

## SUMMARY

# IDRL IN THE SOUTH-WEST INDIAN OCEAN

Study of legal frameworks to facilitate and regulate international disaster response in:  
Union of the Comoros, Mayotte and Reunion, Madagascar, Mauritius, Mozambique,  
Seychelles, and Tanzania



## **ABOUT THE INDIAN OCEAN REGIONAL INTERVENTION PLATFORM**

For twenty years the Indian Ocean Regional Intervention Platform (PIROI) – which reports to the International Relations and Operations Department (DIRO) of the French Red Cross – has been working on risk management of disasters (DRM) in the south-west Indian Ocean. PIROI consists of various members of the International Red Cross and Red Crescent Movement: Comoros Red Crescent, French Red Cross, Malagasy Red Cross, Mauritius Red Cross, Mozambique Red Cross, Seychelles Red Cross Society, Tanzania Red Cross Society, the International Federation of Red Cross and Red Crescent Societies (IFRC), and the International Committee of the Red Cross (ICRC).

PIROI works alongside the Indian Ocean’s National Societies and national risk management authorities (e.g. civil protection departments and government ministries), as well as French organisations who operate in the region. In addition, PIROI works with the Indian Ocean Commission (IOC) under a partnership agreement signed in 2012 which aims to build the capacities of those involved in the region’s disaster risk management. Based in Reunion Island, PIROI also works to develop skills and resources as close as possible to vulnerable areas, thus increasing responsiveness and flexibility when dealing with disasters. The strength of PIROI’s regional response relies on its dense regional networks and coverage: more than 800 local committees and over 35,000 active volunteers work with the seven PIROI-member National Societies, including at its eight warehouses of pre-positioned relief supplies.

PIROI is a key stakeholder in disaster management in the Indian Ocean. It has been interested in International Disaster Law, or IDRL, for several years<sup>1</sup>, both in terms of building other stakeholders’ capacities, and in the advocacy required for it to intervene in the event of disasters in order to effectively provide material assistance to the affected countries. PIROI’s interest is not only reflected by this study but also by its role as organiser of several national workshops and a regional workshop promoting a legal approach to DRM<sup>2</sup>.

This overview stems from a comprehensive study aimed at presenting the international and regional framework of disaster law. It aims to:

- Identify the international legal and policy framework for assistance, as well as its integration into domestic legal frameworks
- Identify national legal and policy arrangements governing international disaster assistance, and analyse the degree of IDRL Guideline integration
- Identify any legal obstacles that may delay or hinder international assistance
- Present key legal frameworks to facilitate humanitarian stakeholders’ response
- Propose recommendations based on these considerations in order to improve the effectiveness of disaster response for Indian Ocean countries

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<sup>1</sup> IFRC, PIROI, IOC, “International law and disaster response” training workshop, 2012

<sup>2</sup> Due to the current pandemic it is not yet possible to announce the dates of future workshops

## INTRODUCTION

The south-west Indian Ocean is one of the world's most active areas in terms of tropical cyclone formation<sup>3</sup>. This causes extensive human and material losses while hampering countries' development efforts. Added to this – as the Intergovernmental Panel on Climate Change (IPCC) underlined in its 2018 special report on the consequences of global warming of 1.5°C – is the risk of an increase in the intensity of extreme weather events<sup>4</sup>.

At the same time, climate change and natural disasters are having an impact on the deployment of humanitarian assistance. One of these impacts is the increased number and diversification of stakeholders responding when disasters occur. For example, the number of non-governmental organisations (NGOs) involved in disaster response has risen sharply in recent years<sup>5</sup>. In addition to NGOs, there are also governmental and United Nations agencies, international organisations such as the RC/RC Movement, and private entities. This creates difficulties for the affected country's authorities in terms of managing and delivering aid.

Despite legislative efforts in recent years, few countries have national legislation or a policy strategy capable of addressing the full range of regulatory issues encountered during disaster relief operations. However – just like a cyclone or mudslide – legal obstacles can hamper the effectiveness of international relief operations<sup>6</sup>. Lack of regulations where they are essential can lead to an uncoordinated, costly, and even inappropriate response to communities receiving assistance, and to national organisations spearheading relief efforts<sup>7</sup>.

The essential role of laws, policies, and institutional arrangements for compliance with all aspects of risk management (DRM) is recognised in several international instruments, including “*The Sendai Framework for Disaster Risk Reduction 2015-2030*” (“Sendai Framework”)<sup>8</sup>. Priority 2 of this Framework aims to strengthen disaster risk governance in order to manage disaster risk. The legal approach to disaster management and the corresponding facilitation of relief efforts is thus very much in line with this priority.

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<sup>3</sup> *Atlas des risques naturels et climatiques de Madagascar* [Atlas of natural and climatic risks in Madagascar], BRGM, Emergency Prevention and Management Unit, World Bank, 2020, p.23

<sup>4</sup> IPCC, Special report on Global Warming of 1.5°C, Chapter 3: Impacts of 1.5°C of Global Warming on Natural and Human Systems, p 171, “Human-induced global warming has already caused multiple observed changes in the climate system (*high confidence*). Changes include increases in both land and ocean temperatures, as well as more frequent heatwaves in most land regions (*high confidence*). There is also high confidence that global warming has resulted in an increase in the frequency and duration of marine heatwaves. Further, there is substantial evidence that human-induced global warming has led to an increase in the frequency, intensity and/or amount of heavy precipitation events at the global scale (*medium confidence*), as well as an increased risk of drought in the Mediterranean Region (*medium confidence*). {3.3.1, 3.3.2, 3.3.3, 3.3.4, Box 3.4}

<sup>5</sup> David Fisher, Law and Legal Issues in International Disaster Response: A Desk Study, International Federation of Red Cross and Red Crescent Societies, 2007, (Law and Legal Issues in International Disaster Response), Figure 1 : Numbers of international NGOs responding to disaster, p.29; IFRC, By Xavier Castellanos and Sergio Ferrero Febel, Haiti +5: Lessons on legal preparedness for humanitarian assistance, 14 January 2015, accessed 12/03/2020, online at: <https://www.ifrc.org/en/introduction/droit-relatif-aux-catastrophes/nouvelles/americas/haiti/haiti-5--lessons-on-legal-preparedness-for-humanitarian-assistance/>

<sup>6</sup> David Fisher, Law and Legal Issues in International Disaster Response: A Desk Study - Abridged Version (Law and Legal Issues in International Disaster Response) p. 5

<sup>7</sup> David Fisher, Law and legal issues in international disaster response ; a desk study, 2007, p. 8

<sup>8</sup> Sendai Framework for Disaster Risk Reduction 2015-2030, 2015 (Sendai Framework)

The IFRC – aware of the importance of a legal approach to DRM – created its programme of rules, laws, and principles applicable to international disaster response as early as 2001<sup>9</sup>. This programme initially aimed to understand how legal frameworks can improve disaster response, particularly for international relief.<sup>10</sup> In 2007, the 30<sup>th</sup> International Red Cross Conference saw unanimous adoption of the *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*<sup>11</sup> (“Guidelines”). These Guidelines are non-binding<sup>12</sup>, and do not have a direct effect on States’ existing rights or obligations under domestic law. Moreover, the United Nations General Assembly (UNGA) has repeatedly encouraged member states to make use of them<sup>13</sup>. Once the Guidelines were adopted, several other consultations and training sessions were held around the world. This led to legislators expressing a clear need for guidance<sup>14</sup>. For this reason the IFRC – in collaboration with the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and the Inter-Parliamentary Union (IPU) – worked on developing model legislation to facilitate implementation of the Guidelines. Thus, in 2013 a final version of the *Model Act for the Facilitation and Regulation of International Disaster Relief* (“Model Act on IDRL”) was adopted<sup>15</sup>. Then, in 2017, the same organisations developed the *Model Emergency Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance* (IDRL “Model Emergency Decree”)<sup>16</sup>. The latter is specifically intended for those situations where a clear legal framework is not in place before the onset of a disaster, or where the adoption of more comprehensive legislation is not practicable.<sup>17</sup>

This study aims to present the legal aspects related to involving various national and international disaster management stakeholders in the countries where PIROI operates. As such, it was decided to select instruments key to building the international relief regime most relevant to PIROI’s activities, and as applied to the major phases of international relief. These are all part of the relationship between the recipient government and the assisting state, and involve distinct and interconnected legal aspects. In addition, the study of national regulatory frameworks is based on

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<sup>9</sup> Council of Delegates of the International Red Cross and Red Crescent Movement, Resolution 5, International Disaster Response Law, 2001, accessed 13/03/2020, online at: <https://www.ifrc.org/PageFiles/53419/idrl-cod-2001s.pdf>

<sup>10</sup> International Federation of Red Cross and Red Crescent Societies, Change of name / The IFRC’s IDRL Programme is becoming the Disaster Law Programme, 2012, accessed 13/03/2020, online at: [https://www.ifrc.org/PageFiles/53419/name%20change%20announcement\\_FINAL%20LATEST%2002.02.2012.pdf](https://www.ifrc.org/PageFiles/53419/name%20change%20announcement_FINAL%20LATEST%2002.02.2012.pdf): The programme will also build its capacity, knowledge base, and partnerships to allow it to respond more effectively to the demand for support on disaster law issues, beyond the area of international disaster relief. It will actively follow up on the 31st International Conference’s requests regarding law and disaster risk reduction and overcoming regulatory barriers to post-disaster shelter.

<sup>11</sup> IFRC, Guidelines

<sup>12</sup> IFRC, Guidelines, p. 13

<sup>13</sup> General Assembly, “Strengthening of the coordination of emergency humanitarian assistance of the United Nations, A/RES/63/139, 2009; General Assembly, International Cooperation on humanitarian assistance in the field of natural disasters, from relief to development, A/RES/63/141, 2009; General Assembly, Strengthening emergency relief, rehabilitation, reconstruction and prevention in the aftermath of the Indian Ocean tsunami disaster, A/RES/63/137, 2008

<sup>14</sup> IFRC, OCHA, IPU, Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, Pilot Version 2011, p v

<sup>15</sup> IFRC, OCHA, IPU, Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2013

<sup>16</sup> IFRC, OCHA, Model Emergency Decree for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, 2017 (Model Emergency Decree)

<sup>17</sup> IFRC, Model Emergency Decree, p. 5

five dimensions that form the structure of analysis: (1) presentation of DRM political and legal frameworks, (2) analysis of the coordination structure, (3) declaration of a state of emergency and calls for international aid, (4) coordination of emergency response and (5) border regulations. Analysis of the role of National Societies was included transversally<sup>18</sup>.

## PRESENTATION OF THE INTERNATIONAL LEGAL ENVIRONMENT

The fact that there is no general convention on disaster relief is not indicative of the extent of legislation in this field, as is evident from IFRC's 2007 survey of applicable standards<sup>19</sup>. Thus, in the absence of a centralised and universal regime, international disaster relief law has developed in a piecemeal fashion through general (mostly sectoral) multilateral global and regional treaties, in addition to more than one hundred bilateral agreements and various memoranda of understanding<sup>20</sup>. It has also been shaped by the influence of *soft law*<sup>21</sup> instruments such as resolutions adopted by United Nations agencies, as well as codes, models and guidelines adopted by international organisations and bodies<sup>22</sup>, which – even if they are non-binding – are intended to reflect a certain consensus and/or practice<sup>23</sup>.

In recent years, the International Law Commission (ILC) has decided to include the protection of persons in the event of disasters in its programme of work<sup>24</sup>. In 2016, it finalised its *Draft articles on the protection of persons in the event of disasters*, and recommended the UNGA develop a convention based on this draft<sup>25</sup>. The 18 articles it contains suggest unifying the humanitarian aid regime in peacetime. From a vertical perspective, the Draft recalls the intrinsic links between fundamental rights and humanitarian assistance in the event of disasters<sup>26</sup>. The constant reference to human rights could be useful in order for States to generate an autonomous duty to provide humanitarian assistance, as illustrated by ILC's half-hearted attempt<sup>27</sup> in articles 10 and 11 which provide that the affected State first has the *duty to ensure the protection of persons and provision of disaster relief assistance in its territory* (art 10) and to the extent that *a disaster manifestly exceeds its national response capacity, the affected State has the duty to seek assistance* (art 11).

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<sup>18</sup> For more details see the full report "Study of legal frameworks to facilitate and regulate international disaster response in: Union of the Comoros, Mayotte and Reunion Island, Madagascar, Mauritius, Mozambique, Seychelles, and Tanzania"

<sup>19</sup> David Fisher, *Law and Legal Issues in International Disaster Response*, pp. 33 to 87; Appendix II.

<sup>20</sup> ILC, *Protection of persons in the event of disasters A/CN.4/590*, p 1

<sup>21</sup> Daniel Thürer, *Soft Law*, *Oxford public international law*, Max Planck Encyclopedias of International Law, 2019, p. 13

<sup>22</sup> ILC, *Protection of persons in the event of disasters, A/CN.4/590 Add.2, V Other instruments and texts: Resolutions adopted by organs of the United Nations; Other instruments adopted by international organizations and entities; Other relevant texts*

<sup>23</sup> David Fisher, *Law and legal issues in international disaster response*, Chapter 3 *Global international Law and Norms*, p. 33

<sup>24</sup> Report of the International Law Commission, 58th session, A/61/10, 2006 p. 464

<sup>25</sup> ILC, Report of the International Law Commission, 68th session, 2016, A/71/10, para 46; Giulio Bartolini, *A universal treaty for disasters? Remarks on the International Law Commission's Draft Articles on the protection of Persons in the Event of Disasters (A universal treaty for disasters?)*, pp 1103-1137

<sup>26</sup> Alina Miron, *The normative foundations of humanitarian assistance in other situations: natural, technological, environmental and pandemic disasters*, in *Normative foundations in other institutions*, p.191; Giulio Bartolini, *A universal treaty for disasters?*, pp. 1115-1118; ILC, *Draft articles*, art 4-6

<sup>27</sup> Alina Miron: *natural, technological, environmental and pandemic disasters*, in, *Normative foundations in other institutions*, p.193

From a horizontal perspective, the Draft articles contain a set of rules of cooperation relating to provision of relief<sup>28</sup> that aim to define the roles of stakeholders, the affected State, the assisting State, but also of international and intergovernmental organisations<sup>29</sup> offering assistance. At present, the UNGA has decided to include in the provisional agenda of its seventy-fifth session scheduled for 2020 an item entitled "*Protection of persons in the event of disasters*"<sup>30</sup>.

### Refugees and internally displaced persons

In principle, refugee law is not associated with disasters. The definition of a refugee under the *Convention relating to the Status of Refugees*<sup>31</sup> and its *Protocol*<sup>32</sup> applies only to people fleeing their country and fearing persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion<sup>33</sup>. However, these instruments may be applicable when the country in which a person has been granted refugee status is affected by a disaster. Thus, a refugee, by virtue of their status, has rights in relation to international disaster relief and recovery operations<sup>34</sup>.

In addition, it is interesting to note that the Human Rights Committee recently held that countries “*may not deport individuals who face climate change-induced conditions that violate the right to life*”<sup>35</sup>. This decision – based on the violation of the right to life due to climate change – could help build a legal regime for “climate refugees” or at least give them greater protection. Furthermore, the commitment made at the UNGA through the *New York Declaration for Refugees and Migrants* in 2016<sup>36</sup> led to the adoption of two non-binding texts<sup>37</sup>, *The Global Compact on Refugees* (GCR), and *The Global Compact for Safe, Orderly and Regular Migration* (GCM). Both of these texts focus on migration in the context of disasters and climate change.<sup>38</sup>

At regional level, the 2009 *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (“Kampala Convention”) applies<sup>39</sup>. This means that States Parties must take measures to protect and assist persons who have been internally displaced due

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<sup>28</sup> Alina Miron, *The normative foundations of humanitarian assistance in other situations: natural, technological, environmental and pandemic disasters*, in *Normative foundations in other institutions*, p.191; Giulio Bartolini, *A universal treaty for disasters?*, pp. 1118-1119; ILC, *Draft articles*, art 7-17

<sup>29</sup> ILC, *Draft articles*, art. 3, “other assisting actor” means a competent intergovernmental organisation, or a relevant non-governmental organisation or entity providing assistance to an affected State with its consent

<sup>30</sup> General Assembly, *Protection of persons in the event of disasters*, A/RES/73/209, 2019, 4

<sup>31</sup> *Convention relating to the Status of Refugees*, 1951, UNTS Vol. 189 p. 137

<sup>32</sup> *Protocol relating to the Status of Refugees*, 1967, UNTS Vol. 606 p. 267

<sup>33</sup> *Convention relating to the Status of Refugees*, article 1

<sup>34</sup> *Convention relating to the Status of Refugees*, art 13 movable and immovable property, art 20 rationing, art 21 housing, art 23 public relief, art 26 freedom of movement

<sup>35</sup> UN info, *Demande d’asile liées au changement climatique : une première pour le Comité des droits de l’homme de l’ONU* [Asylum request due to climate change: a first for the UN Human Rights Committee], 21 January 2020, accessed 13/03/2020, online (in French only) at: <https://news.un.org/fr/story/2020/01/1060291>; Human Rights Committee, CCPR/127/D/2728/2016, 7 January 2020,

<sup>36</sup> General Assembly, *New York Declaration for Refugees and Migrants*, A/Res/71/1, 2016; no State in the region opposed the text

<sup>37</sup> *Global Compact for Safe, Orderly and Regular Migration*, A/RES/73/195, 2018 (GCM); no State in the region opposed the text

<sup>38</sup> GCM, objectives 2, 5 and 21; Thibaut Fleury Graff, *The Two Global Compacts on Migration and Refugees: Strengths and Weaknesses of a New International Cooperation*, p. 227; *Global Compact on Refugees*, Program of Action, p.3

<sup>39</sup> *The Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001R.T.N.U.4S, 8 I.L.M. 1288, 1974

to natural or human-made disasters, including climate change<sup>40</sup>. They are also required to take the necessary measures to organise impartial humanitarian relief operations. Furthermore, this Convention recalls that States that are unable to meet the humanitarian needs of displaced persons must cooperate in seeking the assistance of civil society organisations and other relevant actors<sup>41</sup>.

### Customs law

Customs law instruments contain provisions directly related to technical and material issues in international disaster relief operations, including dispatching relief supplies. The most relevant conventions are the *International Convention on the Simplification and Harmonisation of Customs Procedures* (“Revised Kyoto Convention”),<sup>42</sup> and its Annex J5 pertaining to relief consignments, as well as the *Istanbul Convention on Temporary Admission*<sup>43</sup>, particularly its Annex B.9 concerning goods imported for humanitarian purposes.

### Transport law

Transport is directly involved in the delivery of relief, however legal frameworks vary according to whether it is maritime, air, or road transport (the latter is not relevant to PIROI). There are several treaties concerning transport and disasters, but no so-called “general” treaty<sup>44</sup>. The *Convention on Facilitation of Maritime Traffic*<sup>45</sup> requires States Parties to facilitate the entry and exit of participating vessels for the purposes of disaster relief activities. Thus, States must *insofar as possible, facilitate the entry procedures and formalities for people, cargoes, materials and equipment required to respond to such situations*<sup>46</sup>. In other words, this means in the event of a disaster, prevention, reduction, or control of marine pollution, or other emergency operations necessary to ensure safety at sea, or the safety of the population, or the protection of the marine environment<sup>47</sup>.

Further to this is Annex 9 of the *Convention on International Civil Aviation*<sup>48</sup> (“Chicago Convention”). This requires Contracting States to facilitate the entry into, departure from, and transit through their territories of aircraft engaged in relief missions<sup>49</sup> performed on behalf of international organisations recognised by the United Nations or by or on behalf of their

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<sup>40</sup> Kampala Convention, art 5.4

<sup>41</sup> Kampala Convention, art 5.6

<sup>42</sup> International Convention on the Simplification and Harmonisation of Customs Procedures (“Kyoto Convention”), 1973, UNTS, vol. 950, no. 13561, as amended by the Protocol of 26 June 1999.

<sup>43</sup> Convention on Temporary Admission (“Istanbul Convention”), 1990, UNTS, vol. 1762, No. 30667

<sup>44</sup> David Fisher, Law and legal issues in international disaster response: a desk study, p 42

<sup>45</sup> Convention on Facilitation of Maritime Traffic, 1965, UNTS, Vol 591, No. 8564

<sup>46</sup> Convention on Facilitation of Maritime Traffic, Annex 1, F. Emergency Assistance, 5.12

<sup>47</sup> Convention on Facilitation of Maritime Traffic, Annex 1, F. Emergency Assistance, 5.11

<sup>48</sup> Convention on International Civil Aviation, 1944, UNTS, Vol 1.15, No. 295

<sup>49</sup> Convention on International Civil Aviation, signed at Chicago, Annex 9, Chapter 1, Relief flights: Flights operated for humanitarian purposes which carry relief personnel and relief supplies such as food, clothing, shelter, medical and other items during or after an emergency and/or disaster and/or are used to evacuate persons from a place where their life or health is threatened by such emergency and/or disaster to a safe haven in the same State or another State willing to receive such persons.

organisations with the agreement of the recipient State<sup>50</sup>. In addition, Contracting States are required to ensure that personnel and items arriving on relief flights are cleared without delay<sup>51</sup>.

### Telecommunications law

The most important instrument specific to telecommunications issues in international disaster response operations is the *Tampere Convention*<sup>52</sup>. It provides a comprehensive regulatory framework for emergency telecommunications during relief operations, including coordination of efforts and reduction of regulatory barriers, including restrictions on import and export. The text is intended to apply not only to States Parties, but also to entities providing relief such as humanitarian organisations.

In the light of the signatures and ratifications of the treaties analysed, it appears the common law regime which has developed at international level is not yet that of the countries in the region. In fact several conventions and their annexes are still to be signed and/or ratified.

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<sup>50</sup> Annex 9, Chicago Convention, C. Relief flights following natural and man-made disasters which seriously endanger human health or the environment, and similar emergency situations where United Nations assistance is required, 8.8.

<sup>51</sup> Chicago Convention, Annex 9, art 8.9

<sup>52</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998, entry into force 2005, UNTS, vol. 2296, No. 40906 (Tampere Convention)

# THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR DISASTER RISK MANAGEMENT OF PIROI-MEMBER NATIONAL SOCIETIES

## I. UNION OF THE COMOROS

Since 2012 progress has been made in strengthening the country's DRM system, including institutional capacity-building<sup>53</sup>. However, the Union of the Comoros (UoC) still faces some challenges in terms of its institutional capabilities. This translates into a risk management approach that is more focused on emergency management rather than risk management integrated into territorial and sectoral development<sup>54</sup>. But the fact remains that there is a strong desire to consolidate institutions and work towards establishing a legal basis for DRM. Thus in 2014 the UoC developed its national disaster risk reduction strategy (SNRRC) and its plan of action (DRR PoA). These instruments were created within the framework of the "*Integration of Disaster Risk Reduction into policies to reduce poverty in the Union of the Comoros*"<sup>55</sup> project managed by the United Nations Development Programme (UNDP), in close cooperation with the UoC's General Directorate of Civil Protection (DGSC). Implementation of the Strategy for the Reduction of Risk and Disasters (SNRCC) 2014-2019 and its Protected Areas Resilient to Climate Change (DRRPoA) programme is in line with the Accelerated Growth and Sustainable Development Strategy (SCA2D, 2018-2021) as well as the Comoros Emerging Plan (PCE)<sup>56</sup>.

### National Strategy for Disaster Risk Reduction

The SNRRC plan of action has 27 programme components grouped into 6 areas of focus. The first focus is the *establishment of a legal and institutional framework and mechanisms for DRR*, and component 1.2 proposes adoption of a DRR/DRM law, with a draft submission to the government for consideration and adoption by the legislature in 2016<sup>57</sup>. However, according to the Capacity for Disaster Reduction Initiative (CADRI), in 2018 the Government had not yet endorsed the SNRRC<sup>58</sup>. Moreover, on 6 March 2020, during its most recent meeting with the Director of the DGSC, PIROI was notified that the DRR/DRM bill was scheduled for 2020 and that the SNRRC still needed to be updated<sup>59</sup>. This was confirmed in discussions with the UNDP, which is involved in the process of reviewing and drafting the DRR/DRM law. However, stakeholders involved in revising and elaborating these instruments have devoted most of their time in recent months to the COVID-19 response.

### Diffuse regulatory framework

According to the SNRRC, the organisations that are directly involved in disaster risk management are: the DGSC – the main government body responsible for the management of Disaster Risk

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<sup>53</sup> Union of the Comoros Solidarity Development Unit, Accelerated Growth and Sustainable Development Strategy (SCA2D) 2018-2021), p. 41

<sup>54</sup> The World Bank, Comoros Post-Kenneth Recovery and Resilience Project (P171361), p. 16

<sup>55</sup> National Strategy for Disaster Risk Reduction in the Comoros, final version December, 2014

<sup>56</sup> SCA2D, p. 1

<sup>57</sup> National Strategy for Disaster Risk Reduction in the Comoros (SNRRC), final version December, 2014 p.12, and Strategic Area 1: Establishment of legal and institutional framework and mechanisms for DRR, p.128

<sup>58</sup> The CADRI Partnership, Communication Bulletin 2018, p.1

<sup>59</sup> PIROI talks with Colonel Tachfine, 6 March 2020

Management- according to the decree of 2 March 2012<sup>60</sup> which has Regional Civil Protection Directorates<sup>61</sup> – the National Agency for Civil Aviation and Meteorology (ANACM), the Karthala volcanic observatory (OVK), the General Directorate of Environment and Forests (DGEF), the National Directorate of Land Use, Housing and Town Planning (DNATHU), the Ministry of Higher Education, Basic Research Education (MEN), the Comoros Red Crescent (CoRC), and the Comorian Coast Guard (GC).

In addition, DRM should be coordinated by the National Platform for Disaster Risk Prevention and Reduction (PNPRRC), instituted by decree on 15 September 2012<sup>62</sup>. This is a national multi-sectoral organisation working in the field of prevention and DRR<sup>63</sup>. Despite the official establishment of such a platform, the government did not use it when Cyclone Kenneth struck the islands in 2019, preferring an *ad hoc* inter-ministerial committee<sup>64</sup>. The purpose of this committee was to *suggest to the Government any appropriate measures for coordinating mobilisation, management, monitoring, supervision and action in order to control the cyclone-related disaster*<sup>65</sup>. This highlights a lack of assimilation of the SNRRC, which nevertheless devotes a central place to DRM.

### Border regulations

The UoC does not have any exemption clauses for the entry of personnel and goods. In this respect it is advisable to refer to common law. Thus military personnel, civil servants, magistrates or other officials who serve in one of the Comorian public services or in an organisation directly or indirectly attached to the State by virtue of conventions or agreements signed with the Comorian Government must obtain a service visa<sup>66</sup>. The Minister of the Interior issues service visas on ordinary passports<sup>67</sup>.

The UoC, through the Directorate General of Customs (DGD), is determined to gradually bring its regulations (working methods, procedures and techniques) and even its legislation into line with World Customs Organization (WCO) instruments. To this end, in April 2019 awareness-raising workshops on the *Revised Kyoto Convention* were held for customs officers<sup>68</sup>. In addition, the Comorian Customs Code provides for the introduction of simplified procedures for relief

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<sup>60</sup> Decree No. 12-054/PR, 2 March 2012, DGSC, coordinate the development of a national DRM policy and ensure its implementation; promote risk prevention and combat all disasters; lead and coordinate the implementation of measures to protect and rescue people and property during disasters; organise the protection and defence of the population, property and environment; ensure the collection and analysis of information relating to the protection of populations, property and the environment, and inform the Ministry in charge of Civil Protection of any situation justifying emergency measures

<sup>61</sup> Art 20, Decree No. 12-054/PR, DGSC

<sup>62</sup> Decree No.12-181/PR, 15 September 2012, establishing a National Platform for Disaster Risk Prevention and Reduction (PNPRRC)

<sup>63</sup> Art 2, Decree No. 12-181/PR, PNPRRC

<sup>64</sup> Decree No. 19-047/PR, setting up an Inter-ministerial Committee for the management of disasters caused by Cyclone Kenneth in the Comoros, 8 May 2019

<sup>65</sup> Art 2, Decree No. 19-047

<sup>66</sup> Art 3, Law No. 88-025, conditions of entry and residence in the Comoros for foreigners

<sup>67</sup> Art 4, Law No. 88-025, conditions of entry and residence in the Comoros for foreigners

<sup>68</sup> Comoros Customs, consulted on 20/20/2020, online (in French) at: [http://douane.gov.km/fr/actualite.php?article\\_id=163](http://douane.gov.km/fr/actualite.php?article_id=163)

consignments<sup>69</sup>. Exemptions are authorised by way of derogations,<sup>70</sup> and relief consignments covered by the Customs Code<sup>71</sup> are admitted free of import duties and taxes and free from all prohibitions or restrictions of an economic nature on imports when they consist of a donation sent to an approved organisation and are intended for use or distribution free of charge by said organisation or under its control<sup>72</sup>.

#### Strengths

- UoC has integrated risk management into its development policies (SCA2D & PCE)
- UoC is starting a process to review key instruments of DRM, in particular the SNRRC and its DRRPoA, the national contingency plan, and the island plans
- With the support of UNDP, the UoC wants to develop its DRM/DRR legislation
- UoC has started a process to accede to and implement the revised Kyoto Convention

#### Weaknesses

- UoC did not assimilate its 2014-2019 SNRRC
- UoC has not yet put its platform for disaster risk reduction and prevention into operation
- UoC often favours *ad hoc* DRM processes (for natural and health-related disasters)
- Lack of a plan of action to fully implement the 2014-2019 SNRRC at island level

#### Recommendations

- Develop DRM legislation that is tailored to UoC context, both to address the most pressing DRR priorities, and to ensure a sustainable DRM system is established
- Integrate the legislation into the country's entire legal and institutional framework while expanding existing disaster risk governance capacities, especially at local level
- Strengthen the operating mechanisms of the national platform for disaster risk reduction and prevention
- Work hand-in-hand with the UNDP, DGSC and DLP to create the DRM Act
- Work towards setting up a one-stop shop, which will bring together all government structures for international aid entry: customs, registration of aid-donor agencies, entry visas, and any other relevant facilities
- Work towards making the next SNRRC and DRR/DRM Act more widely known and fully adopted by the stakeholders concerned

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<sup>69</sup> Customs Code, art 1 definition, relief consignments, (a) goods, including vehicles or other means of transport, foodstuffs, medicines, clothing, blankets, tents, prefabricated houses, water purification or storage equipment or other basic necessities transported to assist disaster victims

<sup>70</sup> Customs Code, art. 332

<sup>71</sup> Customs Code, art. 155

<sup>72</sup> Customs Code, art. 332 sub-paragraph 3

## II. Madagascar

Madagascar has placed DRM and DRR on its agenda of national priorities, integrating them into the areas of focus and strategic goals of the National Development Plan (PND) and the Implementation Policy. In addition, strategic target 5 of the General State Policy (PGE) highlights the importance of DRM by “*valuing the natural capital and strengthening resilience to disaster risks*”<sup>73</sup>. This strategic target is then incorporated by the PND, an instrument at the service of the PGE, which focuses on the *implementation of a mechanism and appropriate, well-targeted strategies able to preserve natural capital, reducing the negative effects of climate change and strengthening the resilience of the populations and territories concerned*<sup>74</sup>. This was followed by the emergence of a new legal framework for DRM with Law No. 2015-031 of 12 February 2016 *relating to the National Disaster Risk Management Policy* (PNGRC), which entailed an update to the National Disaster Risk Management Strategy (SNGRC).

### The National Disaster Risk Management Strategy and the National Disaster Risk Management Policy

This strategy update aims to bring it in line with new international guidance such as the Sendai Framework. The SNGRC was prepared by the Emergency Prevention and Management Unit (CPGU), working alongside the National Disaster Risk Management Office (BGNRC) and with support from UNDP. The strategy is presented in 4 strategic targets, the second of which concerns better DRM/DRR governance at all levels, involving the availability of legal mechanisms and instruments that will give legitimacy to the actions undertaken, and will make DRM/DRR a sovereign mission that is mandatory and binding<sup>75</sup>. But it will also strengthen the regulatory framework of DRM/DRR, through developing and disseminating them at all national, territorial and sectoral levels<sup>76</sup>.

### National Disaster Risk Management Policy Law

Law No. 2015-031 repeals all previous provisions to the contrary, in particular Law No. 2003-010 which established the national policy for managing disaster risks<sup>77</sup>. The purpose of the 2015 Law is to define the main mission of DRM, its basic structures, and the principles governing the relations between various stakeholders,<sup>78</sup> with a view to making the multi-risk and multi-hazard approach a reality. Accordingly, the third chapter of the law – which deals with implementation – provides that all DRM and DRR activities be broadly coordinated by the Head of Government, i.e. the Prime Minister<sup>79</sup>. The law is supplemented by Decree No. 2019-1954 setting out the terms of application. Various national DRM structures are included. At strategic level Madagascar has set up a National Council for Disaster Risk Management (CNGRC), an Emergency Management and Prevention Unit (CPGU), and a National Platform for Disaster Risk Reduction (PNRRC). At operational level, there is the National Office for Disaster Risk Management (BNGRC), the

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<sup>73</sup> National Assembly, Law No. 2015-031, relating to the National Policy on Disaster Risk Management

<sup>74</sup> National Development Policy, p. 61, p.66, p.99-100.

<sup>75</sup> SNGR p. 12

<sup>76</sup> R 2.2 the legal framework for DRM/DRR

Law No. 2003-010 of 5 September 2003, establishing the national policy for disaster risk management.

<sup>78</sup> Explanatory memorandum, Law No. 2015-031

<sup>79</sup> Art 25, Law No. 2015-031

National Emergency Coordinating Committee (CRIC) and Ministers responsible for specific risks. In addition to all these national institutions, there are also regional response units, such as the Regional Committee for Disaster Risk Management, and committees at district and municipal levels as well as local relief teams at *fokontany* (village) level<sup>80</sup>.

It is the CNGRC that officially declares a national disaster and informs the government of the need to launch an international appeal<sup>81</sup>. Then, pursuant to Law No. 2015-031 relating to the National Disaster Risk Management Policy and its implementing decree No. 2019-1954, a decree issued by the Government Council proclaims a national disaster. This allows the government to launch an appeal for international aid by way of an official statement issued through its spokesperson.

### Border regulations

Madagascar does not have any exemption clauses for the entry of personnel and goods, so it is advisable to refer to common law in this respect. In particular, field workers on assignment or NGO volunteers can apply for a courtesy visa<sup>82</sup>, which is valid for three months from the date of issue<sup>83</sup>. However, this visa can only be obtained if it is issued by the Malagasy Government to certain entities whose activities they have officially recognised. Moreover, as the BNGRC is the focal point for DRM operations in Madagascar, humanitarian stakeholders can cooperate with this agency to help facilitate their entry into the country<sup>84</sup>.

Customs legislation grants exemptions from import duties and taxes for goods and donations sent to certain persons or entities. Thus the Customs Code states that: *by way of exemptions, the Minister responsible for Customs may authorise the importation free of duties and taxes: f) of consignments intended for the Malagasy Red Cross*<sup>85</sup>. Conditions for applying the above-mentioned provisions as well as what constitutes an eligible good are established by order of the Minister responsible for customs.<sup>86</sup> In particular these provisions aim to take into account international agreements and conventions, bilateral treaties signed by Madagascar, headquarters agreements, special laws providing for exemption from import duties and taxes, as well as the provisions of the WCO's "*Revised Kyoto Convention*"<sup>87</sup>.

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<sup>80</sup> Art 38-42, Decree No. 2019-1954

<sup>81</sup> Art 8.5, Decree 2019-1954

<sup>82</sup> Ministry of Foreign Affairs e-visa, Guide for holders of an official passport, a service passport, a diplomatic passport, or United Nations laissez-passer (UNLP/LP), accessed on 20/06/2020, online at: <https://evisa.diplomatie.gov.mg/index.php/en/guide/others>

<sup>83</sup> Embassy of the Republic of Madagascar in Switzerland, Permanent Mission of the Republic of Madagascar to the United Nations Office and specialised institutions in Geneva and Vienna, accessed on 20/06/2020, online (in French) at: <http://www.ambassade-madagascar.ch/affaires-consulaires/>

<sup>84</sup> IFRC, IDRL in Madagascar, *Etude du cadre juridique pour faciliter et réglementer la réponse internationale en cas de catastrophes* [Study of the legal framework to facilitate and regulate the international response to disasters], p.58

<sup>85</sup> Directorate General of Customs, Customs Code 2019, art 240 sub-paragraph 1

<sup>86</sup> Customs Code 2019, art. 240 sub-paragraph 2

<sup>87</sup> Presidency of the Republic, Law No. 2015-026, 7 December 2015, on the amending finance law for 2015

#### Strengths

- Madagascar has integrated risk management into its development policies (PND & PGE)
- Madagascar has consolidated its legal and institutional framework for DRM and disaster response (Decree 2019-1954)
- Madagascar has made real efforts to disseminate and explain its national DRM policy and the Climate Resilience programme with government officials, NGOs, and partners

#### Weaknesses

- No provision for the specific entry of humanitarian personnel in the event of disasters or for the temporary recognition of professional qualifications
- Unclear about the roles and responsibilities between the strategic body CPGU and the operational body BNGRC
- Lack of strategic-level coordination through the National Platform for Disaster Risk Reduction (PNRRC)

#### Recommendations

- Specify the processes for triggering and terminating international disaster relief operations as part of a review on national DRM policy law
- Clarify the roles and responsibilities between the strategic body CPGU and the operational body BNGRC
- Strengthen strategic-level coordination through the National Platform for Disaster Risk Reduction (PNRRC)
- Promote application of the principle of complementarity of actions and prevent dismantling the BNGRC at regional level
- Work towards setting up a one-stop shop, which will bring together government structures for all international aid entry: customs, registration of aid-donor agencies, entry visas, and all other relevant facilities.

### III. Mozambique

Aware of its vulnerability, in 1999 the Government of Mozambique adopted a national disaster management policy which has led to a proactive approach to DRM<sup>88</sup>. The government developed its first Master Plan for Prevention and Mitigation of Natural Disasters in 2006 (*Plano Director of Prevenção e Mitigação das Calamidades Naturais* or PDPMCN, 2006-2016). This plan helped implement an early warning system and better information management as well as focusing on building capacity for search and rescue<sup>89</sup>. The law establishing the legal framework for disasters/disaster management was adopted in 2014. When the PDPMCN came to an end, a diagnostic of its strengths and weaknesses was carried out. This is now the cornerstone of the 2017 National Disaster Risk Reduction Master Plan (*Plano Director para a Redução do Risco de Desastres* or PDRRD, 2017-2030)<sup>90</sup>.

The Mozambican Government is seeking to develop a holistic vision of DRM and integrate it into its development and climate change adaptation policies, such as the government's five-year programme (*Programa Quinquenal do Governo 2015-2019*), which advocates for the integration of guidelines on DRM and CCA into national, sectoral and local development plans<sup>91</sup>. Through the *Agenda 2025 Visão Estratégica de Nação* the Government wants to take into account the impact of disasters on Mozambique's development<sup>92</sup>. And with its 2013-2025 National Climate Change Adaptation and Mitigation Strategy (*Estratégia Nacional de Adaptação e Mitigação de Mudanças Climáticas*, "ENAMMC")<sup>93</sup>, the government is working on key areas of action to reduce the impacts of climate change<sup>94</sup>. Thirteen measures in the adaptation component of the ENAMMC correspond to the overall vision of DRR developed in the PDRRD<sup>95</sup>.

#### ***Plano Director para a Redução do Risco de Desastres 2017-2030 – PDRRD***

The PDRRD consists of six strategic outlines<sup>96</sup>. Outline (d) focuses on building capacity for rapid response at all levels, public and private, in order to ensure effective prevention, risk reduction, preparedness and response to emergencies in the event of disasters<sup>97</sup>. Outline (f) promotes normative and institutional reforms with regard to the PDRRD's major policy and institutional

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<sup>88</sup> Resolution No. 18/99 establishing the management policy for environmental disasters, 1999

<sup>89</sup> World Bank, Mozambique Disaster Risk Management and Resilience Program, Technical Assessment Report, February 20, 2019, accessed 20/06/2020, online at: <http://documents.worldbank.org/curated/en/168731551137716732/pdf/Final-Technical-Assessment-Mozambique-Disaster-Risk-Management-and-Resilience-Program-P166437.pdf>, p. 19

<sup>90</sup> PDRRD, p.5

<sup>91</sup> PDRRD, p.20

<sup>92</sup> PDRRD, p.18

<sup>93</sup> *Repubblica de mocambique ministerio para a cooperenacao da accao ambiental, 2013-2025, Estratégia Nacional de Adaptação e Mitigação de Mudanças Climáticas* (ENAMMC)

<sup>94</sup> PDRRD, p.19

<sup>95</sup> ENAMMC, p. xi

<sup>96</sup> PDRRD, p 19 to 28: a. *Consolidar a experiência adquirida*; b. *Actuar prospectivamente sobre os processos geradores de risco e proteger os investimentos públicos e privados*; c. *Fortalecer o ordenamento territorial dando atenção ao crescente risco urbano e às mudanças climáticas*; d. *Desenvolver capacidades*; e. *Intervir de forma correctiva*; f. *Promover processos de reforma normativa e institucional*

<sup>97</sup> PDRRD, p.28, d. *Desenvolver capacidades*

public management challenges. In addition, the plan maintains that *innovative* legal conditions must be developed to deal with risks and link all sectoral and multi-sectoral policies<sup>98</sup>.

These strategic outlines are complemented by five objectives, with numbers 2 and 5 being particularly relevant. With Objective Two the government intends to develop a clear vision of the DRM governance system. It seeks to deploy a coordinated regulatory system for DRR, ensuring that existing laws, regulations and other sectoral standards clearly establish the roles and responsibilities of the institutional stakeholders involved<sup>99</sup>. The government also wants to adapt the functional and organisational structure of DRM by clarifying the relationship between the National Institute for Disaster Management (INGC) and other government organisations that play a key role in DRM. Legal and regulatory reform is expected in this regard<sup>100</sup>. In light of the contingency plan, the Government has established three main institutional bodies in the country to manage disaster risk and emergency preparedness: the Disaster Management Coordination Council (CCGC), the Technical Council for DRM (CTGC), and the National Emergency Operations Centre (CENOE)<sup>101</sup>. In addition, for the INGC to ensure full implementation of its missions it relies on three units at national level, CENOE, the National Civil Protection Unit (UNAPROC), and the Post-Disaster Reconstruction Support Office (GACOR). At local level, the INGC comprises a regional operational presence, a provincial delegation and a Multiple Uses and Resources Centre (CERUM).

Also under Objective Two, the Government wants to strengthen the participation of civil society, the private sector, and volunteers in DRR. It therefore plans to review the legislative framework to facilitate the work of organisations, foreign and domestic civil society, and the private sector<sup>102</sup>. Lastly, the Government is promoting the adoption of standards related to the international legal framework, including aspects relating to the mobilisation of humanitarian aid and more specifically the entry and exit of goods and people<sup>103</sup>.

Through Objective Four the Government seeks to guide action to improve systems and procedures in the event of disasters. In this regard, the expected results are establishment of a consolidated disaster preparedness and response mechanism, and strengthening of CENOE as a national preparedness and response entity.<sup>104</sup>

### **Law No. 15/2014 of 20 June 2014, establishing the legal framework for disaster management**

Since June 2014, Mozambique has adopted Law No. 15/2014 which establishes the legal framework for DRM. It includes prevention and mitigation of the destructive effects of disasters, development of relief operations, as well as reconstruction and rehabilitation in affected areas<sup>105</sup>. Chapter IV of the Law provides that disaster management be organised and coordinated by the Government. It is therefore up to the latter to define the structure and functions of disaster

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<sup>98</sup> PDRRD, p. 28 f. *Promover processos de reforma normativa e institucional*

<sup>99</sup> PDRRD, p. 33, 2.1.1

<sup>100</sup> PDRRD, p. 35

<sup>101</sup> Humanitarian response plan, 2018-2020 (revised in August 2019), Mozambique, p.8

<sup>102</sup> PDRRD, p. 35, 2.5.3

<sup>103</sup> PDRRD, p. 34, 2.1.6

<sup>104</sup> PDRRD, p. 39, 4.1.3

<sup>105</sup> *Lei n. 15/2014 de gestao das Calamidades, Sumario*, 20 June 2014

management<sup>106</sup>. International emergency aid is controlled by the Government and includes authorising the entry of people and goods intended to assist disaster-affected populations<sup>107</sup>. As things currently stand, Law No. 15/2014 barely takes into account the recommendations present in the IFRC Guidelines. The Government recently announced that the Mozambican Council of Ministers will propose a new law on disaster risk reduction and management that will repeal Law No. 15/2014<sup>108</sup>. However according to discussions between PIROI and the INGC, the IFRC has not been involved in the process of building the new regulatory framework.

Lastly, it is the Constitution of the Republic of Mozambique that governs the provisions relating to the state of siege and emergency<sup>109</sup>, which can be triggered in the event of a public calamity (*calamidade pública*)<sup>110</sup>. It is thus the President of the Republic who proclaims a state of siege or emergency, and who must inform the Legislative Assembly of the Republic thereof within twenty-four hours following his or her declaration. Once the Assembly has met, it has forty-eight hours within which to deliberate before being called upon to ratify the emergency decree.

### Border regulations

The 2014 framework law provides that once an emergency has been declared, the Government must provide for the establishment of facilities<sup>111</sup>. The Government may create conditions to make visa procedures faster and easier on an *ad hoc* basis, depending on the severity of the situation. According to the declaration of emergency, it is possible for the government to define specific entry procedures (one-off measures for simplified registration of foreign entities to work in the country and rapid entry procedures for international personnel)<sup>112</sup>. However based on experience of response to Cyclone Idai in 2019, in reality a certain disorganisation prevailed, and many tedious regularisations needed to be carried out.

Mozambique is a contracting party to the *Revised Kyoto Convention*, but has not accepted application of Annex J-5 on relief consignments. As a result, all documents relating to customs clearance of humanitarian aid must be sent to INGC 15 days before the donation's estimated arrival date in order to facilitate the normal and legal process of the subsequent authorisation of the exemption of customs duties and other charges<sup>113</sup>.

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<sup>106</sup> *Lei n. 15/2014*, art 19

<sup>107</sup> *Lei n. 15/2014*, art 22

<sup>108</sup> Club of Mozambique, Mozambique: Government submitting new law on disaster risk management and reduction, 5 August 2020, consulted on 05/08/2020, online at: <https://clubofmozambique.com/news/mozambique-government-submitting-new-law-on-disaster-risk-management-and-reduction-167918/>

<sup>109</sup> *Lei n.1/2018, lei da Revisao Pontual da Consituicao da Republica de Moçambique*, art 290 à 298

<sup>110</sup> *da Consituicao da Republica de Moçambique*, art 290

<sup>111</sup> *Lei n. 15/2014*, art 36

<sup>112</sup> IFRC, *Lei de Resposta a Desastres de Dimensao Internacional (IDRL) em Moçambique*, 2012, p.60

<sup>113</sup> Logistics Cluster, *Republica de Mocambique, Instituto Nacional de Gestao de Calamidades Direccqo de prevencao e mitigqco*, 07/04/2019, accessed 10/07/2020, on line at: <https://logcluster.org/document/mozambique-humanitarian-cargo-tax-exemption>

**Strengths**

- Integration of DRM into development and CCA policies
- Legislative framework in place since 2014; recognises the need for revision
- 2017-2030 PDRRC promotes regulatory and institutional reform to address the challenges that the plan presents for DRM
- Existence of key institutions at national and regional levels
- Possibility of leveraging many documents following Cyclones Idai and Kenneth

**Weaknesses**

- Structural issues with the response system; limited maintenance of response equipment; low level of preparation of staff, volunteers and response mechanisms; lack of clarity regarding procedures
- INGC faces capacity constraints at provincial and district levels
- Failure to respect coordination mechanisms when Cyclone Idai hit
- Annex J-5 CKR not ratified

**Recommendations**

- Strengthen governance of the risk management system: training; capacity building at regional level
- Develop standard operating procedures for consistency of operations
- Update the legal framework with a clarification of INGC's and technical agencies' roles and responsibilities, and making it operational at national, regional, and local level
- Work in partnership with INGC and all government bodies as well as the DLP to adopt the new DRM law

## IV. Tanzania

In Tanzania responsibility for DRM lies with the Disaster Management Department (DMD) which operates under the Office of the Prime Minister (OPM). The latter is guided by the 2004 National Disaster Management Policy,<sup>114</sup> the 2015 Disaster Management Act, and the 2017 Disaster Management Regulations<sup>115</sup>. In addition, Tanzania developed a legal approach to DRM at a very early stage, adopting its Disaster Relief Coordination Act<sup>116</sup> as long ago as 1990. This established and organised the maintenance of a system of anticipation, coordination, and organisation for disaster relief. Due to its special status Zanzibar developed its own DRM policy and law, the 2011 Zanzibar Disaster Management Policy<sup>117</sup>, and the 2003 Disasters Management Act No. 2<sup>118</sup>.

At national level, in 2012 the Government adopted its National Climate Change Strategy<sup>119</sup>, which provides guidance on the integration of climate change into the country's sectoral policies and plans. This strategy was supplemented by the National Climate Change Communication Strategy (NCCCS), and the Guidelines for Integrating Climate Change Adaptation into national sectoral policies, plans and programmes of Tanzania<sup>120</sup>. Reference to DRM is made in the National Climate Change Strategy in the section "Strategies On Cross-Cutting Issues". Theme 7 makes the case for reducing the country's vulnerability to the increasing frequency of climate change-related disasters for sustainable development<sup>121</sup>. The strategy to achieve these goals includes enhancing disaster preparedness and management at all levels, and establishing comprehensive community-based early warning and disaster management systems<sup>122</sup>.

Over the past few years and in the aftermath of the 2018 Dar-es-Salaam disasters (explosion of a munitions depot and flooding) the government has also shifted its emergency and disaster response towards better coordination under a citywide plan of action<sup>123</sup>.

### Tanzania Mainland: The 2015 Disaster Management Act

The Disaster Management Act of 2015 is intended to build the legal framework for DRM in Tanzania, and provides for the creation of institutions responsible for DRM at all levels of regional intervention. The Disaster Management Agency is the national focal point for

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<sup>114</sup> It is not possible to download this policy from the Tanzania government website, The United Republic of Tanzania, Ministry of Health, Community Development, Gender, Elderly and Children, accessed on 17/09/2020, online at: [http://www.mcdgc.go.tz/catalogue/index.php/view/national\\_disaster\\_management\\_policy\\_prime\\_ministers\\_office/#](http://www.mcdgc.go.tz/catalogue/index.php/view/national_disaster_management_policy_prime_ministers_office/#)

<sup>115</sup> UNDRR (2020). Tanzania Risk-sensitive Budget Review, p.5

<sup>116</sup> Disaster Relief Coordination No. 9, 1990

<sup>117</sup> The Revolutionary Government of Zanzibar, Zanzibar Disaster Management Policy, 2011

<sup>118</sup> The Disasters Management Act No. 2 of 2003, 2003, Zanzibar

<sup>119</sup> United Republic of Tanzania Vice President's Office, Division of Environment, National Climate Change Strategy, 2012

<sup>120</sup> Joanna Pardoe, Declan Conway, Emilinah Namaganda, Katharine Vincent, Andrew J. Dougill & Japhet J. Kashaigili (2018) Climate change and the water–energy–food nexus: insights from policy and practice in Tanzania, Climate Policy, 2017

<sup>121</sup> United Republic of Tanzania Vice President's Office, Division of Environment, National Climate Change Strategy, 2012 p. 72

<sup>122</sup> United Republic of Tanzania Vice President's Office, Division of Environment, National Climate Change Strategy, 2012 p. 72

<sup>123</sup> The World Bank, Elevating Emergency Response in Tanzania, 2018, accessed 16/09/2020, online at: <https://www.worldbank.org/en/news/feature/2018/03/09/elevating-emergency-response-in-tanzania>; the United Kingdom's Department for International Development (DFID) and the World Bank to support the Government of Tanzania, Tanzania Urban Resilience Program, Annual Report 2018

coordination of disaster risk management and reduction in mainland Tanzania<sup>124</sup>. In addition, the Tanzania Disaster Management Governing Council has been set up, consisting of representatives of the main Ministries concerned by DRM<sup>125</sup>. At district and regional level Regional Disaster Management Committees, District Disaster Management Committees, Ward Disaster Management Committees<sup>126</sup> and Village Disaster Management Committee have all been set up.

### **Zanzibar: The 2003 Disaster Management Act**

The Disaster Management Act of Zanzibar defines the legal framework for DRM in the archipelago. In order to ensure disaster relief co-ordination, a Disaster Coordination Commission (DCCOM) has been set up. This law also establishes a National Committee, responsible for overseeing and coordinating the activities of the government designed to secure effective prevention of disasters, and the preparedness and operation of affairs in the event of a disaster<sup>127</sup>. In order to oversee and supervise all National Committee regional programmes, a Regional Committee is established in every region<sup>128</sup>.

### **The Disaster Management Regulations, 2017**

The Disaster Management Regulations of 2017 state that the Emergency Operations and Communication Centre is the central nerve for monitoring and handling of emergencies, and that it should feed into the normal operations of the Agency<sup>129</sup>. Moreover, although the Minister is responsible for directing all emergency operations, they do so through the Centre's Director General<sup>130</sup>. Assessing the magnitude and severity of an emergency is a task of the Agency, who will classify it as a district, regional or national disaster<sup>131</sup>.

Under the Constitution, following a disaster the President can proclaim a state of emergency for the whole of the United Republic, or the whole of Mainland Tanzania or the whole of Tanzania Zanzibar<sup>132</sup>.

### **Border regulations**

The Disaster Management Regulations of 2017 provide that upon proclamation of the national state of disaster, the responsible Minister may issue directions concerning the regulation of the movement of persons and goods<sup>133</sup> as well as any steps to facilitate international assistance<sup>134</sup>. If these facilities are not established, common law provides for the issuance of an ordinary visa,

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<sup>124</sup> The Disaster Management Act No.7, 2015, art. 5

<sup>125</sup> The Disaster Management Act No.7, 2015, art. 7.2

<sup>126</sup> The Disaster Management Act No.7, 2015, art. 18

<sup>127</sup> The Disaster Management Act No. 2, 2003 (Zanzibar), art 9.1

<sup>128</sup> The Disaster Management Act No. 2, 2003 (Zanzibar), art 12

<sup>129</sup> The Disaster Management Regulations, 2017, art 3.-(2)

<sup>130</sup> The Disaster Management Regulations, 2017, art 4.-(1)

<sup>131</sup> The Disaster Management Regulations, 2007, art 23.-(1)

<sup>132</sup> The United Republic of Tanzania, 2005, art 32(3)

<sup>133</sup> The Disaster Management Regulations, 2017, art 15.-(2)(f)

<sup>134</sup> The Disaster Management Regulations, 2017, art 15.-(2)(n)

multiple entry visa, or gratis visa for the purposes of humanitarian workers.<sup>135</sup> Class C residence permits can also be issued, namely to missionaries, volunteers, and NGO employees<sup>136</sup>.

Tanzania has exemption procedures for non-profit organisations (religious and charitable organisations), created in particular for *relieving persons from the effects of natural calamities, hazards or disasters*.<sup>137</sup> Tax remission on goods imported by NGOs into Tanzania applies if the services are supplied without fee, charge or any other consideration in the form of fees, or payment<sup>138</sup>. In addition, the recipient NGO in Tanzania is required to apply for duty and tax remission to the Tanzanian Revenue Authority's Commissioner for Customs and Excise. Lastly, it is advised to send the application as early as possible to have the ruling made before arrival of the goods in order to avoid demurrage charges.

#### **Strengths**

- A 2015 framework law supplemented by Disaster Management Regulations in 2017
- The responsibilities and coordination system are clearly identified in the framework law and Disaster Management Regulations
- Zanzibar has its own DRM policy and law

#### **Weaknesses**

- CCA and development policies do not take the DRM/DRR component sufficiently into account
- Legal framework for the entry of personnel and goods is not sufficiently developed
- The law is not fully operational (insufficient resources)
- Neither legislation nor regulations contain anything about appeals for international aid

#### **Recommendations**

- Ratify the revised Kyoto Convention and relevant annexes
- Further integrate DRR/DRM into development and CCA policies
- Work on implementing and consolidating the framework law (greater integration of the guidelines)
- Strengthen the skills and resources of all committees involved in DRM/DRR

<sup>135</sup> The United Republic of Tanzania, Visa Guidelines, accessed 18/09/2020, online at: <https://eservices.immigration.go.tz/visa/guidelines#>

<sup>136</sup> Tanzania Revenue Authority, Exemption Procedures for Non-Profit Organizations, accessed 10/07/2020, online

<sup>137</sup> Tanzania Revenue Authority, Exemption Procedures For Non-Profit Organizations, accessed 10/07/2020, online at: <https://www.tra.go.tz/index.php/exemption-procedures-for-non-profit-organizations>

<sup>138</sup> Tanzania Revenue Authority, Exemption Procedures For Non-Profit Organizations, accessed 10/07/2020, online at: <https://www.tra.go.tz/index.php/exemption-procedures-for-non-profit-organizations>

## V. Seychelles

In 2004 the Seychelles government created the Department of Risk and Disaster Management (DRDM) in the form of a National Secretariat for Disaster Risk Management, which was later upgraded into the Department<sup>139</sup>. It now acts as a multisectoral body that operates as a national platform for coordination and policy guidance on disaster risk reduction<sup>140</sup>. In 2014, the government passed its first law on DRM, the Disaster Risk Management Act<sup>141</sup>. This legislation fully contributes to implementing the Seychelles Sustainable Development Strategy (SSDS-2012-2020)<sup>142</sup>, which should allow: *“realising of the nation’s economic, social and cultural potential through an innovative, knowledge-led approach, while being mindful of the need to conserve the integrity of the Seychelles natural environment and heritage for present and future generations”*<sup>143</sup>. In addition, although somewhat dated, the 2009 National Climate Change Strategy<sup>144</sup> takes into account Seychelles' vulnerability to disasters and makes some references to DRM<sup>145</sup>. This policy was due to be updated in 2015, but this will certainly not happen until 2020 when the Third National Communication to the United Nations Framework Convention on Climate Change is issued<sup>146</sup>. In due course it will be particularly interesting to identify the synergies between DRM, DRR and CCA that Seychelles' new national strategy will certainly develop.

### The Disaster Risk Management Act 2014 and the National Integrated Emergency Management Plan (NIEMP)

Through the Disaster Risk Management Act the Government recognises its responsibility to protect communities and the environment<sup>147</sup>. As such, this legislation establishes the DRDM as the national body for DRM responsible for, among other things, the preparation of the National Disaster Risk Management Plan and Strategy, and implementation of the integrated emergency management and coordination system<sup>148</sup>. Before the Disaster Risk Management Act was

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<sup>139</sup> Government of Seychelles, Seychelles DRR peer review, Towards effective implementation of national disaster risk reduction policies, strategies and actions, 2018, p.14-15; UNDP, Disaster risk profile of the Republic of Seychelles, 2008, p. 9

<sup>140</sup> GFDRR, Seychelles, accessed 20/05/2020, online at: <https://www.gfdr.org/en/seychelles>

<sup>141</sup> Disaster Risk Management Act, 18 August 2014, Supplement to Official Gazette, p.443 [Disaster Risk Management Act, 2014]

<sup>142</sup> Seychelles Sustainable Development Strategy 2012-2020 (Volume 1).

<sup>143</sup> FAO, FAOLEX Database, Seychelles, accessed 07/07/2020, online at: <http://www.fao.org/faolex/results/details/en/c/LEX-FAOC185102/>

<sup>144</sup> Government des Seychelles, National Climate Change Strategy, 2009

<sup>145</sup> Government of Seychelles, National Climate Change Strategy, 2009, p.75. However, a more focused inter-sectoral task force to facilitate implementation of adaptation is recommended. This task force shall comprise of representatives from: the ministries concerned, socio-economist, climatologist, disaster expert, community leaders, NGOs, the media, tertiary and research institutions in Seychelles, the insurance industry, and education.; p. 78, Establishment of a National Disaster Crop Insurance scheme; p 88, Integrate climate change education into all sectoral policies and strategies, i.e. tourism, fisheries, energy, agriculture, education, development, disaster response, etc.

<sup>146</sup> DGRIS, Prospective Study Report No. 9 western Indian Ocean, May 2019, p. 68

<sup>147</sup> World Bank and Department of Risk and Disaster Management of Seychelles, 2019. Seychelles National Integrated Emergency Risk Management Plan. Washington, DC: World Bank; Victoria, Seychelles: Department of Risk and Disaster Management, p. 19; Disaster Risk Management Act 2014, 18 August 2014, Supplement to Official Gazette, p.445

<sup>148</sup> IFRC, Seychelles' new law comprehensively tackles disaster management issues, 29 July 2015, accessed 07/07/2020, online at: <https://www.ifrc.org/en/what-we-do/disaster-law/news/africa/seychelles1/seychelles-new-law-comprehensively-tackles-disaster-management-issues-67970/>; Disaster Management Act, 2014, art 4

established, the DRDM had no legal authority to impose or restrict any measures<sup>149</sup>. The Seychelles Red Cross Society – with support from the DLP – was closely involved in the development of the Act. This is illustrated particularly by inclusion of many recommendations from the Guidelines and Model Act, in particular into Part V of the Disaster Management Act which deals with international assistance. When a disaster affects Seychelles, it is up to the Director General of the DRDM, in consultation with the Minister, to make an initial estimate as to whether domestic capacities are sufficient to attend to the needs of affected persons<sup>150</sup>, then they determine whether international assistance is required. In such a case, a request for international assistance is sent, with the consent of the President, through the Ministry of Foreign Affairs<sup>151</sup>.

In May 2018, the Cabinet of Ministers approved the project to develop and implement the first National Integrated Emergency Management Plan, the NIEMP<sup>152</sup>. The latter outlines the general framework and the Seychelles approach to emergency preparedness and response, and delivery of the Integrated Emergency Management System required by Seychelles law<sup>153</sup>. The Government received active support under a World Bank technical assistance programme to produce the plan, and Red Cross Society of Seychelles was consulted during its development<sup>154</sup>. In addition, the document sets out details of the procedures to be followed, the roles and accountabilities for each agency and community involved, and describes the coordination and communications structure within which they will work. The NIEMP should therefore be viewed as the cornerstone for all emergency preparedness and response activities<sup>155</sup>.

### Border regulations

The Disaster Risk Management Act provides that the DRDM's Director General, to the extent necessary for the performance of disaster relief and recovery, should serve as a focal point for liaison between Seychelles and international humanitarian organisations assisting the island nation. The Director General must also facilitate the entry of humanitarian personnel in Seychelles, including liaising with the Ministry responsible for immigration for necessary visas or permits, as the case may be, to be issued for the duration of the assistance. In addition, the DG must facilitate, through the authority responsible for qualification, for temporary recognition of professional qualifications of foreign medical personnel and other licenses or certificates of humanitarian personnel<sup>156</sup>.

The DRDM Director General must also work, through the Ministry for Finance and Trade, for exemption of customs duties, taxes, levies and tariffs or any other government fees on goods and equipment imported, to be exported, in transit or to be re-exported. Lastly, they must liaise and

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<sup>149</sup> Paul Labaleine, in IFRC, Seychelles' new law comprehensively tackles disaster management issues, 29 July 2015, accessed 07/07/2020, online at: <https://www.ifrc.org/en/what-we-do/disaster-law/news/africa/seychelles1/seychelles-new-law-comprehensively-tackles-disaster-management-issues-67970/>; Disaster Management Act, 2014, art 4

<sup>150</sup> Disaster Risk Management, 2014, art. 28.(1)(a)

<sup>151</sup> Disaster Risk Management, 2014, art. 28.(1)(b)

<sup>152</sup> The World Bank, Seychelles Department of Risk and Disaster Management, Seychelles National Integrated Emergency Risk Management Plan (NIEMP), 2019, Washington, DC: World Bank; Victoria, Seychelles: Department of Risk and Disaster Management 10

<sup>153</sup> NIEMP, p. viii

<sup>154</sup> NIEMP, p. 1

<sup>155</sup> NIEMP, p. 7

<sup>156</sup> Disaster Risk Management, 2014, art. 30.(4)(a)(d)(e)

facilitate interactions with the Ministry responsible for health to verify and issue licences to export and distribute the medication and equipment to be used by the international humanitarian organisation<sup>157</sup>.

**Strengths**

- Very comprehensive framework law
- Coordination mechanisms and responsibilities are well identified in the Law and NIEMP
- Seychelles tend to be little affected by disasters, which leaves the opportunity to develop a robust legal and institutional framework

**Weaknesses**

- Law as yet little tested
- The National Climate Change Strategy is old, as it dates from 2009, and the 2015 update has not taken place.
- Difficult to convince about the importance of investing and tackling the issue of DRM
- Only the tourism sector seems to fully grasp the issue (2015 info)

**Recommendations**

- Raise awareness about DRR/DRM
- Work to implement the NIEMP
- Hold capacity-building workshops right down to district level

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<sup>157</sup> Disaster Risk Management, 2014, art. 30.(4)(f)(k)

## VI. Mauritius

In 2012 Mauritius developed its National Climate Change Adaptation Policy<sup>158</sup>. In this policy document, the impacts of climate change are analysed from a broader perspective, including socio-economic indicators, and the strategy, action and investment plans include considerations on DRR, as well as the strengthening of institutions and institutional arrangements to support successful implementation of the CAA policy<sup>159</sup>. In addition, through the 2018 Migration and Development Policy and Action Plan, the Mauritian government intends to address the root environmental, climate drivers, and enhanced resilience to disasters risks in order to avoid forms of forced migration and displacement. Furthermore the Government is devising methods to assess the effectiveness of disaster risk management or reduction strategies vis-à-vis immigrants (e.g. access to information, communication in a language they understand)<sup>160</sup>. Currently, the government wants to pave the way for a "*cleaner, greener and safer*" island. So the Ministry of Social Security, National Solidarity, and Environment and Sustainable Development will, *inter alia*, enhance climate change adaptation and mitigation policies, implement effective disaster risk reduction and management for enhancing public safety, domestic international environmental commitments, and strengthen coordination on DRR across relevant institutions and sectors<sup>161</sup>.

Moreover, in order to improve the country's DRM efficiency, the Mauritian government established in 2013 the National Disaster Risk Reduction and Management Council<sup>162</sup>. This is in lieu of the defunct Central Cyclone and other Natural Disasters Committee<sup>163</sup>. In the same year the National Disaster Risk Reduction & Management Centre (NDRRMC) was set up. Then in 2015, the National Disasters Scheme (NDS)<sup>164</sup> was established. This is intended to take into account the entire DRM process while emphasising a coordinated approach between the agencies involved. Most recently, in 2016 Mauritius adopted framework legislation on DRM which is embodied in its National Disaster Risk Reduction and Management Act<sup>165</sup>.

### The National Disaster Risk Reduction and Management Act

The National Disaster Risk Reduction and Management Act establishes an administrative framework for disaster risk reduction and disaster response with details on the declaration of the state of disaster. This legislation takes into account the insular nature of Mauritian territory, and makes specific provisions for Rodrigues (part VI) as well as Agaléga and Cargados Carajos (part VII). It also provides details on the institutional architecture of the Mauritian government's DRM.

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<sup>158</sup> Republic of Mauritius, National Climate Change Adaptation Policy Framework for the Republic of Mauritius, 2012

<sup>159</sup> Green Growth, Knowledge Platform, National Climate Change Adaptation Policy Framework for the Republic of Mauritius, 2012, consulted 03/08/2020, online at: <https://www.greengrowthknowledge.org/national-documents/national-climate-change-adaptation-policy-framework-republic-mauritius>; Republic of Mauritius, National Climate Change Adaptation Policy Framework for the Republic of Mauritius, 2012, p. 81 Strengthening of capacities for disaster risk reduction and disaster management

<sup>160</sup> CADRI, Draft terms of reference multi sectoral assessment DRM capacities in the Republic of Mauritius, 2019, p.5

<sup>161</sup> Ministry of Social Security, National Solidarity, and Environment and Sustainable Development, Annual report 2018-2019, p.98

<sup>162</sup> Ministry of Environment, Sustainable Development, and Disaster and Beach Management, National Disaster Risk Reduction and Management Centre (NDRRMC), National Disasters Scheme (NDS), 2015

<sup>163</sup> NDS, 2015, p.3

<sup>164</sup> NDS, 2015, p.3

<sup>165</sup> National Disaster Risk Reduction and Management Act No. 2 of 2016, Government Gazette of Mauritius No. 34 of 16 April 2016

The responsibilities of the National Disaster Risk Reduction and Management Council<sup>166</sup> (NDRRM-Council), and the Rodrigues Disaster Risk Reduction and Management Committee are thus specified. The legislation also recommends creation of Local Disaster Risk Reduction and Management Committees (national and for Rodrigues) for every local authority. Moreover, in emergencies the law lays down the roles and responsibilities of the National and Rodrigues Crisis Committees (NCC and RCC) and the National and Rodrigues Emergency Operations Commands (NEOC and REOC).

The National Disaster Risk Reduction and Management Act provides that where it is beyond national capabilities to deal with a disaster or emergency, the Prime Minister may seek international relief assistance, either on the recommendation of the chairperson of the National Crisis Committee, or the chairperson of the Rodrigues Crisis Committee, or the Director General, as the case may be, or on their own initiative<sup>167</sup>. It stipulates that the coordination of international relief assistance is to be carried out in accordance with international norms, and that international assisting agencies must abide by the laws of Mauritius while respecting the principles of humanity, neutrality and impartiality<sup>168</sup>.

### Border regulations

When a state of disaster is declared the government may, on an *ad hoc* basis, create conditions to make the visa process faster and easier. The National Disaster Risk Reduction and Management Act, while providing very little guidance on the entry of humanitarian personnel, specifies that the Prime Minister may issue directions or authorise the issue of directions concerning regulation of the movement of persons to, from, and within the disaster-affected areas<sup>169</sup>.

Following the request for international relief assistance, the National Disaster Risk Reduction and Management Act provides that goods imported as aid to persons affected by a disaster are exempt from duties and taxes<sup>170</sup>. This is pursuant to the Customs Act that allows the Director General to release, free of duty, excise duty and taxes, any relief consignments or goods imported as aid to persons affected by a disaster in Mauritius. They may also, at any time, release imported goods in the event of a natural disaster or other emergency, urgent or unforeseen circumstances or for reasons of national security, in such manner and under such conditions as they determine<sup>171</sup>. Finally, it is interesting to note that the International Federation of Red Cross and Red Crescent Societies and the Mauritius Red Cross Society are among the organisations whose articles related to their normal activities, not intended for sale, are admitted exempt from customs duty<sup>172</sup>.

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<sup>166</sup> National Disaster Risk Reduction and Management Act 2016, art 4-8

<sup>167</sup> National Disaster Risk Reduction and Management Act 2016, art 38

<sup>168</sup> National Disaster Risk Reduction and Management Act 2016, art 38 (2),(4)

<sup>169</sup> National Disaster Risk Reduction and Management Act 2016, art 37.(2)(d)

<sup>170</sup> National Disaster Risk Reduction and Management Act 2016, art 38.(1)

<sup>171</sup> Custom Act No. 47 of 1988 - January 1 1989, art 30.(3) and 30.(4)

<sup>172</sup> Unclassified exemptions from custom duty, accessed 06/05/2020, online at: <https://www.mra.mu/index.php/customs1/import/exemptions>, p.7

**Strengths**

- Has a framework law that has taken guideline recommendations into account
- Several workshops/simulations are carried out between different stakeholders
- Clearly presented roles and responsibilities
- Mauritius promotes regional cooperation in DRR, in 2016 it hosted the 6th Africa Regional Platform and the 5th High-Level Meeting on DRR with the support of the African Union Commission, the Southern African Development Community, and the UNISDR regional office
- Has a Community Disaster Response Programme (CDRP)

**Weaknesses**

- Lack of recognition of the temporary skills of humanitarian workers
- Mobilising at local level is difficult
- Lack of financial resources
- Law as yet little tested

**Recommendations**

- Strengthen institutional and governance aspects related to the coordination and preparation of responses at national and local levels
- Build organisational capacity at local level (including roles and capacities of various district/local committees)
- Work on recognising humanitarian workers' skills, and on facilitating their entry (visas and permits)

## VII. Reunion & Mayotte: the French normative framework and the efforts to take into account the specific nature of French overseas territories

Unlike the countries reviewed previously (except the Union of the Comoros), France does not have a framework law on DRM or a Disaster Risk Management Act. Reference thus needs to be made to a range of legislation that covers both DRR and DRM<sup>173</sup>. In addition, a reform of the “CatNat” regime – which amends the public compensation system for natural disasters, and has remained unchanged since 1982 – is expected. As such, on 16 January 2020 a bill was sent to the National Assembly for first reading<sup>174</sup>.

### Diffuse regulatory framework

The law to modernise civil protection<sup>175</sup> sets out to harness all the skills involved in organising emergency services in the event of technological, natural, or terrorist risks. This law updated civil protection principles proposed by the Law of 22 July 1987 on the organisation of civil security, forest-fire protection, and the prevention of major risks while drawing on lessons learnt from past incidents (1999 storm, flooding in 2000, 2002 and 2003, AZF explosion in 2001). Disaster response organisation is based on a balanced sharing of responsibility between the State and local authorities. When the scale of a situation is such that coordination of relief efforts is required, local, district, regional and national plans should be referred to.

Moreover, the Law No. 55-385 of 3 April 1955 regarding the state of emergency specifies that said state may be declared in overseas departments and territories, in particular in the event of natural disasters of exceptional proportions<sup>176</sup>. The state of emergency is decreed in the Council of Ministers, and must specify the relevant district. It is initially proclaimed for twelve days, and any extension to it can only be authorised by passing a law,<sup>177</sup> which must set its definitive duration<sup>178</sup>. However the declaration of natural disaster is rooted in the insurance system, aimed at allowing insured persons to receive compensation. There is no mention of the international assistance regime. To define some of these elements, we need to study the bilateral or multilateral assistance agreements signed by France, or the resulting administrative arrangements. France has several agreements of this type with EU and non-EU countries<sup>179</sup>.

When a disaster is about to affect or has affected French territory, France can call on European solidarity via the Civil Protection Mechanism. Or even – depending on the scale of the disaster – call for bilateral cooperation via bilateral and multilateral mutual assistance agreements (EU and

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<sup>173</sup> Ministry for Ecology, Sustainable Development, Transport and Housing, *La démarche française de prévention des risques majeurs* [The French approach to prevention of major risks], 2011, Annex 1. *Le cadre législatif et réglementaire des risques majeurs* [The legislative and regulatory framework for major risks], p. 68-70

<sup>174</sup> Bill adopted by the Senate to reform the natural disaster regime, 16 January 2020, No. 2592

<sup>175</sup> Law No. 2004-811 of 13 August 2004 on the modernisation of civil protection

<sup>176</sup> Law No. 55-385 of 3 April 1955 on the state of emergency, art 1

<sup>177</sup> Law No. 55-385 of 3 April 1955 on the state of emergency, art 2

<sup>178</sup> Law No. 55-385 of 3 April 1955 on the state of emergency, art 3

<sup>179</sup> French Ministry for Europe and Foreign Affairs, Treaties and Agreements: Search on 14/09/2020, online at: [https://basedoc.diplomatie.gouv.fr/exl-php/recherche/mae\\_internet\\_\\_\\_\\_traites](https://basedoc.diplomatie.gouv.fr/exl-php/recherche/mae_internet____traites)

non-EU member countries)<sup>180</sup>. The provisions of these agreements aim to stipulate the details of their implementation, particularly the legal facilities for international assistance<sup>181</sup>.

### Bill on major natural hazards in overseas France

After Hurricane Irma hit Saint-Barthélemy and Saint-Martin in September 2017, the Senate Overseas Delegation decided to conduct a study on major natural hazards in overseas territories which face a wide range of major natural hazards. In November 2019 the government launched a regional consultation process on the proposed measures in the bill for major risks overseas, intended to increase the resilience of overseas departments and territories (PIROI participated fully in this consultation). The bill aims to be proactive in preventing and managing major risks in overseas territories, in particular by defining mechanisms to prepare, reduce the impact, and manage a post-disaster context geared towards rebuilding<sup>182</sup>. In this particular respect, the territorial consultation conducted under the auspices of territories' Prefects included a debate on: *d) the creation of a procedure to establish a state of exceptional natural calamity.*

The creation of a state of exceptional natural disaster would make it possible to better take into account the specific characteristics of risk management, specifically by implementing derogation measures providing more efficient decision-making by competent authorities, as well as the implementation of public or private human and material resources for this purpose<sup>183</sup>. In addition, a state of emergency regime could be created that focuses less on security and public order issues than has been the case until now. As a result, as well as the creation of a state of exceptional natural disaster, the consultation suggests: *defining for each decision – in an overall manner and not ad hoc – the content, scope and duration of exemption clauses to cover priority needs (public procurement, debris removal, waste management, etc.). In any event, it should be highlighted that exemptions to the standards are regulated, limited and strictly proportionate to the purposes sought [an experiment is underway on a right of exemption granted to Prefects. An assessment report will follow this two-year experiment]*<sup>184</sup>.

*h) Exemption from dock dues for certain types of equipment in the event of emergencies.*<sup>185</sup>

This is intended to facilitate the transport and delivery of goods of interest to international relief. In the same consultation, it is noted that in practice goods relating to crisis management are totally exempted. In accordance with these policies it has been suggested an automatic exemption system be set up for: *imports of equipment and goods intended to be used primarily to manage a crisis resulting from a natural disaster or an exceptional health situation, and whose purpose is to save and rescue human lives, care for the population, remove debris, secure property, restore*

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<sup>180</sup> French Ministry for Europe and Foreign Affairs, Treaties and Agreements: Search on 14/09/2020, online at: [https://basedoc.diplomatie.gouv.fr/exl-php/recherche/mae\\_internet\\_\\_\\_traites](https://basedoc.diplomatie.gouv.fr/exl-php/recherche/mae_internet___traites)

<sup>181</sup> French Red Cross, *Rapport sur les règles, lois et principes applicables aux actions internationales en cas de catastrophe en France* [Report on the rules, laws and principles for International Disaster Response in France] (IDRL), 2010, p.22

<sup>182</sup> 2<sup>nd</sup> Inter-ministerial committee on overseas France, press kit, 18 September 2019, p. 19

<sup>183</sup> Regional consultation on the proposed measures of the bill for major risks overseas, 2019, Sheet D, principle of creation of a state of exceptional natural disaster

<sup>184</sup> Regional consultation on the proposed measures of the bill for major risks overseas, 2019, Sheet D, principle of creation of a state of exceptional natural disaster

<sup>185</sup> Regional consultation on the proposed measures of the bill for major risks overseas, 2019

*essential infrastructure, or maintain public order*<sup>186</sup>. Such a measure would apply to imported goods remaining in the territory, as well as to those imported temporarily and re-exported intact at the end of the crisis. On the other hand, goods intended for rebuilding (and not for securing or repairing essential infrastructure to a working minimum) will remain subject to dock dues<sup>187</sup>. If these measures were to be adopted, then Law No. 2004-639 of 2 July 2004 relating to dock dues would have to be amended.

The bill currently suffers from government priorities being redirected towards the fight against COVID-19. In fact it should have been forwarded to the Council of State late February or early March 2020<sup>188</sup> and was to be drafted at the end of April 2020<sup>189</sup>. No progress has been reported since then, but there is no doubt that this law will impact the relief regime, and attention should be paid that the recommendations on components D and H of the regional consultation are included.

### Border regulations

Border regulations on the entry of personnel or goods are dependent on application of EU rules,<sup>190</sup> or on the implementation of bilateral or multilateral mutual assistance agreements. It will therefore be advisable in due course to refer to the request for assistance from the French government, which will either have chosen to turn to the European system, or to the nations with which it has established a relationship of assistance.

#### Strengths

- Has developed an EU-specific civil protection mechanism
- France has several bilateral and multilateral mutual assistance agreements in place
- Efforts are underway to take into account the specific nature of overseas departments and territories through the bill on major overseas risks
- The coordination and responsibilities plan is well identified at EU and French levels
- The French Red Cross has civil protection accreditation

#### Weaknesses

- Lack of a framework law with provisions on international assistance
- Disaster management anchored in the insurance system
- The remote geographical position of Mayotte & Reunion may make the EU system less effective (length of time to deliver aid)

<sup>186</sup> Regional consultation on the proposed measures of the bill for major risks overseas, 2019, Sheet H: principle of a targeted exemption from dock dues in the event of a disaster-related emergency

<sup>187</sup> Regional consultation on the proposed measures of the bill for major risks overseas, 2019, Sheet H: principle of a targeted exemption from dock dues in the event of a disaster-related emergency

<sup>188</sup> Senate, Official summary report of 18 February 2020, accessed 09/14/2020, online (in French) at: [https://www.senat.fr/cra/s20200218/s20200218\\_4.html#par\\_685](https://www.senat.fr/cra/s20200218/s20200218_4.html#par_685)

<sup>189</sup> 2<sup>nd</sup> Inter-ministerial committee on overseas France, press kit, 18 September 2019, p. 19

<sup>190</sup> EC regulation No. 1186/2009; Directive 2009/132/EC; Regulation (EC) No. 539/2001

**Recommendations**

- Develop a framework law that takes the guidelines into account
- Go beyond the victim compensation and/or insurance approach
- Ensure that the bill takes into account the specific characteristics of overseas France: allow the creation of a procedure to establish a state of exceptional natural disaster, abolish dock dues for goods relating to crisis management
- Develop a culture of pre-positioning as part of crisis management
- Develop more workshops/simulations in partnership with the region's (military) forces

## CONCLUSION

In the light of this study, it can be said that on a national level, DRM legislation and policies have continued to develop and be strengthened since PIROI's first progress report in 2012. In fact, aside from France, only the Union of the Comoros does not have a framework law. However, several signs show that the Comorian government is also in the process of developing its own model law. In addition, the French government is seeking to take into account the specific needs of Mayotte and Reunion through its bill on major natural risks in overseas France.

However, there is firstly a certain disparity in the integration of the guidelines into national regulatory frameworks; secondly, difficulties in the application of the emergency procedures developed; lastly, a general lack of assimilation of the standards by the stakeholders involved. Thus, while it is important to develop robust standards to reduce the impact of disasters, at the same time it is essential to work to ensure that on the one hand, they are disseminated and assimilated by all stakeholders involved, and that on the other hand, they are adhered to and consolidated as lessons are learned from previous emergencies. In this respect, it would be relevant to transfer legal facilities developed by certain countries in the fight against COVID-19 to natural disaster situations. Moreover, PIROI, DLP and NSs can draw on their DRM experiences from a legal and technical point of view. They can then make use of the special relationship they have with their government counterparts when developing or consolidating legislation and policies related to their areas of expertise. At the same time, there is talk of strengthening the operational aspects of NSs' auxiliary role. These aspects can be codified in various ways into the body of national DRM laws, policies and plans.

Furthermore, at regional level, the geographical area under consideration is subject to several influences with a strong presence of the EU, African Union, and to a lesser extent Arab League. Several international organisations are active in the field of DRM, with the most relevant to this study being the Indian Ocean Commission (IOC), and the Indian Ocean Rim Association (IORA). There is no doubt that initiatives led by these organisations and agencies invite States to develop joint actions, which could positively influence the emergence of regional regulatory frameworks, or at least guidelines. At international level, risk reduction and disaster management have moved higher up political and legal agendas. This is reflected in the content of the Sendai Framework for Disaster Risk Reduction 2015-2030. It applies alongside the commitments made by States in the Paris Agreement, and the full entry into operation of Sustainable development goals (SDGs), both of which have elements of interest to DRR and DRM. Alongside these three flagship instruments, the ILC worked on *draft articles on the protection of persons in the event of disasters* which, if adopted by the UNGA, could lead to the emergence of a general assistance framework.

Ultimately, the fact remains that humanitarian assistance is dependent on respect for national sovereignty. This remains the fundamental principle of international law today, despite a nascent duty to assist that is based on respect for human rights.