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DISASTER RISK MANAGEMENT BILL, 2019

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DISASTER RISK MANAGEMENT BILL, 2019

A BILL

entitled

An Act to provide for the comprehensive management of existing and future disaster risks, for the institutional framework and funding arrangements for the management of disaster risk and other matters connected therewith and incidental thereto

ENACTED BY THE PARLIAMENT OF MALAWI AS FOLLOWS—

PART I—PRELIMINARY

- Short title and commencement **1.** This Act may be cited as the Disaster Risk Management Act, 2019 and shall come into force on a date appointed by the Minister, by notice published in the *Gazette*.
- Interpretation **2.** In this Act, unless the context otherwise requires—
- “climate change adaptation” means—
- (a) in relation to human systems, the process of adjustment to actual or expected climate change and its effects, in order to moderate harm or exploit beneficial opportunities; and
- (b) in relation to natural systems, the process of adjustment to actual climate change and its effects;
- “affected area” means an area or part of the country struck by a disaster;
- “assisting actor” means any assisting international actor and any assisting domestic actor responding to a disaster in the territory of Malawi;
- “assisting international actor” means any foreign state, organization, entity or individual responding to a disaster on the territory of Malawi or transiting through the territory of Malawi to respond to a disaster in another country;
- “capacity” means the combination of all the strengths, attributes and resources available within an organization, community or society to manage and reduce disaster risks and strengthen resilience;

“Commissioner” means the Secretary responsible for disaster risk management designated under section 28;

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

“disaster area” means the geographical extent of the country affected by a specific disaster;

“disaster mitigation” means measures taken to reduce the loss of life, livelihood and property by disasters either by reducing vulnerability or by modifying the hazard, where possible;

“disaster preparedness” means the measures to be taken to reduce, to the minimum level possible, the loss of human lives and other damage through the organization of prompt and efficient actions of response and rehabilitation;

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

“disaster risk” means the potential disaster losses, in lives, health status, livelihoods, assets and services, which could occur to a particular community or a society over some specified future time period;

“disaster risk management” means a systematic process of using administrative directives, organizations and operational skills and capacities to implement strategies, policies and improved resilience capacities, aimed at the following components—

- (a) preventing future risk and reducing the existent risk of disasters;
- (b) mitigating the severity or consequences of disasters;
- (c) promoting and supporting emergency preparedness;
- (d) providing a rapid and effective response and coordination to disasters; and

(e) implementing post-disaster recovery and rehabilitation interventions, including linkages to resilience building and longer development;

“disaster risk reduction” means the concept and practice of preventing new and diminishing existing disaster risk and managing residual risk through systematic efforts aimed at strengthening resilience and therefore to the achievement of sustainable development;

“early warning system” means an integrated system of hazard monitoring, forecasting and prediction, disaster risk assessment, communication and preparedness activities, structures and processes that enables individuals, communities, Governments, businesses and others to take timely action to reduce disaster risks in advance of hazardous events;

“emergency operations centres” means premises established at different levels to undertake the coordination and management of emergency operations in the event of a disaster occurring in any part of Malaŵi as specified under section 48;

“Fund” means the National Disaster Risk Management Fund established under section 67;

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

“initial recovery assistance” means goods, equipment, services and internationally donated funds intended to restore or improve the pre-disaster living conditions of disaster affected communities, including initiatives to increase resilience to disasters and reduce disaster risk;

“internally displaced persons” means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized and/or organized violence, violations of human rights or natural or human made disasters;

“international disaster assistance” means disaster relief and initial recovery that is provided by Assisting International Actors or imported or

otherwise brought to Malaŵi from abroad by or on behalf of assisting domestic actors;

Cap. 22:01 “Local Authority” has the meaning ascribed to it under the Local Government Act;

Cap. 22:01 “Local government area” has the meaning ascribed to it under the Local Government Act;

“mitigation measures” means structural and non-structural measures undertaken to lessen or limit the adverse impacts of natural hazards, environmental degradation, and technological hazards and to ensure the ability of at-risk communities to address vulnerabilities aimed at minimizing the impact of disasters;

“national platform for disaster risk management” means an interdisciplinary and multi-sectoral mechanism for coordination and policy guidance on disaster risk management involving a wide range of entities responsible for disaster risk management, including the public, private and civil society sectors;

“prevention” means the outright avoidance of adverse impacts of hazards and related disasters;

“recovery” means the restoration and improvement where appropriate, of facilities, livelihoods and living conditions of disaster-affected communities, including efforts to reduce disaster risk factors;

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

“resilience” means the ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely, efficient and sustainable manner, including through the preservation and restoration of its essential basic structures and functions;

“risk assessment” means determining the nature and extent of risk by analysing potential hazards and evaluating existing conditions of vulnerability that together could potentially harm exposed persons, property, services, livelihoods and the environment on which they depend;

“risk transfer” means the process of formally or informally shifting the financial consequences of particular risks from one party to another whereby a household, community, enterprise or government Ministry, Department or Agency will obtain resources from the other party after a disaster occurs, in exchange for ongoing financial benefits provided to that other party;

“state of disaster” means a state of disaster declared in terms of section 40 of this Act but excludes a state of emergency declared by the President in terms of section 45 of the Constitution;

“sustainable development” means development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

“volunteer” means any person whose name is entered in a register of volunteers established under section 82; and

“vulnerable groups” means groups that face higher exposure to disaster risk including women, expectant mothers and mothers with young children, children and child-headed households, the elderly, prisoners and detained persons, persons with disabilities, the chronically and terminally ill, minority groups and other persons with special needs.

PART II POLICY AND PRINCIPLES

Role of
Government

3.—(1) Government shall—

- (a) ensure the sustainable reduction of disaster related losses in Malaŵi;
- (b) adopt a disaster risk management approach at all levels, especially at local community level;
- (c) uphold human rights when addressing vulnerability of persons to disaster;
- (d) strengthen the country’s institutional capacity for disaster risk management;
- (e) build the resilience of communities to disasters including climate change impacts;

- (f) implement and provide resources for prevention, preparedness, response and recovery strategies and systems in accordance with national, regional and international instruments on disaster risk management;
- (g) mainstream disaster risk management and resilience building measures in all development policies, plans and strategies;
- (h) develop local and decentralised capacities for disaster risk management and community resilience; and
- (i) ensure that disaster risk management measures are gender responsive, sensitive to indigenous knowledge systems and the special needs of vulnerable groups, and respectful of human rights, culture and religion.

(2) Without prejudice to the generality of the foregoing, it shall be the responsibility of Government to—

- (a) implement measures necessary for effective disaster risk management, within the scope of its powers, functions, duties and responsibilities;
- (b) integrate disaster risk management considerations into their planning and budgeting processes;
- (c) establish service-continuity and contingency plans, articulated with the national disaster risk management plan in a systemic way;
- (d) respond promptly and appropriately to any disaster or impending disaster in accordance with the Operational Guidelines for Disaster Risk Management;
- (e) review all laws, regulations, rules and policies administered by it, with a view to incorporating therein provisions necessary for disaster risk management;
- (f) make available its resources to the National Committee for the purposes of reducing disaster risk and responding promptly and effectively to disasters; and
- (g) take such other actions as it considers necessary for disaster risk management.

Policy to be taken into account

4. A public officer and anybody in Malaŵi exercising or performing powers, duties or functions in connection with disaster risk management as declared by Government through policy measures, from time to time, shall, in the exercise of his powers or the performance of his duties or functions, take into account the declaration in the exercise or performance of its powers, duties or functions.

Role of the Minister

5.—(1) The Minister shall have overall responsibility for the proper administration of this Act and shall, subject to the provisions of this Act, have the responsibility of formulating policies, plans and guidelines for disaster risk management.

(2) In discharging his responsibilities under subsection (1), the Minister shall have powers to—

- (a) establish other institutional arrangements for purposes of the proper and effective administration of this Act; and
- (b) designate disaster risk management focal points in Government, civil society organizations and private sector entity, for purposes of facilitating coordination and integration of disaster risk management.

(3) Without prejudice to the generality of the foregoing, the Minister shall—

- (a) approve measures necessary for ensuring the integration of disaster risk management considerations into all public planning and development frameworks;
- (b) ensure that disaster risk reduction measures are given priority in relevant Government institutions and that each Government institution takes primary responsibility for disaster risk management within its sector;
- (c) ensure that adequate measures are taken by Government and all other stakeholders, including women, youth and other vulnerable groups, to reduce disaster risks, enhance disaster preparedness, and to respond to and recover from disasters;
- (d) mobilize resources, both from within or outside Malaŵi for implementation of disaster risk management programmes;
- (e) initiate policies, legislative proposals, regulations, standards and guidelines on disaster risk management in accordance

with this Act and in consultation with the National Committee;

- (f) promote adherence to applicable international standards on humanitarian efforts and activities; and
- (g) promote international cooperation on matters related to disaster risk management.

(4) The Minister shall coordinate with relevant Government institutions in order to ensure the resilience of public infrastructure and services, and the reduction of risk in future public investments.

PART III INSTITUTIONAL ARRANGEMENTS

Establishment of
the National
Disaster Risk
Management
Committee

6.—(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”) which shall be responsible for providing policy direction on the implementation and co-ordination of disaster risk management programmes.

(2) The National Committee shall exercise its functions and powers independent of the direction, influence or interference of any other person or authority:

Provided that for purposes of accountability, the National Committee shall report to the Minister.

Composition of
the National
Committee

7.— (1) The National Committee shall consist of the following—

- (a) The Secretary to the President and Cabinet, or his/her representative;
- (b) Principal Secretaries of all government Ministries, or their representatives;
- (c) The Inspector General of Police, or his/her representative;
- (d) The Commander of the Malawi Defence Force, or his or her representative;
- (e) The Secretary General of the Malawi Red Cross Society, or his/her representative;
- (f) The Executive Secretary of the Malawi Human Rights Commission, or his or her representative;
- (g) A representative of the NGO Board of Malawi;
- (h) A representative of the private sector;

(i) Not more than seven other members selected by civil society organizations, representing the non-governmental sector, three of which shall represent women and other vulnerable groups; and

(j) Persons co-opted for a specific period or specific discussions pursuant to subsection (5).

(2) Non *ex-officio* members of the National Committee shall not, by virtue of their appointment to the National Committee, be deemed to be officers in the public service.

(3) The names of all members of the National Committee as first constituted and every change in the membership thereof shall be published in the *Gazette*.

(4) The composition of the National Committee shall be inclusive and reflective of the needs and agency of vulnerable stakeholders.

(5) The National Committee may for purposes of this Act co-opt any other person as a member of the Committee.

Functions and duties of the National Committee

8.— (1) The National Committee shall—

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

(b) advise and make recommendations to the President, through the Minister, on matters relating to declarations of states of disaster;

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

(d) exercise oversight over the Department in the implementation of the provisions of this Act and other disaster risk management related laws and regulations;

(e) monitor and evaluate disaster risk management programmes and activities and make recommendations to the Minister;

(f) ensure the necessary coordination and cooperation within Government and with other stakeholders in the delivery of disaster risk management actions;

- (g) coordinate and monitor the adoption of common standards and best practices and promote a uniform approach to disaster risk management among Government institutions, disaster risk management committees, development partners, communities, the private sector and non-governmental organisations;
- (h) coordinate and facilitate the mainstreaming and integration of disaster risk management within and across all sectors and into development policies, plans, programmes and strategies at all levels of administration; and
- (i) exercise and perform such other powers and functions as are stipulated in this Act or any Regulations and Guidelines made under it and may be necessary or expedient for the administration and achievement of objectives of this Act.

(2) In discharging its mandate, the National Committee shall, subject to the provisions of this Act, be responsible to the Minister.

(3) The National Committee shall, to the greatest possible extent consistent with the performance of its duties, under this Act, consult and cooperate with Government, humanitarian agencies, disaster risk management committees, communities, private sector entities, civil society organizations having functions related to, or having aims and objectives related to the objects of this Act.

Tenure of office

9.—(1) A member, other than an *ex-officio* member, shall hold office for a period of five years from the date of appointment and be eligible for re-appointment at the expiry of that period for one more term.

(2) When making appointments after the expiry of the five years, the Minister shall have regard to the need to maintain a reasonable degree of continuity in the membership of the National Committee, so that at least one third of the appointed members shall be re-appointed for the next term of office.

(3) A vacancy in the office of an appointed member shall occur, if the member—

- (a) dies;
- (b) is adjudged bankrupt;

- (c) is sentenced for an offence against any written law to any term of imprisonment;
- (d) is absent, without the permission of the National Committee, from three successive meetings of the National Committee of which he has had notice;
- (e) is no longer able to represent the nominating authority;
- (f) becomes incapacitated by reason of physical or mental illness; or
- (g) resigns in accordance with subsection (4).

(4) An appointed member may at any time resign from his office by giving one month written notice to the Minister.

(5) A vacancy in the membership of the National Committee shall be filled by the appointment of a new member by the Minister.

(6) A person appointed to fill the vacancy shall serve for the remainder of the term of office but no person shall be so appointed where the remainder of the term of office is a period of less than six months.

Chairperson and
Deputy
Chairperson

10.—(1) The Chief Secretary to the Government shall be the Chairperson of the National Committee.

(2) The National Committee shall elect a Deputy Chairperson of the National Committee from among the members at the first meeting of the National Committee.

(3) The Commissioner shall be the Secretary of the National Committee.

(4) Subject to subsection (5), where applicable, the Deputy Chairperson shall hold office until the expiry of his term of office as member of the National Committee.

(5) Where applicable, the Deputy Chairperson may be removed from office by the National Committee upon the unanimous decision of the rest of the members of the National Committee for misconduct, incapacity or another good cause relating to his role as Deputy Chairperson.

National
Committee may
establish sub-
committees

11.—(1) For the better carrying into effect of the provisions of this Act, the National Committee may establish sub-committees that the National Committee deems appropriate, to perform any functions and responsibilities that the National Committee shall determine subject to the directions of the National Committee.

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

(3) The provisions of this Act relating to the meetings of the National Committee shall apply, with the necessary modifications, to the meetings of the sub-committees.

Meetings of the
National
Committee

12.—(1) The National Committee shall meet as often as its business requires and in any event not less than once in every three months.

(2) Meetings of the National Committee shall be held at a place and time that the Chairperson shall determine.

(3) The Chairperson shall convene the ordinary meetings of the National Committee by giving members written notice of at least fourteen days.

(4) The Chairperson—

(a) may, in his discretion; or

(b) shall—

(i) in response to an emergency; or

(ii) at the written request of more than four members and within seven days of the request,

convene an extraordinary meeting of the National Committee to be summoned at a place and time that he may appoint.

(5) A quorum for any meeting of the National Committee or its sub-committee shall be formed by the presence of half of its membership.

(6) In the absence of the Chairperson, the Deputy Chairperson shall preside over the meeting and in the absence of both Chairperson and Deputy Chairperson, the members present and forming a quorum shall elect one of their number to preside over the meetings of the National Committee, and the elected member shall exercise all the powers, duties and functions of the Chairperson.

(7) Subject to the provisions of this Act, the National Committee shall regulate its procedure:

Provided that the National Committee may, at its discretion, invite any person with specific knowledge, information or expertise to attend any of its meetings or a meeting of any of its committees, and address it on a matter, but the person so invited shall not vote at the meeting on any decision.

(8) The National Committee, and every sub-committee of the National Committee, shall record and keep minutes of its meetings.

Attendance of meetings

13.—(1) Each member of the National Committee shall attend meetings of the National Committee or any sub-committee of the National Committee in person.

(2) The Commissioner, or any other officer as the Commissioner may designate, shall record the minutes of the meetings and take part in the deliberations thereof subject to the directions of the National Committee or sub-committee but shall not be entitled to vote.

(3) Where in a meeting, the deliberations of the National Committee or of a sub-committee of the National Committee concern any member of the National Committee designated to attend the meeting, the National Committee or the sub-committee, as the case may be, may exclude the member from the meeting.

Directions by the Minister to the National Committee

14. The Minister may, on any matter relating to his duties that affect the public interests of Malaŵi, give directions to the National Committee of a special or general character in relation to the policy to be followed in the exercise of the powers conferred and the duties imposed on the National Committee by or under this Act.

Establishment of the National Disaster Risk Management Technical Committee

15.—(1) There is hereby established the National Disaster Risk Management Technical Committee (in this Act, referred to as the “National Technical Committee”) which shall be the main technical forum for various stakeholders on disaster risk management.

(2) The National Technical Committee shall serve as the National Platform for disaster risk management in Malaŵi.

Composition of the National Disaster Risk Management Technical Committee

16.—(1) The Minister shall appoint members of the National Technical Committee among—

(a) public officers at the level of Director in public service;

- (b) civil society organizations;
- (c) Malaŵi Red Cross Society;
- (d) research and academic institutions;
- (e) the private sector;
- (f) heads of international organizations; and
- (g) media practitioners.

(2) The overall composition of the National Technical Committee shall as far as possible, reflect a balance of knowledge, experience, representation of vulnerable groups and technical expertise relevant to different aspects of disaster risk management and the distinct actors involved in disaster risk management activities.

(3) The National Technical Committee shall elect, from among its number, a chairperson and a deputy chairperson, who shall provide leadership to the National Technical Committee.

(4) The National Technical Committee may for purposes of this Act co-opt any other specialised persons as members of the National Technical Committee.

(5) The National Committee shall prescribe the rules of operation and procedure for the National Technical Committee and for the sub-committees established thereunder.

Functions of the
National
Technical
Committee

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

- (2) The National Technical Committee shall—
 - (a) provide technical advice and guidance to the National Committee relating to the application of this Act and any other written law relating to disaster risk management;
 - (b) advise the National Committee on the implementation of disaster risk management programmes;

- (c) provide technical support and guidance to Government on the development and implementation of disaster risk management plans and contingency plans;
- (d) provide technical support and guidance to the National Committee on the mainstreaming and integration of disaster risk management into sustainable development policies, planning and programmes;
- (e) provide technical support and guidance on—
 - (i) the establishment, development and monitoring of a comprehensive disaster risk management system for Malaŵi;
 - (ii) the development and consolidation of risk knowledge, including disaster risk management related research and studies;
 - (iii) the establishment of an effective integrated early warning system and ensure its sustainability;
 - (iv) the development, monitoring and implementation of national public awareness strategies for disaster risk management; and
 - (v) the integration of disaster risk management into pre-school, primary, secondary and tertiary education curricula;
- (f) develop national standards and guidelines for conducting comprehensive disaster risk assessments that include the differentiated characteristics of vulnerability based on gender and inclusivity;
- (g) support the National Committee whenever the National Contingency Plan is activated to coordinate activity in response to a disaster;
- (h) play a catalytic role in the generation of resources for the implementation of integrated disaster risk management measures;

- (i) monitor and review the implementation of disaster risk management activities in line with international standards and the national policy;
- (j) facilitate the sharing of lessons and good practices in disaster risk management; and
- (k) perform any other functions assigned to it under this Act, and any regulations and guidelines made hereunder.

Sub-committees
of the National
Technical
Committee

18.—(1) The National Technical Committee shall establish sub-committees as may be necessary, including those responsible for the following—

- (a) coordination and assessment;
- (b) agriculture and food security;
- (c) health and nutrition;
- (d) water and sanitation;
- (e) early warning systems;
- (f) information and communication;
- (g) search and rescue;
- (h) early recovery;
- (i) transport and logistics;
- (j) spatial planning, shelter and camp management;
- (k) education; and
- (l) protection.

(2) A sub-committee established by the National Technical Committee under sub-section (1) shall—

- (a) advise the National Technical Committee on matters relating to its thematic area in all the components of disaster risk management; and

- (b) exercise any other powers or perform any other functions as stipulated in operational guidelines for disaster risk management or any other regulations made under this Act:

Provided that—

- (i) the vesting, delegation or assignment of any functions in a sub-committee shall not divest the committee of such functions;
- (ii) the National Technical Committee may vary or revoke any decision of any such sub-committee in exercise of its functions; and
- (iii) the technical subcommittees shall function as clusters during times of disaster preparedness, response and recovery.

Local Authority
Disaster Risk
Management
Cap. 22:01

19.—(1) The overall policy coordination and direction for disaster risk management at the local authority level shall rest with a Council as established under section 5 of the Local Government Act.

(2) The District Commissioner shall have the overall responsibility for coordinating, directing, controlling, and overseeing implementation of all disaster risk management functions and components at district level.

(3) The Chief Executive Officer of a Town, Municipal and City Council shall have the overall responsibility for coordinating all disaster risk management functions and components at Town, Municipal and City Council level, as the case may be.

Establishment of
the Local
Authority
Disaster Risk
Management
Committees

20.—(1) Subject to the Local Government Act, there are hereby established Local Authority Disaster Risk Management Committees at district, town, municipal, or city levels (in this Act, each referred to as “Local Authority Committee”) which shall be sub-committees of the Executive Committee of the Council in which they are situated.

(2) A Local Authority Committee shall consist of technical focal points of Government and the following members—

- (a) the head of planning and development;
- (b) the officer responsible for disaster risk management;

- (c) representatives of relevant Government institutions at local authority level;
- (d) representatives of civil society organizations responsible for disaster risk management;
- (e) representatives of faith-based organizations;
- (f) representatives of women and youth groups;
- (g) representatives of persons with disabilities and other vulnerable groups; and
- (h) representatives of the private sector.

(3) A Local Authority Committee may co-opt such other members as are necessary for the performance of its functions under this Act.

(4) A Local Authority Committee shall be chaired by the officer responsible for planning and development.

(5) The office responsible for disaster risk management at local authority level shall be the secretariat of the Local Authority Committee.

Functions of a
Local Authority
Committees

21.—(1) A Local Authority Committee shall direct, control, coordinate and oversee all matters relating to disaster risk management within a local government area and shall—

- (a) act as an advisory and consultative body on issues concerning disaster risk management in the local authority area;
- (b) ensure that disaster risk management within its jurisdiction is consistent with the National Disaster Risk Management Policy and Plan;
- (c) ensure that hazard analysis and zoning, as well as risk scenarios are elaborated and integrated into physical planning at Local Authority level;
- (d) ensure that developments in local government areas are in compliance with approved physical development plans or standards stipulated in any other law in force in Malaŵi;

- (e) develop and implement disaster risk management and contingency plans within its jurisdiction and regularly review and assess the plans;
- (f) report to the Council Executive Committee on matters related to disaster risk management;
- (g) mobilize resources for disaster risk management activities in the local authority;
- (h) formulate contingency budgets to respond to disasters; and
- (i) perform any other roles and functions as may be stipulated in regulations and guidelines made under this Act or any other law in force in Malaŵi relating to disaster and risk management.

Local Authority
Disaster Risk
Management
Officer

22.—(1) There shall be in each Council, an officer responsible for disaster risk management, who shall be a public officer.

(2) The Disaster Risk Management Officer shall be responsible for the coordination of disaster risk management activities within his local authority area.

(3) Without prejudice to the generality of the subsection (2), the Disaster Risk Management Officer shall—

- (a) advise the District Commissioner or Chief Executive Officer, on matters relating to disaster risk management in that Local Authority;
- (b) build stakeholders’ capacity in disaster risk management in the local authority;
- (c) promote stakeholders’ awareness in disaster risk management issues;
- (d) mobilize resources for disaster risk management activities in the local authority;
- (e) coordinate hazard zoning and the integration of specific prevention and mitigation measures into the local development and physical development planning;

- (f) coordinate disaster relief assistance provided by civil society organisations and other stakeholders at local authority level;
- (g) establish and maintain a disaster risk management information system in the local authority, that includes gender specific information;
- (h) serve as secretary for the Local Authority Committee;
- (i) perform such other functions as may be prescribed by the Local Authority in accordance with this Act and regulations and guidelines made under it; and
- (j) keep the National Committee advised of the status of disaster risk management, and of any adverse or potentially dangerous situation or conditions in the local authority.

(4) In performing his duty under this Act, the Disaster Risk Management Officer shall be subordinate to the District Commissioner or the Chief Executive Officer, as the case may be.

Establishment and composition of Area and Village Disaster Risk Management Committees

23.—(1) The District Disaster Risk Management Committee shall ensure that each Traditional Authority Area or group of villages has a disaster risk management committee.

(2) The Area Disaster Risk Management Committee shall be established at Traditional Authority level while the Village Disaster Risk Management Committee shall be established at Group Village Headman level.

(3) The Area Disaster Risk Management Committee shall be a subcommittee of the Area Development Committee.

(4) The Village Disaster Risk Management Committee shall be a subcommittee of the Village Development Committee.

(5) An Area or Village Committee shall consist of the following members not exceeding fifteen in number—

- (a) representatives of Government at area or village level;
- (b) local volunteers trained in disaster risk management;
- (c) representatives of the Village Natural Resources Management Committee established under the Forestry Act;

- (d) representatives of women, youth and other vulnerable groups;
- (e) representatives of the business community;
- (f) representatives of civil society organisations involved in disaster risk management;
- (g) representatives of faith-based organisations; and
- (h) any other members as shall be provided for in regulations or guidelines made under this Act.

(6) Members of an Area and Village Committee shall elect a chairperson.

(7) A Chief or Group Village Headman shall act as an advisor of the committee within his area.

(8) Councillors shall serve as advisors of Area Committees.

Functions of
Area and Village
Disaster Risk
Management
Committees

- 24.—**(1) Area and Village Disaster Risk Management Committees shall—
- (a) coordinate and facilitate the implementation of disaster risk management programmes and activities at area and village levels;
 - (b) participate in risk analysis and vulnerability assessments;
 - (c) undertake assessments after disasters to identify affected persons;
 - (d) sensitise the local community on disaster risk reduction, preparedness, response and recovery;
 - (e) assist in the dissemination of early warning messages to the general public; and
 - (f) perform such other functions as may be prescribed by the Local Authority in accordance with this Act and regulations and guidelines made under it.

Establishment
and composition
of Ward Disaster
Risk
Management
committees

25.—(1) City, Municipal and Town Councils shall ensure the establishment of disaster risk management committees in all wards:

Provided that any City, Municipal or Town Council may establish other disaster risk management committees within specific wards as it considers fit, to manage zones of particular vulnerability within the wards.

(2) A Ward Disaster Risk Management Committee shall consist of the following members not exceeding fifteen in number—

- (a) representatives of Government at ward level;
- (b) a representative from the private sector within the ward;
- (c) a representative from civil society organizations within the ward;
- (d) local volunteers trained in disaster risk management;
- (e) representatives of women, youth and other vulnerable groups;
- (f) representatives of the business community;
- (g) representatives of faith-based organisations; and
- (h) any other members as shall be provided for in regulations or guidelines made under this Act.

(3) Members of the Ward Disaster Risk Management Committee shall elect a chairperson.

(4) The Councillor representing the ward shall act as an advisor to the committee.

Functions of the
Ward Committee

26.—(1) The Ward Disaster Risk Management Committee shall—

- (a) coordinate and facilitate the implementation of disaster risk management and emergency operations at Ward level;
- (b) develop and strengthen the capacity of communities to prepare for, respond to, recover from and mitigate the impacts of disasters;
- (c) mobilize resources for disaster risk management in the Ward;

- (d) promote and facilitate community ownership and participation in disaster risk management activities at Ward level;
- (e) assist in the identification and recruitment of volunteers; and
- (f) prepare Ward Disaster Risk Management Plans.

General disaster risk management obligation

27.—(1) Every person shall have the obligation to take all the necessary, reasonable and appropriate measures to manage disaster risk in accordance with this Act and any other written law or policy relating to disaster risk management.

PART IV SECRETARIAT

Department of Disaster Risk Management

28.—(1) There is hereby established a department of the Government to be known as the Department of Disaster Risk Management and the principal objectives of which shall be to—

- (a) facilitate the review and further development, as appropriate, of relevant laws and policies in order to ensure coherence;
- (b) provide secretarial and administrative support to the entire disaster risk management system;
- (c) support implementation of disaster risk management activities in collaboration with local authorities, civil society organizations and the private sector;
- (d) coordinate the mobilization of resources for the implementation of disaster risk management programmes and activities;
- (e) coordinate the development of disaster risk management and contingency plans;
- (f) maintain and operate a disaster risk management information system to facilitate collection, analysis and retrieval of information for timely decision-making;
- (g) conduct inclusive, participatory and locally-led public awareness and education programmes on disaster risk management;

- (h) ensure that developments in urban areas are in compliance with approved physical development plans;
- (i) facilitate and coordinate recovery, rehabilitation and reconstruction activities while promoting the principle of building-back-better; and
- (j) ensure that there is at all times an officer designated as a disaster risk management focal point in Government, civil society organizations and relevant private sector entities, for purposes of facilitating coordination and integration of disaster risk management.

(2) The Department shall be headed by the Secretary responsible for Disaster Risk Management.

(3) The Secretary for Disaster Risk Management shall be the Commissioner for Disaster Risk Management (in this Act, referred to as the “Commissioner”) and in his capacity as Commissioner shall be responsible for the implementation of this Act.

(4) In discharging his functions as Commissioner, the Commissioner shall be subject to the general and special directions of the National Committee and this Act.

Powers of
Commissioner

29.—(1) The Commissioner shall have power to—

- (a) request Government, civil society and humanitarian organizations for assistance in terms of the use of their facilities and resources for disaster risk management purposes; and
- (b) in the event of a disaster, or a potential disaster, call on the Malaŵi Defence Force, Malaŵi Police Service, the Malaŵi Red Cross Society and other stakeholders to assist disaster response structures; and
- (c) order any officer or any Government institution at any level or any local authority to take such measures for the prevention or mitigation of disaster, or to effectively respond to disaster, as may be necessary, and such officer or department shall be bound to carry out such order.

(2) Notwithstanding the generality of the foregoing, the Commissioner shall, in the discharge of its functions, have power to—

- (a) request the production by any person, of any document or information which, in the opinion of the National Committee, is necessary for the execution of its functions under this Act;
- (b) promote its functions and objectives, or any matter under its consideration, through sponsorship, support or organisation of conferences, workshops or meetings;
- (c) 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
- (d) 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.

PART V

DISASTER RISK MANAGEMENT IMPLEMENTATION MECHANISMS

Disaster risk
management
information
systems

30.—(1) The Commissioner shall take reasonable steps to—

- (a) collect or cause to be collected information or data on all aspects of disaster risk management at the highest level of spatial or sectoral disaggregation possible;
- (b) process and analyse the information or data collected under paragraph (a);
- (c) develop and maintain a database envisaged under subsection (4); and
- (d) take steps to disseminate such information especially to communities that are vulnerable to disasters and to guarantee easy autonomous access to all relevant information by interested individuals or groups.

(2) The Commissioner may, by notice in writing, require any person to provide such information as may be useful for the purpose of subsection (1) to the Office within such a period as may be specified.

(3) The Commissioner shall ensure that any information furnished by a person under subsection (2) shall remain confidential except for purposes of performing his functions under this Act.

(4) The Commissioner shall develop and maintain a database on disaster risk management information and collaborate with relevant organizations and such other bodies and persons as it deems necessary in the collection, processing and analysis of the information.

(5) Without prejudice to the generality of the foregoing, the database shall contain extensive information concerning disasters and disaster risk management issues in Malaŵi, including information on—

- (a) disaster events, losses and impacts, specifically detailing particular characteristics of those impacts on vulnerable groups;
- (b) recurring occurrences that result in loss, but which are not classified as disasters under this Act;
- (c) early warning systems;
- (d) emergency response resources and capacity at all levels;
- (e) population of communities that are vulnerable to disasters;
- (f) disaster risk management stakeholders and their interventions;
- (g) indigenous knowledge relating to disaster risk management;
- (h) vulnerability and hazard maps; and
- (i) any other disaster risk management aspect deemed necessary for the database.

(6) The Commissioner shall take reasonable steps to ensure that the database is accessible to all stakeholders.

(7) Subject to any written law, subsection (4) shall not prevent the Commissioner from—

- (a) establishing security safeguards to protect the database from abuse; and

- (b) classifying parts of the database as restricted areas and limiting access to those parts to persons authorized by the National Committee.

(8) For the purpose of maintaining the management information system, disaster risk management agencies shall be obliged to—

- (a) keep detailed and updated records of disaster risk reduction, response and recovery activities; and
- (b) submit reports on disaster risk management activities, including on resource utilization, to the Commissioner.

Education and training

31.—(1) The Commissioner shall promote risk knowledge and a culture of safety and resilience among disaster risk management stakeholders, including communities, by promoting public awareness, education, training and research.

(2) Without prejudice to the generality of subsection (1), the Commissioner, in coordination with the Ministries responsible for education and information, shall—

- (a) ensure that disaster risk management is integrated into the primary, secondary and tertiary education curricula;
- (b) promote the delivery of first aid and emergency response education at different levels;
- (c) develop or cause to be developed training and learning programmes in disaster risk management, that are accessible to all stakeholders, including vulnerable groups; and
- (d) promote civic education, awareness and local community training in regard to disasters which different parts of Malaŵi are vulnerable to and measures that may be taken by the communities to prevent, mitigate and respond appropriately to such disasters.

Disaster risk reduction

32.—(1) The Commissioner shall, in collaboration with Government and such other bodies or persons as it deems necessary—

- (a) conduct comprehensive hazard, vulnerability and risk assessments;
- (b) encourage and support the development of community based sustainable development programmes and interventions aimed at reducing the risk and impact of disasters;

- (c) facilitate community participation in planning, implementation and assessment of disaster risk reduction activities, including risk analysis and vulnerability assessments;
- (d) devise measures for reducing disaster risk in publicly and privately owned, managed or regulated services and infrastructure;
- (e) promote hazard mitigation measures to reduce losses from disasters including development of land use and construction regulations, standards and guidelines;
- (f) encourage and support the establishment of resilient critical infrastructures;
- (g) direct Local Authorities to examine the quality of construction of any building or structure within their jurisdiction and, if it is of the opinion that the standards laid down for such construction or building for the prevention of disaster are not followed, may direct the Local Authority to take such actions as may be necessary to secure compliance with such standards;
- (h) enhance relevant mechanisms and initiatives for disaster risk reduction and transparency, including financial incentives, public awareness raising and training initiatives, reporting requirements and legal and administrative measures; and
- (i) ensure that disaster risk reduction measures are gender responsive, sensitive to indigenous knowledge systems, and respectful of human rights.

(2) The Commissioner shall guide Government and other bodies or individuals on how to assess and prevent or reduce the risk of disasters, including—

- (a) ways and means of—
 - (i) determining levels of risks;
 - (ii) identifying, analysing and mapping hazards and conducting related research into their effects and developing responses;

(iii) assessing the vulnerability of communities, households and economic assets to disasters that may occur;

(iv) increasing the capacity of communities and households to minimise the risk and impact of disasters that may occur;

(v) monitoring the likelihood of and the state of preparedness for disasters that may occur; and

(vi) promoting the resilience of new and existing critical infrastructure, including water, transportation and telecommunications infrastructure, educational facilities, hospitals and other health facilities; and

(b) the development and implementation of appropriate prevention and mitigation measures.

Act No. 17 of 2016

(3) Where the responsible authority under the Physical Planning Act is of the opinion that the quality of construction of any building or structure is such that it may result in loss of life or damage to property if a disaster occurs, the responsible authority may require the owner to take such action as may be necessary under section 61 of the Physical Planning Act to avoid such a consequence or in the event of default by the owner invoke the provisions of section 61(3) and (4) of the Physical Planning Act.

Act No. 17 of 2016

(4) Notwithstanding anything contained in the National Construction Industry Act, the National Construction Industry Council shall develop and enforce appropriate building codes and safety measures to enhance resilience to prevailing hazards and improve the safety of dwellings, critical infrastructure and public buildings such as hospitals, schools, bridges and market places.

Disaster risk assessment

33.—(1) The Commissioner, in coordination with Local Authorities, shall periodically undertake or cause to be undertaken comprehensive hazard, vulnerability and capacity assessments and mapping at national, local authority and community level covering all sectors.

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

(a) identify and map risks, areas, ecosystems, communities and households, that are exposed and vulnerable to physical and human-induced threats;

- (b) review the technical characteristics of hazards such as their location, intensity, frequency and probability of occurrence;
- (c) conduct periodic analyses of exposure and vulnerability including the physical social, health, economic and environmental dimensions, as well as the differentiated character of those dimensions for men and women;
- (d) regularly evaluate the effectiveness of prevailing and alternative response, coping and recovery capacities in respect to likely risk scenarios;
- (e) facilitate the production of hazard and vulnerability maps for Malawi;
- (f) promote use of space-based technologies in disaster risk management initiatives; and
- (g) coordinate the development and implementation of capacity building programmes in key institutions responsible for disaster risk identification, assessment and monitoring.

(3) The Commissioner shall facilitate the integration of risk assessment information into early warning systems.

Awareness and preparedness

34.—(1) It shall be the responsibility of Government, Local Authorities and Disaster Risk Management Committees to take disaster preparedness measures designed to afford adequate protection of life and property including—

- (a) providing adequate resources for preparedness and response;
- (b) identifying target populations, especially the vulnerable and assess their needs and capacities;
- (c) conducting community meetings and involving communities in exploring and mapping risks and planning their responses;
- (d) fostering the development by communities of monitoring and early warning systems for local hazards;
- (e) generating and disseminating awareness messages on risk reduction, preparedness, response and recovery to the general public, including vulnerable groups; and

- (f) development and periodic review of disaster and hazard assessment tools.

(2) The Commissioner shall establish a programme of disaster preparedness that utilizes the services of Government and includes—

- (a) preparation, and review of disaster preparedness and contingency plans and programmes;
- (b) investment in and, development, maintenance and strengthening of early warning systems;
- (c) promoting community-based disaster risk management planning and community awareness raising programmes which shall incorporate adequately inclusive and gender-sensitive specific objectives and actions;
- (d) developing and monitoring an inventory of available disaster response equipment and supplies at all levels;
- (e) supply of protective material for the Disaster Risk Management Committees;
- (f) establishing community centres for the promotion of public awareness and the stockpiling of necessary materials to implement rescue and relief activities; and
- (g) training stakeholders and volunteers in disaster assessment, preparedness and response;

(3) Local Authorities shall ensure that awareness and preparedness activities are being implemented at community level by—

- (a) ensuring that local authority staff members are well trained; and
- (b) ensuring that resources are allocated for preparedness and response and are properly accounted for.

Establishment of an integrated early warning system

35.—(1) The Commissioner, in coordination with the Technical Sub-Committee, shall establish an effective and integrated early warning system for all hazards.

(2) The early warning systems shall integrate the following elements, namely—

- (a) risk knowledge;

- (b) monitoring and warning services;
- (c) dissemination and communication; and
- (d) response capability.

(3) The integrated early warning system shall be operated under the supervision of the National Technical Committee.

(4) The Commissioner shall coordinate with all relevant agencies to ensure that early warning messages on impending disasters are timely disseminated to the general public and population at risk to ensure that appropriate action is taken.

(5) The Commissioner shall direct Government, including an appropriate public officer to provide technical assistance to Local Authorities to ensure that timely and effective disaster warnings are provided.

(6) The issuance of warnings and alerts under this section shall be prescribed by the Minister.

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

- (a) the National Committee may consult such organisations and entities as it considers necessary in the development of warning or alert messages and may request or instruct such organisations or entities to issue warnings within their spheres of operation:

Provided that the issuance of warnings under this subsection shall be in such manner as may be prescribed by the National Committee;

- (b) the Government institutions responsible for Water Resources Management will be responsible for issuance of riverine flood early warnings;
- (c) the government institutions responsible for meteorological services will be responsible for issuance of warnings related to flash floods and other climate hazards; and
- (d) the National Committee may direct any authority or person in control of any audio or audio-visual media or such other means of communication as may be available to carry out

warnings and advisories regarding any impending disaster or disaster and such authority or person shall comply with such a direction.

Simulation exercise

36.—(1) The National Committee shall organize or direct appropriate bodies and officers to organize simulation exercises to test their systems in order to ensure effectiveness and readiness.

(2) All disaster risk management stakeholders shall take part in simulation exercises to improve their state of preparedness to respond to disasters and ensure that response equipment is functional.

Annual equipment certification

37. Appropriate bodies and officers specified in section 25 shall submit to the National Committee annual certification that—

(a) indicates that disaster early warning and response equipment deployed pursuant to this Act is operational as of June 30 of the preceding year; and

(b) in the case of any piece of the equipment that is not operational as of such date, identifies that equipment and describes the mitigation strategies that are in place to repair or replace that piece of equipment within a reasonable period of time.

Disaster response

38.—(1) The Commissioner shall ensure that there is timely response and provision of appropriate relief assistance to persons affected by disasters.

(2) Notwithstanding the generality of subsection (1) and in the spirit of ensuring coordinated and timely disaster response—

(a) village, area and ward committees shall conduct initial rapid disaster assessments and report to Local Authorities within eight (8) hours of the occurrence of a disaster using all the necessary means of communication possible;

(b) irrespective of the magnitude of a disaster, a Local Authority shall alert the National Committee immediately of the disaster occurrence using necessary possible communication pending verification;

(c) Local Authorities shall conduct verification assessment exercises of the reported disasters within twenty-four hours;

(d) within seventy-two hours of the occurrence of a disaster, the Local Authority shall take all necessary measures to respond

to the disaster, including notifying the National Committee as provided for under paragraph (b);

- (e) all disaster reports and requests for assistance shall be channelled through the Local Authority;
- (f) the Commissioner shall provide the necessary support to the Local Authorities in responding to the disaster within seventy-two hours upon receipt of a duly verified disaster report from the Local Authority; and
- (g) depending on the magnitude and scale of the impact and needs, the Commissioner may recommend to the President through the minister to declare a state of disaster to facilitate mobilization and provision of support towards the affected population and sectors.

Disaster Recovery
Programme

39.—(1) Government shall take responsibility to—

- (a) take *ex-ante* disaster recovery measures designed to restore affected livelihoods and infrastructure;
- (b) recover, rehabilitate and reconstruct using better and modern principles and techniques; and
- (c) sustainably improve the resilience of affected communities.

(2) The Minister shall establish a programme of disaster recovery that utilizes the services of all appropriate bodies and includes—

- (a) institutional structure for the coordination and articulation of disaster recovery actions;
- (b) implementation of post-disaster needs assessments, for guiding the recovery process; and
- (c) identification of financial instruments for retention and transfer of risk, and for financing recovery and reconstruction.

(3) The Commissioner shall carry out a post-disaster review within three months after completion of response operations.

(4) The Commissioner shall request disaster risk management stakeholders to provide information relevant to a post-disaster review.

PART VI
DECLARATION OF DISASTER

Declaration of a
state of disaster

40.—(1) If at any time it appears that a disaster is of such a nature and extent that extraordinary measures are necessary to assist and protect the persons affected or likely to be affected by the disaster in any area within Malaŵi or that circumstances are likely to arise making such measures necessary, the Commissioner shall recommend to the President that a state of disaster be declared for the whole of or any part of Malaŵi.

(2) The President may, upon receipt of a recommendation made under subsection (1) and pursuant to section 45(3)(c) of the Constitution, declare that, with effect from a date specified by him in the declaration, a state of disaster exists within an area defined by him in the declaration:

Provided that where such declaration has been made in any manner other than by notice in the *Gazette*, the President shall, as soon as possible after making the declaration, cause it to be published in the *Gazette*.

(3) A declaration of a state of disaster shall immediately activate the disaster response mechanisms under this Act.

(4) The declaration of a state of disaster under subsection (2) shall remain in force for a period of three months from the date specified in the declaration as the commencement date of the state of disaster, unless the President by notice in the *Gazette*, withdraws such declaration before the expiry of such a period:

Provided that the President may, from time to time, extend or further extend such period by not more than three months and shall do so by notice in the *Gazette*, published before the expiry of such period or any such extension thereof.

(5) Where a state of disaster has been declared, the declaration shall be communicated to the National Assembly during the meeting next occurring after the declaration.

(6) Subject to subsection (4), a declaration of a state of a disaster remains in force until such a time it is revoked or varied by the President, by notice in the *Gazette*.

Responsibilities
and powers of the
Commissioner
during a state of
disaster

41.—(1) The Commissioner shall coordinate all activities after a declaration of a state of disaster.

(2) In the event of the declaration of a state of disaster, the National Committee shall, subject to the provisions of this Act and the Constitution—

- (a) determine and provide the types of relief assistance most urgently needed, taking into consideration, the differentiated needs of the population, in terms of gender, age, disabilities and other relevant vulnerability factors;
- (b) coordinate the provision of disaster relief assistance by different stakeholders;
- (c) in consultation with the Ministry responsible for Finance, make available funds from the Fund to support the costs of disaster response and recovery operations;
- (d) appeal to any body or person for vehicles, equipment, property, supplies and other materials or resources, necessary to respond to the disaster;
- (e) through the Minister responsible for Lands, and subject to the Lands Acquisition Act—
 - (i) take possession of or control over any land for the purpose of dealing with the situation; or
 - (ii) direct any person who is the owner of or who has possession of or control over any land or other property which is required for the purposes of dealing with the disaster situation to surrender the use of such land to a specified person or to a specified authority or to deliver or make available such property to a specified person in the service of that authority;
- (f) implement all or any of the provisions of a contingency plan that is applicable in the circumstances or, initiate, order and oversee the implementation of all or any of the provisions of such plan;
- (g) disseminate information relating to the disaster and response efforts in accessible formats;
- (h) take steps to facilitate international assistance;
- (i) in collaboration with the National Technical Committee, develop and implement a recovery plan; and

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- (j) take such other action as it deems necessary to assist disaster affected populations in promptly obtaining assistance to which they are entitled.

(3) Any person who provides any vehicles, equipment, building, property, land, supplies or other materials pursuant to subsection (2) shall be entitled to fair compensation thereof from Government.

(4) The Commissioner shall direct relevant public institutions to—

- (a) provide food, water, shelter, healthcare, education and other essentials for the affected persons;
- (b) issue warnings of risks and hazards;
- (c) disseminate public health and safety information;
- (d) control and restrict vehicular traffic to, and from and within the affected area;
- (e) control and restrict the entry of any person into, movement within and departure from an affected area;
- (f) remove debris;
- (g) conduct search and rescue operations;
- (h) make arrangements for the disposal of unclaimed dead bodies;
- (i) provide alternative shelter;
- (j) construct temporary bridges or other necessary structures; and
- (k) demolish unsafe public or private structures which may endanger the public.

(5) In performing any duties under subsection (4), the Commissioner may request cooperation from Government or any other person or body.

Entry and search

42.—(1) Where the Commissioner has reasonable grounds to believe that it is necessary in the interest of public safety, it may authorize relevant officers to—

- (a) enter premises for purposes of search and rescue, and ensuring compliance with any orders made or measures instituted by the Commissioner;
- (b) close to traffic any street, road, footpath or open space otherwise providing access to the disaster area;
- (c) control and restrict entry into and movement within and departure from the disaster affected area or any part of it; and
- (d) direct any person to leave the disaster area by the safest and shortest route.

(2) The Commissioner may issue such directions to any body or person and take such other steps as may be necessary to curtail the escalation of the disaster or to alleviate, contain or minimise the effects of disaster.

(3) The powers referred to in subsections (1) and (2) shall be executed only to the extent that is necessary for the purpose of—

- (a) assisting and protecting the public;
- (b) providing relief to the public;
- (c) protecting property; or
- (d) mitigating the destructive or other effects of a disaster.

(4) If a police officer on duty in or near the disaster area has reasonable cause to believe that an offence against this Act is being or is about to be committed, the officer may order a person to leave the disaster area and may use such force as is reasonably necessary to remove the person from the disaster area or to prevent a person from entering a disaster area.

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

Evacuation
procedures

43.—(1) The Commissioner shall, in consultation with Local Authorities, assess the likelihood of loss of life and injury to persons where there is an imminent threat of a disaster or where a disaster has occurred.

(2) If on an assessment pursuant to section (1) an evacuation is considered necessary, the Minister acting on the advice of the Commissioner shall, subject to subsections (3) and (4), issue a notice of evacuation.

(3) The notice of evacuation issued pursuant to subsection (2) shall specify the nature of the disaster, the potential loss of life and injury to persons, and the areas of Malaŵi required to be evacuated.

(4) The notice of evacuation shall be communicated in such a manner that it is accessible and usable by illiterate as well as persons with disabilities and other vulnerable groups.

(5) Where a notice is issued pursuant to subsection (2), the Commissioner shall coordinate the evacuation in accordance with Standard Operating Procedures for Disaster Response with the assistance of other agencies involved in emergency and disaster risk management including the Malaŵi Police Service, Malaŵi Defence Force and Local Authorities.

(6) An action shall not be brought against a person for anything done in good faith in the exercise of any power or duty conferred by a notice of evacuation issued pursuant to this Act.

Duty to comply with notice of evacuation

44. Where the Minister issues a notice of evacuation under section 43 requiring an affected area to be evacuated, every person within that area shall comply with the notice of evacuation.

Forced evacuation

45. Persons unwilling to leave disaster affected areas shall be evacuated by use of reasonable force, if such evacuation is—

- (a) absolutely necessary under the circumstances to respond to a serious and imminent threat to their life and health, and less intrusive measures would be insufficient to avert the threat; and
- (b) to the extent possible, carried out after the persons concerned have been informed.

General provision on evacuation

46.—(1) Affected persons shall be evacuated in a manner and to a designated evacuation centre that—

- (a) minimizes family separation;
- (b) fully respects their rights and does not discriminate against any person;
- (c) is safe and not expose them to further risk; and
- (d) provides living conditions that respect the dignity of the persons concerned.

(2) To the extent possible, the affected persons shall be informed, in a manner that is accessible to them and in a language, they can understand, of the likely duration of the process of the evacuation, and the reasons why it is necessary.

(3) The Commissioner shall minimise the use of educational facilities as evacuation shelters during disasters.

(4) The Commissioner shall ensure that information about evacuation measures and assembly sites is in accessible formats and publicly announced in all areas at risk.

(5) Where people have been evacuated to a designated evacuation centre, the period of stay in such a centre shall not exceed three months:

Provided that the Commissioner shall seek approval from the Minister for any extension of the period prescribed in this subsection.

Property rights **47.**—(1) The right to property shall be respected, protected and fulfilled in accordance with the Constitution and relevant laws of Malaŵi.

(2) The State shall respect property rights of affected persons, whether individual, collective or based on formal titles, customary entitlements or prolonged and uncontested possession or occupancy.

(3) The Malaŵi Police Service and other security agencies shall protect property and possessions left behind by persons displaced by disasters against looting, destruction and arbitrary or illegal appropriation, occupation or use.

(4) Individual owners or communities, whose land deeds or property documents have been lost or damaged during a disaster or whose land boundaries have been destroyed, shall have equal and non-discriminatory access to procedures to re-claim ownership of their original land and property without undue delay.

(5) The Minister responsible for land shall establish procedures for restitution of title deeds or property documents, including for child and women-headed households.

(6) The Minister responsible for land shall make regulations to provide for alternative forms of proof of land ownership, in the aftermath of a disaster, where restitution of relevant documents is not possible.

Emergency
Operations
Centres

48.—(1) The Commissioner shall be responsible for the establishment and maintenance of emergency operations centres to coordinate activities undertaken in response to a disaster at the national, regional and Local Authority levels.

(2) The Commissioner shall be responsible for the administration and supervision of any emergency operations centre.

(3) The Commissioner shall ensure the provision of adequate staff and resources to effectively manage and operate an emergency operation centre.

(4) Emergency operations centre shall comprise members of clusters and any person deemed necessary for the response to disasters.

Functions of
Emergency
Operations
Centres

49. The Emergency Operation Centre shall—

(a) provide centralized coordination and control of emergency or disaster response and operations continually, where necessary;

(b) keep the public informed of the emergency or disaster in a timely and factual manner through briefings and bulletins;

(c) arrange for logistic support to site personnel;

(d) issue disaster alerts and give direction to the general public;
and

(e) perform other functions as shall be stipulated in the Operational Guidelines for Disaster Risk Management and Standard Operating Procedures for Emergency Operation Centres.

Camp
coordination and
management

50.—(1) The Commissioner shall establish and maintain a list of premises available and suitable for use as disaster evacuation camps.

(2) The list shall—

(a) distinguish between premises owned by Government and premises owned by other bodies;

(b) state the facilities available at each listed premises, including safe spaces for women, children, persons with disabilities and other vulnerable groups;

(c) indicate the suitability of each listed premises, for use prior to, during a disaster or in the aftermath of a disaster, as the case maybe; and

(d) indicate the periods for, and the conditions under which, the listed premises, would be suitable for use in the instances mentioned under this section.

(3) The Commissioner shall ensure that each camp is assigned an officer charged with the responsibility of managing the camp during any period the premises are being used for that purpose.

Obstruction of
camp officers

51.—(1) A person shall not assault or obstruct a Camp Officer in the execution of his or her duties.

(2) A person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine of five million Kwacha and imprisonment for two years.

General
guarantees for
persons affected
by disasters

52.—(1) A person affected by a disaster shall be recognized and treated as a person entitled to enjoy the same rights and freedoms as all others and shall not be discriminated against on any basis.

(2) The Commissioner in coordination with the Malaŵi Police Service and the Malaŵi Defence Force shall ensure the security of persons affected by disasters.

(3) Women, children, persons with disabilities, the elderly, the chronically ill and other vulnerable groups have the right to protection and security in times of disasters, calamities, and other crisis situations especially in all phases of relief, recovery, rehabilitation and reconstruction efforts.

(5) The Commissioner shall give special attention to the health needs of women and girls, including provision of appropriate hygienic supplies and reproductive health services.

Respect for
vulnerability

53.—(1) Every person involved in disaster response operations shall—

(a) ensure, in consultation with affected communities and disaster risk management committees, that relief supplies are appropriately targeted to those most in need;

(b) ensure that special attention is paid to the needs of vulnerable persons, to ensure they are not excluded in the targeting

process; and

- (c) ensure that vulnerable groups are protected from all forms of abuse and exploitation.

(2) The Commissioner shall ensure that only appropriate, reliable and capable implementing partners are engaged in disaster response activities.

Protection
against all forms
of violence

54.—(1) A disaster affected person shall be protected against gender based and other violence, all forms of exploitation and abuse, and survivors shall be provided with appropriate support.

(2) Without prejudice to the generality of the foregoing, the Commissioner, in consultation with Government and other bodies shall—

- (a) develop and implement measures to reduce possible risks to women, children and other vulnerable groups, including trafficking, forced prostitution, rape or domestic violence;
- (b) develop and implement measures to prevent and eradicate the practice of sexual, coercion, exploitation, harassment and abuse in exchange for the provision of humanitarian assistance and protection;
- (c) support affected persons to assert their rights and to access remedies from judicial or other authorities and provide them with information on their entitlements and available remedies;
- (d) establish codes of personal conduct for relief and humanitarian workers that protect disaster affected persons from sexual abuse, corruption, exploitation and other violations of human rights and ensure such codes are adhered to by all involved in the operation of the humanitarian action; and
- (e) create safe spaces for women, children, persons with disabilities and other vulnerable groups in disaster evacuation camps.

Access to
information

55.—(1) Subject to the Access to Information Act, any person affected by a disaster shall have the right to request and receive information, which is in the custody of or under the control of a public body or a relevant private body, in so far as such information is connected to the disaster and required for the exercise of his or her rights.

(2) The Commissioner shall ensure that information made available to individuals affected by disasters is in formats that are inclusive and accessible to all members of the community.

(3) Persons affected by disasters shall be informed of and consulted on measures taken on their behalf and given the opportunity to take charge of their own affairs to the maximum extent and as early as possible.

PART VII SPECIALLY VULNERABLE AREAS

Delineation of specially vulnerable areas
Act No. 17 of 2016

56.—(1) Notwithstanding the provisions of Part VI of the Physical Planning Act, the Minister, in consultation with the Minister responsible for physical planning, may designate certain parts of Malaŵi as specially vulnerable areas for purposes of disaster risk management.

(2) The Commissioner shall prepare for the approval of the Minister, a draft order delineating any specially vulnerable area that the Commissioner recommends for designation under subsection (1).

(3) In the preparation of the draft order, the Commissioner shall invite comments from the general public or any part thereof that would be affected by the proposed order, including the holding of at least one public meeting at which the draft may be discussed.

(4) If the Minister is of the view that the recommendation made by the Commissioner is reasonable, he shall, upon consulting the Minister Responsible for physical planning, settle the delineation of the specially vulnerable area by publishing the order in the *Gazette* and daily newspapers of wide circulation.

(5) Nothing in this Part shall affect the mandate of the Minister responsible for Land matters to declare any customary land in a Traditional Land Management Area to be hazardous land in accordance with the provisions of section 19 of the Customary Land Act.

Act No. 19 of 2016

Special area precautionary plans for specially vulnerable areas

57.—(1) The Commissioner for Physical Planning, may prepare for the approval of the Minister responsible for physical planning, a special area precautionary plan comprising—

(a) strategies for disaster risk management in the specially vulnerable area;

(b) strategies, policies and standards for development and for

maintenance of building or structures in the specially vulnerable areas;

- (c) standards for environmental and disaster risk assessments for contemplated development in the specially vulnerable area; and
- (d) provisions designating any part of the specially vulnerable area as a prohibited area for human habitation, farming or for the purpose of removing vegetation, sand, stones and gravel and requiring strict observance of buffer zones.

(2) A special area precautionary plan may communicate strategies, policies, standards or designations by means of maps and diagrams.

Act No. 17 of 2016 (3) Any person or authority that is subject to the Physical Planning Act, 2016 and every local authority shall be guided by a special area precautionary plan in making any decision or granting any approval for development in areas covered by the special area plan.

(4) The special area precautionary plan shall be published in the *Gazette*.

(5) Any person or authority exercising any function under this Act or any function under any law in force in Malaŵi relating to disaster risk management in disaster prone area shall have regard to special area precautionary plans.

Act No. 17 of 2016 (6) A special area precautionary plan shall not authorize any development that is not permitted under the Physical Planning Act, or any other law in force in Malaŵi.

Act No. 17 of 2016 (7) Notwithstanding the provisions of the Physical Planning Act, no development shall take place in a specially vulnerable area without prior consultation with the Commissioner.

(8) Any development in a specially vulnerable area that is not in compliance with the above provision shall be deemed unauthorised development for the purposes of Part V (Division II) of the Physical Planning Act.

Relocation and
resettlement
procedure

58.—(1) Where adaptation and risk reduction measures are not sufficient to protect persons at risk, the Commissioner shall facilitate the relocation of such persons from specially vulnerable areas.

(2) Prior to any decision requiring the relocation or resettlement of any person or group of persons from a specially vulnerable area to a safer site, the Commissioner shall assess the feasibility of the relocation or resettlement and consider possible measures to prevent, mitigate and compensate any negative impacts.

(3) If resettlement or relocation occurs in situations other than during the emergency stages of disasters, the following guarantees shall be complied with—

(a) a specific decision shall be taken by the Commissioner to order the resettlement;

(b) adequate measures shall be taken to guarantee to those displaced, full information on the reasons and procedures for resettlement;

(c) to the greatest possible extent, the relocation programme should endeavour to mitigate negative socio-economic impacts on the relocated persons and on host communities; and

(d) the informed consent of those to be relocated and resettled should be sought:

Provided that such consent shall not be withheld where there is a real danger to human life and property through exposure to high disaster risk.

(4) The Commissioner shall meaningfully engage those affected, particularly vulnerable groups, in the planning and management of the relocation.

(5) Relocated persons shall be assisted to regain their productive activities and to restore and improve their livelihoods and communities compared to the levels they enjoyed before the relocation.

Unlawful
occupation of a
specially
vulnerable land

59.—(1) Any person who refuses to comply with a lawful order of the Commissioner to relocate from land that is situated in a specially vulnerable area shall be deemed to be an unlawful user or occupier of any such land.

(2) Where a person is deemed to be an unlawful user or occupier of land situated in a specially vulnerable area, 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 user

or occupier (in this Act otherwise referred to as “the defendant”) requiring him to answer such a complaint.

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

Act No. 16 of 2016 (4) In making a determination of the period of time which shall be allowed to the defendant to vacate the land the Magistrate shall be guided by the provisions of section 45(4) of the Land Act.

(5) If the defendant fails to comply with the order made by the Magistrate, he shall be removed from the land by a police officer or an officer of the court authorised on that behalf and for that purpose by the Magistrate.

Regulations for disaster prone areas
Act No. 17 of 2016
Act No. 16 of 2016

60.—(1) Notwithstanding the provisions of the Physical Planning Act, the Land Act or any law in force in Malaŵi, the Minister may, with the concurrence of the Minister responsible for Physical Planning, make regulations for land use management specially vulnerable areas and for the effective implementation of relocation or resettlement programmes.

PART VIII DISASTER RISK MANAGEMENT PLANS

National Disaster Risk Management Plan

61.—(1) The Commissioner shall, in consultation with the National Committee, develop, implement and monitor a comprehensive National Disaster Risk Management Plan which shall be reviewed and updated every five years or as necessary to take into account emerging issues and scientific data as well as other changing circumstances.

- (2) The plan referred to under subsection (1) shall set out—
- (a) the manner in which the concept and principles of disaster risk management are to be applied in Malaŵi;
 - (b) expected climate change impacts and risks for Malaŵi;
 - (c) measures to be taken for the integration of disaster risk management and climate change adaptation in development plans and projects, at national and sector levels;
 - (d) measures to be taken for disaster preparedness and capacity building to effectively respond to the threat of a disaster or

an emergency;

- (e) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies measures for the prevention of disasters and mitigation of their effects;
- (f) measures for disaster recovery and reconstruction; and
- (g) such other measures as the National Committee considers appropriate for inclusion in the Plan.

(3) The plan shall—

- (a) be based on the national disaster risk management policy;
- (b) facilitate requirements for disaster risk management including prevention, mitigation, preparedness, response and building-back-better recovery measures;
- (c) facilitate community participation in disaster risk management, including the participation of women, children, persons with disabilities and other vulnerable groups;
- (d) place emphasis on measures that reduce the vulnerability of specially vulnerable areas, communities and households and outline priority areas for investment in disaster risk management, for resilience building;
- (e) establish specific actions for ensuring that vulnerability and risk are addressed considering the differentiated characteristics of women and men, girls and boys;
- (f) take into account indigenous knowledge relating to disaster risk management;
- (g) promote disaster risk management research; and
- (h) provide for any other matters as are relevant for purposes of this Act.

(4) Appropriate provision shall be made for the financing of measures to be carried out under the National Disaster Risk Management Plan.

(5) Copies of the National Disaster Risk Management Plan shall be made accessible to Government institutions, civil society organisations, disaster risk management stakeholders and any concerned member of the public.

(6) Implementation of the National Disaster Risk Management Plan shall be carried out according to the Operational Guidelines for Disaster Risk Management prepared by the Minister and regularly updated to take account of changing circumstances.

(7) The National Disaster Risk Management Plan shall guide all persons and agencies in the public and private sectors, including Government institutions, non-governmental organisations and local level disaster risk management committees.

(8) The Commissioner shall monitor relevant activities, strategies, plans and programmes of Government institutions, civil society organisations, Local Authorities and other bodies to ensure that they conform to strategies, plans and programmes under the National Disaster Risk Management Plan.

(9) If the Commissioner determines that any Government institution, civil society organisation or private company is failing to perform its functions as stipulated in the plan, the Commissioner shall—

- (a) issue such instructions as it deems necessary to secure compliance;
- (b) report the failure to the Minister, who shall take such steps as necessary to secure compliance; and
- (c) impose administrative penalties upon the failure of Government institutions, civil society organizations or other bodies to comply with the instructions with his instructions.

(10) The Commissioner shall cause to be developed guidelines for the preparation and updating of disaster risk management plans and shall assist Government institutions, Local Authorities and other entities as may be specified in the Act in preparation of plans.

Mainstreaming
disaster risk
management into
sustainable
development

62.—(1) Government institutions, Local Authorities, civil society organizations and private sector bodies shall include the following in their development policies and plans—

- (a) measures for ensuring the resilience of public or private investments, including infrastructures and services;

- (b) measures for the prevention of disasters and mitigation of their effects, within the scope of their powers, mandates and services;
- (c) training programmes and exercises for staff members, employees and other persons with respect to the provision of necessary services and the procedures to be followed in disaster response and recovery activities;
- (d) measures to be taken for disaster preparedness and capacity building to effectively respond to the threat of disasters or emergencies; and
- (e) such other matters as are considered necessary or advisable for—
 - (i) preventing or reducing the risk of disasters;
 - (ii) mitigating the severity or consequences of disasters;
 - (iii) promoting and supporting emergency preparedness;
 - (iv) providing a rapid and effective response to disasters;
 - (v) provision of necessary and essential services during disasters;
 - (vi) implementing post-disaster recovery and rehabilitation; and
 - (vii) building resilience against future shocks and stresses.

(3) All entities required to mainstream disaster risk management into their policies, plans and programmes under subsection (1) shall—

- (a) make provision for financing disaster risk management activities specified therein; and
- (b) furnish a status report regarding the implementation of the disaster risk management measures stipulated in their policies, plans and programmes to the Commissioner, as and when required.

63.—(1) Notwithstanding the provisions of the Local Government Act or any other law in force in Malaŵi, every Local Authority, Area, Ward and

Local Authority,
Area, Ward and
Village Disaster
Risk Management
Plans

Village Disaster Risk Management Committee shall develop and implement a disaster risk management plan.

(2) The disaster risk management plans provided for in sub-section (1) shall be in conformity with the National Disaster Risk Management Plan and implemented according to the provisions of the Operational Guidelines for Disaster Risk Management.

(3) Plans prepared under subsection (1) shall be submitted to the Council for approval before implementation.

(4) The Commissioner shall monitor progress in the implementation and regular updating of disaster risk management plans.

(5) Local Authorities shall make provision in their annual budgets, for funds for the purposes of carrying out the activities and programmes set out in their plans, including procurement of equipment.

(6) Plans prepared under this section shall guide all persons and institutions in the public and private sectors at local authority level.

National and
Local Authority
Contingency
Plans

64.—(1) The Commissioner shall prepare a national multi-hazard contingency plan to be reviewed and revised annually and as necessary.

(2) Government institutions shall develop and implement Sectoral Continuity and Contingency Plans.

(3) Local Authorities shall develop multi-hazard contingency plans for their respective areas to be reviewed and revised annually and as necessary.

(4) The Commissioner shall promote the development of Business Continuity Plans within the private sector.

Gender and
disability
responsive
planning

Cap. 25:06
Cap. 33:06

65.—(1) Notwithstanding anything contained in the Gender Equality Act, and the Disability Act, the National and Local Authority Committees shall ensure that disaster risk management plans are gender and disability responsive and that there is effective participation of women in the development and implementation of the plans.

PART IX

FUNDING FOR DISASTER RISK MANAGEMENT

Funding
provisions for
Disaster Risk
Management

66.—(1) The Minister, in consultation with the Minister responsible for Finance, shall—

- (a) identify an optimal combination of financial instruments for disaster risk management, including national and local level disaster risk management funds, budget processes and incentives for the integration of risk management measures into sectoral and local investment and risk transfer mechanisms; and
- (b) develop a Disaster Risk Financing Strategy in order to comprehensively manage the financial risks and impacts of disasters by integrating and articulating the different financial instruments.

(2) The Minister responsible for Finance shall, in the annual estimates, make provision for funds for the formulation, development and implementation of disaster risk management activities.

National Disaster Risk Management Fund

67.—(1) Subject to the Public Finance Management Act, there is hereby established a fund to be known as the National Disaster Risk Management Fund (hereafter referred to as the “Fund”) which shall be a special fund established in accordance with section 181 of the Constitution.

(2) 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 gifts, bequests, donations, loans, investments, grants and voluntary contributions; and
- (c) such other moneys or assets which may in any manner become payable to, or vested in the Fund.

Objects of the Fund

68.—(1) The objects for which the Fund is established shall be the development, promotion, management and implementation of disaster risk management interventions or programmes, including actions that may ensure timely response to disasters.

(2) Without prejudice to the generality of the foregoing, the Fund may be applied to—

- (a) implementation of disaster prevention, mitigation, preparedness and response interventions;
- (b) the provision of essential commodities and other relief to those affected by any disaster;

- (c) the restoration, reconstruction and rehabilitation of livelihoods and infrastructure;
- (d) the promotion of disaster risk management assessments, research and training;
- (e) the payment of any compensation due to any person under this Act;
- (f) the cost of any scheme which the Commissioner considers to be in the interests of disaster risk management;
- (g) supporting Local Authority Disaster Risk Management activities; and
- (h) any purpose which the Commissioner considers to be in the interests of the objects of the Fund.

Management of the Fund

Cap. 37:02

69.—(1) The Fund shall be managed by the Commissioner.

(2) The Commissioner shall perform its financial management functions in accordance with the Public Finance Management Act.

(3) The Commissioner shall develop and apply priorities, guidelines and procedures governing the granting of moneys from the Fund for achieving the objects of the Fund.

(4) Moneys may be paid out of the Fund only—

- (a) for the purposes of the Fund or as authorized by this Act;
- (b) if sufficient credit is available in the account; and

Cap. 37:02

(c) in accordance with section 42 of the Public Finance Management Act.

Advances to the Fund

70. If in any financial year, the income of the Fund together with any surplus income brought from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for Finance shall make advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for Finance may determine.

Books and other records of accounts, audit and reports
Cap. 37:02

71.—(1) The Commissioner shall cause to be prepared an annual statement of the income and expenditure of the Fund in accordance with the provisions of the Public Finance Management Act and generally accepted international standards.

Cap. 37:01

(2) The Accounts of the Fund shall be subject to an annual audit by the Auditor General in accordance with the provisions of the Public Audit Act.

(3) As soon as practicable, but not later than four months after the end of each financial year, the Commissioner shall cause to be prepared—

(a) an annual technical report detailing out the activities for which the funds were used;

(b) an annual report on all the financial transactions of the Fund; and

(c) the report under paragraph (b) shall include an income and expenditure account, a balance sheet and a copy of the report made thereon by the Auditor General.

(4) At the next sitting following the expiration of the period prescribed under subsection (3), the Minister shall lay the reports specified in subsection (3) before Parliament.

(5) Where money has been allocated to Government from the Fund for purposes of disaster risk management, a progress report on the spending of that money shall be submitted to the Commissioner on a quarterly basis.

(6) Copies of reports referred to in subsection (5) shall be submitted simultaneously to the Ministry responsible for finance.

Emergency procurement

Cap. 37:03

72. Where by reason of any disaster or a forecasted disaster, the Commissioner is satisfied that immediate procurement of provisions or materials or the immediate application of resources is necessary for rescue or relief, the Commissioner may, notwithstanding section 37 of the Public Procurement and Disposal of Public Assets Act, authorise the emergency procurement of the provisions or materials for emergency rescue or relief.

PART X

INTERNATIONAL DISASTER RISK MANAGEMENT ASSISTANCE

International cooperation and assistance

73.—(1) Government shall cooperate with other governments and international organizations in the exercise of its disaster risk management powers and duties.

(2) The Commissioner may, depending on the scope, magnitude of damage or implications of the adverse effects of disaster recommend to the Minister to request international assistance.

(3) The Minister shall, immediately after a declaration of a state of disaster and in consultation with the Commissioner make—

(a) an initial estimate of the magnitude of damage, the disaster response needs and initial recovery assistance; and

(b) a determination of international assistance required and request for the international assistance.

(4) A determination of required international assistance may also be made, at the discretion of the Minister, prior to the onset of a disaster.

(5) The request for international assistance shall be accompanied by information relating to—

(a) the extent and type of assistance required, based on the report prepared by the Minister; and

(b) the procedures to be followed by assisting international actors when making offers or providing assistance.

(6) For purposes of ensuring a concerted effort on the international sphere, the Minister responsible for Foreign Affairs, through the diplomatic missions of Malaŵi, may facilitate the call for international assistance.

(7) The Commissioner shall negotiate with the assisting international actors in-advance as to what costs, if any, that Malaŵi will bear for the assistance that the assisting international governments, organizations and persons will provide.

Commencement
and termination
of international
assistance

74.—(1) The period for international assistance shall commence upon the issuance of a request for assistance under section 73.

(2) Where, on the basis of updated needs assessments and other information the Commissioner is satisfied that the need for disaster relief is coming to an end, it shall advise the Minister to approve a termination date for the international disaster response period, with due consideration for the impact on ongoing relief.

(3) The Minister, in consultation with the Minister of Foreign Affairs, may terminate the receipt of international assistance by issuing a notice in writing to any source of international assistance.

(4) The termination date shall be announced no later than thirty days prior to the proposed date.

(5) The announcement shall include information about the anticipated ongoing needs for goods and services related to initial recovery assistance, if any.

(6) Upon issuance of an announcement of termination of international assistance and pursuant to this section, the Commissioner shall consult with international assisting actors actively involved in disaster response work in order to reduce any negative impact from the termination and, where necessary, to ensure an adequate handover of responsibilities.

Obligations of
the
Commissioner

75.—(1) The Commissioner shall, to the extent necessary for the performance of disaster response and recovery, serve as the central focal point for liaison between the Government and assisting international actors, promoting the effective facilitation, coordination and oversight of international disaster response pursuant to this Part.

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

- (a) inform the assisting international actors of their rights and responsibilities under this Act;
- (b) request Government to make available assets or premises required to facilitate the work of the assisting international actors;
- (c) facilitate the entry of humanitarian personnel into Malaŵi, including liaising with the Minister responsible for immigration for necessary visas or permits, as the case may be, to be issued for the duration of the assistance;
- (d) facilitate, through the authority responsible for qualifications and relevant professional bodies, the temporary recognition of foreign professional qualifications, including those of foreign medical personnel;
- (e) facilitate, through the Minister responsible for finance and trade, the granting of exemptions from customs duties, taxes,

levies and tariffs or any other Government fees on goods and equipment directly relevant to disaster risk management that is imported, exported, in transit or re-exported by assisting international actors;

- (f) request the Commissioner General of the Malaŵi Revenue Authority to waive or reduce inspection requirements of the goods and equipment to be used for the disaster relief and recovery;
- (g) request the Directorate of Road Traffic and Safety Services to recognize foreign driving licences of international humanitarian personnel for the duration of their stay;
- (h) facilitate, through the Ministry responsible for telecommunications, the use and setting up of the telecommunication equipment by the humanitarian personnel;
- (i) allow access by international humanitarian personnel to disaster-affected areas and persons requiring disaster relief or initial recovery assistance, subject to limitations based on security, public order or public health, weighed in the context of the urgency of the disaster needs;
- (j) permit international humanitarian personnel to provide their goods and services directly to affected persons;
- (k) facilitate through the Ministry responsible for finance, the provision of legal capacity to assisting international actors to open bank accounts, if necessary;
- (l) ensure the security and safety of the humanitarian personnel and the goods and equipment to be used by them; and
- (m) facilitate, in coordination with the Ministry responsible for health, the importation of medications and medical equipment for the purpose of disaster relief or initial recovery assistance so long as they conform to the requirements of the Pharmacy, Medicines and Poisons Act.

Cap. 35:01

Obligations of assisting international actors

76.—(1) Every assisting international actor shall cooperate and coordinate with national authorities and organizations during the disaster relief and initial recovery period.

(2) The head of the assisting international actor shall ensure that any medications or equipment to be used are safe, of good quality, have not expired, are maintained in appropriate condition and are labelled in accordance with the requirements of the Pharmacy, Poisons and Medicines Act.

(3) The assisting international actor shall comply with the principles of humanity, independence and impartiality in providing assistance and shall establish priorities on the basis of need and they shall not—

- (a) engage in adverse distinctions, exclusions or preferences based on any ground;
- (b) seek to further a particular political or religious standpoint or interfere in internal matters not related to disaster response;
- (c) seek to obtain commercial gain from their assistance; and
- (d) gather sensitive information or intelligence of a political, economic or military nature.

(4) The assisting international actor shall ensure that any goods or equipment they import for the purpose of disaster relief or initial recovery assistance which are or which become unusable, as well as any other waste products produced by them are destroyed, recycled or otherwise disposed of in a safe, environmental friendly and effective manner and in compliance with the laws of Malaŵi.

(5) Humanitarian personnel shall not be liable for any acts done in good faith during the performance of their assistance.

Transparency in the utilization of internationally donated funds

77.—(1) Funds received by Government from international sources for the purposes of disaster relief and initial recovery assistance shall be accepted by the Commissioner and placed in account opened under the Fund.

(2) All persons that receive funds donated for the purposes of Disaster Relief and Initial Recovery Assistance shall submit a report to the Commissioner specifying the utilization of the funds.

Regulations for international assistance

78.—(1) The Minister shall make regulations setting out procedures, roles and responsibilities related to the facilitation and regulation of international disaster assistance provided to Malaŵi, as well as for international disaster assistance transiting through Malaŵi to aid another affected state.

(2) The Minister, on recommendation from the Commissioner and in consultation with Government, shall determine—

- (a) such incentives as may be necessary to facilitate the importation of food, clothing, medicine, equipment and other relief and recovery related supplies; and
- (b) such measures as are necessary to promote disaster risk management.

PART XI MISCELLANEOUS

Utilization of the facilities of Disaster Relief Organizations

79.—(1) In providing relief and assistance under this Act, the Commissioner may utilize, with their consent, the personnel and facilities of humanitarian or disaster assistance organizations, in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of housing and essential facilities, whenever the Commissioner finds that such utilization is necessary.

(2) The Commissioner may enter into agreements with the humanitarian or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Commissioner whenever such organizations are engaged in providing relief during and after a major disaster or emergency.

(3) An agreement specified under subsection (2) shall include provisions assuring that use of Government facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing non-discrimination as provided for under this Act, and such other regulation as the Minister may require.

(4) All voluntary agencies, including civil society organizations, which desire to participate in disaster risk management activities may—

- (a) participate in capacity-building, vulnerability assessments and reduction programmes and training activities;
- (b) assist in relief operations under the supervision of the Commissioner;
- (c) assist in assessing damage and in carrying out reconstruction and rehabilitation activities in accordance with the guidelines framed by the Minister; and

(d) provide such assistance to the Commissioner as may be necessary for effective disaster risk management.

Transparency in the utilization of disaster assistance

80.—(1) Subject to this section, no donations received in respect of a particular disaster may be used otherwise than for the purpose of the relief of persons who suffered injury, loss or damage as a result of that disaster or for other purposes related to disaster response or recovery.

(2) Where a person collects relief supplies or raises funds in response to an appeal following a declaration of a state of disaster, the person shall be required to submit a report to the Commissioner detailing the relief supplies and funds raised and the manner in which they were utilised.

(3) The use of donations for a purpose other than the purpose for which the donation was requested shall be an offence.

Duties of utility and emergency service providers

81.—(1) Every utility or emergency service provider shall—

(a) ensure that it is able to function to the fullest possible extent, even though this may be at a reduced level, during and after a disaster;

(b) make available to the Commissioner in writing, on request, its plan for functioning during and after a disaster;

(c) participate in the development of the national and local authority disaster risk management plans and frameworks; and

(d) provide any technical advice to the Commissioner and Lead Agencies that may be reasonably required by the Commissioner or Lead Agencies.

(2) Nothing herein contained shall be taken as requiring utility service providers to provide services to premises illegally located in specially vulnerable areas or if circumstances exist by reason of which their doing so will or may encourage breach of any provisions of the Act.

Disaster Risk Management volunteers

82.—(1) The Commissioner shall maintain a register for person intending to participate in disaster risk management activities as volunteers to be known as the Register of Volunteers.

(2) Any person who wishes to volunteer for the purposes of assisting in disaster risk management or in a disaster shall submit his name to a Local Authority for registration as a volunteer and it shall, after screening the

person on the basis of the requisite appropriate skills and expertise, register the person as a volunteer.

(3) Each Local Authority shall submit, in writing, to the Commissioner, the names of the registered volunteers within its jurisdiction.

(4) The Commissioner shall prepare a comprehensive list of the most appropriate areas of skill and expertise required of volunteers and shall distribute this list to Local Authorities.

(5) The Commissioner shall annually publish the names of all volunteers registered in the Register of volunteers in the *Gazette*.

(6) The Commissioner may engage a volunteer who is not on the Register of Volunteers if during a disaster it is necessary and practicable to do so.

(7) The Commissioner and Local Authorities shall provide appropriate training and guidance to disaster risk management volunteers.

(8) A volunteer shall comply with every reasonable instruction given to him by the Commissioner or Local Authority concerned or by any person authorised to give such instruction.

(9) A volunteer may resign as a volunteer upon giving a notice of fourteen days, in writing, to the relevant local authority which shall, upon the expiry of that period, remove the volunteer's name from the register.

(10) Any written law relating to the payment of compensation on death of, or injury to an officer on duty in the public service shall, with the necessary modifications, apply in relation to a volunteer performing any duty under this Act as though he was an officer in the public service.

(11) Any compensation payable under sub-section (10) shall be paid out of the Fund.

(12) The Commissioner may, in consultation with the National Committee, make rules—

(a) setting out the criteria and procedure for registering volunteers;

(b) governing the services of volunteers under this Act;

	<p>(c) providing guidelines and procedures for the payment of compensation to a volunteer for any disability, death or injury during the provision of volunteer services under this Act; and</p> <p>(d) provide for any other matter relevant for the effective delivery of volunteer services.</p>
Protection from liability	83. For the avoidance of doubt, any person who exercises duties or powers assigned to him under this Act or regulations made hereunder, in good faith, shall not be liable for his acts or omissions for injury to persons or damage or loss of property caused by reason of the exercise of those duties.
Employees who assist in emergency situations	<p>84.—(1) Where the Commissioner certifies in writing that the services of a person are needed by the Department, for the performance of tasks related to response and recovery from an emergency or a disaster during a specified period, the employer of that person shall pay the salary or benefits to which the employee was entitled for the period specified.</p> <p>(2) The period the Commissioner may specify under subsection (1) must in no case exceed a continuous period of four weeks.</p> <p>(3) An employer who fails to comply with subsection (1) commits an offence and upon conviction is liable to a fine of two million Kwacha and to imprisonment for one year.</p>
Compensation	85. Where an officer exercising his duties under this Act suffers any physical injury, loss or damage to any personal property in the course of duties under this Act or regulations made under this Act, he shall be entitled to receive compensation paid out of public funds in respect of the expenses incurred in the treatment of the injury and the value of such property loss or damage.
Administrative penalties	<p>86.—(1) If the Minister is satisfied on reasonable grounds that a person has contravened this Act, or any regulations made under it, he may impose administrative penalties on such person or institution by—</p> <p>(a) giving the person a written warning; or</p> <p>(b) directing the person to do a specified act or refrain from doing a specified act, in order to—</p> <p>(i) remedy the effects of the contravention;</p> <p>(ii) compensate the person who has suffered loss because of such contravention;</p>

(iii) ensure that the person does not commit further contraventions.

(c) requiring a person to pay a monetary penalty of up to ten million Kwacha;

(d) requiring the person to pay a penalty of one hundred thousand Kwacha for each day the offence continues to be committed.

(2) The direction referred to under sub-section (1) may require the establishment of compliance programmes or the taking of measures to abate danger.

(3) A person on whom an administrative penalty has been imposed and who fails or refuses to comply with the administrative penalty commits an offence and shall, on conviction, be liable to a fine of fifteen million Kwacha and to imprisonment for seven years.

(4) Where the administrative penalty imposed by the Commissioner is monetary and the person on whom it has been imposed does not pay the monetary penalty for more than thirty days from the date of the initial demand in writing by the Authority, the amount in respect of the monetary penalty may be recovered by the Commissioner as a civil debt.

Abatement of
danger

87.—(1) Where a Local Authority identifies premises as likely to pose a danger in the event of a disaster, it shall give the owner or occupant of the premises a notice containing specific instructions as to the steps to take to abate or remove the danger within four weeks.

(2) Upon failure to comply with the instructions, the Local Authority shall take the necessary steps to give effect to the instructions including entry by its agents upon the premises after giving due notice to the owner or occupant of the premises.

(3) A person who is served with a notice under subsection (1) and who does not take all the steps as directed by the Local Authority in the notice to abate or remove the potential danger within four weeks from the date of receipt of the notice, commits an offence and in addition to any penalty imposed under section 98 shall be made to pay any expenses which the Local Authority incurs to abate or remove the danger.

Offences

88.—(1) A person who—

- (a) without lawful excuse, refuses or fails to comply with an order, direction or instruction given under this Act;
- (b) delays, obstructs, assaults, threatens or abuses any officer or agent of Government in the performance of functions under this Act;
- (c) without reasonable cause, refuses to give an officer such assistance as the officer may require for the purposes of exercising functions under this Act;
- (d) knowingly gives or attempts to give an officer or agent of government false or misleading information, or refuses to give information in answer to an inquiry under this Act;
- (e) wilfully neglects duties conferred or imposed upon him or her by any law, standard, guidelines and code, resulting into destruction of property and loss of lives;
- (f) refuses to give reasonable assistance to any person seriously affected by disaster; or
- (g) knowingly makes a claim which he or she knows or has a reason to believe to be false in order to obtain any relief, assistance or other benefits consequent to disaster,

shall be guilty of an offence and shall be liable on conviction to a fine of five million Kwacha and to imprisonment for two years.

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

- (a) takes any property that has been left exposed or unprotected;
- (b) takes any property from the body of a person who is dead or from a person who has been injured;
- (c) takes any vehicle, equipment or property abandoned by reason of a disaster;
- (d) buys for consumption or resale any relief goods, equipment or other aid commodities which are intended for distribution to disaster victims;

(e) diverts relief goods, equipment or other aid commodities not intended to persons other than the rightful recipient or consignee; or

(f) accepts, possesses, uses or disposes relief goods or equipment or other aid commodities not intended for nor consigned to him or her,

commits an offence liable to a fine of fifteen million Kwacha and to imprisonment for seven years.

(3) A person who, in the course of a disaster—

(a) sells relief goods, equipment or other aid commodities which are intended for distribution to disaster victims;

(b) sexually molests, abuses or otherwise exploits persons affected by disasters who are in positions of vulnerability;

(c) misrepresents the source of relief goods, equipment or other aid commodities by—

(i) either covering, replacing or defacing the labels of the containers to make it appear that the goods, equipment or other aid commodities came from another agency or person; or

(ii) making false claims relating to the source of goods,

commits an offence liable to a fine of twenty million Kwacha and to imprisonment for ten years.

(4) A person, being entrusted with money or materials, or otherwise being in custody of or dominion over, any money or materials meant for disaster risk management or relief operations, shall disclose to the Commissioner the nature and amount of resources received and used.

(5) Where any person referred to in subsection (5) fails to disclose such money or materials or misappropriates or appropriates—

(a) for his own use;

(b) for the use of other persons who are not the victims of a disaster; or

(c) disposes of such money or materials or any part thereof or wilfully compels any other person to do so,

commits an offence, and is liable on conviction to a fine of five million Kwacha and to imprisonment for two years.

General penalty

89.—(1) A person who commits an offence for which no other penalty is specified under this Act is liable on conviction to a fine of five million Kwacha and to imprisonment for two years.

(2) Where particular provision is made by this Act for a lesser penalty than that which would apply under this section, that lesser penalty applies to the exclusion of the penalty which would otherwise be applicable under this section.

Liability of directors of bodies corporate

90. Where an offence against a provision of this Act or regulations made hereunder is committed by a body corporate, each director of the body corporate also shall be guilty of the offence and on conviction shall be liable to the same penalty unless it is established that he took reasonable precaution and exercise due diligence to avoid the commission of the offence.

Powers of the Minister

91.—(1) The Minister may, by an order published in the *Gazette*, make regulations as may be necessary for the proper administration of this Act.

(2) Without prejudice to the generality of the foregoing, the regulations, made under subsection (1) may provide for—

- (a) the integration of disaster risk management into sustainable development policies and planning processes at all levels;
- (b) the involvement and participation of the public and other organizations or entities in disaster risk management;
- (c) the mitigation, preparedness, response and recovery programmes or measures to be undertaken for hazards or emergencies involving Malaŵi and any neighbouring country;
- (d) the minimum standards of preparedness to be established and implemented by Government and other bodies;
- (e) procedures for requisitioning or taking possession of property for use during emergencies;
- (f) procedures and guidelines for payment of compensation to persons affected by deprivation of property;

- (g) the establishment of Area and Village Disaster Risk Management Committees;
- (h) protection of vulnerable groups from exploitation and abuse;
- (i) the payment out of the moneys appropriated by Parliament for this purpose, of compensation to any person, or the dependents of any person, whose death, bodily injury or disablement results from any event occurring in the course of the performance of any function entrusted to such person in terms of this Act; and
- (j) any other matter which is relevant to give effect to the provisions of this Act.

(3) The Minister may prescribe guidelines for—

- (a) the minimum standards of relief to be provided to persons affected by disaster, which shall include—
 - (i) the minimum requirements to be provided in relief camps in relation to food, shelter, drinking water, medical facilities and supplies, and sanitation;
 - (ii) provisions for ensuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, and without discrimination on any ground;
 - (iii) targeted measures to address specific assistance and protection needs of particular categories of affected populations;
 - (iv) measures to address the particular needs of women from a gender perspective to ensure their full protection from sexual exploitation, abuse and other sexual and gender-based violence committed against them; and
 - (v) such other relief as may be necessary; and
- (b) the Operational Guidelines for Disaster Risk Management to adequately provide for effective coordination and management of disaster risk management programmes under this Act.

Cap. 1:01	<p>(4) Notwithstanding the provisions of section 21 (<i>e</i>) of the General Interpretation Act, the Minister may, in regulations made under this Act, prescribe a fine of up to fifteen million Kwacha and imprisonment for seven years, for an offence committed in contravention of the regulations.</p>
Act No. 19 of 2017	<p>(5) The Malaŵi Environment Protection Authority shall consult the Commissioner before the commencement of any activity relating to the preparation of guidelines or plans for coordination, prevention, mitigation and management of environmental emergencies under section 64 of the Environment Management Act, 2017.</p>
By-laws	<p>92. Local Authorities may, by notice published in the <i>Gazette</i>, make by-laws to give effect to the provisions of this Act.</p>
Sanction for non-compliance by public officers	<p>93.—(1) A public officer that fails to abide by their responsibilities under this Act shall be liable to disciplinary measures pursuant to Malaŵi Public Service Regulations.</p> <p>(2) This section is without prejudice to any civil or criminal liability under other laws that might also attach to actions or omissions of public officers.</p>
Exemption from custom duty Cap. 42:01	<p>94. No custom duty or other similar tax under the Customs and Excise Act shall be payable upon any article which is imported into Malaŵi and shown to the satisfaction of the Commissioner General of the Malaŵi Revenue Authority to be required for the use of the Government or its agents in the performance of its functions under this Act.</p>
Burials during disasters	<p>95. Where the Minister, after consulting a Local Authority, is satisfied that persons have died as a result of any disaster, he may, if he considers that it is necessary or expedient to do so, give directions and make such arrangements as he considers appropriate in respect of the removal, safe custody, examination, burial or cremation of the remains of the persons concerned.</p>
Repeals and savings Cap. 33:05	<p>96.—(1) The Disaster Preparedness and Relief Act is hereby repealed.</p> <p>(2) Any subsidiary legislation made under the repealed Act, in force immediately before the commencement of this Act—</p> <p style="padding-left: 40px;">(a) shall, unless in conflict with this Act, continue in force and be deemed subsidiary legislation made under this Act; and</p>

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

(3) The repeal referred to in sub-section (1) does not affect anything done under the provisions of the repealed Act and any such thing remains valid until otherwise provided.

SCHEDULE

HAZARDS

1. Geological Hazards
 - (a) Earthquakes
 - (b) Landslides

2. Hydro-Meteorological Hazards
 - (a) Strong winds

- (b) Floods
 - (c) Droughts
 - (d) Extreme temperatures
 - (e) Severe storms
 - (f) Hailstorms
3. Chemical Hazards
- (a) Explosions
 - (b) Spills
 - (c) Fires
 - (d) Gas leaks
 - (e) Radioactive emissions
4. Health-Ecological Hazards
- (a) Intoxication
 - (b) Poisonings
 - (c) Epidemics
 - (d) Plagues
 - (e) Air pollution
 - (f) Water pollution
 - (g) Soil contamination
 - (h) Extinction of flora and fauna species
5. Social-Organisational Hazards
- (a) Wars
 - (b) Meetings and demonstrations
 - (c) Sabotage
 - (d) Interruption of services (blackouts, water supply, communications, etc.)
 - (e) Terrorism
 - (f) Crowds (because of sports matches or religious gatherings)
 - (g) Accidents (cars, railroads, planes, etc.)
 - (h) Bomb threats

OBJECTS AND REASONS

The principal object of the Bill is to repeal and replace the Disaster Preparedness and Relief Act with a new comprehensive management of existing and future disaster risks, for the institutional framework and funding arrangements for the management of disaster risks in Malawi.

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