

Appendix 1: Proposed IDR Revisions to CDEMA's Model CDM Law and Policy

The purpose of this document is to propose legal and policy provisions to guide the development of International Disaster Response Law (IDRL) in the Caribbean context, and more specifically for participating states of the Caribbean Disaster and Emergency Management Agency (CDEMA). It has been prepared as part of a wider research-based developmental initiative commissioned collaboratively between CDEMA and the International Federation of Red Cross and Red Crescent Societies (IFRC). It is a subset of a wider document developed under the moniker 'Gap Analysis Report and Recommendations for the Comprehensive Disaster Management (CDM) Legal and Policy Framework in CDEMA Participating States' ("the Report").

In this section, key IDRL gaps identified through research and consultation are matched against provisions in CDEMA's Model Comprehensive Disaster Management Legislation and Regulations, 2013 ("the Model Legislation"), as well as its Model National CDM Policy for Caribbean Countries ("the Model Policy"). These gaps are outlined in the Report, catalogued in order of different aspects of IDR, and summarized in the Report's final chapter. The recommended legislative amendments are outlined in the first sub-section, outlined in order of the respective sections of the Model Legislation, while the proposed policy changes are included in the second sub-section. Recommendations for amendments to the Model Legislation are limited to the relevant sections of the main statute and do not address the accompanying regulations.

It should be noted that while the Report is written with global benchmarks in mind and therefore uses the term 'International Disaster Response' (IDR) to describe the cross-border movement of goods and services in response to a disaster, the Model Legislation uses the analogous term 'International Humanitarian Assistance' (IHA) to reference similar issues. For consistency, IHA is thus used in reference to proposed changes to the Model Legislation and the Model Policy.

Proposed Modifications to CDEMA's Model CDM Legislation and Regulations, 2013

This section outlines a more expansive approach to the treatment of IHA provisions in the Model Legislation. It is designed to build upon and to be read in tandem with the existing provisions in Part X of the Model Legislation, some of which are copied below for ease of reference. The recommendations herein are informed and guided by the gaps outlined in the main report and the stakeholder-informed proposals for addressing these gaps that emerged during the research process that led up to its preparation. The recommendations therefore highlight the rationale for the inclusion of expanded provisions in a summative way, with the text of the main report providing more contextual information.

The approach adopted is consistent with the current drafting style of the Model Legislation, where key benchmarks are captured in the text of the Model Legislation, while further details are intended to be iterated in accompanying regulations. Notably, however, the recommended approach expands the text of the Law by including more detailed parameters for the types of information or regulatory provisions to be included in accompanying regulations. This stems from the fact that the process of developing regulations can be protracted and time consuming

and the Model Legislation (or any national laws adapted from this template) can provide a more comprehensive role in guiding policies and practices for engaging with, regulating and facilitating IHA.

The textual style aims to mirror that which is used in the current Model Law, while incorporating adapted provisions from the IFRC Model Law and Emergency Decree on IDRL. This helps to ensure that the additional text reads synchronously with the Model Legislation, while reflecting global best practices in IDR regulation. Wherever feasible, extensive details outlined in the body of the IFRC Model Law and Emergency Decree are redirected to regulations, in order to ensure that the Commonwealth Caribbean style of legal drafting is preserved. For each section of this document, proposed text for the Model Law is given in italics, with any excerpts from the current content given in black font, while new content is differentiated in blue font.

Role of the IHA Coordinator

The role and responsibilities of the IHA Coordinator should be expanded to specify the types of communication and coordination obligations that the IHA Coordinator can be expected to perform. This includes establishing coordination groups and partnership arrangements, as well as ensuring that channels of communication are maintained between the government and international donors. Communication responsibilities will include circulating any needs lists developed by the state. Key benchmarks can be included in the Model Legislation, while further details are iterated in accompanying regulations. The following proposed text expands on s.70 of the current Model Legislation:

(1) There shall be an International Humanitarian Assistance Coordinator who shall be the Director, or such other official designated by the Minister.

(2) The Minister may, by Regulations, outline the role and functions of the International Humanitarian Assistance Coordinator, which shall include but not be limited to the following obligations:

- a) Subject to section 73, the International Humanitarian Assistance Coordinator shall ensure coordination and collaboration between local and international donors before, during and after the occurrence of disasters, and shall serve as the central focal point for liaison between the government and assisting international actors.*
- b) Where required, the International Humanitarian Assistance Coordinator shall establish coordination groups and other partnership arrangements to facilitate collaboration between and among local and international donors.*
- c) The International Humanitarian Assistance Coordinator shall develop and maintain electronically accessible communication systems that promote the effective facilitation, coordination, guidance and oversight of international humanitarian assistance, and inform assisting actors of their rights and obligations under national laws.*
- d) The International Humanitarian Assistance Coordinator shall publish up to date accounts of the humanitarian needs of the affected population, including the location and scope of needs as well as a list of goods, services and equipment required for the disaster operation and any special protection measures applicable to vulnerable groups.*

Approved IHA Actors

It is proposed that a new section should be included that defines who an Approved IHA Actor is, for the purposes of this law. The term Approved IHA Actor will then be used throughout this Part of the Model Legislation as a criteria for determining which organisations benefit from the special measures, expedited facilities, waivers and other legal facilities available under this Part. The Approved IHA Actor can be a state, bilateral or multilateral donor partner, the Red Cross which includes the National Society of the host country, the IFRC and its Network, and other components of the RCRC Movement, any entity included in CDEMA's Regional Register of Approved IHA Actors or an organisation that is recognized by the NDMO Director or the National Disaster Plan as a disaster response partner.

Approved IHA Actors can expect to receive the benefits ascribed under this Part of the law, as well as other rights outlined in accompanying Operational Guidelines for Approved IHA Actors. However, in the event that this designation alone will not be treated as a form of legal personality, the law can make reference to registration as a foreign entity authorized to do business in country, as this facility is common throughout Commonwealth Caribbean Companies Laws. Approved IHA Actors who will only participate in a disaster relief activity that lasts for a period of weeks may have no intention of having permanent presence in each country they assist. However, their regional registration via CDEMA would provide a reference point for implementing any accountability or reporting requirements.

The following text is thus recommended for inclusion as a new section in Part X of the Model Legislation:

Designation and Facilitation of Approved IHA Actors

(1) For the purposes of this law and the facilities granted under this or any other law to organisations providing international disaster relief goods or services, the following entities shall be deemed to be "Approved IHA Actors":

- a) States and intergovernmental organizations whose offers of assistance have been formally accepted by the government;*
- b) The [insert name of the National Red Cross Society] and any components of the international Red Cross and Red Crescent Movement acting in support of the [insert name of the National Red Cross Society],*
- c) Any entity registered on the Regional Register of Approved IHA Actors approved by CDEMA,*
- d) Any entity registered on a National Register of Approved IHA Actors, and*
- e) Any foreign or domestic non-governmental organization that has a named role or responsibility in the National Disaster Plan that requires the importation and free distribution of disaster relief goods, equipment or services, or which have been deemed appropriate by the Director on the basis of their experience and capacity for providing effective humanitarian assistance.*

(2) [To be included for countries that have a National Register of Approved IHA Actors] The Director shall publish Eligibility Criteria and Procedures for Registration for new IHA Actors seeking to attain approval status.

(3) The Director shall maintain a List of Approved IHA Actors and shall circulate this list to all government departments providing approvals, permits, waivers and other legal facilities

supporting the entry and distribution of international disaster relief goods, equipment and services.

(4) Approved IHA Actors seeking to establish semi-permanent operations within the country may register under section [] of the Companies Act as a foreign entity doing business in (the territory/state) and shall maintain such records as are required for the period of their registration.

OR

(4) Approved IHA Actors who submit duly authorized copies of their incorporation certificates or other current legal evidence of their legal personality and registered status in another jurisdiction shall be issued with a certificate of authorization to do business in [insert the name of the country] for a period of two years. The period of authorization can be renewed for an additional period of two years, provided that the Approved IHA Actor submits proof that their legal registration in their country of origin is up to date.

(5) The Director shall develop and publish Guidelines for Approved IHA Actors, which shall include but not be limited to the following:

- a) Guidelines for Approved IHA Actors to be integrated into national, sectoral or thematic coordination groups.*
- b) Guidelines for Approved IHA Actors to implement programmes that are gender-responsive and protect the rights of children, indigenous communities (where applicable, persons with disabilities and other vulnerable or at-risk groups).*
- c) Guidelines for Approved IHA Actors to access disaster affected areas, provided this is done in compliance with Disaster or Emergency Orders and other directives issued from time to time by the state.*
- d) Requirements for Approved IHA Actors to integrate principles of sustainability and resilience in their operations and to align their activities to relevant national development policies.*
- e) Requirements for Approved IHA Actors to act in accordance with the terms of the National Disaster Plan, the National Disaster Policy and any other relevant guidelines issued by the state from time to time.*

Requests for International Assistance

The Model Legislation can include expanded provisions for making requests for international assistance. The current wording of s.71 provides for requesting states to make a formal request for international assistance, with procedural details to be elucidated in accompanying regulations. It is proposed that, in keeping with the recommendations for enhancing the specificity and predictability of national regulatory and policy frameworks for IDRL, additional requirements should be included in the body of the Model Legislation. These could require Committees to be guided by certain considerations in determining the need for international assistance. This additional content should underscore the importance of consultation in determining the need for international assistance, the necessary linkages with damage assessment and needs analysis (DANA) processes and outcome reports and any Official Needs List that have been issued, and whether these needs can be met from local or regional resources. The following text can provide a guideline for this additional content:

Request for international assistance.

(1) (a) *The Committee may, depending on the scope, magnitude of damage or implications of the adverse effects of the disaster, recommend to the Government to request international assistance.*

(b) *In determining whether a request for international assistance should be made, the Committee shall take into consideration:*

- *The perspectives and recommendations of the National Disaster Office and the Ministry of Foreign Affairs [insert names of other authorities, as appropriate];*
- *The outcomes of any official damage assessment and needs analysis process that has been conducted; and*
- *The scope and content of any Official Needs List and whether the needs identified can be met from national or regional resources.*

Types of Legal Facilities and Guidelines Applicable to IDR Goods, Equipment and Services

The Model Legislation should make more detailed reference to the types of legal facilitation (exemptions and expedited facilities) that should be made available to Approved IHA Actors. While it is acknowledged that comprehensive details will need to be captured in Regulations accompanying the law, it is noted that there can be a time lapse of years between the enactment of a law and the promulgation of regulations. By including some additional parameters in the body of the law, the Model law can be used as a benchmark for developing disaster plans and policies, or for implementing practical arrangements following a major disaster event.

The following text, which expands on s.72 of the current Model Legislation and incorporates adapted provisions from the IFRC Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance¹, is recommended.

Importation and donation of relief goods, equipment and services.

(1) *The importation and donation of relief goods are hereby authorized in accordance with section [] of the Customs Act.*

(2) *The Minister may, by Regulations under this or any other law, outline the scope and types of waivers and exemptions to customs duties, value added tax and such other fees, duties and taxes applicable upon the importation and donation of relief goods by the Agency or any Approved IHA Actor.*

(3) *Subject to the provisions of the Customs Regulations, any importation and donation intended for the operation of the Agency and its member agencies shall be treated as importations by or donations to the Agency.*

(4) *Notwithstanding anything contained in the provisions of any other law to the contrary, the Minister may, by Regulations, on the advice of the Committee, make provision—*

- a. *respecting the initiation and termination of international humanitarian assistance;*
- b. *respecting the scope and types of waivers and exemptions to staff and volunteers of Approved IHA Actors, to facilitate their implementation of disaster-related*

¹ IFRC. (2011). *Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*. Accessible at https://disasterlaw.ifrc.org/sites/default/files/media/disaster_law/2020-10/Pilot%20Model%20Act%20on%20IDRL%20%28English%29.pdf

activities and programmes approved by the Director. These shall include work permit waivers and leave to remain that match the timeframes and scope of duties outlined in the approved activity or programme.

- c. outlining procedures and guidelines for the entry, use and export of any disaster relief equipment, including motor vehicles, medical and telecommunications equipment, including those using satellite and radio frequency.*
- d. outlining standards and guidelines for disaster relief goods, including labelling guidelines and minimum expiration windows for foods and drugs, as well as any items which, under this or any other law or regulation, is deemed prohibited or unsuitable for importation for the purposes of disaster relief;*
- e. outlining guidelines and procedures for the entry, immediate use and exit of search and rescue dogs;*
- f. with respect to **any other** privileges and immunities in relation to immigration and customs for the purposes of this Part;*
- g. identifying sanctions applicable to Approved IHA Actors in relation to the breach of any standards or guidelines established under this or other laws, including but not limited to the suspension of their approved status.*

Reporting and Accountability Requirements for Approved IHA Actors

The Model Legislation should clearly express accountability and transparency requirements, as well as compliance and reporting obligations of Approved IHA Actors. These can be captured in greater detail in rules of operation, codes of conduct and standard operating procedures, which the Minister with responsibility for the Act should be able to implement by a gazetted Order. The details of accountability measures will not therefore be included in the Model Legislation; however the law will establish the requirement for accountability, transparency and professionalism in the operations of Approved IHA Actors. Appropriate references should be made to other standards and regulations in place, which will be different from country to country. Additionally, the Code of Conduct developed by CDEMA should be adopted by reference or adapted and included as a schedule to the Act.

In order to monitor compliance, the Approved IHA Actors will need to supply reports to the IHA Coordinator. Sanctions will need to be put in place for non-compliance and should include suspension or removal from the list of Approved IHA Actors and loss of access to any related benefits. The text below is thus recommended as a new section to be added to this Part of the Model Legislation.

Accountability and Transparency Requirements for Approved IHA Actors

- (1) The Minister may by Order put in place such rules of operation, codes of conduct and standard operating procedures as necessary to maintain accountability, transparency and professionalism in the operations of Approved IHA Actors. Approved IHA Actors shall abide by these and all other laws of [name of state/territory] and cooperate and coordinate with the Committee and all national authorities.*

- (2) *Approved IHA Actors shall:*
- a. *comply with the principles outlined in the (scheduled) Code of Conduct for IHA Actors.*
 - b. *ensure that all goods and services they provide are appropriate to the needs and circumstances of the affected population and are in compliance with the requirements of this and all applicable laws and standards of [name of state/territory],*
 - c. *ensure that the goods and services they provide conform to standards and guidelines for international disaster relief goods and services, as established from time to time by CDEMA.*
- (3) *The IHA Coordinator shall monitor the implementation of the activities and programmes of Approved IHA Actors, as well as their compliance with their responsibilities under this or other laws and regulations. To facilitate this oversight, Approved IHA Actors shall furnish to the IHA Coordinator quarterly reports about their activities in a format provided. These reports shall be consolidated by the IHA Coordinator, who shall prepare an annual IHA Report at the end of each financial year. The annual IHA Report shall be submitted to [insert applicable authority, e.g. Minister with portfolio responsibility for disaster management or Parliament].*
- (4) *Where the IHA Coordinator suspects that any Approved IHA Actor has failed to materially comply with its obligations as set out in this or other laws and regulations, it shall consult with the Approved IHA Actor to seek clarification or explanation and, where appropriate, remediation and immediate implementation of compliance requirements. In the event that the matter cannot be resolved in this manner, the IHA Coordinator shall refer the issue to the Committee for action.*
- (5) *Approved IHA Actors who fail to comply with the requirements of this or any other applicable law shall be subject to temporary suspension or removal from the list of Approved IHA Actors, and for the time of such suspension or removal shall have no right of access to any of the benefits ascribed to Approved IHA Actors under this law.*
- (6) *The Committee shall:*
- a. *Develop procedural guidelines for disciplinary measures and other decision-making in relation to the suspension or removal of any Approved IHA Actors; and*
 - b. *Ensure that any Approved IHA Actor that is being considered for disciplinary measures is provided with the opportunity to be heard.*
- (7) *An Approved IHA Actor that is adversely affected by the decisions of the Committee may lodge an appeal with [insert the name of the appropriate authority] within 30 days of receiving notice of the Committee's decision.*

Emergency IDR Facilitation and Expedited Measures

The Model Legislation can be the basis for putting in place temporary expedited measures to move goods and personnel through ports in the immediate wake of a major disaster. This can be

a useful tool that allows countries to respond effectively to the mass influx of disaster relief goods and services, particularly following a major disaster event. Several countries already use one-stop or single -window clearance mechanisms, either in response to a disaster or as an overarching trade management system.

This section will prompt countries to establish expedited measures to process disaster relief goods. The expedited measures are as useful for the state as they are for importers, as the burden of processing a mass influx of goods can be overwhelming for ordinary customs and immigration processes. These special measures will benefit from a built-in distinction between unsolicited/inappropriate goods and solicited/appropriate goods. For example, any waiver of fees, taxes or duties should be reserved for goods deemed to be ‘approved disaster relief goods’. The simplest expression of what constitutes approved disaster relief goods will be the content of the request list compiled by the Director responsible for the national disaster agency and circulated among donors. Consistent with the remainder of this Part, disaster relief goods consigned to the Agency and Approved IHA Actors should also benefit from waivers of fees, taxes and duties.

The text below captures these aims, and should be added as a new section in Part X:

Emergency Facilitation of IHA

- (1) On the declaration of a major disaster and for a reasonable time period thereafter, the Minister may by order commission expedited measures for processing the entry of disaster relief goods, equipment and personnel. This shall include, as appropriate:*
 - a. One-Stop or Single Window facilitation teams at major ports.*
 - b. Expedited forms and procedures for processing disaster relief goods consigned to the Agency or to Approved IHA Actors.*
 - c. Priority landing and immigration and customs clearance for disaster relief goods and personnel.*
 - d. Waivers of such fees, duties and taxes, as are deemed appropriate, for all approved disaster relief goods included in the needs list published by the Director and intended for free distribution.*
- (2) The Committee shall provide support to the implementation of these measures, ensuring that all relevant staff are apprised of and integrated in the implementation procedures.*

Strengthening Visiting Forces Provisions

The section on visiting disciplined forces currently relates mainly to visiting forces from among CDEMA members. It does not account for the types of issues that can arise from solicited or unsolicited groups of disciplined forces from outside of the region. The Model Legislation should thus be updated to outline the types of rules to be covered for Visiting Forces, especially in relation to unsolicited or unplanned visiting disciplined forces. This should include provisions for clarifying chain of command while on disaster relief projects, cost recovery in relation to the food, accommodation, transportation and other daily costs incurred by visiting forces, as well as expected standards of operation in their interactions with the public. These provisions can be outlined in detail in regulations, but the Model Legislation should set the parameters for the content of these regulations. The recommended text outlined below should be added to s.73 of the Model Legislation:

- (1) *The Minister may, by Regulations, establish rules to guide the operations of any foreign disciplined forces participating in disaster relief efforts, whether solicited or unsolicited. The rules shall include, put not be limited to, provisions:*
- a. Clarifying the chain of command in relation to the implementation of disaster relief activities.*
 - b. Establishing guidelines for the assumption and payment of costs of transportation, accommodations, food and other daily expenses by each visiting force, unless alternate arrangements are agreed with the government prior to deployment.*
 - c. Outlining standards and expectations applicable to disciplined forces, including adherence to any use of force or public interaction policies in place.*

Proposed Additional Content for CDM Model Policy

This section recognizes that IHA Actors can play a critical role at different stages of the CDM process and can either advance or undermine the holistic and sustainable principles that guide the CDM approach. Currently, no single aspect of the Model Policy addresses IHA, however the goals of the Model Policy set a sufficiently expansive and comprehensive framework for guiding the activities of all partners in the CDM cycle, including IHA Actors. It is therefore recommended that a new sub-section be included in the Model Policy that specifically addresses the mainstreaming of CDM in the activities of IHA Actors, by equipping them with information and guidelines on more sustainable and policy-coherent approaches to response and recovery activities. The Model Policy's thematic emphasis on environmental and community resilience and the protection of the most vulnerable groups is expressly included here.

1.3.3.5 Mainstream the CDM Approach among international humanitarian assistance (IHA) partners while strengthening their accountability to national sustainable development goals.

- *Develop a Code of Conduct for IHA Actors, underscoring the importance of integrating disaster mitigation and preparedness in their response and recovery activities.*
- *Develop standards and guidelines for appropriate IDR goods, integrating considerations regarding environmental and economic sustainability and impact on livelihoods, and promote awareness among all relevant stakeholders including diaspora groups, faith-based organisations, service clubs and other NGOs who may provide ad hoc relief in the wake of a major disaster.*
- *Provide guidance to IHA actors on sustainable methods of providing aid, including:*
 - *Partnering with local enterprises (NGOs, Community organisations, small and micro-enterprise) to preserve livelihoods and rebuild social and economic stability at the community level.*
 - *Using cash-based donations, particularly among socio-economically vulnerable recipients, to promote increased resilience.*
 - *Using climate-resilient building methods and materials.*
 - *Partnering with local tradesmen, skilled and semi-skilled workers and promote capacity building, where feasible.*
 - *Using local (or regional) procurement of relief goods and equipment wherever possible in order to mitigate the risk of inappropriate donations, reduce the cost of transportation and warehousing, and contribute to economic renewal in affected communities.*
 - *Minimizing solid waste from inappropriate or unusable donations.*
- *Provide guidelines to IHA actors for improving environmental sustainability and community resilience in disaster recovery and reconstruction efforts, including:*

- *Promoting awareness of and compliance with local (or regional) regulations, building codes, risk mitigation strategies and resilient construction guidelines among IHA actors.*
- *promoting partnerships and technical exchanges between IHA Actors and local sustainability champions.*
- *Provide guidelines for integrating social protection, welfare and support systems in IHA activities, including:*
 - *Practical considerations (including any unique cultural, social or linguistic requirements) for protecting the rights of specially protected or vulnerable communities, including indigenous persons, undocumented migrants and refugees or asylum seekers.*
 - *Legal and policy guidelines for protecting the rights of children.*
 - *Guidelines for interfacing with persons with disabilities.*
 - *Guidelines for protecting beneficiaries from sexual exploitation or abuse.*
 - *Procedures for integrating IHA assistance with local social welfare or social safety net programmes.*
 - *Referral mechanisms for addressing critical issues that arise in relief distribution, including gender-based or domestic violence, protection of vulnerable persons, child rights issues or other similar concerns.*