nuku'alofa in late 2013 to review its Corporate Plan, positive feedback was provided by one of the Island Districts Branch Managers. A District Emergency Management Committee (DEMC) had been recently established at Vava'u and TRCS branch manager has been invited as a member of that Committee. This is a positive development and should provide the impetus for TRCS to re-connect with the formal structure through the district and village emergency management committees. Given the recommendation that a new NEMP be developed, it would be an opportunity for TRCS to reflect upon and review its DM role and to make the appropriate representations to secure membership in the NEMC under the terms of the new Plan

During the consultations, it was noted that TRCS is one of the few organisations that have an up to date Disaster Management Plan (updated to March 2013). The Legal Researcher was most fortunate during this study to have participated as a Red Cross

83 NEMP, page 56.

## Role of civil society organizations

volunteer in a simulation exercise and was able to experience the execution of its SOPs under that Plan. It would seem logical and practical that the TRCS Disaster Management Plan be aligned to the Tonga National Emergency Management Plan so that they are complementary plans falling under the same umbrella framework. This would mean that both government and TRCS are involved in the planning and development of each of their plans to ensure harmonisation.

Under the EM Act, the only national committee that has express power to co-opt NGO representatives is the NERC.<sup>84</sup> This is in addition to the NEMP allocating the TRSC as a member of the NERC. However, the Acting Attorney General has advised that there is inherent jurisdiction for the NEMC to co-opt any entity pursuant to the EMA. In that regard, the endeavors by the TRCS to be re-instated as a member of the NEMC should be recognized.

### Recommendation 5: Role of the Tonga Red Cross Society

- That the Minister responsible for Emergency Management co-opt the TRCS as a permanent member of the National Emergency Recovery Committee pursuant to section 17 of the Emergency Management Act.
- That the TRCS be included as a member of the Taskforce on International Disaster Assistance Preparedness referred to in Recommendation 13 below.
- That the EMR be modelled on Chapters II (Article 11) and III (Article 13) of the Model Act.
- That the auxiliary status and Fundamental Principles of the TRCS be further recognised by ensuring that domestic delays do not inhibit the TRCS' ability to initiate the assistance from the Foreign Components of the International Red Cross and Red Crescent Movement.

## 5.2 Role of other civil society organisations

The Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management 2010-2015 places strong emphasis on “enhanced community preparedness and resilience to impacts of all disasters” and “strong partnerships, cooperation and collaboration within government agencies and with civil societies, NGOs and the private sector.”<sup>85</sup> Consultations with the Civil Society Forum of Tonga, Act for Peace and the Tonga Community Development Trust revealed a robust and committed approach by civil society to building community resilience in emergency management. Further work is required to bring these positive developments under the formal EM structure. For example, only recently Village Emergency Management Committees (VEMC), which are prescribed in the EMA, have been established and Village Emergency Management Plans (VEMP) have been drafted under an Act for Peace project.<sup>86</sup> However, these have not been integrated into the EM structure and further resourcing is required to implement these plans. There is also a need to strengthen meaningful engagement and dialogue with civil society as an important resource base and community-based access and connections.

<sup>84</sup> EM Act, section 17.

<sup>85</sup> JNAP-CDDRM, page 6

<sup>86</sup> Act for Peace is an Australian faith-based humanitarian organization.

In Tonga, the churches play a significant role (directly through their domestic and international members and congregations and through their humanitarian branches<sup>87</sup>) in responding to emergencies. The churches are associated through the National Council of Churches and National Forum of Church Leaders. In the aftermath of TC Ian, the churches were amongst the first responders mobilizing local members and the Tongan diaspora.

The three-tiered structure in the EMA provides opportunities for the civil society to effectively engage in a meaningful way with Emergency Management at the district and village levels. However, there is a need to enhance the role of civil society by formal recognition of the critical role that they play and their proven ability to execute initial and immediate emergency response.

### Recommendation 6: Role of other civil society organisations

- That key civil society organizations are included as members of the Taskforce on International Disaster Assistance Preparedness referred to in Recommendation 13 below.
- That the EMR under this recommendation be modelled on Chapter III (Article 13) of the Model Act.

<sup>87</sup> These include Caritas (Catholic Diocese of Tonga and Niue), Adventist Development and Relief Agency (Seventh Day Adventist Church), Salvation Army and Humanitarian Aid and Welfare Services (Church of Jesus Christ of the Latter Days Saints).



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# **Chapter 6**

## Requests for international disaster relief and assistance

IDRL Guidelines Article 10(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 assessments with the United Nations and other assisting humanitarian organisations.
IDRL Guidelines Article 10(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.
IDRL Guidelines Article 10(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.

## 6.1 Assessment to inform request for international assistance

Following an emergency declaration, there are no prescribed timelines for requesting international assistance. However, the NEMC is of the view that such a request should be initiated once the different levels of disaster assessments have been completed, needs are identified, quantified and prioritised, and responsibilities allocated to the relevant international agencies. International assistance is most effective when based on a request which is the outcome of proper damage assessments being undertaken to determine the needs of those affected in an emergency. Concerns were expressed following Tropical Cyclone Ian targeted at the perceived delay from Government between the declaration of the state of emergency (on 11 January 2014, the same date that the cyclone hit) and the formal request for international assistance (which was formally made on 21 January 2014 through the Pacific Humanitarian Team). However, according to the Chairman of the NEMC and Minister responsible for emergency management, it was vital that an adequate damage assessment was first undertaken to inform the request of international assistance. On 30 January 2014, Tropical Cyclone Ian Response Plan was endorsed and included Annex 4 on International Assistance.

The EMA assigns disaster assessments as the responsibility of the NEOC (for initial assessments) and the NERC (for detailed sectoral assessments). The outcome of the disaster assessments is the foundation of effective response operations which is dependent on two critical factors – information and resources. Once reliable information is available from the disaster assessments then the request for international assistance and resources can be initiated.

The superseded 1999 National Disaster Management Plan (NDMP) states that the decision on whether international assistance is to be requested will be determined by the NEMC, who will submit through its Chairman and to Cabinet, a recommendation that a formal request for international assistance is initiated. The EMA directs the NEMC to “have in place arrangements with other nations and relevant bodies to provide support to the Kingdom during major emergencies.” Unfortunately however, there are no guidelines as to what constitutes a “major emergency” such as to warrant the activation of

## Requests for international disaster relief and assistance

international assistance. Such criteria has not been formulated nor have any specific arrangements been developed and implemented. The 1999 procedure continues to be the accepted procedure although it is not mirrored in the NEMP.

The Draft Disaster Assessment Manual (2011) formulated by NEMO (but which has yet to be endorsed) provides a useful timeline<sup>88</sup>

- Initial Situation Overview – usually an aerial assessment by the NEOC within 8 hours of the event impact, which would determine whether to advise that a state of emergency be declared.
- Initial Disaster Assessment – carried out by the NEOC within 48 hours after the emergency, which would then enable the Cabinet to allocate national resources as required and to determine whether to request foreign assistance.
- Detailed Sectoral Assessment – carried out by the NERC, to be completed at least within 2 months of the emergency and requires detailed sectoral assessments. These are submitted to Cabinet to determine the long-term recovery program.

### Recommendation 7: Assessment to inform request

- That the EMR provide for the assessment of the need for international disaster assistance to determine that domestic capabilities are sufficient or whether the scale of the disaster requires a request for international disaster assistance.
- That the EMR under this recommendation be modelled on Chapter II (Article 5) of the Model Act.

## 6.2 Governmental focal point for requesting international assistance

The Minister of Foreign Affairs and Trade (MFAT) is responsible for requesting international assistance upon the direction of Cabinet although there is no specific legislation conferring specific powers and authority. The NEMP assigns to MFAT the role of the focal liaison point for overseas emergency relief assistance and external relations. Furthermore, there are conventional diplomatic protocols and conventions which require all government requests for international assistance to be communicated by MFAT. The Secretary for Foreign Affairs is a member of the NERC and NEOC under the EMA with the intention that he will administer the formal channels of request and accepting of offers of assistance from international agencies.

Although there are references in the EMA and NEMP to the roles of the NEMC and the Ministry of Foreign Affairs that may be relevant to requesting international assistance, these fall short of the standards proposed by the IDRL Guidelines. There are no standard procedures, the responsible authority is not specified and the phases/stages in Tonga's emergency management system do not adequately accommodate international assistance. During the consultations, one of the major concerns raised by leading agencies was the uncertainty as to the process for requesting international assistance – whether this was to be directed through the NEMC or NEMO, the appropriate Minister to Cabinet or directly to the Ministry of Foreign Affairs and Trade (MFAT).

<sup>88</sup> Disaster Assessment Manual 2011, page 11.

Resident diplomatic missions are always extended the courtesy of an invitation to attend NEMC meetings during emergency situations. Tonga maintains a solid relationship with its foreign partners, which is reinforced through regular engagement and dialogue, oft times these strong relationships lead to informal and ad hoc arrangements in times of emergencies with formalities to ensue. Unfortunately, such informal arrangements are not always appropriate and should not be encouraged.

Once the formal request has been made then the ongoing liaison is handed over to the National Controller (either the NEOC or an appointed member of the NEOC). Although there are close relationships amongst the resident diplomatic corps in Tonga which has accommodated ease of information exchange, the new NEMP should detail the appropriate procedures. These procedures should also include requests to non-state actors for example United Nations agencies, NGOs, churches and the large Tongan diaspora overseas through Tonga's High Commissions and Consulates.

Consultations via simulation exercise and other training forums revealed that international assistance is initiated and maintained primarily through the diplomatic channels. It is interesting to note that in a simulation exercise held in Tonga last year there was no issue taken with the absence of a procedure to officially request international assistance from a major international organisation. The process appeared to be handled by the Minister responsible for emergency management and the National Controller at the EOC with direct contact to the regional office of the international organisation. The initial response from Tonga's resident foreign diplomatic missions following TC Ian was initiated based on informal discussions with the Tongan Government having considered the acute degree of devastation and destruction to the affected island group.

### 6.2.1 Other channels for requesting international assistance

In the course of consultations the Legal Researcher was advised that in exceptional circumstances, a lead agency is able to request international assistance in accordance with agreed, applicable protocols. For example, the Minister for Health is the national focal point for the World Health Organization (WHO) and all requests for assistance must be endorsed and submitted by that Minister directly to the WHO. This situation is unique because the WHO has established a national office which is managed by a Country Liaison Official and had established this system since its inception.

There are no other UN agencies with resident offices in Tonga. Therefore, external communications for those agencies are exchanged through MFAT. The NEMP refers to the UNOCHA as the point of contact for international engagement. Recent experiences of the NEMO office indicate that foreign affairs protocol must be complied with even for routine contact with United Nations Disaster Assessment and Coordination (UNDAC) regarding operational matters – this position was highlighted by Government officials during the consultation workshop. This requirement impacts on the timely and efficient engagement with one of Tonga's key emergency contact points. It also impedes the capacity of NEMO as a focal operational agency by hindering the ability of the office to strengthen its networks and association with emergency management agencies as a critical means of preparedness and during emergency situations. This impediment may be resolved through the NEMC exercising its function to enter into emergency support arrangements with foreign nations and international agencies. Such arrangements should include the assigning by Government of Tonga of a focal contact point – whether it is the Chairman of NEMC or the Manager of NEMO – for daily external communication and liaison. In making such arrangements, NEMC should also

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identify other humanitarian agencies to be included in these arrangements. Regional bodies such as SPC and SOPAC also have in-country focal points for contact either through the Prime Minister's Office, Ministry of Foreign Affairs and Trade or in some cases, with other Ministries.

The Tonga Red Cross Society may make direct contact to the International Federation of Red Cross & Red Crescent Societies (IFRC) Pacific Office in Suva, Fiji to request international assistance, as required.<sup>89</sup> Assistance from the IFRC and from National Red Cross Red Crescent Societies from other countries is facilitated directly through the Secretary-General in Nuku'alofa. TRCS should act in consultation with the government. TRCS Disaster Management Plan specifically states: *“Recognising the Kingdom of Tonga, specifically the National Emergency Management Committee (NEMC), as the authoritative body for disaster management, the TRCS will coordinate and cooperate with that body while remaining true to the Red Cross Principles, its constitution, and the Code of Conduct for the International Red Cross and Red Crescent”*. According to the principle of independence and the Principles and Rules of Red Cross and Red Crescent Humanitarian Assistance, the TRCS must be free to request support for its humanitarian mission from the Movement as needed. Of course, it should do this in consultation with the government, but it would violate these rules and principles if it had to seek prior permission to do so.

Most humanitarian branches of the churches in Tonga may also directly activate regional or global humanitarian assistance. The churches also are a strong link in mobilising the Tongan diaspora with appeals for assistance.

Comments were made during the consultations that formal channels are increasingly being circumvented in emergency situations as a result of the severity of emergencies demanding urgent responses and the closer networks and alliances forged between national agencies (both government and NGOs) and their international partners. Diplomatic protocols are still observed where bilateral and multilateral state actors are concerned. Where international responders are NGOs, their lead agencies in Tonga are more likely to initiate and maintain direct contact and liaison with their international partners during the various phases of an emergency. This is particularly the case where the foreign actors are providers of specialized, technical emergency response and humanitarian assistance. The health sector has already been discussed above. There is a broad power in the Fire and Emergency Services Act empowering the Service to “do all things necessary or convenient to be done or in connection with the performance of its functions.”<sup>90</sup> Although, there is no express provision for requesting international assistance, section 55 of that Act refers to a “member of an international emergency service organization who is present at an emergency within the Kingdom...” The deployment of international emergency services is not specified and is yet to be applied under this new Act.

### Coordination Mechanisms

There is no mechanism in place to ensure that requests for international assistance between the Government and other lead agencies are complementary. There is no information focal point to monitor and review the progress of deployment and distribution of relief goods and services. The 1999 NDMP<sup>91</sup> referred to the international assistance protocols as the responsibility of the Central Control Group (CCG) to “...liaise directly

<sup>89</sup> TRCS – Disaster Management Plan

<sup>90</sup> Section 6(2)(d).

<sup>91</sup> NDMP, pages 32-33.

with international aid agency representatives and diplomatic missions after a formal request for assistance has been submitted by the Government, to determine the type, quantity and distribution of assistance required. All departments and organizations (including NGO's) which have determined that assistance is required must submit their needs to the CCG, and should under no circumstances make direct request to aid agencies/donors or diplomatic missions without the prior approval of the CCG."<sup>92</sup> Furthermore, "...aid agencies must liaise with CCG regarding relief distributions to ensure that assistance goes to areas of greatest need. The CCG will also be accountable to the aid agencies/donors for ensuring that all relief assistance is distributed in accordance with the guidelines governing the provision of such assistance, and for the preparation of a report on expenditure/distribution of assistance provided by each agency and/or donor countries."

A new NEMP (as recommended in Recommendation 2) should adopt these principles and prescribe procedures that apply to international assistance and the liaison channels to be used so that ongoing dialogue is maintained with international agencies. It is noted that the TRCS with its auxiliary status should not be subjected to the constraints placed on NGOs as described in the NDMP above. According to the principle of independence and the Principles and Rules of Red Cross and Red Crescent Humanitarian Assistance, the TRCS must be free to request support for its humanitarian mission from the Movement as needed. Consultation with government should of course be undertaken. However, these rules and principles must not be violated.

The absence of clear procedures to request international assistance must be addressed as this is a critical step in the sequencing of international disaster assistance.

### Recommendation 8: Government focal point for requesting international assistance

- That the EMR establish a central focal point agency to serve as a liaison between the Government of the Kingdom of Tonga and assisting international actors, promoting the effective facilitation, coordination and oversight of international disaster assistance and serving as the main counterpart for any applicable international or regional coordination mechanisms.
- That the EMR under this recommendation be modelled on Chapter III (Article 12) of the Model Act.

## 6.3 The request for international assistance

Article 10(2) of the IDRL Guidelines proposes that 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 required. Operationally, the NEMC has noted its preference that requests must specify the nature, type and quantity of assistance and relief required. It was also reiterated at a recent disaster simulation exercise that the request for assistance should be directly relevant to the agency from which assistance is sought. This assumes that the NEMC has properly identified and allocated the needs according to the agency best positioned to provide that specific need.

<sup>92</sup> NDMP, page 33.



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**Recommendations 9: The request for international assistance**

That any request for international disaster assistance is :

- directed appropriately to particular international actors or to the international community generally and accompanied by information on the extent and type of assistance required.
- accompanied by information which would allow international actors to offer and provide assistance.
- That the EMR under this recommendation be modelled on Chapter II (Article 6) of the Model Act.

**6.4 Unsolicited offers of assistance**

Unsolicited offers of assistance (financial, goods and services) from non-state actors particularly humanitarian organisations and the large Tongan diaspora is a particularly salient issue. As, unfortunately, not all offers of assistance correspond to the aid requested. The effect is often an unmanageable, chaotic influx of consignments labelled for humanitarian purposes but which are not appropriate or suitable. One of the major challenges in international assistance is managing the volume of relief goods mobilised by the Tongan diaspora. Although well-meaning, large volumes of unwanted goods often create more harm than good, particularly when they congest the customs and border procedures delaying much-needed aid from reaching the people who need it.

Article 5(2) of the IDRL Guidelines recommends that 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. Financial donations require that there is an accountable public financial management system in place. Guidelines should form part of the new NEMP to manage the Tonga diaspora and advocate that any assistance should be monetary or should comply with the relief items expressly requested by the government. There are no provisions for the refusal of certain offers of assistance, although the NEMC may exercise its powers under section 10(e) to decline such offers.<sup>93</sup>

In accepting offers of assistance from non-state actors, it is advisable that there be principles and standards in place to ensure that donations and assistance meet minimum standards and that the quality of disaster relief is of a high standard.

**Recommendation 10: Offers of assistance**

- That appropriate measures be adopted to manage, through a central focal point agency, the offer and acceptance of international assistance by civilian and military actors.
- That the EMR under this recommendation be modelled on Chapter II (Article 7) of the Model Act.

<sup>93</sup> The NEMC's function to have in place arrangements with foreign nations and relevant bodies to provide support during major emergencies.



## 6.5 Command, Control and Coordination during an Emergency Response

A major concern expressed during the research relates to the specific responsibilities of the national command, control and coordination during the response and recovery phases. These critical roles are not clearly articulated in the EMA and may be interpreted in various ways, such as:

- “command” may be referring to the Minister’s role as Chairman of the NEMC, NEOC and NERC and who is a proactive Commander during an emergency;
- “command” may be referring to the National Controller or the NEOC or an appointed member of the NEOC, as the circumstances will demand
- “control” may be referring to the Minister of Finance and National Planning (FNP) because the overriding, determining factor that drives many decisions in any developing nation is domestic funding availability and prioritising the use of limited resources. The Emergency Fund Act 2008 is administered by the Minister for FNP on the direction of the NEMC. However, ultimately the timely and effective mobilising of financial resources is contingent on the administration of the Ministry of Finance and National Planning (MFNP)
- “control” may be referring to the NERC as the emergency phase shifts from operations to recovery
- coordination of emergency management activities, programs and response are the functions of the NEMC, NEMO, NEMO Manager and National Coordinator of the EOC
- the role of the DEMC and VEMC is also unclear

Moreover, the ultimate success of coordination rests principally with the involvement of the different stakeholders with varying degrees of capabilities and contribution to disaster management. The role of a defined National Controller is crucial to ensuring that the response of all stakeholders is effective and efficient, particularly in assessing resources and achieving the optimum utilisation of available resources. It is desirable that a nominated person be in control, with authority to accept overall responsibility at national level. This would ensure that decisions are made and disseminated expeditiously, response and support is decisive, efficient and effective and that strategic direction on outcomes is given to all stakeholders.

Managing major disaster response and early recovery phases is a demanding undertaking requiring excellent intelligence, sound judgment, accelerated decision making, speed of action and appropriate measured response.<sup>94</sup> The Draft Disaster Assessment Manual suggests that once a request is submitted to external agencies then control and coordination is handed over to the National Controller, who will assume the principal responsibility for liaising with international agencies.

<sup>94</sup> EM Qld, Review Report, p. 95

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**Recommendation 11: Command, Control and Coordination during an Emergency Response**

- The establishment of a Taskforce on International Disaster Assistance Preparedness should address the overlap and duplication in roles. It may be established under the chairmanship of the central focal point agency, with the primary role of enhancing preparedness for implementation of the EMR in case of a disaster requiring international disaster assistance.
- National and local authorities should endeavor to integrate the role of assisting international actors into their contingency planning and mechanisms for operational coordination of disaster relief and initial recovery assistance. In particular, they shall endeavor to facilitate the work of assisting international actors within their humanitarian mandate, while balancing the urgent needs of people affected by disaster and necessary safeguards relating to public safety and health, coordination and oversight.
- That the EMR under this recommendation be modelled on Chapter III (Articles 12 and 15) of the Model Act.

**6.6 Rules about the types of information international relief providers must provide**

There are requirements in various legislation and regulations in Tonga relating to information to be provided by international relief providers who respond to the Kingdom's request for assistance. These requirements include provision of prescribed documentation (such as customs and duties forms and evidence of professional registration), the authorizing/approving entity (ministerial, chief executive officer or a delegate) and stipulated procedures for provision of information. Much of this information relates to the nature, description and quantity of relief goods and services to be imported into Tonga. However, these are not collated into a single reference document. It is recommended that a new NEMP is drafted to incorporate important operational matters such as information management.

**Recommendation 12: Rules about the types of information international relief providers must provide**

- That the EMR establish a Single Window International Facilitation Team (SWIFT) for the purpose of consolidating and expediting the legal requirements concerning entry of incoming international personnel, goods, equipment and transport, as well as the application process for eligibility.
- That the EMR under this recommendation be modelled on Chapter III (Articles 14) of the Model Act.

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# Chapter 7

## Eligibility for legal facilities

## Eligibility for legal facilities

IDRL Guidelines Article 13	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.
IDRL Guidelines Article 14(1)	Subject to existing international law, it is the prerogative of originating, transit and affected States to determine which assisting humanitarian organisations will be eligible to receive the legal facilities described in Part V with respect to their disaster relief or initial recovery assistance.
IDRL Guidelines Article 14(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.
IDRL Guidelines Article 14(3)	Any additional requirements imposed on assisting humanitarian organizations should not unduly burden the provision of appropriate disaster relief and initial recovery assistance.
IDRL Guidelines Article 14(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.
IDRL Guidelines Article 14(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.

During the stakeholder consultations and workshop there was strong support for the recommendation to formulate and implement a robust certification/registration system whereby eligibility for legal facilities for assisting states, organizations and personnel are guaranteed.

## 7.1 Diplomatic and Consular Officials

The Diplomatic Privileges Act 1949, Diplomatic Relations Act 1971, Consular Conventions Act 1951 and Consular Relations Act 1970 recognise the international privileges and immunities of diplomatic and consular officials in accordance with the relevant international conventions. These are stated as – exemption of the premises of the special mission from taxation; inviolability of the premises; inviolability of archives and documents; freedom of movement; freedom of communication; personal inviolability; inviolability of the private accommodation; immunity from jurisdiction; exemption from social security legislation; exemption from dues and taxes; exemption from personal services and exemption from customs duties and inspection. Disaster relief personnel cannot claim such privileges and immunities.

## 7.2 International and Regional Organisations

The International Organisations (Immunities and Privileges of Certain Officers) Act 1967 and the Special Missions Privileges and Immunities Act 1977 extend privileges and immunities described above to special missions of states and international organisations in accordance with the relevant international conventions. The international organisations that are recognised under Tongan law are – the United Nations Organisation, International Labour Organisation, Food and Agricultural Organisation of the United Nations, United Nations Educational Scientific and Cultural Organisation, International Civil Aviation Organisation, World Health Organisation, International Telecommunication Union, World Meteorological Organisation, International Atomic Energy Agency, Universal Postal Union, Asian Development Bank and the Commonwealth Secretariat. In order to be granted these privileges and immunities, a Cabinet Order is required, which the Ministry of Foreign Affairs and Trade is principally responsible for administering.

## 7.3 Foreign Government Personnel

The EMA provides for the immunity of persons exercising emergency powers – “No legal proceeding or claim shall lie against any person for any act done in good faith and without gross negligence in the exercise of any power or performance of any duty conferred upon him by or under this Act.”<sup>95</sup> The same provision is reflected in other Acts such relating to emergencies in public health, plant and animal diseases and transportation.

The EMA defines an “authorised officer” as a “person authorised to exercise emergency powers for a state of emergency under this Act.”<sup>96</sup> The Minister responsible for EM “...may authorise any person or class of persons to exercise the emergency powers under this Act.”<sup>97</sup> Whether these provisions can be applied to foreign civilian defence personnel or foreign governmental personnel has yet to be determined. However, the Minister’s power to appoint authorised persons is arguably a broad power with no expressed limitations as is required in urgent and extraordinary circumstances.

## 7.4 Foreign Non-Government Personnel

In practice, during emergency circumstances, deployment of foreign government personnel would not ordinarily pose any difficulties. However, a sudden influx of large numbers of well-intentioned non-government personnel may present some challenges particularly in terms of accountability and coordination during an emergency and therefore, there is a need to clarify their legal status and eligibility for the legal facilities. Under the immigration regulations visas are required for both types of personnel but these may be expedited with appropriate endorsements provided by deploying foreign governments or NGOs.

<sup>95</sup> EM Act, section 42.

<sup>96</sup> EM Act, section 2.

<sup>97</sup> EM Act, section 36(1).

### **Recommendation 13: Legal Status of Foreign Entities Providing Assistance**

- That there is a need to recognise the exceptional circumstances surrounding disasters so that specific legal facilities are granted to international actors to facilitate their mobilisation into Tonga, as the circumstances will require.
- That there are clear criteria, efficient certification procedures, adequate safeguards in place to ensure that the legal facilities are not subjected to abuse and manipulation and that eligibility for and access to legal facilities is reciprocated by commitment to principles of international disaster assistance.
- That there is recognition of the distinct status and responsibilities of the different international assisting actors so that eligibility is categorised accordingly – such as assisting states, relevant intergovernmental organizations (United Nations and regional organisations), TRCS, foreign components of the RCRC Movement, assisting actors and private businesses.
- That the EMR under this recommendation be modelled on Chapter V (Articles 20 to 24) of the Model Act.
- That the EMR should incorporate provisions prescribing the general responsibilities of assisting actors including principles of international disaster assistance, respect for the dignity and privacy of affected persons, quality of goods and service and removal or disposal of unused goods.
- That the EMR under this recommendation be modelled on Chapter IV (Articles 16 to 19) of the Model Act.

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# **Chapter 8**

## Legal facilities for entry and operations



## 8.1 Domestic legal status of foreign organisations (Registration)

IDRL Guidelines Article 20(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.
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There is no requirement for a foreign organisation to be registered in Tonga to access services and to operate its business. However, without formal registration the organisation may not be able to hire staff, set-up bank accounts, lease property or arrange for visas

In terms of a foreign organization it was suggested that, in the absence of specific registration provisions, the only requirement to set up operations for emergency purposes would be a letter of support from NEMC or NEMO. This suggestion has not been tested and its adequacy is questionable. It was suggested that NEMO be the focal point for a pre-registration process for foreign organizations to be implemented as part of its preparedness actions and arrangements with foreign agencies.

### Recommendation 14: Domestic legal status of foreign organisations

- That the EMR should incorporate provisions granting legal capacity to assisting international actors in order that they may make necessary in Tonga, allow for their engagement and termination of locally engaged personnel and jurisdiction over international personnel.
- That the EMR under this recommendation be modelled on Chapter VI (Part 6) of the Model Act.

## 8.2 Civil society organisations – local NGOs

Under Tongan law, there are two acts that allow an NGO to register itself and its constitution or articles of association. The first is the Charitable Trusts Act 1993, which is the Act that provides for the incorporation and registration of religious, educational and other charitable trusts and societies. The Registrar of Charitable Trusts is the CEO (or delegated officer) of the Ministry of Labour, Commerce and Tourism. The Act prescribes governance requirements so any organisation registered under this Act will be required to comply with these requirements. There are no fees applicable for the registration process.

The second is the Incorporated Societies Act 1984 which provides for incorporation of societies that are established for purposes other than pecuniary gain. No provision covers for-profit organisations in this Act. The Registrar of Incorporated Societies is the CEO (or delegated officer) of the Ministry of Labour, Commerce and Tourism. This Act also prescribes governance requirements and a fee structure.

Domestic NGO's may register under either of these Acts depending on whether there is a pecuniary purpose of the organisation. Although registration is not compulsory, many NGO's have done so to secure legal recognition and to facilitate the administration of business operations.

The registration regimes described above means that a registered NGO would not be required to register with other agencies or as another type of entity. The Companies Act 1995 applies to entities that wish to be incorporated and registered as a company. This Act encompasses a comprehensive governance regime based on sound international practices.

### 8.3 Other Assisting Actors – Private Sector and Individuals

IDRL Guidelines Article 15	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 4.
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Private companies/individuals and other charitable/humanitarian organisations may submit requests to the Ministry of Revenue Services for exemptions on custom duties, excise tax and consumption tax on “relief consignments”. Recommendation 15 above regarding the Legal Status of Foreign Entities Providing Assistance includes provision for other assisting actors.

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## **Chapter 9**

# Customs arrangements for the arrival of relief goods in disaster

<p>IDRL Guidelines Article 17(1)</p>	<p>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:</p> <ul style="list-style-type: none"> <li>a. Exempt them from all customs duties, taxes, tariffs or governmental Fees;</li> <li>b. Exempt them from all export, transit, and import restrictions;</li> <li>c. Simplify and minimize documentation requirements for export, transit and import;</li> <li>d. Permit re-exportation of any equipment or unused goods which the assisting State or assisting humanitarian organization owns and wishes to retain.</li> </ul>
<p>IDRL Guidelines Article 17(2)</p>	<p>equipment only, originating, transit and affected States should additionally:</p> <ul style="list-style-type: none"> <li>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</li> <li>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.</li> </ul>
<p>IDRL Guidelines Article 17(3)</p>	<p>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.</p>
<p>IDRL Guidelines Article 17(4)</p>	<p>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.</p>

## 9.1 General customs arrangements

The Customs and Excise Management Act 2007 prescribes the customs laws in Tonga. The Customs Division of the Ministry of Revenue Services has recently developed the Tonga Customs Procedures Applicable to Relief Consignment 2013, which are a set of standard operating procedures (SOPs) to grant customs clearance free of all customs duties, excise taxes and charges for relief consignments. “Relief consignments” are defined in the SOP as –

## Customs arrangements for the arrival of relief goods in disaster

- a. goods, including vehicles and other means of transport, foodstuffs, medicaments, clothing, blankets, tents, pre-fabricated houses, water purifying and water storage items, or other goods of prime necessity, forwarded or received as aid to those affected by a disaster; and
- b. equipment, vehicles and other means of transport, specially trained animals, provisions, supplies, personal effects, and other goods needed by disaster relief personnel to perform their duties and to support them in living and working in the territory of the disaster throughout the duration of their mission.

This exemption was motivated by the International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) 1974<sup>98</sup> relating to relief consignments and the United Nations Model Customs Facilitation Agreement<sup>99</sup>. The exemption is not automatic nor is there provision for an unrestricted exemption. The Minister holds statutory discretion to grant a waiver. The written approval from the Deputy Commissioner of Revenue is still required to import relief consignments on an exempted basis. One of the issues raised by the Tonga Red Cross Society is the requirement to lodge a request for exemption on each occasion that a relief consignment is imported. Although approval has always been granted, there is a need for an expedited procedures to avoid unnecessary delays.

The recently developed Tonga Customs Procedures Applicable to Relief Consignments are intended to simplify the documentation requirements for emergencies and encourages pre-clearance arrangements to be in place. The prior approval of the Deputy Commissioner may be granted prior to importation. Therefore, the importer may submit verifiable documentation (Airway Bill, Bill of Lading or Packing Inventory) prior to importation for consideration and approval. Once approved, the importer will not be required to go through the additional procedure of completing customs import entry forms when the consignments arrive in-country. They should be cleared expeditiously by customs on arrival.

The procedure provides specifically for exemptions to be verbally authorised, if necessary. There are also provisions for waivers of storage costs and charges at the customs storage facilities. The procedure emphasises that customs officers must comply with a direction, by the Minister or Chief Executive Officer, to exempt relief consignments and to expedite priority clearance for relief goods and equipment (including inspection),<sup>100</sup> working outside the normal business hours and outside customs locations.<sup>101</sup>

Further the Minister for Revenue Services may simplify and facilitate customs procedures and declarations in relation to relief consignments.<sup>102</sup> Tonga Customs Procedure for Relief Consignments mirrors the definition contained in the Customs and Excise Regulations 2008.

<sup>98</sup> A blueprint for modern and efficient Customs procedures aimed at providing international commerce with the predictability and efficiency required by modern trade. See World Customs Organization website: [http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf\\_revised\\_kyoto\\_conv.aspx](http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv.aspx).

<sup>99</sup> A model agreement between the United Nations and a State/Government concerning measures to expedite the import, export and transit of relief consignments and possessions of relief personnel in the event of disasters and emergencies. See UNOCHA website: <http://www.unocha.org/what-we-do/coordination-tools/logistics-support/customs-facilitation>.

<sup>100</sup> SOP (Relief Consignments) – Customs Division, paragraph 2.3 and 3.2.

<sup>101</sup> SOP (Relief Consignments) – Customs Division, paragraphs 3.6

<sup>102</sup> Customs and Excise Regulations 2008, Regulation 136(2).

The prior approval of the Minister or CEO is required before the goods are landed in Tonga. However, the SOP emphasises a simplified customs clearance process through–

- approval of the customs duty exemption by the Minister, CEO or an authorised officer<sup>103</sup>
- verbal approval in a disaster situation<sup>104</sup>
- customs clearance to be granted on all approved relief consignments – (a) free of all customs duties, excise taxes and charges; and (b) without requiring the importer to prepare a Customs Import Inventory<sup>105</sup>
- temporary admission of all equipment, vehicles and other means of transport, specifically trained animals or any other goods needed by disaster relief personnel to perform their duties in the territory of the disaster and are intended to be re-exported<sup>106</sup>

The exemption applies to “relief consignments” and falls short of the IDRL recommendation that the legal facilities be applied to eligible actors. As was evidenced in the responses to TC Ian, the volume of containers from the Tongan diaspora living overseas became unmanageable with confusion over customs requirements. The NEMO was overwhelmed with the excessive importation of goods, a large part of it unusable, from the Tongan diaspora.

### Recommendation 15: Customs Arrangements for the Arrival of Relief Goods in Disaster

- The Tonga Customs Procedures Applicable to Relief Consignments would be enhanced by the formulation of specific provisions for the entry of international disaster goods and equipment by eligible actors, which should include – a specific condition that the customs facilitation is applicable to eligible actors only; customs facilitation and priority treatment; duty of compliance by eligible actors; representation to customs; exemption from import duties, taxes and restrictions; simplification of documentation requirements; extended hours for customs; inspections and customs security and agreements on pre-positioning of stock.
- That the EMR under this recommendation be modeled on Chapter VI: Part 6 (Articles 29 to 36) of the Model Act.

## 9.2 Unused humanitarian goods

One of the issues raised during the consultations was the nature of unused humanitarian goods. Consignments often were not properly addressed to a domestic recipient/beneficiary or the beneficiary (such as NEMO) were not able to provide storage space for consignments. These were then inadvertently stored at the customs and NEMO warehouses for extended periods requiring resources for proper maintenance of the goods. There have been circumstances where goods and equipment deployed through international assistance were not used – as they were either inappropriate for the specific emergency situation at hand or were expired food items that were not fit for consumption. During the 4 years after the 2009 tsunami that devastated the northern-most

<sup>103</sup> SOP (Relief Consignments) – Customs Division, paragraph 3.1

<sup>104</sup> SOP (Relief Consignments) – Customs Division, paragraph 3.2

<sup>105</sup> SOP (Relief Consignments) – Customs Division, paragraph 3.3

<sup>106</sup> SOP (Relief Consignments) – Customs Division, paragraph 4.1

## Customs arrangements for the arrival of relief goods in disaster

island of Tonga, the NEMO warehouse in the capital (Nuku'alofa) remained crammed with sacks of used clothing that had been sent by the Tongan diaspora. These unused clothing had to be disposed following Cyclone Ian to make space available for the inflow of assistance for the Ha'apai group. Those clothing were not suitable to the hot weather in the northern islands. The Manager of NEMO also confirmed that there were at least 2 containers from the 2009 tsunami disaster that remains at the main wharf. Those containers were not consigned to NEMO but Customs confirms that it was imported as part of the tsunami relief and Customs had requested that NEMO take responsibility for those containers. There is no provision in Tongan law for managing this particular issue. Goods that have not cleared customs and which are stored in customs warehouses are subject to a 6-week time limit. On expiry of the 6-weeks, then the goods are sold at a public auction.<sup>107</sup> Consignments that have cleared customs are subject to a 2-year limit on storage at customs warehouses before disposal procedures are engaged.<sup>108</sup>

### Recommendation 16: Unused humanitarian goods

- Adequate provision should be made for unused humanitarian goods so that the following issues are covered – nature of equipment and unused goods; re-export of goods and equipment and donation of unused goods and equipment.
- That the EMR under this recommendation be modelled on Chapter VI: Part 4 (Articles 42 to 44) of the Model Act.

## 9.3 Communications equipment

IDRL Guidelines  
Article 18(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.

The Communications Act 2000 controls communications through a licensing and regulatory regime. The Minister responsible for Communications may (with Cabinet's consent) exempt any persons from holding a license to operate telecommunications services.<sup>109</sup> In a national emergency the Act compels a license-holder to place its facilities (free of charge) at the services of the Government and also to supply competent persons to operate such facilities and provide content applications services.<sup>110</sup> Tonga has also ratified the Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations 1998, which calls for the removal of regulatory barriers to telecommunication services in an emergency situation.

<sup>107</sup> Customs and Excise Management Regulations 2008, section 105(1).

<sup>108</sup> Customs and Excise Management Regulations 2008, section 105(2).

<sup>109</sup> Communications Act 2000, sections 19 and 34.

<sup>110</sup> Communications Act 2000, section 83.



These international obligations have yet to be incorporated into Tongan law as there is no reference to the convention in the relevant legislation. Hence, there is no specific regulation on the importation of telecommunications equipment into Tonga. However, if telecommunications equipment were part of a relief consignment then the applicable customs clearance procedure would facilitate its importation. Further, there is no provision that assigns specific frequencies for the purpose of emergency circumstances. It has been noted by officials from the Communications Department that the current exercise to formulate the National Spectrum Management Strategy will consider this particular matter.

Under the NEMP, His Majesty’s Armed Forces have primary responsibility for the communications systems in emergency situations.

**Recommendation 17: Communications equipment**

- Communications equipment of eligible organisations should be permitted expedited entry without restrictions (subject to national security and public order); waiver or expedited licensing and fees requirements and access to telecommunications facilities and services.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 37) of the Model Act.

**9.4 Food**

IDRL Guidelines Article 18(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.
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The importation of food is a particularly challenging issue for Tonga. Tongan diaspora often send foodstuffs as the immediate response to a disaster in Tonga. This is a sensitive issue because of the frequent disregard for the quality and expiry dates of food sent, as well as its potential to displace the domestic commercial and agricultural markets. Even as recent as TC Ian there were reports of expired foodstuffs being amongst the relief consignments received as part of the response.

The Public Health Act 2008 (administered by the Minister for Health) regulates food safety including the standard of food imported into Tonga by prohibiting the preparing, packing or selling of food that has any substance which is poisonous, dangerous or otherwise injurious to health; consists of any filthy, putrid, rotten, decomposed or diseased substance or foreign matter, or is otherwise unfit for human consumption; is adulterated; has deteriorated or has perished; or is contained in a damaged packaging.<sup>111</sup> The application of this Act to the importation of foods for humanitarian purposes is not specified however it would be reasonable to foresee that the prohibitions outlined above may also apply to foods imported for such purposes. The Food Act 2014 establishes the National Food Authority with responsibility for regulating specific standards and codes relating to food safety and fitness for human consumption.

<sup>111</sup> Public Health Act 2008, section 20.

## Customs arrangements for the arrival of relief goods in disaster

In addition, the Consumer Protection Act 2000 provides that goods and services must comply with approved standards.<sup>112</sup> The Act prohibits the manufacturing, supplying or trading in goods to which an approved standard has been prescribed, unless those goods comply with the standard.<sup>113</sup> The Consumer Affairs Division (Ministry of Labour, Commerce and Tourism) administers this Act with the power to recall defective goods or publicly disclose the defect and means of disposal or re-dress.<sup>114</sup>

There are no express provisions to expedite the clearance process for food during emergencies. However, the definition of “relief consignments” in the Customs and Excise Regulations includes “...other goods of prime necessity, forwarded or received as aid to those affected by a disaster...” Food should fall within this definition.

### Recommendation 18: Food

- Given the vital role of foodstuffs during emergencies, the importation of food should be admitted pursuant to expedited procedures in addition to the waiver of importation requirements.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 39) of the Model Act.

## 9.5 Medication

IDRL Guidelines  
Article 18(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; 20
- 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 Non-proprietary Name or generic name, batch number, dosage form, strength, name of manufacturer, quantity in the container, storage conditions and expiry date.

<sup>112</sup> Consumer Protection Act 2000, section 12.

<sup>113</sup> Consumer Protection Act 2000, section 13.

<sup>114</sup> Consumer Protection Act 2000, section 16.

Medicinal goods and equipment are controlled by the Therapeutic Goods Act 2001, which regulates the importation,<sup>115</sup> quality, availability and registration of therapeutic goods. The Act is administered by the National Drugs and Medical Supplies Committee (chaired by the CEO of Health)<sup>116</sup> including the licensing of authorised importers of therapeutic goods, maintaining the Tongan Registered List of Medicinal Drugs and quality control.<sup>117</sup> The Minister for Health may authorise the importation of a medicinal drug not included in the registered list in the interest of public health during a major disaster or period of emergency.<sup>118</sup>

The Act also provides for the importation of donated medicinal drugs, which must comply with the following requirements –

- included in the List of Essential Drugs for the Kingdom;
- of known good quality; labelled with the generic international non-proprietary name (INN) and English description;
- if sent under the same programme or to the same recipient regularly, are of consistent strength;
- they meet the specifications of the Central Pharmacy and Medical Store;
- the prospective donations are fully detailed and approved by the Principal Pharmacist before dispatch of the donation from the home port; and
- they have a “use by” or “expiry” date provided with sufficient useful life remaining after estimated arrival date in the Kingdom.<sup>119</sup>

To expedite the importation of donated medicine, the Committee has delegated the approvals process to the Hospital Superintendent on non-contentious applications.

### Recommendation 19: Medication

- The existing requirements for the importation of medication and medical equipment should be consolidated with specific provisions for international disaster assistance with suitable measures in place to ensure expedited importation and that appropriate standards and quality are prescribed.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 38) of the Model Act.

## 9.6 Vehicles

IDRL Guidelines Article 18(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.
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<sup>115</sup> Therapeutic Goods Act, Part IV.

<sup>116</sup> Therapeutic Goods Act, section 4.

<sup>117</sup> Therapeutic Goods Act, Part III.

<sup>118</sup> Therapeutic Goods Act, section 10(4).

<sup>119</sup> Therapeutic Goods Act, section 16.

## Customs arrangements for the arrival of relief goods in disaster

The importation of foreign vehicles does not fall within the definition of “relief consignments” because it is not for the purpose of “free distribution.” However, temporary admission for foreign vehicles is allowed for an initial period of 4 months and renewable up to 12 months.<sup>120</sup> This admission (with waiver of customs duties) is subject to an undertaking of re-exportation.

The Traffic Act 1958 is administered by the Principal Licensing Authority (Minister for Infrastructure) to register and license all motor vehicles and all drivers in the Kingdom.<sup>121</sup> There are no exemptions for the registration of foreign vehicles imported for the purposes of relief and recovery work. During the National Stakeholder workshop in 2013, participants confirmed that it is common practice for Government to register vehicles as an official government vehicle if the intention is to eventually hand over ownership to Government. There are exemptions from payment of registration and license fees if the applicant is entitled to diplomatic and consular privileges. Cabinet may also grant exemption from fees, if necessary.<sup>122</sup> There are no regulations restricting any make or model of vehicles that may be imported into Tonga but they may be required to meet Warranty of Fitness standards.

### Recommendation 20: Vehicles

- The importation of vehicles by eligible actors, the Tonga Red Cross Society or any approved domestic civil society organization should be either granted temporary recognition or the process for domestic registration and issuing of vehicle plates should be expedited.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 40) of the Model Act.

## 9.7 Search dogs

The Animals Diseases Act 1979 regulates the importation of animals by prescribing that a written permit must be issued by the CEO for Agriculture, Fisheries, Forestry and Food and such permit may impose conditions.<sup>133</sup> The conditions that may be imposed on the permit is not expressed in the Act. There are no exemptions or provisions for expediting procedures for rescue dogs under that Act (such as exemption from quarantine).

### Recommendation 21: Search dogs

- The relevant Acts should be consolidated to permit the temporary importation of search dogs without the need for quarantine requirements but with the development of specific regulations relevant to rescue dogs.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 41) of the Model Act.

<sup>120</sup> Customs Act, sections 30, 31 and 32.

<sup>121</sup> Traffic Act 1958, Part II.

<sup>122</sup> Traffic Regulations 1974, Regulation 35(2)(e).

<sup>123</sup> Animal Diseases Act 1979, section 6(1).

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# **Chapter 10**

## Management of foreign personnel during a disaster

## 10.1 Entry of Response Personnel

IDRL Guidelines Article 16(1)	<p>With regard to disaster relief and initial recovery personnel of assisting States and eligible assisting humanitarian organizations, affected States should:</p> <ol style="list-style-type: none"> <li>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;</li> <li>In disaster relief operations, waive or significantly expedite the provision of such visas and work permits;</li> <li>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;</li> </ol> <p>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.</p>
IDRL Article 16(2)	<p>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.</p>
IDRL Article 16(3)	<p>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.</p>

The Immigration Act 1969 stipulates that no person may enter the Kingdom unless – (a) he is in possession of a valid permit lawfully issued to him under the provisions of this Act; or (b) he is exempted under the provisions of the Act.<sup>124</sup> The Act does not provide for any special permit or visa for international disaster relief personnel who cannot claim diplomatic privileges and immunities. The Immigration Regulations 2010 in the Fee Schedule makes reference “...to any other permit not stipulated above...” ie. other than a visitor, business, employment, assured income, study and resident. However, the nature of that particular permit is not specified. For the purposes of international disaster personnel, the Prime Minister may, with Cabinet’s consent, by Order exempt any person or class of persons, either absolutely or conditionally, from all or any of the provisions of the Act.<sup>125</sup>

If the necessary arrangements are in place, then foreign humanitarian and relief personnel may enter Tonga on the basis of that exemption. However, advance notification will be required as exemptions will be granted on an individual basis. The conditions may include a time limitation on the validity of the permit (ie. for the duration of the

<sup>124</sup> Immigration Act 1969, section 6(1).

<sup>125</sup> Immigration Act 1969, sections 7(1)(k) and 38(1).

state of emergency) and that a specified official (Minister responsible for EM) or agency (NEMO) is responsible for supervision of the personnel. An employment permit is a cumbersome process with strict documentation requirements and is not conducive for immediate deployment of relief personnel.

It is noted that pursuant to the Tampere Convention, Tonga is required to expedite the entry of telecommunications personnel. However, it is advisable that a system is implemented that would apply to all relief personnel of eligible organizations

### Recommendation 22: Entry of Response Personnel

- A separate disaster visa should be expressly incorporated into the immigration laws for international relief personnel with exemptions or waivers on application procedures and fees and the appropriate permit to engage in disaster-related activities within Tonga.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 25) of the Model Act.

## 10.2 Recognition of Foreign Professional Qualifications

IDRL Guidelines Article 16(1)(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;
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In general, there are no specific statutory provisions for emergency review of foreign qualifications. The recognition of medical qualifications is regulated by –

- Medical and Dental Practice Act 2001 – the Medical and Dental Practice Board registers the medical practitioners, health officers, dentists and dental therapists.<sup>126</sup> The Minister of Health may, subject to such conditions as he thinks fit, exempt in writing members of short-term visiting specialist health teams or individual short-term visiting medical practitioners, health officers, dentists or dental therapists from the requirements of the Act.<sup>127</sup> On approval to engage in the relevant medical practice, such foreign personnel are authorized to prescribe medication.
- Nurses Act 2001 – the Nurses Board registers nurses, nurse practitioners and midwives.<sup>128</sup> The Minister of Health may, subject to such conditions as he thinks fit, exempt in writing members of short-term visiting specialist health teams or individual short-term visiting nurses, nurses practitioners or midwives from the requirements of the Act.<sup>129</sup>

<sup>126</sup> Medical and Dental Practice Act 2001, section 3(2).

<sup>127</sup> Medical and Dental Practice Act 2001, section 10.

<sup>128</sup> Nurses Act 2001, section 3(2).

<sup>129</sup> Nurses Act 2001, section 10.



## Management of foreign personnel during a disaster

- Pharmacy Act 2001 – the Pharmacy Board registers pharmacists and assistant pharmacists.<sup>130</sup> The Minister may, subject to such conditions as he thinks fit, exempt in writing members of short-term visiting specialist health teams or individual short-term visiting pharmacists or assistant pharmacists, from the requirements of this Act.<sup>131</sup>

In practice, it has been clarified that the exemption as it relates to visiting medical specialists relates to the documentation they must submit in applying for registration. Therefore, the relevant legislation appears to be intended for scheduled visiting medical teams. There are no provisions for emergency specific circumstances.

### Recommendations 23: Recognition of Foreign Professional Qualifications

- The domestic requirements for recognition of foreign professional qualifications may be enhanced to ensure that the measures for expedited procedures already established in Tonga are promptly initiated.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 26) of the Model Act.

## 10.3 Transport During Disaster

### Transport of relief goods

IDRL Guidelines Article 19(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.
IDRL Guidelines Article 19(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.
IDRL Guidelines Article 19(3)	Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

The Civil Aviation Act 2014 regulates the movement and landing of aircrafts with prior notification to the Tongan civil aviation required for in-bound aircrafts, with no special exemptions for aircrafts on humanitarian or emergency missions. The Act does not apply to operational service of His Majesty's Armed Forces.<sup>132</sup>

However, the Civil Aviation (Aerodomes and Licensing Charges) Regulations 1996 grants exemptions from payment of fees and charges to aircraft engaged in air and sea rescue operations<sup>133</sup> and aircraft engaged in disaster relief or emergency medical evacuation.<sup>134</sup>

<sup>130</sup> Pharmacy Act, section 3(2).

<sup>131</sup> Pharmacy Act, section 10.

<sup>132</sup> Civil Aviation Act 2014, section 3.

<sup>133</sup> Civil Aviation (Aerodomes and Licensing Charges) Regulations 1996, Regulation 9(e).

<sup>134</sup> Civil Aviation (Aerodomes and Licensing Charges) Regulations 1996, Regulation 9(f).

The legislation relating to shipping and ports management regulates the movement and docking of ships with prior notification required. There are complex arrangements in place with notification to the Ports Authority (at the main seaport and capital, Nuku'alofa) and the Marine and Ports Division at the outer-islands' ports. A complicating issue with marine transportation is that there are no specific exemptions for port fees and charges (wharfage and handling of consignments) in disasters, which are currently outsourced to a private company, at cost. So while the government may grant specific waivers/exemptions of other fees, this does not apply to the port fees and charges. This has caused prolonged and highly contentious delays during recent disasters, which was resolved only after numerous meetings and informal arrangements agreed for that particular situation. It was suggested by both the Ports Authority and Marine and Ports Division that Ports Agents are engaged to manage the complex port requirements.

### Recommendation 24: Transport of relief goods

- The relevant Acts should be consolidated to incorporate adequate measures for ground, air and sea transportation as the key logistical aspect in international disaster assistance. The main issues to be included are – facilitation of means of transport, entry of transport operators, prior notification of arrival of carriers and exemption from applicable taxes, levies, duties, fees or charges imposed by government, statutory or private agencies.
- That the EMR under this recommendation be modelled on Chapter VI: Part 5 (Articles 45 to 47) of the Model Act.

#### 10.3.1 Driving License

The Traffic Act 1958 recognises foreign driving licences – “Any person who holds a valid driving licence issued by another country, may, on production of such driving licence to the Principal Licensing Authority and on payment of the prescribed fee and passing such driving test as may be prescribed by the Principal Licensing Authority for such persons, be issued with a motor driver’s licence entitling such person to drive the same class of motor vehicle as his own licence entitles him.”<sup>135</sup> There is no provision in Tongan law allowing a person to drive for any period of time in Tonga with a foreign driver’s licence. The requirement to pay the prescribed fee and sitting a driving test is an onerous procedure. There are no exemptions for these requirements but some arrangement can be made whereby Government of Tonga’s contribution may include the waiver of these fees. It was suggested that where a state of emergency has been declared then eligible personnel holding valid overseas licenses should be recognised for a specific emergency period.

Article 16(1)(c) of the IDRL guidelines proposes the establishment of “expedited procedures for temporary recognition of ... 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.”

<sup>135</sup> Traffic Act 1958, section 16.

### Recommendation 25: Driving License

- Temporary recognition should be accorded to valid foreign driving licences necessary for the performance of disaster relief or initial recovery functions without the need to comply with the onerous procedures under the Traffic Act.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 27) of the Model Act.

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# **Chapter 11**

## Tax, currency exchange and charges

## 11.1 Tax for disaster related activities

IDRL Guidelines Article 20(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.
IDRL Guidelines Article 21	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.

### 11.1.1 Consumption Tax

The following tax relief is stipulated in Tonga's revenue laws. The Consumption Tax Act 2003 confers power on the Minister for Revenue (with Cabinet's consent) to grant CT exemption on certain imports.<sup>136</sup> Since that Act came into force, relevant exemptions have been granted including the import of medical prescriptions, dental, nursing or health services; imports by diplomats according to law; import of certain agricultural supplies and equipment.<sup>137</sup> It was confirmed that, in practice, the import of "relief consignments" are CT exempted and that the supply of "relief consignments" are CT refundable. However, these special provisions are not specified in the SOPs on Customs Procedures for Relief Consignments.

The Consumption Tax Regulations 2005 does provide for the grant of "tax refunds."<sup>138</sup> This means that the CT (15%) is payable and the importer or supplier is then entitled to a refund upon proper application to the Minister – an onerous procedure that is incompatible with the expeditious and humanitarian nature of emergency responses. Such refunds may be authorised for –

- a. a public international organization, foreign government, or any other person to the extent that organization, government, or person is entitled to exemption from Consumption Tax under an international agreement;<sup>139</sup> or
- b. a non-profit organization in respect of a taxable supply to, or taxable import by the organization of goods or services acquired for the purposes of providing charitable activities.<sup>140</sup>

The relevant definitions<sup>141</sup> for the purposes of the refund are –

**"charitable activities"** – the free distribution of food, meals, board, lodging, clothing, necessities or amenities to any persons in necessitous circumstances, but not including any activities relating to the conduct of a business;

**"international agreement"** – an agreement between the Government and a foreign government or public international organization for the provision of financial, technical, humanitarian, or administrative assistance to the Government; and

<sup>136</sup> Consumption Tax Act 2003, section 5(3)(a).

<sup>137</sup> Consumption Tax Order 2003.1

<sup>138</sup> Consumption Tax Regulations 2005, Regulation 9.

<sup>139</sup> Consumption Tax Regulations 2005, Regulation 9(2).

<sup>140</sup> Consumption Tax Regulations 2005, Regulation 9(2).

<sup>141</sup> Consumption Tax Regulations 2005, Regulation 9(1).

**“non-profit organization”** – an institution, body, or trust of a public character that the Minister has certified as conducting activities exclusively for charitable purposes, which includes the relief of poverty, advancement of education or religion beneficial to the community.

### Recommendations 26: Consumption Tax

- The legislation on Consumption Tax may be enhanced with specific provisions to incorporate the relevant disaster period in which a CT exemption may be accorded to authorized relief consignments.
- That the EMR under this recommendation be modelled on Chapter VI: Part 7 (Article 51) of the Model Act.

#### 11.1.2 Customs duty and excise tax

The Customs Act 2007 provides that all importers shall pay customs duty on all imports prior to the release of goods from Customs control.<sup>142</sup> Customs duty is then payable on imported goods when they are entered.<sup>143</sup> The Minister shall (with Cabinet’s consent) impose, revoke, suspend, reduce or increase customs duty on imported or exported goods; and (b) provide for exemptions from Customs duty.<sup>144</sup> Exemption has been granted on relief consignments under the Customs and Excise Management Regulations 2008<sup>145</sup> – *“Relief consignments received as gifts by an organisation approved by the Minister for use by or under the control of that organisation or for distribution free of charge by the organisation or under their control shall be admitted into the Kingdom free of all Customs duties, excise taxes and charges.”*

It was confirmed by the Ministry of Revenue Services that there is no requirement that an importer be formally registered in Tonga as a humanitarian organisation. If sufficient evidence is provided that the goods are relief consignments, then the importer would benefit from the expedited procedures and customs duty exemption. The Minister may license any person to act as a Customs Broker and represent an owner of goods for the purposes of the Customs laws.<sup>146</sup>

### Recommendation 27: Customs Duty and Excise Tax

- The application of customs duty and excise tax for the entry of international emergency goods and equipment would be enhanced by formulation of specific provisions for the entry of international disaster goods and equipment by eligible actors, which should include – customs facilitation and priority treatment; duty of compliance by eligible actors; representation to customs; exemption from import duties, taxes and restrictions; simplification of documentation requirements; extended hours for customs; inspections and customs security and agreements on pre-positioning of stock.
- That the EMR under this recommendation be modelled on Chapter VI: Part 6 (Articles 29 to 36) of the Model Act.

<sup>142</sup> Customs Act 2007, section 4(1)

<sup>143</sup> Customs Act 2007, section 7(1)

<sup>144</sup> Customs Act 2007, section 3(1)

<sup>145</sup> Customs and Excise Regulations 2008, Regulation 136(3).

<sup>146</sup> Customs and Excise Management Act 2007, section 120

### 11.1.3 Income Tax

The Income Tax Act 2007 provides that the Minister of Revenue Services shall, with the approval of Cabinet, by Order and in accordance with clause 19(b) of the Constitution impose, revoke, suspend, reduce or increase income tax for each fiscal year on a person who has chargeable income for the year.<sup>147</sup> Employment income is defined as any amount, whether of a revenue or capital nature, arising from employment including wages, salary, remuneration, benefit-in-kind, allowance and reimbursable expenditure.

<sup>148</sup> Income tax exemptions are granted by the Act for income –

- derived by an individual or international organisation under the Diplomatic Privileges Act or the Consular Relations Act<sup>149</sup>
- derived by an individual shall be exempt income to the extent provided for in an agreement between the Government and a foreign government or public international organisation for the provision of financial, technical, or administrative assistance to the Government<sup>150</sup>
- (other than business income) of a non-profit organization shall be exempt income<sup>151</sup>

A non-profit organisation is defined as “**charitable purposes**” for the relief of poverty, advancement of education or religion, or any other purpose beneficial to the community and “**non-profit organisation**” means an institution, body, or trust of a public character that the Minister has certified as conducting activities exclusively for charitable purposes.<sup>152</sup> There are no provisions to provide specific exemptions for income earned by personnel of an international humanitarian organisation providing relief.

#### Recommendations 28: Income Tax

- Exemptions should be granted on the income of eligible assisting international actors during a specific period of the disaster.
- That the EMR under this recommendation be modelled on Chapter VI: Part 7 (Article 52) of the Model Act.

## 11.2 Currency exchange and banking

There are no restrictions in the foreign exchange controls regime on the import of funds in foreign currencies into the Kingdom. However, the Customs and Excise Management Order 2012 stipulates a “restricted export” as the amount of \$10,000TOP or more in cash, except with the written permission of the Governor of the National Reserve Bank of Tonga. Outgoing electronic transfers are also restricted annually to \$100,000TOP. However, the National Reserve Bank of Tonga may permit the repatriation of funds if evidence is provided that the funds were originally imported for a specific purpose.

The commercial banks have confirmed that they are able to service the opening and closing of bank accounts for emergency personnel. Preferential exchange rates are accommodated by the commercial banks at their discretion.

<sup>147</sup> Income Tax Act, section 5(1)

<sup>148</sup> Income Tax Act, section 5(1)

<sup>149</sup> Income Tax Act, section 16(1)

<sup>150</sup> Income Tax Act, section 17

<sup>151</sup> Income Tax Act, section 18

<sup>152</sup> Income Tax Act, section 18



**Recommendation 29: Currency exchange and banking**

- Specific provisions should be incorporated into Regulations to facilitate the transfer of funds and access to the best available exchange rates for the purposes of international disaster assistance.
- That the EMR under this recommendation be modelled on Chapter VI: Part 8 (Articles 54 and 55) of the Model Act.

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# Chapter 12

## Freedom of access and security

IDRL Guidelines Article16(1)(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.
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Stakeholders recognise that the freedom of access and movement must be considered and balanced against the personal security and welfare of assisting actors as well as safe-guarding the vulnerable communities. The potential to inundate vulnerable communities with a large number of assisting actors can be overwhelming and counter-productive to effective response and relief.

## 12.1 Freedom of Movement during disaster

Freedom of access by relief personnel to disaster-affected persons is guaranteed in both the EMA and the Tonga Fire and Emergency Services Act 2014 with no restrictions as to type of persons to whom assistance is rendered. The Tongan constitution also declares the freedom of all persons in the Kingdom.<sup>153</sup> Under the EM Act, there are extensive powers granted to an authorised officer during the period of a state of emergency, which includes freedom of movement. This empowers an authorised officer to exercise emergency powers necessary for the prevention of loss of human lives, illness or injury to humans or animals, loss or damage to property, and damage to the environment.<sup>154</sup> Further, it is an offence to obstruct an authorised officer from the exercise of his emergency powers.<sup>155</sup>

Section 55 of the Tonga Fire and Emergency Services Act –

“A member of an international emergency service organisation who is present at an emergency within the Kingdom for the purpose of mitigating or responding to that emergency may be approved by the Commissioner to perform all or some of the functions that the Commissioner would have and be capable of exercising and performing under this Act.”

Subject to any arrangements as to effective and efficient coordination of relief operations within the EM system, there are no restrictions on humanitarian organisations distributing relief according to their principles and values. There is no requirement that all relief goods must be handed over to Government. Consultations with domestic NGOs and humanitarian organisations reveal that they enjoy the independence to distribute their relief assistance.

### Recommendation 30: Freedom of Movement During Disasters

- The statutory provisions guaranteeing freedom of access and movement should be extended to international personnel of eligible actors so that they may enjoy, as circumstances necessitate, the same access to disaster-affected areas as domestic actors.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 28) of the Model Act.

<sup>153</sup> Act of the Constitution 1875, Clause 1.

<sup>154</sup> EM Act, section 37.

<sup>155</sup> EM Act, section

## 12.2 Ensuring the safety and security of assistance

IDRL Article 22	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.
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The Police are primarily responsible for law and order in the Kingdom. There is no specific provision under any of the relevant legislation requiring Police to provide security to international disaster relief workers which in any case may not be practical given the small size of the Police force as well as its primary duties to maintain law and order. In such circumstances, the Tongan military may assist in safety and security responsibilities, if necessary and in accordance with a formal request for civil assistance. Also, the airport and port facilities maintain their own safety and security personnel. Private security firms are also licensed to provide security services although enabling legislation to regulate this service has not come into force.<sup>156</sup>

<sup>156</sup> Private Securities Services Act 2010.

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# **Chapter 13**

## Additional facilities and measures for international disaster relief

### 13.1 Extended opening hours

IDRL Guidelines Article 23	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.
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Tonga's administrative system is accustomed to emergencies and national events. Extended business hours for key government agencies, transport services, public utilities and private sector can be easily arranged, if necessary. The issue that needs to be clarified is the assignment of duty officers during emergency situations particularly with the Government agencies.

Recommendation 13 above regarding Single Window International Facilitation Teams provides for extended opening hours of necessary facilities and services and ensures the consolidation and expeditious processing of legal and administrative requirements for the entry of international actors.

### 13.2 Access to facilities and services

IDRL Article 24(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.
IDRL Article 24(12)	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: <ul style="list-style-type: none"> <li>a. In-country transport, including by national airlines;</li> <li>b. Use of buildings and land for office and warehouse space; and</li> <li>c. Use of cargo handling equipment and logistic support.</li> </ul>

The emergency powers in the EM Act includes the "...placing property under the control or at the disposal of an authorised officer..."<sup>157</sup> Therefore, logistical services and capabilities may be requisitioned or appropriated under this provision. However, there are no current arrangements in place with private businesses or umbrella organisations (National Forum of Church Leaders, Tonga Chamber of Commerce and Industries or Civil Society Forum of Tonga) for such purposes. During the consultations the private businesses reiterated their commitment to providing assistance, as and when required, in disaster situations. Therefore, proper arrangements should be agreed with service providers in advance.

Recommendation 13 above regarding Single Window International Facilitation Teams ensures the consolidation and expeditious processing of legal and administrative requirements for the entry of international actors.

<sup>157</sup> EM Act, section 37(2)(k).

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# **Chapter 14**

## Accountability and transparency



## 14.1 Accountability and transparency of the Government

IDRL Guidelines Article 3(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.
IDRL Guidelines Article 5(1)	States providing funding to other assisting actors should encourage them to act in a manner consistent with the provisions of paragraph 4.
IDRL Guidelines Article 5(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.
IDRL Guidelines Article 6(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.
IDRL Guidelines Article 6(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.

The Minister and CEO of MFNP have principal responsibilities to receive and disburse international grants made to the Government.<sup>158</sup> Such grants may include receipts from other Governments, international or domestic institutions or individuals and these are considered as public funds by virtue of the Public Finance Management (PFM) Act 2002.<sup>159</sup> That Act also provides a safeguard against diversion and misappropriation of funds through the established procurement regulations<sup>160</sup> and internal and external audit procedures. The Government's financial system is managed and centralised at the Ministry of Finance and National Planning (Treasury Operations) with stringent financial procedures<sup>161</sup> prescribed by the standards and practices promulgated by the International Federation of Accountants as applicable to Governments and public enterprises.<sup>162</sup> The Minister also has the power to suspend (pending investigation) on accountable officer for breach of the PFM Act.<sup>163</sup>

The Emergency Fund Act 2008 directs the Minister for MFNP (in consultation with Cabinet and NEMC) to determine the criteria for the allocation of the emergency funds for relief and reconstruction.<sup>164</sup> These criteria have yet to be developed. One of the issues discussed in consultations was the access to the emergency fund to strengthen institutional capacity and national preparedness. Access to this fund must be considered within the context of externally funded development projects already being implemented. The intention of the donor is also a relevant consideration. Tonga was the first nation to access the Pacific Catastrophe Risk Insurance, which was deposited within a fortnight of TC Ian hitting Tonga. A further funding was provided by the Global Facility for Disaster Reduction and Recovery to assist Tonga in the preparation for future disasters.

<sup>158</sup> Public Finance Management Act 2002, sections 3 to 5.

<sup>159</sup> Public Finance Management Act 2002, sections 2.

<sup>160</sup> Public Procurement Regulations 2010

<sup>161</sup> Public Finance Administration (Public Funds) Regulations 1984

<sup>162</sup> Public Finance Management Act 2002, section 2.

<sup>163</sup> Public Finance Management Act 2002, section 6(1)(b).

<sup>164</sup> Emergency Fund Act 2008, section 6.

The Auditor General is empowered under the Public Audit Act to audit the transactions, books and accounts, and other financial records of Ministries and Government agencies, monitor compliance with the requirements of any Act governing the management and control of public money and public resources and review and confirm the discharge of financial management obligations.<sup>165</sup>

**Recommendation 31: Accountability and transparency of the Government**

- The existing statutory provisions should be strengthened for the purposes of international disaster assistance to manage issues such as supervision of assisting actors, non-compliance by assisting actors, transparency as to internationally donated funds, annual reporting on implementation and sanction for non-compliance by officials.
- That the EMR under this recommendation be modelled on Chapter VII (Articles 56 to 60) of the Model Act.

**14.2 Accountability of assisting organisations**

IDRL Guidelines Article 4(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.
IDRL Guidelines Article 4(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: <ol style="list-style-type: none"> <li>a. Aid priorities are calculated on the basis of need alone;</li> <li>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;</li> <li>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;</li> <li>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.</li> </ol>

<sup>165</sup> Public Audit Act 2007, section 6.

## Accountability and transparency

IDRL Article 4(3)	<p>To the greatest extent practicable, their disaster relief and initial recovery assistance should also be:</p> <ol style="list-style-type: none"> <li>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;</li> <li>b. Adequate for the needs of affected persons and consistent with any applicable international standards of quality;</li> <li>c. Coordinated with other relevant domestic and assisting actors;</li> <li>d. Provided and conducted in a manner that is sensitive to cultural, social and religious customs and traditions;</li> <li>e. Carried out with adequate involvement of affected persons, including women, youth and the elderly, in their design, implementation, monitoring and evaluation;</li> <li>f. Provided by competent and adequately trained personnel;</li> <li>g. Commensurate with their organisational capacities;</li> <li>h. Building upon and conducted in a manner that strengthens local disaster risk reduction, relief and recovery capacities and reduces future vulnerabilities to disasters;</li> <li>i. Carried out so as to minimize negative impacts on the local community, economy, job markets, development objectives and the environment; and</li> <li>j. Provided in a transparent manner, sharing appropriate information on activities and funding.</li> </ol>
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There is no specific law in Tonga prescribing minimum standards in disaster relief and recovery. Pursuant to the EMA, the NEMC is responsible for the coordination of the development and implementation of effective emergency management for the Kingdom<sup>166</sup> and for having in place arrangements with other nations and relevant bodies to provide support to the Kingdom during major emergencies.<sup>167</sup> Arguably any effective emergency management assumes that standards will be appropriately aligned to international best practices and procedures. However, these requirements must be clearly stated.

The EMA grants immunity to persons exercising emergency powers on the following terms –

“No legal proceeding or claim shall lie against any person for any act done in good faith and without gross negligence in the exercise of any power or performance of any duty conferred upon him by or under this Act.”<sup>168</sup>

<sup>166</sup> EM Act, section 10(b).

<sup>167</sup> EM Act, section 10(e).

<sup>168</sup> EM Act, section 42.

<sup>169</sup> EM Act, section 36.

This appears to be a broad immunity which would apply to any person or class of persons, and may include any person that the Minister responsible for EM has authorised to exercise the emergency powers under the EMA.<sup>169</sup> There is no specific, prescribed form for the grant of the Minister’s authority. In the event that an offer of foreign assistance is provided, it is advisable that the acceptance of that offer clearly state any authorization to act in the capacity of an emergency officer. Arguably, foreign relief personnel would be protected from criminal and civil liability and this can be expressed in the eligibility provisions for international actors that are incorporated into the EMR. This would mean that eligible international personnel would fall within the definition of “authorised emergency officer” for the purposes of the EM Act.

The Traffic Act provides for special defences for drivers charged with speeding in certain emergency circumstances – ambulance service, police business, fire brigade, medical emergency or power utility emergency. This defence does not expressly cover international actors in emergency situations.<sup>170</sup>

Recommendation 14 above regarding the General Responsibilities of Assisting Actors prescribes the principles and standards that international actors will be required to comply with.

<sup>169</sup> EM Act, section 36.

<sup>170</sup> Traffic Act, section 24.

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## **Chapter 15**

Tonga as a transit or  
sending state for international  
assistance

## 15.1 Transit of disaster relief

IDRL Guidelines Article 16(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.
IDRL Guidelines Article 17(1)(b)	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 – exempt them from all export, transit, and import restrictions.
IDRL Guidelines Article 19(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.
IDRL Guidelines Article 19(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.
IDRL Guidelines Article 19(3)	Any applicable exit, transit and entry visas for the operating personnel of such transport vehicles should be promptly issued.

## 15.2 Sending of international assistance from Tonga

In recent years, the Kingdom’s assistance to foreign emergency situations has been through financial donations.

### Recommendation 32: Transit of Disaster Relief

- The absence of specific provisions for the transit through Tonga of international disaster assistance should be addressed to cover issues such as facilitation for transit; transit facilities period; entitlement to transit facilities; disaster transit visa; goods and equipment in transit and trans -shipment; and transport for transit and trans -shipment.
- That the EMR under this recommendation be modelled on Chapter VIII (Articles 61 to 66) of the Model Act.

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# **Chapter 16**

## Summary of observations and recommendations



This Study has concluded that there is a need to enhance Tonga's legal and policy framework to incorporate measures for the facilitation of international disaster assistance to ensure that it is deployed in a timely manner and for the regulation and oversight over international agencies and personnel who are to provide international disaster assistance.

### 1. Focal Legislation on Emergency Management

The Emergency Management Act 2007 (EMA) does not include express, detailed provisions for the facilitation and regulation of international disaster assistance. Other relevant legislation make provision for pertinent issues relating to international disaster management and the underlying principles of these legislation should be consolidated under a single instrument.

#### Recommendation 1

- That the Government of Tonga articulates and promulgates under a single instrument the procedures, roles and responsibilities related to the facilitation and regulation of international disaster assistance in the event of a disaster in Tonga
- That the Minister responsible for Emergency Management exercises his regulation-making power pursuant to section 43 of the EMA to bring into force new emergency management regulations entitled the Emergency Management (Facilitation and Regulation of International Emergency Relief and Initial Recovery Assistance) Regulations (EMR)
- That the said EMR be formulated according to the Model Act for the Facilitation and Regulation of International Emergency Relief and Initial Recovery Assistance ("the Model Act") with the appropriate amendments to align with the national legislation and regulations.
- That the EMR incorporate the relevant aspects of the General Provisions (Short Title, Purpose and Scope of the Regulations, Definitions and Existing Rights, Privileges and Immunities) to be modelled on Chapter 1 (Articles 1 to 4) of the Model Act.
- That section 5(2) of the EMA is amended to strengthen the application of the Act and recommended Regulations so that where there is inconsistency with other existing legislation, the EMA and the Regulations will prevail.

### 2. National Emergency Preparedness and Planning

The National Emergency Management Plan 2008 is outdated, inappropriate and inconsistent with the Emergency Management Act 2007.

#### Recommendation 2

- That the NEMP be reviewed with a view to formulating a new plan that is founded on: clear and coherent approach to dealing with emergencies; common reference for all departments and authorities which have roles in emergency response activities; incorporating linkages with all lead agencies who have control over specific emergency events; a basis for coordinated action through partnerships amongst stakeholders; clear allocation of responsibilities; robust communications strategy; focus on emergency-related training; a basis to review and evaluate current and future disaster management requirements; and sustained community engagement and participation.
- In addition, the NEMP should include standard operating procedures on operational matters – direction and coordination of emergency-related actions; emergency operations center activities; alerting and activating the emergency management system; communications; warning; survey and assessment; information management; emergency logistics and be aligned to the recommended Regulations on international assistance..
- The EMR<sup>171</sup> (ie. recommended Regulations) should incorporate a provision modelled on Chapter II of the Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (Model Act) detailing the following - Assessment of the Need for International Disaster Assistance; Requests for International Disaster Assistance; Offers and Acceptance of International Assistance; International Disaster Relief and Initial Recovery Periods; Termination of the International Disaster Relief Period; Termination of the International Initial Recovery Period and International support for the Tonga Red Cross Society.

<sup>171</sup> Referred to in Recommendation 1

## Summary of observations and recommendations

**3. Tonga as a recipient of international assistance**

The institutional arrangements are not specifically designed for international disaster assistance although the legal and policy framework emphasises external assistance. The Kingdom is highly dependent on external assistance in times of emergencies.

**Recommendation 3**

- That the process of executing the all-hazards-one system approach should be further clarified and addressed in the formulation of a new NEMP

**4. Early Warning System and activation of the emergency management system**

There is a need to strengthen the procedures for activating the different stages of the emergency management system so that it is clear as to when a request for international disaster assistance will be initiated, deployed and terminated.

**Recommendation 4**

- That the elements of international disaster assistance within Tonga's emergency management system be strengthened through defined stages of initiating, facilitating and terminating international assistance, with distinct periods for international disaster relief and initial recovery.
- That EMR sections responding to this recommendation be modelled on Chapter II (Articles 8 to 10) of the Model Act.

**5. Role of the Tonga Red Cross Society**

That the Tonga Red Cross Society's auxiliary status is recognised by statute (Tonga Red Cross Society Act 1972) and the Society holds a prominent profile in the Kingdom. However, it is advisable that the Society's critical role in emergency management and response be enhanced through active participation in the national emergency structure.

**Recommendation 5**

- That the Minister responsible for Emergency Management co-opt the TRCS as a permanent member of the National Emergency Recovery Committee pursuant to section 17 of the Emergency Management Act.
- That the TRCS be included as a member of the Taskforce on International Disaster Assistance Preparedness referred to in Recommendation 13 below.
- That the EMR be modelled on Chapters II (Article 11) and III (Article 13) of the Model Act.
- That the auxiliary status and fundamental principles of the TRCS be further recognised by ensuring that domestic delays do not inhibit the TRCS' ability to initiate the assistance from the Foreign Components of the International Red Cross and Red Crescent Movement.

**6. Role of other civil society organisations**

With the exception of section 17 of the Emergency Management Act (membership of a NGO representative on the National Emergency Recovery Committee), there is no express provision of the involvement of international NGO's in emergency response and operations. There is a need to enhance the role of civil society organisations in this regard.

**Recommendation 6**

- That key civil society organizations are included as members of the Taskforce on International Disaster Assistance Preparedness referred to in Recommendation 13 below.
- That the EMR under this recommendation be modelled on Chapter III (Article 13) of the Model Act.

**7. Assessment to inform request**

The Draft Disaster Assessment Manual (2011) provides a useful timeline and guide but requires further enhancements to incorporate the initiation of international disaster assistance.

**Recommendation 7**

- That the EMR provide for the assessment of the need for international disaster assistance to determine that domestic capabilities are sufficient or whether the scale of the disaster requires a request for international disaster assistance.
- That the EMR under this recommendation be modelled on Chapter II (Article 5) of the Model Act.

**8. Government focal point for requesting international assistance**

The Government focal point for requesting international assistance is uncertain and requires clarity as to the identity of the focal point and its powers and responsibilities.

**Recommendation 8**

- That the EMR establish a central focal point agency to serve as a liaison between the Government of the Kingdom of Tonga and assisting international actors, promoting the effective facilitation, coordination and oversight of international disaster assistance and serving as the main counterpart for any applicable international or regional coordination mechanisms.
- That the EMR under this recommendation be modelled on Chapter III (Article 12) of the Model Act.

**9. The request for international assistance**

Little guidance is provided in the EMA or the NEMP as to the circumstances in which a request for international assistance is to be initiated. The procedures for requesting external assistance are flexible. Consequently, the level of detail required in an assessment for international assistance purposes is also unclear. There is a need to formulate simple and clear procedures to initiate, facilitate and regulate international disaster assistance.

**Recommendation 9**

That any request for international disaster assistance is :

- directed appropriately to particular international actors or to the international community generally and accompanied by information on the extent and type of assistance required.
- accompanied by information which would allow international actors to offer and provide assistance.
- That the EMR under this recommendation be modelled on Chapter II (Article 6) of the Model Act.

**10. Offers of Assistance**

There are no measures in place to manage the offer and acceptance of international assistance.

**Recommendation 10**

- That appropriate measures be adopted to manage, through a central focal point agency, the offer and acceptance of international assistance by civilian and military actors.
- That the EMR under this recommendation be modelled on Chapter II (Article 7) of the Model Act.

**11. Command, Control and Coordination during an Emergency Response**

Although the practice in the Kingdom is to request international assistance when the emergency response is beyond national capacity and resources, there is a need to clearly set out this criterion. Initiating international assistance through a formal request should be preceded by a formal declaration of an emergency. This would then allow for the deployment and operations of international assistance.

**Recommendation 11**

- The establishment of a Taskforce on International Disaster Assistance Preparedness should address the overlap and duplication in roles. It may be established under the chairmanship of the central focal point agency, with the primary role of enhancing preparedness for implementation of the EMR in case of a disaster requiring international disaster assistance.
- National and local authorities should endeavor to integrate the role of assisting international actors into their contingency planning and mechanisms for operational coordination of disaster relief and initial recovery assistance. In particular, they shall endeavor to facilitate the work of assisting international actors within their humanitarian mandate, while balancing the urgent needs of people affected by disaster and necessary safeguards relating to public safety and health, coordination and oversight.
- That the EMR under this recommendation be modelled on Chapter III (Articles 12 and 15) of the Model Act.

**12. Rules about the types of information international relief providers must provide**

Various instruments and legislation prescribe different types of information to be provided for the purposes of emergency management and operations. These should be collated into a single point of contact or document.

## Summary of observations and recommendations

**Recommendation 12**

- That the EMR establish a Single Window International Facilitation Team (SWIFT) for the purpose of consolidating and expediting the legal requirements concerning entry of incoming international personnel, goods, equipment and transport, as well as the application process for eligibility.
- That the EMR under this recommendation be modelled on Chapter III (Articles 14) of the Model Act.

**13. Legal Status of Foreign Entities Providing Assistance**

Tongan law provides for immunities and privileges for certain Foreign Diplomatic and Consular Personnel and International Organisations. However, there are no similar provisions for other foreign personnel deployed in disaster operations. The Emergency Management Act provides that immunity from legal proceedings are accorded to authorised emergency officers, unfortunately however, this falls far short of the IDRL guidelines recommendations.

**Recommendation 13**

- That there is a need to recognise the exceptional circumstances surrounding disasters so that specific legal facilities are granted to international actors to facilitate their mobilisation into Tonga, as the circumstances will require.
- That there are clear criteria, efficient certification procedures, adequate safeguards in place to ensure that the legal facilities are not subjected to abuse and manipulation and that eligibility for and access to legal facilities is reciprocated by commitment to principles of international disaster assistance.
- That there is recognition of the distinct status and responsibilities of the different international assisting actors so that eligibility is categorised accordingly – such as assisting states, relevant intergovernmental organizations (United Nations and regional organisations), TRCS, foreign components of the RCRC Movement, assisting actors and private businesses.
- That the EMR under this recommendation be modelled on Chapter V (Articles 20 to 24) of the Model Act.
- That the EMR should incorporate provisions prescribing the general responsibilities of assisting actors including principles of international disaster assistance, respect for the dignity and privacy of affected persons, quality of goods and service and removal or disposal of unused goods.
- That the EMR under this recommendation be modelled on Chapter IV (Articles 16 to 19) of the Model Act.

**14. Domestic legal status of foreign organisations**

There is legislation for the registration of charitable organisations, charitable trusts and incorporated societies. However, there is no system specifically for the registration of foreign disaster relief organisations and personnel.

**Recommendation 14**

- That the EMR should incorporate provisions granting legal capacity to assisting international actors in order that they may make necessary in Tonga, allow for their engagement and termination of locally engaged personnel and jurisdiction over international personnel.
- That the EMR under this recommendation be modelled on Chapter VI (Part 6) of the Model Act.

**15. Customs Arrangements for the Arrival of Relief Goods in Disaster**

The customs and excise law grants exemptions on “relief consignments”. However, it would be preferable if the operational procedures are incorporated with into one instrument, covering all aspects of international disaster assistance, as a key reference document.

**Recommendation 15**

- The Tonga Customs Procedures Applicable to Relief Consignments would be enhanced by the formulation of specific provisions for the entry of international disaster goods and equipment by eligible actors, which should include – customs facilitation and priority treatment; duty of compliance by eligible actors; representation to customs; exemption from import duties, taxes and restrictions; simplification of documentation requirements; extended hours for customs; inspections and customs security and agreements on pre-positioning of stock.
- That the EMR under this recommendation be modelled on Chapter VI: Part 6 (Articles 29 to 36 of the Model Act).

### 16. Unused humanitarian goods

Except in the case of medical goods, there is no provision in Tongan law for the proper disposition of unused humanitarian goods.

#### Recommendation 16

- Adequate provision should be made for unused humanitarian goods so that the following issues are covered – nature of equipment and unused goods; re-export of goods and equipment and donation of unused goods and equipment.
- That the EMR under this recommendation be modelled on Chapter VI: Part 4 (Articles 42 to 44) of the Model Act.

### 17. Communications equipment

The communications law allows the responsible Minister to grant an exemption to hold a communications licence but there is no specific exemption for emergency purposes. Tonga's international obligation on the matter has yet to be applied in domestic law. Communications equipment is not specified in the definition of "relief consignment" but may be classified as a good of "prime necessity".

#### Recommendation 17

- Communications equipment should be – permitted expedited entry without restrictions (subject to national security and public order); waiver or expedited licensing and fees requirements and access to telecommunications facilities and services.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 37) of the Model Act.

### 18. Food

Food safety through prescribed standards is enforced by law. There are no special provisions relating to importation of food for emergency purposes, although the definition of "relief consignments" is likely to apply to food.

#### Recommendation 18

- Given that food safety should be the paramount consideration, the importation of food should be admitted pursuant to expedited procedures rather than waiver of importation requirements.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 39) of the Model Act.

### 19. Medication

The public health and medication law adequately covers those aspects relevant to international disaster assistance. However, it would be preferable if the operational procedures are incorporated with into one instrument, covering all aspects of international disaster assistance, as a key reference document.

#### Recommendation 19

- The existing requirements for the importation of medication and medical equipment should be consolidated with specific provisions for international disaster assistance with suitable measures in place to ensure expedited importation and that appropriate standards and quality are prescribed.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 38) of the Model Act.

### 20. Vehicles

There are no specific provisions for the temporary recognition of vehicles imported for emergency purposes although the Minister may grant an exemption.

#### Recommendation 20

- The importation of vehicles by eligible actors, the Tonga Red Cross Society or any approved domestic civil society organization should be either granted temporary recognition or the process for domestic registration and issuing of vehicle plates should be expedited.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 40) of the Model Act.

## Summary of observations and recommendations

**21. Animals**

There are no specific provisions to exempt the import of search dogs for the purpose of international disaster assistance.

**Recommendation 21**

- The relevant Acts should be consolidated to permit the temporary importation of search dogs without the need for quarantine requirements but with the development of specific regulations relevant to search and rescue dogs.
- That the EMR under this recommendation be modelled on Chapter VI: Part 3 (Article 41) of the Model Act.

**22. Entry of Emergency Personnel**

There is no exemption for entry permit or a specific visa for emergency personnel under the immigration laws although there is provision for additional types of visas from those already prescribed. Also, the Prime Minister may grant exemptions from the provisions of the Act.

**Recommendation 22**

- A separate disaster visa should be expressly incorporated into the immigration laws for international relief personnel with exemptions or waivers on application procedures and fees and the appropriate permit to engage in disaster-related activities within Tonga.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 25) of the Model Act

**23. Recognition of Foreign Qualifications**

Registration is mandatory for medical personnel under specific legislation for particular medical personnel. The registration procedure may be expedited for emergency purposes. However, it would be preferable if the operational procedures are incorporated with into one instrument, covering all aspects of international disaster assistance, as a key reference document.

**Recommendation 23**

- The domestic requirements for recognition of foreign professional qualifications may be enhanced through pre-deployments measures that international actors are required to comply with. Such measures will ensure that the expedited procedures already established in Tonga are promptly initiated.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 26) of the Model Act.

**24. Transport of Relief Goods**

There are no specific exemptions for transporting emergency relief goods under the civil aviation or shipping law.

**Recommendation 24**

- The relevant Acts should be consolidated to incorporate adequate measures for ground, air and sea transportation as the key logistical aspect in international disaster assistance. The main issues to be included are – facilitation of means of transport, entry of transport operators, prior notification of arrival of carriers and exemption from applicable taxes, levies, duties, fees or charges imposed by government, statutory or private agencies.
- That the EMR under this recommendation be modelled on Chapter VI: Part 5 (Articles 45 to 47) of the Model Act.

**25. Driving License**

Foreign driver's license are recognised in Tongan law but local registration is mandatory. There are no exemptions for emergency purposes for registration or waiver of fees.

**Recommendation 25**

- Temporary recognition should be accorded to valid foreign driving licences necessary for the performance of disaster relief or initial recovery functions without the need to comply with the onerous procedures under the Traffic Act.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 27) of the Model Act



**26. Consumption Tax**

There is no CT exemption for the import or supply of goods and services for the purposes of humanitarian assistance. The provision for a tax refund for charitable and humanitarian purposes is an onerous procedure.

**Recommendation 26**

- The legislation on Consumption Tax may be enhanced with specific provisions to incorporate the relevant disaster period in which a CT exemption may be accorded to authorized relief consignments.
- That the EMR under this recommendation be modelled on Chapter VI: Part 7 (Article 51) of the Model Act.

**27. Customs Duty and Excise Tax**

The import of relief consignments is exempted under the customs and excise laws. The clearance and approval procedure may be expedited for emergency purposes. However, it would be preferable if the operational procedures are incorporated with into one instrument, covering all aspects of international disaster assistance, as a key reference document.

**Recommendation 27**

- The application of customs duty and excise tax for the entry of international emergency goods and equipment would be enhanced by formulation of specific provisions for the entry of international disaster goods and equipment by eligible actors, which should include – customs facilitation and priority treatment; duty of compliance by eligible actors; representation to customs; exemption from import duties, taxes and restrictions; simplification of documentation requirements; extended hours for customs; inspections and customs security and agreements on pre-positioning of stock.
- That the EMR under this recommendation be modelled on Chapter VI: Part 6 (Articles 29 to 36) of the Model Act.

**28. Income Tax**

Income tax exemptions are granted in certain circumstances relating to humanitarian and charitable activities.

**Recommendation 28**

- Exemptions should be granted on the income of eligible assisting international actors during a specific period of the disaster.
- That the EMR under this recommendation be modelled on Chapter VI: Part 7 (Article 52) of the Model Act.

**29. Currency exchange and banking**

There are no specific provisions for currency exchange and funds transfer for international disaster assistance under banking law.

**Recommendation 29**

- Specific provisions should be incorporated into Regulations to facilitate the transfer of funds and access to the best available exchange rates for the purposes of international disaster assistance.
- That the EMR under this recommendation be modelled on Chapter VI: Part 8 (Articles 54 and 55) of the Model Act.

**30. Freedom of Movement During Disasters**

Subject to any arrangements as to effective and efficient coordination of relief operations, there are no restrictions to the movement and access of humanitarian organisations to affected people and areas.

**Recommendation 30**

- The statutory provisions guaranteeing freedom of access and movement should be extended to international personnel of eligible actors so that they may enjoy, as circumstances necessitate, the same access to disaster-affected areas as domestic actors.
- That the EMR under this recommendation be modelled on Chapter VI: Part 1 (Article 28) of the Model Act.



## Summary of observations and recommendations

**31. Accountability and transparency of the Government**

There are adequate provisions in law to ensure that the provision of disaster relief goods and services are accountable and transparent. There are safeguards in place to prevent the misappropriation or diversion of such goods and services. However, it would be preferable if the operational procedures are incorporated with into one instrument, covering all aspects of international disaster assistance, as a key reference document.

**Recommendation 31**

- The existing statutory provisions should be strengthened for the purposes of international disaster assistance to manage issues such as supervision of assisting actors, non-compliance by assisting actors, transparency as to internationally donated funds, annual reporting on implementation and sanction for non-compliance by officials.
- That the EMR under this recommendation be modelled on Chapter VII (Articles 56 to 60) of the Model Act.

**32. Transit of Disaster Relief**

There are no specific provisions in Tongan law relating to the transit of disaster relief through the Kingdom. However, the laws and regulations relating to the receiving of international disaster assistance in Tonga may be applicable to transit situations.

**Recommendation 32**

- The absence of specific provisions for the transit through Tonga of international disaster assistance should be addressed to cover issues such as facilitation for transit; transit facilities period; entitlement to transit facilities; disaster transit visa; goods and equipment in transit and transshipment; and transport for transit and transshipment.
- That the EMR under this recommendation be modelled on Chapter VIII (Articles 61 to 66) of the Model Act.

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## Final key observations

Finally, this report would be remiss if it were to exclude a number of recurring threads voiced by stakeholders in the course of the research for this report.

Although the following observations are outside the scope of this particular study, stakeholders felt it was important enough to warrant mention in this report as follows:

- There was strong feedback received recommending that the Government of Tonga consider the formulation of a new NEMP to give full effect to the EMA.
- It is also recommended that adequate funding be targeted towards the administration of the National Emergency Management Committee (NEMC) and the National Emergency Management Office (NEMO). The NEMC is the primary policy and planning agency for emergency management with functions and powers conferred by the EMA. The NEMO is the operational and administrative arm of the emergency management system with primary responsibility to execute the directions of the NEMC. A recurring concern voiced during the consultations is the acknowledgement that unless appropriate resources are directed to NEMO, the emergency management system is at risk of disintegration with dire consequences.

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# Annex 2 – IDRL Guidelines

## Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance

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### 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
  - c. International Federation of Red Cross and Red Crescent Societies and the International Committee of the Red Cross; 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.



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## **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

### **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.

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## Part II: Early Warning and Preparedness

### 7. Early Warning

1. 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.

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## 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

1. 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

1. 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.

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### Part IV: Eligibility for Legal Facilities

#### 13. Facilities for Assisting States

1. 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

1. 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 4.

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## 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.
    - iv.

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

1. 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

1. 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

1. 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.

# Annex 3 – Emergency Management Act 2007

## Part I - Preliminary

### 1. Short title and commencement

This Act may be cited as the Emergency Management Act 2007.

### 2. Interpretation

In this Act, unless the context otherwise requires

**“authorised officer”** means a person authorised to exercise emergency powers for a state of emergency under this Act;

**“Director”** means the Director of Works; **“emergency”** means an event, actual or imminent, which endangers or threatens to endanger life, property or the environment and which requires a significant and coordinated response;

**“emergency management”** means arrangements about managing the potential adverse effects of an event, including mitigating community risk, preparing for and responding to threatening events and recovering from an emergency;

**“emergency operations”** means activities undertaken before, during or after an event happens to help reduce loss of human life, illness or injury to humans, property loss or damage or damage to the environment;

**“emergency powers”** means the powers authorised under this Act to be exercised on a declaration of a state of emergency;

**“event”** means any of the following –

- a. a cyclone, earthquake, storm, storm surge, tornado, tsunami, volcanic eruption or other natural happening;
- b. an explosion or fire, a chemical, fuel or oil spill, or a gas leak;
- c. an infestation, plague or epidemic;
- d. a failure of an essential service or infrastructure;
- e. a terrorist attack against the Kingdom; or
- f. any other event similar to an event referred to in paragraphs (a) to (e);

**“health practitioner”** is as defined in the Health Practitioners Act;

**“Manager”** means the manager of the National Emergency Management Office;

**“military personnel”** means members of the Tonga Defence Services and any overseas military personnel who are in the Kingdom under a status of forces agreement;

**“Minister”** means the Minister responsible for emergency management; and

**“National Emergency Management Office”** means the National Emergency Management Office established under this Act.

### 3. Act binds the Crown

This Act binds the Crown.

### 4. Relationship to other Acts

1. Except as provided in section 6, the powers under this Act are in addition to and do not limit the making of a declaration or exercise of a power under any other Act.
2. The existence of a declaration under any other Act shall not prevent or limit the declaration of a state of emergency under this Act.

### 5. Effect on powers in other Acts

1. This section applies when a state of emergency has been declared under any other Act.
2. Where the exercise of powers under any other Act is inconsistent with the exercise of emergency powers under this Act, the emergency powers shall prevail over the powers under the other Act.

### 6. Limit on application

This Act shall not apply to situations involving –

- a. armed combat against an enemy;
- b. industrial disputes; or
- c. internal disturbances and tensions such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

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## **Part II – Emergency Management Committees and Other Bodies**

### 7. Establishment National Emergency Management Office

The National Emergency Management Office is established as a Division within the Ministry, which shall have the following functions —

- a. provide support and advice to emergency management committees on emergency management and emergency operations in the Kingdom;
- b. review and monitor the National Emergency Management Plan;
- c. implement the policies and decisions of the National Emergency Management Committee;
- d. coordinate emergency management activities in the Kingdom;
- e. regularly report to the National Emergency Management Committee about the performance of the National Emergency Management Office’s functions; and

## Annex 3 – Emergency Management Act 2007

- f. establish and maintain effective communication within Government and with non-government organisations and the private sector on emergency management.

### 8. Functions of the Manager

The Manager shall be responsible to the Director for the following functions –

- a. manage the functions of the National Emergency Management Office;
- b. prepare an annual work program for the development of a budget; and
- c. other functions relating to emergency management the Director considers appropriate.

### 9. Establishment

The National Emergency Management Committee is hereby established.

### 10. Functions

The National Emergency Management Committee shall have the following functions —

- a. make policy decisions of national significance relating to emergency management for the Kingdom;
- b. coordinate the development and implementation of effective emergency management for the Kingdom;
- c. approve and regularly review the National Emergency Management Plan;
- d. ensure that the regular exercise of operational procedures in the National Emergency Management Plan is carried out;
- e. have in place arrangements with other nations and relevant bodies to provide support to the Kingdom during major emergencies;
- f. provide support to District Emergency Management Committees; and
- g. coordinate effective emergency management and emergency response in communities before, during and after the impact of an event.

### 11. Membership

The National Emergency Management Committee shall consists of the following members –

- a. the Minister who shall be the chairman;
- b. Chief Secretary and Secretary to Cabinet;
- c. the Director;
- d. Secretary for Finance and Planning;
- e. Director of Agriculture, Forestry, Fisheries and Food;
- f. Director of Health;

- g. Police Commander;
- h. Commander of Tonga Defence Services;
- i. Secretary for Lands, Survey, Natural Resources and Environment;
- j. the Manager who shall be the Secretary; and
- k. Director of Education.

## 12. Annual report on emergency management

The Minister shall prepare a report on emergency management in the Kingdom, as part of his annual report to the Legislative Assembly, including the following –

- a. information about activities undertaken during the year to maintain or enhance the Kingdom's emergency management;
- b. details of emergency operations undertaken during the year;
- c. information about priorities for disaster risk reduction; and
- d. other matters about emergency management the Minister considers appropriate.

## 13. Establishment and functions of National Emergency Operations Committee

The National Emergency Operations Committee is hereby established, which shall have the following functions –

- a. activate ministries and organisations in response to an event that has happened, is happening or may happen;
- b. liaise with ministries, non government organisations and community groups in the execution of their emergency management roles and responsibilities;
- c. carry out initial assessment;
- d. collate and prioritise immediate disaster relief requirements; and
- e. manage the distribution of immediate relief supplies.

## 14. Membership of National Emergency Operations Committee

The National Emergency Operations Committee shall consist of the following members –

- a. the Minister who shall be the chairman;
- b. the Director;
- c. Police Commander;
- d. Commander, Tonga Defence Services;
- e. Secretary for Foreign Affairs; and
- f. the Manager.

## Annex 3 – Emergency Management Act 2007

### 15. Functions of the National Controller

The National Emergency Operations Committee shall have the following functions –

- a. determine the priority of the response roles of any Government or non-government agency, in consultation with members of the National Emergency Operations Committee;
- b. direct and coordinate the activities of any Government or nongovernment agency; and
- c. allocate all available resources of the government which the Minister, in consultation with the National Emergency Operations Committee, considers necessary,

for responding to events that may, happen, is happening or about to happen.

### 16. Establishment and functions of National Emergency Recovery Committee

The National Emergency Recovery Committee is hereby established, which shall have the following functions –

- a. coordinate the recovery phase following any event;
- b. carry out detailed assessments in partnership with the relevant committee;
- c. coordinate the provision of emergency relief; and
- d. coordinate all recovery and rehabilitation works.

### 17. Membership of National Emergency Recovery Committee

The National Emergency Recovery Committee shall consist of the following members –

- a. the Minister who shall be the chairman;
- b. Chief Secretary and Secretary to Cabinet;
- c. Secretary for Finance;
- d. Director;
- e. Secretary for Foreign Affairs;
- f. Commander of Tonga Defence Services;
- g. representative of non-government organisations who may be coopted as required; and
- h. Manager who shall be the Secretary.

### 18. Establishment and functions of District Emergency Management Committees

1. A District Emergency Management Committee shall be established for each of the following districts of the Kingdom –

- a. Ha'apai
- b. Vava'u

- c. Niuatoputapu;
  - d. Niuafu'ou; and
  - e. 'Eua.
2. Each District Emergency Management Committee shall have the following functions –
- a. prepare, and regularly review, a District Emergency Management Plan;
  - b. develop and implement effective emergency management in the district in accordance with any relevant policies issued by the National Emergency Management Committee;
  - c. provide reports and make recommendations to the National Emergency Management Committee about disaster risk reduction and emergency management activities in the district;
  - d. regularly conduct exercises of operational procedures as required by the District Emergency Management Plan;
  - e. provide support to communities to ensure effective emergency management in communities before, during and after the impact of an event;
  - f. promote community awareness of emergency management, including ways of mitigating, preparing for, responding to and recovering from an emergency;
  - g. identify and coordinate the use of resources for emergency operations in the district;
  - h. manage emergency operations in the district in accordance with any policies and procedures issued by the National Emergency Management Committee;
  - i. establish and review communications systems in the district for use when an event threatens or an emergency happens; and
  - j. provide information about an event or an emergency in the district to the National Emergency Management Committee.

### **19. Membership of District Emergency Management Committees**

Each District Emergency Management Committee shall consist of the following members –

- a. the Governor or Government Representative of the district who shall be the chairman; and
- b. any other members appointed by the chairman with the approval of the Minister.

### **20. Annual report of District Emergency Management Committees**

1. Each District Emergency Management Committee shall prepare and give to the National Emergency Management Committee an annual report about emergency management in the district, by 30th March of each year.
2. The report shall include the following –



## Annex 3 – Emergency Management Act 2007

- a. information about activities undertaken during the year to maintain or enhance the district's emergency management;
- b. details of emergency operations undertaken during the year;
- c. other matters about emergency management the National Emergency Management Committee considers appropriate.

### 21. Chairman may give directions

1. The chairman of the National Emergency Management Committee, after consulting with the chairman of the District Emergency Management Committee, may give a District Emergency Management Committee a written direction about the performance of its functions if satisfied it is necessary to ensure the functions are adequately performed.
2. The District Emergency Management Committee shall comply with the direction given under subsection (1).

### 22. Establishment of the Village Emergency Committee

The Village Emergency Committee is hereby established, which shall have the following functions –

- a. develop and implement effective emergency management in the village in accordance with any relevant policies issued by the National Emergency Management Committee;
- b. provide reports and make recommendations to the District Emergency Management Committee about disaster risk reduction and emergency management activities in the village;
- c. provide support to village communities to ensure effective emergency management in village communities before, during and after the impact of an event;
- d. coordinate village community awareness of emergency management, including ways of mitigating, preparing for, responding to and recovering from an emergency;
- e. identify and coordinate the use of resources for emergency operations in the village;
- f. manage emergency operations in the village in accordance with any policies and procedures issued by the National Emergency Management Committee;
- g. establish and review communications systems in the village for use when an event threatens or an emergency happens; and
- h. promptly provide information about an event or an emergency in the village to the District Emergency Management Committee.

### 23. Membership of Village Emergency Committee

A Village Emergency Committee shall consist of the following members –

- a. town officer who shall be the chairman; and
- b. representatives appointed by the town officer with the approval of the Minister.

#### **24. Annual report of Village Emergency Committee**

1. Each Village Committee shall prepare and give to the District Emergency Management Committee an annual report about emergency management in the village by 28th of February of each year.
2. The Village Emergency Committee shall comply with the direction given in subsection (1).

#### **25. Committee meetings**

Each committee shall hold a meeting at least once each quarter at the time and place decided by the chairman of the committee.

#### **26. Chairing of meetings**

If the chairman of a committee is absent from a meeting, the members may elect an acting chairman who shall chair that meeting.

#### **27. Minutes**

A committee shall keep minutes of its meetings.

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### **Part III - Emergency Management Plans**

#### **28. National Emergency Management Plan**

The National Emergency Management Committee shall prepare a National Emergency Management Plan , to include provision for the following –

- a. mitigation, preparedness, response and recovery, based on a risk management process;
- b. specific events under this Act;
- c. the roles and responsibilities of relevant bodies;
- d. priorities for disaster risk reduction;
- e. (arrangements of provision of support from other nations and donor agencies;
- f. support and coordinate the District Emergency Management Committees; and
- g. any other matter it considers appropriate.

### 29. District Emergency Management Plans

A District Emergency Management Committee shall prepare a District Emergency Management Plan for the district, to include provision for the following –

- a. mitigation, preparedness, response and recovery, based on a risk management process;
- b. specific events that may happen in the district;
- c. the roles and responsibilities of relevant entities;
- d. priorities for disaster risk reduction for the district; and
- e. any other matter it considers appropriate.

### 30. Plans to be available to the public

Each committee shall –

- a. keep a copy of their emergency management plans available for inspection by members of the public during business hours at the Ministry of Works' office; and
- b. provide a copy of the whole or part of an emergency management plan,

free of charge.

### 31. Guidelines

The Minister may prepare and issue written guidelines for emergency management committees for the development of emergency management plans and any other matters that he considers necessary.

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## Part IV - Declaration of State of Emergency

### 32. Declaration of state of emergency

1. The Prime Minister may declare a state of emergency for the Kingdom, or a part of the Kingdom, if satisfied that –
  - a. an emergency has happened, is happening or may happen in the Kingdom; and
  - b. it is necessary for emergency powers to be exercised to prevent or minimise –
    - i. loss of human life;
    - ii. illness or injury to humans;
    - iii. property loss or damage; or
    - iv. damage to the environment.
2. A declaration made under subsection (1) applies only to the area specified in the declaration and remains in force for 28 days.

### 33. Duration of declaration

A state of emergency commences when it is declared and ends 28 days after the day it is declared, unless the Prime Minister ends it earlier.

### 34. Renewal of declaration

1. The Prime Minister may renew the declaration of a state of emergency from time to time for a period of up to 28 days.
2. The declaration or its renewal shall be published in such manner as the Prime Minister deems necessary for bringing it to the notice of the public.

### 35. Expiration of declaration

The declaration ceases to have effect on the expiration of 28 days from the date on which it was made, or if renewed, on the expiration of the time it was renewed for.

### 36. Authorisation for exercise of powers

1. The Minister may authorise any person or class of persons to exercise the emergency powers under this Act.
2. Police officers and military personnel may exercise emergency powers.

### 37. Powers on a declaration

For purposes of this section –

**“place”** includes land, premises and a vehicle; and

**“vehicle”** means anything used for carrying anything or any person by land, water or air.

During the period of a state of emergency an authorised officer may exercise emergency powers necessary for the prevention of loss of human lives, illness or injury to humans or animals, loss or damage to property, and damage to the environment, including but not limited to –

- a. entering property without warrant;
- b. evacuation of people and animals;
- c. preventing people, animals, plants, vehicles, and other things from entering a place;
- d. preventing people, animals, plants, vehicles, and other things from leaving a place;
- e. taking necessary equipment onto a place to assist them in carrying out their duties;
- f. directing the movement of people, animals, vehicles and other things;
- g. shutting off a supply of electricity, fuel, gas or other service, and taking and using electricity, fuel, gas or water;
- h. maintaining, restoring, or preventing damage to essential services;

- i. shutting down or dismantling any equipment or motor;
- j. removing, demolishing or damaging any building or thing;
- k. placing property under the control, or at the disposal of an authorised officer;
- l. decontaminating people and property;
- m. erecting barriers and closing roads; and
- n. requiring a person to give the authorised officer reasonable help to exercise the authorised officer’s emergency powers.

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## Part V - Offence Provisions

### 38. Obstruction of authorised officer

Any person who, without lawful excuse, obstructs an authorised officer in the exercise of a power under this Act, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both.

### 39. Failure to comply with direction

Any person who, without lawful excuse, fails to comply with a direction under this Act, or required by an authorised officer to give assistance, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both.

### 40. Impersonation of authorised officer

Any person who knowingly impersonates an authorised officer, commits an offence and shall be liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 years, or both.

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## Part VI - Miscellaneous

### 41. Disclosure of information

Nothing in this Act authorises or requires the disclosure of information which may compromise the safety or security of the Kingdom or its people.

### 42. Immunity of person exercising powers

No legal proceeding or claim shall lie against any person for any act done in good faith and without gross negligence in the exercise of any power or performance of any duty conferred upon him by or under this Act.

### 43. Regulation-making power

The Minister may, with the consent of Cabinet make regulations generally for carrying into effect the provisions of this Act.



# Annex 4 – Matrix of Stakeholders and Functions

Disaster Management Functions	Functional Lead Agency
Emergency Management Systems	Ministry of Meteorology, Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC) (National Emergency Management Office)
Transportation infrastructure	Ministry of Infrastructure (Marine Transport Division) (Land Transport Division) (Civil Aviation Division)
Warnings	MEIDECC (Tonga Meteorological Services)  Ministry of Lands and Natural Resources (Geological Services Unit)
Emergency supply	MEIDECC (National Emergency Management Office)
Building and engineering services	Ministry of Infrastructure (Public Works Division) (Building Control and Standards Division)
Communication and Information	MEIDECC
Telecommunications services	Tonga Communications Corporation Digicel  MEIDECC
Public health and medical services	Ministry of Health
Search and rescue	Tonga Police
Emergency medical retrieval	Ministry of Health – Ambulance Service
Electricity, fuel, gas, waste and reticulated and potable water supply	Ministry of Public Enterprises (Tonga Power Ltd) (Home Gas Ltd) (Tonga Water Board) (Waste Management Authority)  Ministry of Health  Total Energy Pacific Energy
External affairs and communication	Ministry of Foreign Affairs and Trade
Human-social recovery	Ministry of Internal Affairs  Churches Tonga Red Cross Society  Non-Government Organizations

Annex 4 – Matrix of Stakeholders and Functions

Disaster Management Functions	Functional Lead Agency
Economic recovery	Prime Minister’s Office and Cabinet Ministry of Finance and National Planning
Environmental recovery	MEIDECC Ministry of Lands and Natural Resources
Infrastructure recovery	Transportation Infrastructure: Ministry of Infrastructure
Infrastructure recovery	Building Recovery: Ministry of Infrastructure
Infrastructure recovery	Telecommunications: MEIDECC
Infrastructure recovery	Energy Infrastructure (electricity, gas, fuel): Ministry of Public Enterprises
Infrastructure recovery	Water Supply and Sewerage Infrastructure: Tonga Water Board and Waste Authority Ltd
Infrastructure recovery	Water Entities: Ministry of Health and Village Water Committees



# Annex 5 – References

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- Public Finance Administration (Public Funds) Regulations 1984.
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- Therapeutic Goods Act 2001.
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- Traffic Regulations 1974.
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# 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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