

GAZETTE EXTRAORDINARY

**The Malawi Gazette Supplement, dated 5th March, 2023, containing
Bills**

NOTICE

The following Bills, for introduction in Parliament, are published for general information.

LILONGWE 5th March, 2023.

FIONA. KALEMBA
Clerk of Parliament

DISASTER RISK MANAGEMENT BILL, 2023

MEMORANDUM

This Bill seeks to repeal the Disaster Preparedness and Relief Act (Cap. 33:05) and replace it with a new Act in order to align the law with developments in the area of disaster preparedness, risk reduction, and response and recovery. The Bill, among other things-

(a) establishes a National Disaster Risk Management Committee (“National Committee”), which will principally be responsible for providing leadership in the development, coordination and implementation of disaster risk management strategies and interventions and also be responsible for recommending to the President the declaration of a state of disaster, and which shall comprise all key stakeholders in disaster risk management, including government officials (at Principal Secretary level), disaster risk management experts, representatives of civil society organisations, and a representative each of the Human Rights Commission and Red Cross Society of Malawi, and outlines the powers and functions of the National Committee;

(b) establishes a National Disaster Risk Management Technical Sub-Committee which will principally be responsible for providing technical support to the National Committee and the Commissioner, and provides for the membership and functions of the Committee;

(c) establishes the office of the Commissioner for Disaster Risk Management, which will be responsible for development, coordination and implementation of disaster risk management strategies and interventions, and prescribes the powers and functions of the office;

(d) provides a mandate and guidelines for the establishment of local government structures for disaster risk management, coordination and implementation;

(e) provides for 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 establishment of an integrated early warning system;

(f) provides for the declaration of a state of disaster and the measures to be taken upon declaration of the state of disaster;

(g) provides for the procedure for, and consequences of, declaring disaster prone areas as high-risk areas for purposes of disaster risk management and the resettlement of persons occupying those areas;

(h) provides for a structured mechanism for appeal for international relief assistances, and regulates the operation of assisting international actors; and

(i) provides for the establishment of the Disaster Risk Management Trust Fund, which shall be a repository of funds intended for use in disaster risk management.

DISASTER RISK MANAGEMENT BILL, 2023

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A B I L L

entitled

An Act to provide for disaster preparedness, risk reduction, response and recovery; the establishment of the National Disaster Risk Management Committee and the National Disaster Risk Management Technical Sub-Committee; the establishment of the office of Commissioner for Disaster Risk Management; and matters incidental thereto

ENACTED by the Parliament of Malaŵi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Disaster Risk Management Act, 2023, and shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

Short title and commencement

Interpretation

2. In this Act, unless the context otherwise requires—

“assisting actor” means any individual or organization responding to a disaster;

“disaster” means a serious disruption of the functioning of a community at any scale involving widespread human, material, social, cultural, economic or environmental loss or impact, which exceeds the ability of the affected community to respond, cope and recover using its own resources;

“disaster area” means a geographical area, within the territory of Malaŵi, where a disaster has occurred;

“disaster response” means the provision of emergency services and assistance during or immediately after a disaster in order to save lives, reduce health impact of the disaster, ensure public safety and meet the basic subsistence needs of the affected persons or community;

“disaster risk” means the potential disaster associated with loss of life, health status, livelihoods, assets and services, which may occur to a particular community over a period of time;

“disaster risk management” means a systematic process of using administrative systems and structures to implement policies and strategies to—

(a) reduce the risk of an existing disaster or prevent future risk;

(b) mitigate the severity or impact of a disaster;

(c) promote and support emergency preparedness;

(d) provide rapid and effective response and coordination to disasters; and

(e) promote post-disaster recovery and rehabilitation interventions, including resilience building;

“District Commissioner” includes a Chief Executive Officer of a City, Municipality or Town Council;

“early warning system” means an integrated system of hazard monitoring, forecasting and prediction, and includes structures and processes that enable individuals, communities, the Government and other organizations to take timely action to reduce disaster risks in advance of a hazardous event;

“evacuation centre” means premises specifically designated by the Commissioner to provide temporary shelter to persons affected by a disaster.

“Fund” means the Disaster Risk Management Trust Fund established under section 49;

“hazard” means a dangerous phenomenon, substance, human activity or condition that may cause loss of life, injury or other health impact, property damage, loss of livelihoods or services, social or economic disruption, or environmental damage;

“initial recovery assistance” means goods, equipment, services, funds and other resources made available for the purpose of improving the living conditions of a community affected by a disaster, and includes initiatives to increase resilience to disasters and reduce disaster risks;

“local government authority” means a District Council, Town Council, Municipal Council or City Council established under the Local Government Act;

Cap. 22:01

“local government area” has the meaning ascribed thereto under the Local Government Act;

Cap. 22:01

“National Committee” means the National Disaster Risk Management Committee established under section 3;

“recovery” means restoration, and where appropriate, improvement of facilities, livelihoods and living conditions of a disaster affected community, and includes efforts to reduce disaster risk factors;

“relief” means the provision of assistance during or immediately after a disaster to meet the life preservation and basic subsistence needs of persons or a community affected by the disaster;

“risk assessment” means determining the nature and extent of risk by analysing potential hazards and evaluating existing conditions of vulnerability that may potentially harm persons, property, services, livelihoods or the environment;

“state of disaster” means a state of disaster declared under section 37;

“Technical Sub-Committee” means the Disaster Risk Management Technical Sub-Committee established under section 11;

“volunteer” means a person whose name is entered in a register of volunteers established under section 21; and

“vulnerable group” means a demographic group that face higher exposure to disaster risk and includes a minority group and persons with special needs.

PART II—NATIONAL DISASTER RISK MANAGEMENT COMMITTEE AND
NATIONAL DISASTER RISK MANAGEMENT TECHNICAL SUB-COMMITTEE

Establishment
and
composition of
the National
Disaster Risk
Management
Committee

3.—(1) There is hereby established a national committee to be known as the National Disaster Risk Management Committee (in this Act referred to as the “National Committee”).

(2) The National Committee shall consist of—

(a) the following *ex-officio* members or their designated representatives—

- (i) the Secretary to the President and Cabinet;
- (ii) the Secretary to the Treasury;
- (iii) the Principal Secretary responsible for education;
- (iv) the Principal Secretary responsible for transport;
- (v) the Principal Secretary responsible for agriculture;
- (vi) the Principal Secretary responsible for community services;
- (vii) the Principal Secretary responsible for health;
- (viii) the Principal Secretary responsible for lands;
- (ix) the Principal Secretary responsible for water;
- (x) the Principal Secretary responsible for local government;
- (xi) the Commander of the Malaŵi Defence Force;
- (xii) the Inspector General of Police;
- (xiii) the Executive Secretary of the Human Rights Commission; and
- (xiv) the Secretary General of the Malaŵi Red Cross Society; and

(b) the following members appointed by the Minister—

- (i) two persons with work experience in disaster risk management;
- (ii) two persons representing civil society organizations operating in the disaster risk management sector; and
- (iii) one person representing the private sector.

(3) A representative of an *ex-officio* member referred to in subsection (2) (a) shall be designated by, or on behalf of, the *ex-officio* member by notice in writing to the National Committee to attend the meetings thereof, and upon such designation the *ex-officio* member shall not himself or herself attend to the business

of the National Committee in person unless the designation is rescinded.

(4) The Minister shall, in making appointments under subsection (2) (b)—

(a) take into account the provisions of the Gender Equality Act; and

(b) have regard to the need for continuity in the membership of the National Committee so that at least two members of the immediate past National Committee shall be retained.

(5) A member of the National Committee other than an *ex-officio* member shall not, by virtue of the appointment, be deemed to be an officer in the public service.

(6) The Minister shall publish, in the *Gazette*, names of all members of the National Committee, as first constituted, and every subsequent change in the membership.

4.—(1) A member of the National Committee appointed under section 3 (2) (b) shall serve for a term of three years from the date of appointment and shall be eligible for re-appointment at the expiry of that period for another term of three years.

Tenure of
office and
vacancies

(2) The office of a member of the National Committee appointed under section 3 (2) (b) shall become vacant—

(a) on the expiry of the term of office of the member;

(b) upon the member being adjudged bankrupt;

(c) upon the member being sentenced to any term of imprisonment for an offence, without the option of paying a fine, against any written law;

(d) if the member is absent, without valid reason, from three consecutive meetings of the National Committee of which the member has had notice;

(e) upon the member becoming mentally or physically ill, where upon a suitably qualified medical practitioner certifies that the member is no longer, by reason of the illness, capable of performing duties of the office of member of the National Committee;

(f) if the member resigns from office by giving one month notice in writing to the Minister;

(g) in the case of a member appointed under paragraph (ii) or (iii), if the member is no longer able to represent the relevant sector; and

(h) upon the death of the member.

(3) A vacancy in the membership of the National Committee shall be filled by the appointment of a new member by the Minister in accordance with the criteria set out in section 3(2)(b).

(4) A person appointed to fill a vacancy under subsection (3) shall serve for the remainder of the term, but the Minister may not appoint a person to fill the vacancy where the remainder of the term is a period of less than six months.

(5) The period served by a person appointed under subsection (3) shall not be regarded as a term for purposes of subsection (1) unless the period served is two years or more.

Co-opted
persons

5. The National Committee may, in its discretion, at any time and for any period, co-opt any person to be a member of the National Committee, and such member shall attend any meeting of the National Committee and take part in the deliberations thereof, but shall not be eligible to vote.

Chairperson
and Vice-
Chairperson of
the National
Committee

6.—(1) The Secretary to the President and Cabinet shall be the Chairperson of the National Committee.

(2) The Minister shall appoint one of the *ex-officio* members, other than an *ex-officio* member under paragraph 3 (2) (a) (xiv), as Vice-Chairperson of the National Committee.

- (3) The office of the Vice-Chairperson shall become vacant if—
- (a) the holder resigns from office by giving notice in writing to the Chairperson;
 - (b) the holder of the office ceases to be a member of the National Committee; and
 - (c) the Committee so decides by simple majority or the Minister so directs.

(4) Whenever the Chairperson is absent or is for any cause unable to discharge the functions of his or her office, the Vice-Chairperson shall discharge the functions of the Chairperson.

Allowances
of members of
the National
Committee

7. A member of the National Committee, other than an *ex-officio* member, shall, in respect of expenses incurred in travelling and subsistence while discharging duties as a member of the National Committee, be paid, out of the funds of the Fund, such allowances as the Minister may determine.

Functions of
the National
Committee

8.—(1) The National Committee shall—

- (a) advise and make recommendations to the President on matters relating to declaration of state of disaster;

(b) advise the Minister on all matters relating to disaster risk management;

(c) coordinate resource mobilisation for the Fund;

(d) recommend to the Minister measures necessary for ensuring the integration of disaster risk management in all aspects of economic planning and development;

(e) oversee the implementation of the provisions of this Act and other disaster risk management related laws, policies and plans;

(f) promote coordination and cooperation within Government and with other stakeholders in the delivery of disaster risk management interventions;

(g) coordinate and facilitate the mainstreaming and integration of disaster risk management within and across all sectors and into development policies, plans, programmes, processes and strategies at all levels of administration;

(h) facilitate the development of service-continuity and contingency plans, consistent with the national disaster risk management plan in a systemic way;

(i) develop and implement a complaint and feedback mechanism in disaster response; and

(j) perform such other functions as are stipulated in this Act or as may be necessary or expedient for the administration and achievement of objects of this Act.

(2) The National Committee shall, in the performance of its functions, consult and collaborate with Government institutions, private sector entities and civil society organizations.

9. The National Committee may—

Powers of the
National
Committee

(a) order a Government Ministry, Department or Agency, or request a civil society or other humanitarian organization to provide facilities and resources for disaster risk management;

(b) order any officer or any Government institution, including a local government authority, to take such measures for the prevention or mitigation of disaster, or to effectively respond to a disaster, as may be necessary, and the officer or Government institution shall be bound to carry out the order;

(c) request any person to produce any document or information which, in the opinion of the National Committee, is necessary for the execution of its functions under this Act;

(d) carry out consultations regarding any matter under its

consideration and for the general conduct of its work and determine the procedure for carrying out such consultations; and

(e) do and perform all such things or acts as are necessary or expedient for the execution of its functions, duties and powers under this Act.

Meetings of
the National
Committee

10.—(1) The National Committee shall meet for the transaction of its business once in every three months, at such places and times as the Chairperson may determine.

(2) The Chairperson shall convene ordinary meetings of the National Committee by giving the members not less than seven days' written notice.

(3) The Chairperson may, on his or her own motion and at any time, convene an extraordinary meeting of the National Committee by giving the members not less than twenty-four hours written notice.

(4) The Chairperson shall convene an extraordinary meeting of the National Committee within three days of receipt of a request in writing signed by not less than eight members specifying the purpose for which the meeting is to be convened.

(5) A quorum at every meeting of the National Committee shall be constituted by ten members.

(6) The Chairperson or, in the absence of the Chairperson, the Vice-Chairperson shall preside over a meeting of the National Committee and, in the absence of both the Chairperson and Vice-Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meeting.

(7) A decision of the National Committee on any question shall be by consensus but where this is not possible, the decision shall be determined by a majority vote of members present and voting, and where there is an equality of votes, the Chairperson or, in the absence of the Chairperson, the Vice-Chairperson or other member presiding, shall have a casting vote in addition to a deliberative vote.

(8) A member of the National Committee, other than an *ex-officio* member, shall attend meetings of the National Committee in person.

(9) The National Committee may, where necessary and taking into account the nature of the matter to be deliberated, invite any person to attend its meeting and participate in the deliberations or to make a presentation or to be asked questions on any matter, but the person so invited shall have no right to vote.

(10) The National Committee may make rules to regulate its

proceedings and business or the proceedings and business of the National Technical Sub-Committee and other sub-committees of National Committee.

(11) The Commissioner shall be the secretary of the National Committee and shall record and keep minutes of meetings of the National Committee and the minutes shall be confirmed at the subsequent meeting.

11.—(1) There shall be a National Disaster Risk Management Technical Sub-Committee which shall be the main technical forum on disaster risk management.

Establishment and membership of the National Disaster Risk Management Technical Sub-committee

(2) The Technical Sub-Committee shall consist of—

(a) a senior officer designated in writing by each of the *ex-officio* members of the National Committee;

(b) one member designated by and representing development partners;

(c) two members representing civil society organizations; and

(d) one member who is a media practitioner.

(3) Members of the Technical Sub-Committee under subsection (2) (c) and (d) shall be appointed by the National Committee and shall serve for a term of three years and may be re-appointed once for another term of three years.

(4) The Commissioner or any other senior officer designated by the Commissioner shall be the chairperson of the Technical Sub-Committee.

12.—(1) Subject to provisions of this Act, the Technical Sub-Committee shall serve as a national technical advisory body to the National Committee on all matters relating to disaster risk management.

Functions of the Technical Sub-Committee

(2) Without prejudice to the generality of subsection (1), the Technical Sub-committee shall—

(a) provide technical advice to the National Committee on implementation of this Act and any other written law relating to disaster risk management;

(b) advise the National Committee on implementation of disaster risk management programmes;

(c) provide technical support to the National Committee on development and implementation of disaster risk management and contingency plans;

(d) provide technical support to Government and other stakeholders on mainstreaming and integration of disaster risk management into sustainable development policies, planning and programmes;

(e) provide technical support to the National Committee on—

(i) development, establishment and monitoring of a comprehensive disaster risk management system for Malaŵi;

(ii) development and consolidation of risk knowledge, including disaster risk management related research and studies;

(iii) establishment and sustainability of an effective integrated early warning system;

(iv) development, implementation and monitoring of a national public awareness strategy for disaster risk management; and

(v) integration of disaster risk management into pre-school, primary, secondary and tertiary education curricula;

(f) support the National Committee in the development of national standards and guidelines for conducting comprehensive disaster risk assessments;

(g) support the National Committee in coordinating activities in response to a disaster whenever the national contingency plan is activated;

(h) play a catalytic role in the generation of resources for the implementation of disaster risk management measures;

(i) monitor and review the implementation of disaster risk management activities in line with international standards and the national policy on behalf of the National Committee;

(j) facilitate the sharing of lessons and good practices in disaster risk management; and

(k) perform any other function assigned to it by the National Committee.

Sub-committees **13.**—(1) The National Committee may establish any number of sub-committees, in addition to the Technical Sub-Committee, to carry out any special or general functions determined by the National Committee and may delegate to the sub-committees any of its functions as the National Committee may consider expedient.

(2) The National Committee shall appoint a chairperson for each sub-committee from amongst its members.

(3) A member of a sub-committee who is not an officer in the

public service shall, in respect of expenses incurred by him in travelling and subsistence while discharging his duties as member of that sub-committee be paid out of the funds of the Fund such allowances as the Minister may determine.

PART III—COMMISSIONER FOR DISASTER RISK MANAGEMENT

14.—(1) There shall be a Commissioner for Disaster Risk Management (in this Act referred to as the “Commissioner”) whose office shall be a public office.

Establishment
of the office
of Commi-
ssioner

(2) In addition to the Commissioner, there shall be appointed in the public service a Deputy Commissioner and such other officers subordinate to the Commissioner as are necessary for the proper performance of the functions of the Commissioner.

15.—(1) The Commissioner shall be responsible for coordinating disaster risk management.

Functions
of the
Commi-
ssioner

(2) Without prejudice to the generality of subsection (1), the Commissioner shall—

(a) provide secretarial and administrative support to the National Committee;

(b) implement disaster risk management activities in collaboration with relevant stakeholders;

(c) coordinate the development and implementation of disaster risk management and contingency plans;

(d) monitor and evaluate disaster risk management programmes and activities;

(e) maintain and operate a disaster risk management information system to facilitate collection, analysis and retrieval of information for timely decision-making;

(f) conduct inclusive public awareness and education programmes on disaster risk management;

(g) issue guidelines for conduct of initial rapid disaster assessments;

(h) respond promptly and appropriately to any disaster or impending disaster in accordance with the standard operating procedures for disaster response; and

(i) facilitate and coordinate recovery, rehabilitation and reconstruction activities while promoting the principle of building-back-better.

(3) The Commissioner shall, in discharging the functions of the office, be subject to the general and special directions of the National Committee.

PART IV—LOCAL GOVERNMENT AREA DISASTER RISK
MANAGEMENT

Local
government
area disaster
risk
management

16. A District Commissioner shall have the overall responsibility for implementation of all disaster risk management functions and interventions in a local government area under his or her jurisdiction.

Local
government
disaster risk
management
committees

17.—(1) There shall be a disaster risk management committee in each local government authority.

(2) A local government disaster risk management committee shall consist of—

(a) the head of planning and development in the local government authority;

(b) the officer responsible for disaster risk management in the local government authority;

(c) heads of Government institutions at local government authority level;

(d) two representatives of civil society organizations working in the disaster risk management sector in the local government area, appointed by the District Commissioner;

(e) two representatives of faith-based organizations, appointed by the District Commissioner; and

(f) a representative of the private sector, appointed by the District Commissioner.

(3) A local government disaster risk management committee may co-opt any person resident in the local government area to be a member of the committee or invite any person to attend its meeting, and the member so co-opted or so invited shall take part in the deliberations of the committee, but shall not be entitled to vote.

(4) The local government disaster risk management committee shall be chaired by the officer responsible for planning and development in the local government authority.

(5) The officer responsible for disaster risk management in the local government authority shall be the secretary of the local government disaster risk management committee.

18.—(1) A local government disaster risk management committee shall act as an advisory and consultative body on disaster risk management in the local government authority.

Functions of local government disaster risk management committees

(2) A local government disaster risk management committee shall perform any other functions as may be assigned to it by this Act, any other written law, the National Committee or the local government authority.

19.—(1) A local government authority shall establish area disaster risk management committees within its area of jurisdiction as it may deem appropriate to facilitate disaster risk management programs and interventions at community level.

Area disaster risk management committees

(2) The Commissioner shall issue guidelines on creation, membership, functions and operation of area disaster risk management committees.

20. There shall be, in each local government authority, an officer who shall, subject to the general and specific directions of the District Commissioner, be responsible for disaster risk management programmes and interventions in the local government area.

Local authority disaster risk management officer

21.—(1) The Minister may, by regulations published in the Gazette, prescribe registration requirements and terms and conditions of engagement for disaster risk management volunteers.

Disaster risk management volunteers

(2) The Commissioner shall maintain a register of disaster risk management volunteers.

PART IV—DISASTER PREPAREDNESS AND RISK MANAGEMENT

22.—(1) The National Committee shall develop and implement a national multi-hazard contingency plan.

Disaster preparedness

(2) A local government authority shall develop and implement a local government authority multi-hazard contingency plan.

(3) A local government authority shall submit its local government authority multi-hazard contingency plan developed under subsection (2) to the National Committee.

(4) Any institution that provides an essential service shall develop and submit to the National Committee a business continuity plan.

(5) The Commissioner shall, from time to time, test or audit any plan developed under this section

(6) The Commissioner shall develop and disseminate guidelines for development, implementation, testing and audit of multi-hazard contingency plans and business continuity plans.

Disaster Risk
Management
Plan

23.—(1) The National Committee shall develop and implement a National Disaster Risk Management Plan which shall guide all stakeholders in disaster risk management.

(2) A local government authority shall develop a disaster risk management plan for its local government area which shall guide disaster risk management in the local government area.

(3) Where the National Committee or a local government authority determines that an institution is failing to perform functions assigned to the institution in the National Disaster Risk Management Plan or the local government area disaster risk management plan, the National Committee or the local government authority, as the case may be, shall issue such instructions, as it deems appropriate, to secure compliance.

Disaster risk
management
information
systems

24.—(1) The Commissioner shall develop and maintain a database of disaster risk management information and collaborate with other stakeholders in the collection, processing and analysis of the information.

(2) The database maintained under subsection (1) shall be accessible to all stakeholders at no cost.

Establishment
of an integrated
early
warning system

25.—(1) The National Committee shall establish an integrated early warning system for hazards.

(2) The Commissioner shall develop and disseminate multi-hazard early warning system protocols and standards which shall provide guidance for the timely generation, dissemination and utilization of early warning information.

(3) Without derogating from the generality of the foregoing—

(a) the government institution responsible for water resources management shall be responsible for issuance of riverine flood early warnings;

(b) the government institution responsible for meteorological services shall be responsible for issuance of warnings related to flash floods and other climate hazards; and

(c) the Commissioner may, from time to time, instruct any institution to issue an early warning within the sphere of operation of the institution.

(4) The Commissioner may direct an owner or person in control of an audio, audio-visual or any other media platform to disseminate a warning with respect to a disaster or an impending disaster.

26. The Commissioner shall—

Disaster risk
assessment
and reduction

(a) periodically undertake or cause to be undertaken disaster risk assessments; and

(b) take or cause to be taken necessary measures to reduce or prevent disaster risk.

27.—(1) The National Committee may, by notice published in the *Gazette*, issue rules for the conduct of disaster simulation exercises in Malawi to test the state of preparedness.

Simulation
exercises

(2) The National Committee may, from time to time, order a specified sector or institution to conduct a simulation exercise.

(3) An institution that conducts a simulation exercise under subsection (2) shall submit a report of the exercise to the National Committee.

28.—(1) A person who owns a disaster early warning equipment or any disaster response equipment shall register particulars of the equipment with the Commissioner.

Annual
equipment
certification

(2) An owner or operator of equipment registered with the Commissioner under subsection (1), shall cause the equipment to be tested and certified fit for purpose by the appropriate authority by 31st July every year.

(3) Where equipment is certified fit for purpose, the owner or operator of the equipment shall submit a copy of the certificate to the Commissioner.

(4) Where the equipment is not certified fit for purpose, the owner or operator of the equipment shall submit to the Commissioner a plan for the repair or replacement of the equipment.

29.—(1) Where a local government authority determines that any premises within its area of jurisdiction is posing danger or is likely to pose danger to life or property, the local government authority shall issue an order to the owner or occupier of the premises to carry out such remedial activities, within such period, as may be specified in the order.

Abatement
of danger

(2) Where the owner or occupier of the premises fails to implement the remedial activities specified in the order within the specified period, the local government authority may carry out the remedial activities and recover as a civil debt the cost thereof from the owner or occupier of the premises, as the case may be.

General obligation on disaster risk management

30. Every person shall take appropriate measures to manage disaster risk in accordance with this Act or any guideline issued by the National Committee or the Commissioner on disaster risk management.

Education and training

31. The Commissioner shall provide public awareness, education and training on disaster risk management.

PART VI—HIGH-RISK AREAS

Declaration of High-risk areas

32.—(1) The Minister may, after consulting the Minister responsible for physical planning and by notice published in the *Gazette*, declare a part of Malaŵi as a high-risk area for purposes of disaster risk management.

(2) A declaration under subsection (1) shall—

(a) specify the location of the land;

(b) specify the boundaries and extent of the land;

(c) briefly state the reason for declaring the area as high-risk; and

(d) state the effective date of the declaration.

(3) A copy of the declaration under subsection (1) shall be—

(a) served on all persons occupying and using the land in a manner and form as will be understandable to the persons;

(b) served on a local government authority having jurisdiction in the area;

(c) put up in conspicuous places within the area; and

(d) published in at least two newspapers of wide circulation in Malawi.

(4) A declaration under subsection (1) may declare the area or any part of the area as a prohibited area for human habitation or impose limitations or restrictions on usage of the land.

(5) The power of the Minister under subsection (1) shall not limit the power of the Minister responsible for land matters to declare any customary land to be hazardous land in accordance with section 19 of the Customary Land Act.

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Development of high-risk areas

33.—(1) Where the Minister issues a declaration under section 32, the Commissioner for Physical Planning shall, within ninety days of the declaration and by notice published in the *Gazette*, issue—

(a) standards for development of the area, including standards for maintenance of buildings and other structures; and

(b) standards for environmental and disaster risk assessment for development of the area.

(2) A responsible planning authority for a high-risk area shall—

(a) in preparing a National Physical Development Plan, district physical development plan or local physical development plan under Part IV of the Physical Planning Act; or

No. 17 of 2016

(b) in considering an application for a development permission in the area under Part V of the Physical Planning Act, take into account subsection (1) and section 32.

No. 17 of 2016

(3) Any development in a high-risk area that does not comply with standards prescribed under subsection (1) shall be deemed to be unauthorized development and shall be dealt with in accordance with the Physical Planning Act.

No. 17 of 2016

34.—(1) Where a high-risk area, or any part thereof, is declared a prohibited area for human habitation, the Commissioner shall relocate the persons resident in the area to another area.

Relocation and resettlement procedure

(2) Where a relocation of persons under subsection (1) is implemented during a time, other than during an emergency stage of a disaster, the Commissioner shall—

(a) give not less than thirty days’ notice of the relocation to the affected persons, and the notice so given shall—

(i) specify the boundaries and extent of the land from which people are to be relocated;

(ii) state the reason for the relocation;

(iii) provide details of the relocation procedures;

(iv) provide information on the resettlement location; and

(v) provide information on measures put in place to prevent, mitigate and compensate any negative impact of the relocation; and

(b) put in place measures to prevent, mitigate and compensate any negative socio-economic impact of the resettlement on the host community.

(3) The Commissioner shall provide the requisite support to persons relocated under this section to enable the persons to regain their productive activities, and to restore and improve their livelihoods.

35.—(1) Where residents of a high-risk area are relocated under section 34, a person shall not settle in the area, except with the written approval of the Commissioner.

Unlawful occupation of high-risk areas

(2) Where a person contravenes subsection (1), a Magistrate having jurisdiction over the area where such land is located may, upon a sworn complaint being made by the Commissioner, issue a summons to the alleged unlawful occupier of the land (in this section otherwise referred to as the “defendant”) requiring him or her to answer the complaint.

(3) The Magistrate shall, if satisfied that the defendant is an unlawful occupier of the land, make an order requiring the defendant to vacate the land within seven days or such other longer period as the Magistrate may determine.

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(4) The Magistrate shall, in determining the period under subsection (3), be guided by section 45(4) of the Land Act.

(5) A defendant who fails to comply with an order made under subsection (3) may be removed from the land, using reasonable force, by a police officer or an officer of the court authorized in that behalf and for that purpose by the Magistrate.

PART VII—DISASTER RESPONSE AND RECOVERY

Commissioner to facilitate timely, etc disaster response

36.—Where a disaster occurs in any area within Malaŵi, the Commissioner shall facilitate the provision of timely, coordinated and appropriate response to the disaster.

Declaration of a state of disaster

37.—(1) Where a disaster occurs in any area within Malaŵi, and it appears to the President that the disaster is of such a nature and magnitude that extraordinary measures are necessary to assist and protect persons affected, or likely to be affected, by the disaster, or that circumstances are likely to arise making such measures necessary, the President may declare that, with effect from a date specified in the declaration, a state of disaster exists within the area specified in the declaration.

(2) A declaration made under subsection (1), shall be published in the *Gazette*, and shall remain in force for a period of three months from the effective date specified in the declaration, unless the President, by notice published in the *Gazette*, curtails the declaration before the expiry of the prescribed effective period.

(3) The President may, from time to time, before the expiry of the validity period of a state of disaster and by notice published in the *Gazette*, extend the validity period for a period not exceeding three months.

(4) Where a state of disaster has been declared, the Minister shall, within seven days of the declaration, report the declaration to the

National Assembly, if the National Assembly is in session, or if not, at the commencement of the next ensuing session.

(5) The declaration of a state of disaster under subsection (1) shall immediately activate the disaster response mechanisms prescribed under this Act.

38.—(1) Where a state of disaster is declared under section 37, the Commissioner shall—

Duties and powers of the Commissioner during a state of disaster

(a) determine and advise assisting actors of the type of relief assistance needed, taking into consideration, the differentiated needs of the affected demographic groups;

(b) coordinate the operation of, and provision of disaster relief assistance by, assisting actors in accordance with international standards;

(c) mobilise initial recovery assistance necessary to respond to the disaster;

(d) through the Minister responsible for land matters, and subject to the Lands Acquisition and Compensation Act, take possession or control of any real property required in disaster response;

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(e) establish and operate an emergency operations centre and coordinate activities undertaken in the emergency operations centre;

(f) establish an evacuation camp;

(g) implement all or any activity in the contingency plan applicable to the prevailing circumstances;

(h) disseminate information relating to the disaster and disaster response in an accessible format;

(i) issue guidelines on disaster response;

(j) facilitate disaster response by international assisting actors; and

(k) order any relevant public institution to—

(i) provide food, water, shelter, healthcare, education or other basic necessity to the affected persons;

(ii) issue a warning of risk;

(iii) conduct a search and rescue operation;

(iv) disseminate public health and safety information;

(v) control and restrict vehicular traffic to, from and within a disaster area;

(vi) control and restrict the entry of any person into, movement within and departure from a disaster area;

(vii) restrict use of or entry into any street, road, footpath or open space in or adjacent to the disaster area;

(viii) regulate entry into, movement within and departure from a disaster area, or any part thereof;

(ix) direct any person to leave the disaster area by the safest and shortest route;

(x) remove debris;

(xi) dispose of unclaimed dead bodies, in accordance with the Public Health Act;

(xii) provide alternative shelter;

(xiii) construct temporary infrastructure, as may be required ; and

(xiv) demolish any unsafe structure which may endanger life or any other property in the area.

(2) The powers under subsections (1) (h) shall be exercised only to the extent that is necessary to—

(a) protect life and property;

(b) expedite and facilitate provision of relief assistance;

(c) facilitate search and rescue operation; or

(d) mitigate the impact or other effects of the disaster.

(3) An assisting actor shall comply with the procedure and terms and conditions for provision of relief assistance as may be specified in guidelines issued by Commissioner.

(4) The National Committee shall pay fair compensation to any person who provides any equipment, building, land, supplies or other materials pursuant to subsection (1).

(5) For purposes of this section “emergency operations centre” means premises designated to provide centralized coordination, management and control of emergency and disaster response operations.

Entry, search
and rescue

39.—(1) Where it is determined necessary to save life, or that it is necessary in the interest of public safety so to do, the Commissioner or any officer authorized by the Commissioner, may enter any premises in a disaster area for purposes of search and rescue, or ensuring compliance with any order made or measure instituted by the Commissioner.

(2) The Commissioner or the authorized officer may, upon entry of any premises under subsection (1), order any person to take specified steps as may be necessary to curtail the escalation of the disaster or to alleviate, contain or minimise the effects of the disaster.

(3) Where the Commissioner or authorized officer is carrying out a search and rescue operation under subsection (1) and a person refuses to take instructions from the Commissioner or the authorized officer, the Commissioner or the authorized officer may use such force, as is reasonably necessary, to remove the person from the disaster area or to prevent the person from entering the disaster area.

(4) The power of entry under this section may be exercised with or without the consent of the owner of the premises.

40.—(1) Where a disaster has occurred, or there is an imminent threat of a disaster, and an evacuation from a specified area is determined necessary, the Commissioner shall issue a notice of evacuation.

Evacuation
of persons

(2) The notice of evacuation issued under subsection (1) shall specify—

- (a) the nature of the disaster or imminent threat of disaster;
 - (b) the potential magnitude of loss of life or injury to persons;
- and
- (c) the area required to be evacuated.

(3) The notice of evacuation shall be disseminated to residents of the disaster area or imminent threat of disaster area, and to the general public.

(4) The Commissioner shall coordinate the evacuation in accordance with standard operating procedures for disaster response.

(5) Where an evacuation notice is issued under subsection (1), a person resident in the area specified in the notice shall be evacuated from the disaster area to an evacuation centre, and the evacuation shall be carried out in a manner that—

- (a) minimizes separation of family members;
 - (b) respects the human rights of every person being evacuated;
- and
- (c) is safe, and does not expose any person being evacuated to further risk.

(6) A claim shall not be brought personally against an assisting actor for anything done in good faith in the exercise of any power or duty conferred under this section.

Compliance with evacuation directions

41.—(1) Where an evacuation notice is issued under section 40, the Commissioner may issue such directions as would facilitate the evacuation exercise and every person within the area shall comply with the directions.

(2) The Commissioner, or any officer authorized by the Commissioner, may use such force as is reasonably necessary to evacuate any person who does not comply with any direction issued under subsection (1).

Duration of stay in evacuation centres

42.—(1) Any person evacuated to an evacuation centre shall not stay in the evacuation centre for a period exceeding three months.

(2) The Commissioner may, from time to time, where it is determined necessary so to do, extend the period prescribed under subsection (1) by a period not exceeding three months at a time.

Management of evacuation centres

43. The Commissioner shall, during the period an evacuation centre is hosting evacuated persons—

(a) assign an officer who shall be charged with the responsibility of managing the evacuation centre;

(b) put in place measures to ensure respect and protection of human rights of persons resident in the evacuation centre; and

(c) establish a complaints redress mechanism for the evacuation centre.

Disaster recovery programme

44. The National Committee shall, upon conclusion of a disaster response in a disaster area, develop and implement a disaster recovery programme for the area.

PART VIII—INTERNATIONAL RELIEF ASSISTANCE

Appeal for international relief assistance

45.—(1) Where a state of disaster is declared under section 37 and the President, on advice from the National Committee, determines that international relief assistance is required, the President shall issue an appeal for international relief assistance.

(2) The National Committee shall, upon issuance of an appeal under subsection (1), provide information on—

(a) the extent and type of assistance required; and

(b) the guiding principles and procedures for provision of relief assistance by international assisting actors.

46.—(1) The provision of international relief assistance shall commence upon the issuance of an appeal for international assistance under section 45 and terminate on a date specified in a notice issued under subsection (2).

Commence-
ment and
termination of
international
relief
assistance

(2) Where the President, on advice from the National Committee, is satisfied that international relief assistance is no longer required, the President shall issue a notice terminating the period for provision of the assistance.

(3) A notice issued under subsection (2) shall—

(a) be in writing;

(b) be served on all international assisting actors, and in case of individual assisting actors affiliated to an organisation, service on the organisation shall be deemed to be adequate notice on all assisting actors affiliated to that organization;

(c) prescribe a date of termination, which is not less than thirty days from the date the notice is issued; and

(d) contain information on identified needs related to early recovery assistance.

(4) Where a notice under subsection (2) is issued, the Commissioner shall, after consulting international assisting actors, develop an exit plan to minimise the negative impact of the termination.

47.—(1) Where an appeal for international relief assistance is issued under section 45, the Commissioner shall, in addition to the responsibilities provided under section 38—

Obligations
of the
Commissioner

(a) serve as a focal point for liaison between the Government and assisting international actors;

(b) facilitate, coordinate and oversee the international disaster response;

(c) inform the assisting international actors of their rights and responsibilities under this Act;

(d) facilitate the entry, residence and operation of assisting international actors in Malawi;

(e) facilitate recognition of foreign professional qualifications, driving licences and other required documentation for the duration the assisting international actors are in Malawi, to enable the assisting international actors to effectively provide relief assistance;

(f) facilitate acquisition of premises required for use by the assisting international actors;

(g) facilitate importation of equipment, goods and supplies to be used in the provision of relief assistance;

(h) where the importation, use or installation of any equipment requires regulatory or any other approval, facilitate expedited acquisition of the required approval;

(i) facilitate provision of security to internal assisting actors and their goods, supplies and equipment;

(j) provide any other logistical support required by assisting international actors; and

(k) facilitate the granting of tax and levy exemptions on goods, supplies and equipment directly relevant to disaster risk management that is imported, exported, in transit or re-exported by an assisting international actor.

Obligations
of assisting
international
actors

48.—(1) An assisting international actor shall—

(a) cooperate and coordinate with other assisting actors and national authorities;

(b) provide goods and services that are appropriate to the needs and circumstances of persons affected by the disaster; and

(c) comply with guidelines issued by the National Committee and any requirement prescribed under this Act.

(2) An assisting international actor shall—

(a) destroy, recycle or otherwise dispose of any unusable goods, supplies or equipment imported into Malawi by the assisting international actor; and

(b) recycle or dispose of any waste produced by the assisting international actor in Malawi, in a safe and environmentally friendly manner and in compliance with the laws of Malaŵi.

PART IX—DISASTER RISK MANAGEMENT TRUST FUND

Establishment
and manage-
ment of a
Disaster Risk
Management
Trust Fund

No. 4 of 2022

49.—(1) Subject to the Public Finance Management Act, the Secretary to the Treasury shall establish a trust fund to be known as the Disaster Risk Management Trust Fund (in this Act referred to as the “Fund”).

(2) The object of the Fund shall be to promote disaster preparedness, risk management and timely and effective disaster response.

(3) The Fund shall consist of—

(a) sums of money as appropriated by the National Assembly, from time to time;

(b) sums of money as may be advanced to the Fund by way of bequests, donations and grants; and

(c) such other sums of money as may, in any manner, become payable to, or vested in, the Fund.

(4) The Fund shall be used to—

(a) develop, promote, manage and implement disaster risk management interventions in Malawi;

(b) implement disaster prevention, mitigation, preparedness, response and recovery interventions in Malawi;

(c) provide disaster relief to persons affected by disaster;

(d) rehabilitate and restore livelihoods and infrastructure of persons affected by disaster;

(e) promote disaster risk management assessments, research and training;

(f) pay compensation due to any person under this Act; and

(g) pay any other category of expenditure as the National Committee considers to be in the interest of the objects of the Fund.

(5) The Fund shall be managed in accordance with the Public Finance Management Act.

No. 4 of 2022

PART X—OFFENCES AND PENALTIES

50.—(1) A person who—

Offences and penalties

(a) delays, obstructs, assaults, threatens or abuses an assisting actor, officer or any other person authorized to perform any function under this Act;

(b) upon request for support by an assisting actor, officer or any other person authorised to perform any function under this Act, without reasonable cause, refuses or neglects to render the requested support;

(c) wilfully neglects any duty conferred or imposed upon the person by this Act or any standard, guideline or code issued by the National Committee resulting in destruction of property or loss of life;

(d) upon request refuses to give assistance, without reasonable cause, to any other person affected by a disaster; or

(e) makes a claim which he or she knows or has reasonable ground to believe to be false, in order to obtain any relief assistance or any other benefit consequent upon a disaster,

commits an offence and shall, upon conviction, be liable to a fine of K10,000,000 and to imprisonment for two years.

(2) A person who, in the course of a disaster, without lawful excuse—

(a) takes any property, that does not belong to the person, that has been left exposed or unprotected in a disaster area;

(b) takes any property from a person who is injured or the body of a person who is dead;

(c) takes any property abandoned by reason of a disaster;

(d) buys any relief item, equipment or other relief commodity which is intended for distribution to or use by an affected person;

(e) deploys equipment being used in a search and rescue operation or provision of relief assistance to a task not related to the search and rescue operation or provision of relief assistance;

(f) diverts, sells or disposes of any relief item, equipment or other relief commodity; or

(g) accepts, possesses, uses or disposes of a relief item, equipment or other relief commodity not intended for or consigned to him or her,

commits an offence and shall, upon conviction, be liable to a fine of K15, 000, 000 and to imprisonment for three years.

(3) A person who misrepresents the source of a relief item, equipment or other relief commodity by—

(a) covering or defacing the label on the item, equipment or relief commodity;

(b) replacing the label on the item, equipment or commodity so as to make it appear as if the item, equipment or commodity came from a source other than the one that provided the item, equipment or commodity; or

(c) making false claims relating to the source of the item, equipment or commodity,

commits an offence and shall, upon conviction, be liable to a fine of K20,000,000 and to imprisonment for four years.

(4) Where a body corporate commits an offence under this section—

(a) the body corporate shall, instead of the penalty provided under subsection (1), (2) or (3), upon conviction, be liable to a fine of K50,000,000; and

(b) each director or manager of the body corporate at the time the offence is committed, commits the same offence, and unless the director or manager proves that the offence was committed without his or her consent or connivance and that he or she exercised such diligence as he or she ought to have exercised, having regard to the nature of his or her functions in that capacity, to prevent the commission of the offence and shall, upon conviction be liable to the penalty prescribed under subsection (1), (2) or (3).

PART IV—MISCELLANEOUS

51.—(1) Subject to this section, no relief assistance received in respect of a particular disaster shall be used otherwise than for the purpose of providing relief to persons affected by that disaster or for other purposes related to disaster response or recovery.

Accountability and utilization of relief assistance

(2) Where a person receives relief assistance for purposes of providing disaster response under this Act, the person shall report particulars of the relief assistance to the Commissioner, and shall at the end of the disaster response provide a report on the utilization of the relief assistance to the Commissioner.

52.—(1) The National Committee shall, as soon as practicable, but not later than three months after the end of each financial year, cause to be prepared and submitted to the Minister an annual report detailing activities implemented during the year.

Annual reports

(2) The report submitted under subsection (1) shall include an income and expenditure account of the Fund, a balance sheet and a copy of the report made thereon by the Auditor General.

(3) The Minister shall, as soon as practicable after the end of each financial year, but not later than six months after the end of the financial year, lay before Parliament a copy of the annual report received under subsection (1).

53. A utility service provider in a disaster area shall as soon as practically possible provide to the Commissioner in writing a disaster contingency and early recovery plan of the service in the area.

Utility service providers to provide disaster contingency and early recovery plans

Protection
from liability

54. A court action or other proceeding shall not be brought personally against any member of the National Committee, a sub-committee of the National Committee, a local government disaster risk management committee, an area disaster risk management committee or a disaster risk management volunteer in respect of any act or omission done in good faith in the course of carrying out the provisions of this Act.

Regulations

55.—(1) The Minister may, on recommendation of the National Committee and by notice published in the *Gazette*, make regulations as are necessary or expedient for the purpose of giving full effect to this Act and prescribing all matters which are necessary or convenient to be prescribed.

(2) Without prejudice to the generality of subsection (1), the regulations may make provision for—

(a) forms of registers, notifications and reports required under this Act;

(b) prescribing a code of conduct for assisting actors;

(c) the management of high-risk areas;

(d) implementation of relocation and resettlement programmes; and

(e) prescribing anything required to be prescribed under this Act.

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(3) Notwithstanding the provisions of section 21(e) of the General Interpretation Act, the regulations made under subsection (1), may provide for offences the contravention of which may attract a penalty of a fine not exceeding K5,000,000 and to imprisonment for twelve months.

(4) In addition to the penalty prescribed under subsection (3), the regulations may provide for forfeiture to the state of any item, machinery, equipment or any other thing connected with the commission of the offence.

By-laws

56.—(1) A local government authority may, in consultation with the National Committee, make by-laws to give effect to the provisions of this Act.

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(2) Notwithstanding the provisions of section 21(e) of the General Interpretation Act, the by-laws made under subsection (1), may provide for offences the contravention of which may attract a penalty of a fine not exceeding K3,000,000 and to imprisonment for six months.

57.—(1) The Disaster Preparedness and Relief Act is hereby repealed.

Repeal and
savings
Cap. 33:05

(2) Any subsidiary legislation made under the Disaster Preparedness and Relief Act, repealed by subsection (1), in force immediately before the commencement of this Act—

(a) shall remain in force, unless in conflict with this Act, and shall be deemed to be subsidiary legislation made under this act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any power exercised, decision made or action taken under the Disaster Preparedness and Relief Act, repealed by subsection (1), shall, on the commencement of this Act, be deemed to be have been exercised, made or undertaken under this Act.

(4) Any outstanding balance in the National Disaster Preparedness and Relief Fund established under the Disaster Preparedness and Relief Act, repealed by subsection (1) shall, on the commencement of this Act, be transferred to the Disaster Risk Management Trust Fund.

OBJECTS AND REASONS

The principal object of this Bill is to repeal the Disaster Preparedness and Relief Act (Cap. 33:05) and replace it with a new comprehensive legal framework in order to align the law with developments in the area of disaster preparedness, risk reduction, and response and recovery.

The Bill, among other things, establishes a National Disaster Risk Management Committee (“National Committee”), which will principally be responsible providing leadership in the development, coordination and implementation of disaster risk management strategies and interventions, and also, be responsible for recommending to the President the declaration of a state of disaster. The National Committee shall comprise all key stakeholders in disaster risk management, including government officials (at Principal Secretary level), disaster risk management experts, representatives of civil society organisations, and a representative each of the Human Rights Commission and Red Cross Society of Malawi, and outlines the powers and functions of the National Committee.

The Bill establishes—

(a) a National Disaster Risk Management Technical Sub-Committee which will principally be responsible for providing technical support to the National Committee and the Commissioner, and provides for the membership and functions of the Committee; and

(b) the office of the Commissioner for Disaster Risk Management, which will be responsible for development, coordination and implementation of disaster risk management strategies and interventions, and prescribes the powers and functions of the office.

The Bill also provides for—

(a) a mandate and guidelines for the establishment of local government structures for disaster risk management, coordination and implementation;

(b) 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 establishment of an integrated early warning system;

(c) the declaration of a state of disaster and the measures to be taken upon declaration of the state of disaster;

(d) the procedure for, and consequences of, declaring disaster prone areas as high-risk areas for purposes of disaster risk management and the resettlement of persons occupying those areas;

(e) a structured mechanism for appeal for international relief assistances, and regulates the operation of assisting international actors; and

(f) the establishment of the Disaster Risk Management Trust Fund, which shall be a repository of funds intended for use in disaster risk management.

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