

Development of Malawi's Disaster Risk Management Act 2023

Origins of the disaster law review process

In 2014, Malawi's Department of Disaster Management Affairs (DoDMA) and the Malawi Red Cross Society (MRCS) conducted research on the country's legal preparedness for international disaster assistance. This research project culminated in a report entitled International Disaster Response Law (IDRL) in Malawi: A Study on Legal Preparedness for Regulatory Issues in International Disaster Response (the IDRL Report), which was published in 2015. The report identified several aspects of Malawi's existing legal framework that needed to be strengthened to enable international disaster assistance.

At the time of this project, the Malawi Government was already actively reviewing its legal arrangements for disaster risk management (DRM), intending to introduce new legislation to replace the Disaster Preparedness and Relief Act of 1991. A draft DRM Bill was produced in 2013, with assistance from the United Nations Development Programme. The DRM Bill represented a significant advancement from the existing legislation, however, the IDRL Report identified several areas where more detailed provisions were still needed.

Following the publication of the IDRL Report, DoDMA hired a legal expert to advise on how the report's recommendations could be incorporated into the DRM Bill. In a preliminary report, the legal expert provided advice on the next steps in the process, recommending the need for a task force to be established to support the ongoing work on the DRM Bill, and for consultations with stakeholders.

A taskforce is established to oversee the review

Consistent with the expert's recommendation, the Malawi Government established a taskforce to support the ongoing work on the DRM Bill. The taskforce comprised representatives from a broad range of government departments, the Malawi Red Cross Society, national non-government organisations and development partners. Malawi Red Cross Society continued to play an important role in the process, providing technical advice on how the DRM Bill could be strengthened and guidance to the legal expert in this regard.

The taskforce oversees extensive stakeholder consultations

As technical legal work continued, the task force also oversaw extensive consultations with a broad range of DRM actors and stakeholders in Malawi. In total, more than 70 stakeholders were consulted as part of the review. Consultations were held with relevant sectoral government agencies such as the Ministry of Justice, the Department of Climate Change and Meteorological Services, the Department of Civil Aviation and the Malawi Revenue Authority. Equally, district governments were consulted. In terms of non-government actors, the task force consulted with representatives from the Civil Society Network Organization and the Council for Non-Governmental Organisations, as well as academic experts from universities.

During the consultation process, a deliberate effort was made to include and understand the views of women, children, people with disabilities and people with other vulnerabilities. This was enabled by community consultation meetings in Chikwawa and Nsanje Districts. These community consultation meetings identified the central role of local authorities in disaster risk management and highlighted the importance of supporting and enabling this role through enhanced institutional arrangements. Equally, they drew attention to the need for people who have been internally displaced by disasters to be provided with dignified living conditions in camps or other places where they are residing.

The extensive consultations enabled the task force to identify the types of provisions that would need to be included in the new law. In particular, the new law would need to contain provisions creating a National DRM Committee, establishing an early warning system, enabling the declaration of a state of disaster and regulating international disaster assistance. Important changes to the institutional arrangements for DRM were also identified, including reviewing the composition of district-level committees and renaming them from Civil Protection to Risk Management Committees.

Finally, it was identified that DoDMA's mandate needed to be expanded with regards to the relocation of people living in very high-risk areas.

The DRM Bill is drafted and tabled in Parliament

The lessons learned from the extensive consultation process culminated in DoDMA submitting a draft DRM Bill to the Ministry of Justice in August 2020. The Ministry of Justice provided several comments on the Bill. In 2021, DoDMA held a working session to incorporate the comments, with support from Malawi Red Cross Society. Upon resubmission, the DRM Bill was endorsed by the Ministry of Justice and tabled in Parliament. This was a huge achievement for the taskforce, but its work was far from done.

In the months that followed, key members of the taskforce, including DoDMA, the Environmental Affairs Department, the Department of Climate Change and Meteorological Services and Malawi Red Cross Society, had to work hard to keep the DRM Bill on the agenda. They had several meetings with the Parliamentary Committee on the Environment as well as with the Cabinet Ministers.

With a change of government having recently occurred, the meetings with Cabinet Ministers were vital to informing the new government about the DRM Bill and persuading it of the importance of enacting it in a timely manner.

A new DRM Bill is passed

On 12 April 2023, Parliament passed the DRM Bill of 2023. After years of tenacious advocacy from members of the task force, the devastating impacts of Cyclone Freddy in February 2023 provided the final impetus for this much-needed legal reform. The Disaster Risk Management Act 2023 provides Malawi with a modern, comprehensive legal framework for disaster risk management.

It is a multi-hazard, all-phases disaster law which establishes the institutional and financial architecture for Malawi's DRM system. It has a strong focus on establishing DRM structures at the local level and ensuring preparedness through measures such as contingency planning and establishing an early warning system.

Equally, it provides for the declaration of a state of disaster and contains detailed provisions on international assistance.



Key features of the new DRM Act

- It establishes a National Disaster Risk Management Committee (National Committee) responsible for providing leadership in the development, coordination and implementation of DRM strategies;
- It establishes a National Disaster Risk Management Technical Committee responsible for providing technical support to the National Committee and the Commissioner for DRM;
- It establishes the Office of the Commissioner for DRM, which is responsible for development, coordination and implementation of DRM strategies and interventions;
- Provides the DoDMA with a mandate and guidelines for the establishment of local government structures for DRM coordination, and implementation;
- Includes measures to ensure disaster preparedness through, among other things, the development of multi-hazard contingency plans, the development and maintenance of disaster risk management information systems and the development of an integrated multi-hazard early warning system;
- Establishes a procedure for declaring disaster-prone areas as high-risk areas for the purposes of DRM and the resettlement of persons occupying those areas;
- Provides for the declaration of a state of disaster and the measures to be taken upon such a declaration;
- Establishes a mechanism for appealing for international relief assistance and regulating the operation of assisting international actors; and
- Provides for the establishment of the Disaster Risk Management Trust Fund to serve as a repository of funds intended for use in DRM.

The DoDMA is currently developing the DRM Act Implementation Plan to ensure the new law is fully implemented. Equally, efforts are being made to raise public awareness of the contents of the new Act.

Key lessons learned

The development of the new DRM Act in Malawi has permitted the identification of several important lessons, which could be helpful for other governments and National Societies embarking on a similar process. For the National Society, the advancement of the DRM Act has increased the recognition of the Malawi Red Cross Society's auxiliary role to the public authorities. The experience highlighted that legislative reform can be a lengthy process that requires sustained engagement and commitment from the government and supporting actors.

This can be promoted by assigning government and National Society employees to work on the process from beginning to end, thereby ensuring continuity. To the contrary, when focal points change during the process, this can result in a loss of momentum and institutional memory, ultimately hampering progress.

To the extent possible, employees with significant experience in disaster law and policy should be released from their routine duties, to be able to bring their important knowledge to the table.

Another key factor for success is for the government and supporting actors to make sure they fully understand parliamentary procedures (and any other relevant law reform procedures) at the very outset. This is key to planning the legal review process and ensuring that any procedural requirements or other formalities are complied with. As was the case in Malawi, it can be beneficial for the government to hire a legal consultant with expertise in disaster risk governance to advise it on the new law. Finally, the experience in Malawi underlines the importance of extensive consultations with a broad range of actors and stakeholders, including at-risk communities and groups with particular vulnerabilities. It is only through extensive consultation that the resulting law can be tailored to the local context and fully address existing challenges and vulnerabilities.



Disaster Law in Southern Africa

Southern Africa is frequently affected by disasters, including cyclones, floods, and droughts. Climate change is increasing the frequency and intensity of these crises, which often have catastrophic impacts, including the loss of lives, livelihoods and assets, and damage to property, infrastructure, and the environment.

The 2022–2023 South-West Indian Ocean cyclone season was one of the most destructive and longest-lived on record. This was predominantly due to Cyclone Freddy which traversed Madagascar, Mozambique and Malawi between February and March of 2023. Humanitarian organisations, including members of the International Red Cross and Red Crescent Movement, contributed to disaster preparedness, emergency responses and recovery and reconstruction efforts.

Many national economies in Southern Africa are agriculturally based, and as long as climate change mitigation strategies enshrined in existing global policies are not wholeheartedly implemented, a significant portion of the 363 million inhabitants of Southern Africa could be food-insecure in the coming years. An increase in the mass movement of people from areas affected by climate-induced natural disasters is also more likely. Internal and external migration will necessitate greater coordination among humanitarian organisations to adequately support receiving communities and countries to respond to the added burden introduced by new arrivals. This is why strong disaster laws are important in the region – to ensure that future risks are mitigated, and that clear rules and procedures ensure timely and effective disaster response.

IFRC Disaster Law

IFRC Disaster Law works with National Red Cross and Red Crescent Societies and governments to strengthen disaster risk governance, through the development and implementation of disaster and emergency-related legislation, policies and procedures.

With 20 years of experience supporting the development and implementation of disaster law and policy around the world, we are the global leader in disaster law technical advice to governments.



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