



LEGAL PREPAREDNESS FOR REGIONAL AND INTERNATIONAL DISASTER ASSISTANCE IN THE PACIFIC

REGIONAL SUMMARY AND ASSESSMENT



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Background

Pacific Island Countries are extremely vulnerable to climate change and natural hazards, which are major challenges for the development aspirations of the people of the Pacific and their environment. In fact, the region hosts five of the ten most at-risk countries in the world. As witnessed by recent destructive Tropical Cyclones and health emergencies in the region, some of these events transcend national boundaries or may overwhelm local coping capacities, requiring regional and international support. During such times, it is essential that regional and international assistance compliments domestic efforts and that local actors are firmly in the driver's seat. It is also important that if assistance is accepted, that certain legal facilities are granted to humanitarian partners so that they can provide timely and effective assistance. As such, it is critical that domestic laws and policies provide clear rules of the road to guide national and international humanitarian efforts.

This research report examines the legal preparedness for international disaster assistance across the 16 English-speaking member states of the Pacific Islands Forum, in addition to providing a comparative regional analysis. The Pacific Islands Forum now includes 18 members, with New Caledonia and French Polynesia becoming active full members in 2018.¹ These latter members are not part of this study. It provides an assessment of domestic disaster risk management arrangements against the *"Guidelines for the domestic facilitation and regulation of international disaster relief and initial recovery assistance"* (IDRL guidelines) as promulgated by the International Federation of Red Cross and Red Crescent Societies and accepted by all United Nations member states as the key measurement in its assessment.

In addition to the country profiles the research also looks at trends, opportunities and challenges related to legislative frameworks for both international and regional cooperation. In summary the regional analysis concludes that

- Most Pacific countries have a disaster risk management legislative framework, however there are varying degrees of comprehensiveness and alignment to the IDRL Guidelines;
- Overall, coordination and management of international assistance tends to be a discretionary power and decision making on an ad hoc basis;
- Arrangements and procedures for country level disaster risk management arrangement and international assistance is not well documented and difficult to access for international/regional responders;
- It is suggested that Pacific countries should consider both aligning their disaster law frameworks (particularly as regards international assisting actors) within an easily understood regional framework;
- Overall, the research recognises that although disaster law in the Pacific is developing it is doing so in national silos. The current low level of regional cooperation and coordination in terms of national arrangements risks being a missed opportunity to develop a truly Pacific approach to regional response.

In addition to this hardcopy version, country and regional analysis can also be accessed through an online platform at www.rcrc-resilience-southeastasia.org/disaster-law/international-disaster-response-law-in-the-pacific/

1 The first Pacific Islands Forum Leaders Meeting at which the French Territories participated was in September 2018

Since the completion of this research, the world including the Pacific region, has been rocked by the impacts of the COVID 19 pandemic. The quick actions taken by Pacific governments and regional partners to establish the “Pacific Humanitarian Pathway on COVID-19 “(PHP-C) is commendable. The pathway is a high-level political mechanism to support regional coordination and cooperation for medical and humanitarian assistance for both the pandemic and other emergencies that may arise during COVID across the Pacific. This present research will assist Pacific governments as they look at how to implement regional and other international commitments into their domestic frameworks. This report provides a Regional Summary and Assessment of progress in the Pacific on legal preparedness for regional and international disaster assistance. This report should be read together with the accompanying Country Profiles Report.

Methodology

The research was primarily undertaken as a desktop study utilising publicly available resources from the 16 states concerned. In addition, the research team made contact with relevant representatives from the 16 states by email, telephone, and, in some cases, through face to face meetings. These feedback processes were used to ensure the accuracy of the country studies. The research team would particularly like to thank those Pacific partners who took the time to review and comment on our work. Nevertheless, the nature of the task and the challenges around legal research in the Pacific (which is explored in more detail below in a disaster context) means that errors may remain. This is particularly true where the research team was unable to gain the level of feedback desired within the research timeframe. We would therefore welcome further feedback to fill gaps and clarify areas of confusion in the current report.

The work was lead by Professor W. John Hopkins and Finau Heuifanga Leveni who are the authors of this report. However, it would not have been possible without the efforts of Leticia Smith and Holly Faulkner (LLM students at the University of Canterbury) who worked as research assistants on the project. The authors wish to express their particular thanks to them both for their assistance in completing the project.

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Australian Government
Department of Foreign Affairs and Trade



Federal Ministry
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and Development

Legal Preparedness for Regional and International Disaster Assistance in the Pacific – Regional Summary and Assessment

The Country case studies provide a useful basis to understand national approaches to International Disaster Response Law (IDRL) amongst the 16 Pacific Island Forum states which are the focus of this study. It also provides the basis for an assessment of Pacific wide approaches to IDRL.

The following sections explore this issue in more depth, first by examining the overall similarities and differences between states evident in the above research, before looking in a little more detail at the particular aspects chosen for analysis (with reference to the IDRL Guidelines and the Draft Pacific Regional Guidelines). Finally, the report concludes by assessing the extent to which a Pacific approach to IDRL can be identified (and developed) and briefly explores the possibility of developing a regional approach to such issues as a method to enhance coordination, cooperation and resilience in the context of natural disasters.

Disaster Management Legal Frameworks

State	Dedicated DRM Act?	Name of Relevant Act(s)	Year
Australia	No	No Commonwealth legislation. State/Territory function.	-
Cook Islands	Yes	Disaster Risk Management Act	2007
Federated States of Micronesia	Yes	Disaster Relief Assistance Act	1989
Fiji	Yes	National Disaster Management Act	1998
Kiribati	Yes	National Disaster Act	1993
Marshall Islands	Yes	Disaster Assistance Act	1987
Nauru	Yes	National Disaster Risk Management Act	2016
New Zealand	Yes	Civil Defence and Emergency Management Act	2002
Niue	Yes	Public Emergency Act National Disaster Relief Act	1979 1980
Palau	No	N/A. Addressed through executive decree	-
Papua New Guinea	Yes	National Disaster Management Act	1984
Samoa	Yes	Disaster and Emergency Management Act	2007
Solomon Islands	Yes	National Disaster Council Act	1989
Tonga	Yes	Emergency Management Act	2007
Tuvalu	Yes	National Disaster Management Act	2008
Vanuatu	Yes	National Disaster Act Meteorology, Geological Hazards and Climate Change Act	2000 2016

Table 1: Pacific Forum Approaches to DRM and IDRL

Although the table above confirms the existence of a legislative disaster law framework across all but two of the states concerned, this is somewhat misleading. In fact, the content of these frameworks varies dramatically. These can be divided into three broad groups, namely those without a formal legal framework at all, those with more modern (post-2000) frameworks and those based upon older disaster or emergency acts which tend to pre-date the development of global principles around IDRL. These are summarised in table 2 below:

No Formal Legislative DRM Framework	Post-2000 “Modern” DRM Acts	Older DRM Acts
Australia	Vanuatu	FSM
Palau	Tuvalu	Solomon Islands
	Tonga	PNG
	Samoa	Niue
	New Zealand	Marshall Islands
	Nauru	Kiribati
	Cook Islands	Fiji

Table 2: Disaster Management Legal Frameworks

Older examples, as might be expected, have little or no reference to international assistance as they pre-date the principles of IDRL by several years (several decades in some cases). However, even more recent examples do not, necessarily, follow the IDRL guidelines, given that only two were promulgated in the post-IDRL era (Tuvalu and Nauru). Nevertheless, the development of IDRL as a concept can be detected in many of the elements within these later acts. The end result of this is a wide range of approaches across the Pacific towards disaster law generally and international assistance in particular.

In all cases, significant elements of the legal framework are found in secondary legislation, planning documents (the legal status of which vary) and informal/soft law practices and documents. This creates practical difficulties. In most of the states examined, secondary legislation is often all but impossible to access outside the states concerned (with Fiji, Australia and New Zealand being the primary exceptions). This issue is particularly problematic when legal issues which are central to international assistance are often found outside the disaster law framework, in general acts dealing with business as usual issues. This leads to a legal map that is both complex (being found across several legislative acts) and difficult to access.

The lack of a primary legislative framework around IDRL, while not fatal for the operation of IDRL within the states concerned, does provide a barrier for effective understanding among outside agencies who lack the guidance that an easy to access legislative framework can provide. Lacking these signposts, the details of international assistance and co-operation can be difficult to locate.

In all of the states examined, many of the details around international assistance law are to be found in planning documents that co-exist with the formal legal framework. This compounds the above issue as these documents are often detailed, dense and complex making them difficult to understand, particularly to those outside the state concerned. This is made more difficult by many of these documents not being available online.

The exact nature of these plans varies dramatically, as does their status within the system. In many cases, the response planning document is part of a wider DRR plan, with has a quasi-formal status, but this is not always the case.

State	Recent Plan?	DRM Plan/Policy Documents	Date(s)
Australia	Yes	The Commonwealth Government Disaster Response Plan (COMDISPLAN)	2017
Cook Islands	Yes	NDRM Plan	2017
Federated States of Micronesia	Yes	National Disaster Response Plan	2016
Fiji	No	The National Disaster Management Plan	1995
Kiribati	Yes	National Disaster Risk Management Plan	2012
Marshall Islands	Yes	National Disaster Management Plan Standard Hazard Mitigation Plan National Disaster Risk Management Arrangements document	1997 2005 2017
Nauru	Yes	National Disaster Risk Management Plan	2008
New Zealand	Yes	National Civil Defence Emergency Management Plan	2015
Niue	Yes	Public Emergency Regulations Disaster Management Plan	2004 2010
Palau	Yes	National Disaster Risk Management Framework	2010 (amended in 2016)
Papua New Guinea	No	Disaster Management Plan	1987
Samoa	Yes	National Disaster Management Plan	2017
Solomon Islands	Yes	National Disaster Management Plan	2018
Tonga	Yes	National Emergency Management Plan	2009
Tuvalu	No	National Disaster Management Plan	1997
Vanuatu	Yes	National Disaster Plan	2010

Table 3: Pacific Forum Disaster Management Plans

Three examples utilise plans which appear to be outdated (Fiji, PNG and Tuvalu). In the cases of PNG and Fiji in particular, references to organisations and practices found in the plans do not appear to accord with the situation on the ground and at times appear to contradict the legislation. In general, the age of the planning documents reflects the extent to which they address international assistance specifically or in any detail. As will be seen from the following sections, the later plans tend to address such matters more explicitly

The plans themselves are often required under primary legislation but their exact legal status can be unclear. However, in practice, many states seem to regard them as formal law rather than informal or non-legal guidance documents. Whatever the exact legal status of these documents (they might perhaps be best seen as “deemed regulations” in the New Zealand context)² functionally, they should be regarded as part of the legal framework and this is the approach taken by the research team.

However, including specific procedures and processes around international assistance (and other aspects of response) within planning documents can be problematic. These documents are not written with the precision of law but rather in the language of policy. In some cases the researchers found it hard to find the exact elements of the plan relating to international assistance and in some examples the processes were vague or confusing in their specifics.

² A deemed regulation in New Zealand is a document or policy that has the effect of being a delegated regulation (i.e. empowered by statute) no matter its formal status as a Plan, Code of Practice, etc.

The situation is made further complex by elements within some plans being contradictory and difficult for the outsider to understand.

While a domestic NDMO or government may be well aware of how the process will work, for those unfamiliar with the specific legal context of the state concerned the details can be confusing. Given that trained lawyers, familiar with the field and Pacific legal systems, undertook this research, it is suggested that, in a response situation some international assistance actors may struggle to undertake the processes required and thus risk delays and confusion in the delivery and management of response assistance.

1 Does the Disaster Law Framework Address International Assistance?

Although most states surveyed provide a legal framework to address international assistance, the exact nature of the provisions and their nature vary dramatically. Most states provide some primary legislation on the subject but in a minority of cases these issues are entirely dealt with in secondary regulations or planning documents. This difference of approach creates some complications with the clarity of the procedures but even amongst similar legal approaches, the substantive differences are dramatic.

State	Primary Legislation	Regulations/ Plans	Additional Comments
Australia	No	Yes	
Cook Islands	No	Yes	
Federated States of Micronesia	No	No	Legislation only addresses the relationship with FEMA under FSM's free association agreement with the USA.
Fiji	Yes	Yes	
Kiribati	No	Yes	Regulations provide a limited set of procedures for request and use of international disaster assistance.
Marshall Islands	Yes	Yes	
Nauru	Yes	No	
New Zealand	No	Yes	
Niue	No	Yes	
Palau	N/A	Yes	International assistance addressed by executive decree
Papua New Guinea	No	No	Minimal references in primary legislation
Samoa	Yes	Yes	
Solomon Islands	No	No	Minimal references in primary legislation
Tonga	Yes	Yes	
Tuvalu	Yes	Yes	
Vanuatu	Yes	Yes	

Table 4: IDRL Legal Frameworks in Pacific Forum States

In the case of Nauru, for example, the provisions for international assistance are clear and framed by the disaster legislation. This provides a well-defined system, whereby the President is authorised to make such requests upon the advice of the Disaster Council and the Cabinet. In such circumstances, the request must be accompanied by a list of the required assistance plus information on the procedures by which such assistance must be provided. The clear and comprehensive nature of the Nauruan act can be contrasted with the treatment of international assistance in Papua New Guinea where, although international assistance is covered by the legislation, very few details are provided.

Most states fall somewhere between these extremes. Fiji, for example, provides a clear if limited set of procedures around requests for international assistance and is notable for the specific barring of unsolicited aid unless approved by the National Controller. Another point of note is the approach of Niue which, although providing a very limited legal framework, does provide for the (Ministerial) post of International Assistance Co-ordinator to act upon Cabinet decisions to request assistance. In almost all cases where the process is defined in the legal framework, the final decision lies with the political branch (usually in the form of the cabinet). The Ministry of Foreign Affairs (or equivalent) takes the formal responsibility of handling the request in cases where this is set out in law or policy.

A degree of variability amongst states as regards systems for the requesting of international assistance is understandable given the difference in governance and constitutional structures. However, it is debateable whether the current level of variance is optimal or necessary. It is clear that a number of states do not currently comply with the IDRL guidelines and the risk of confusion and poorly coordinated aid exists in a number of jurisdictions. At the very least, many Pacific states would benefit from clearer set guidelines around structures for requesting assistance and consideration should be given to regional coordination of such requests.

Elements of the current systems (both formal and informal) are explored in more detail in the sections below.

2 Is there a clear focal point for point for coordinating international disaster assistance?

The ability of states to interact with international assisting actors is crucial to delivery of effective assistance in a timely manner. It is therefore somewhat concerning that there is a lack of clarity around a single point of contact in many of the states studied as can be seen from table 5. In a number of cases there is no clear and obvious coordination point for international assisting actors to contact (although the authors accept that this may exist).

In many cases the exact role of the NDMOs and the Ministry of Foreign Affairs is unclear. In Tuvalu and Vanuatu, for example, the framework names both the Secretary for Foreign Affairs and the NDMO as responsible. In other cases, the point of contact is a committee rather than a specific individual, although further research would be needed to investigate how these models work in practice. The Marshall Islands are also notable for the explicit bar that it places upon direct contact between domestic actors and international assisting states and agencies.

A number of states formally provide a political leader as the point of contact in the relevant legislation (the President, in the case of the FSM), although in practice the policy documentation makes clear that the responsibility lies with a committee (the National Disaster Committee in the case of FSM). In some cases, such as Fiji (under the 2010 SOPs), recent soft law documents

have clarified the contact point for international assistance, however, in some cases, even more recent legislative frameworks have failed to create a clear point of contact to those undertaking the domestic response activity.

Overall, the complexity that many Pacific States exhibit in this field seems unnecessary and less than optimal. While it is accepted that the specifics of the national constitutional or administrative position in many states may require a degree of internal complexity, this should be kept to a minimum for international assisting actors. There are some existing examples of this. It is questioned in particular whether the extensive role for the Foreign Affairs Ministries is required outside of providing assistance in relaying the requests.

State	Is there a clear focal point for coordinating Disaster Response	Are the roles in relation to assistance specified?	Is it clear who international assisting actors should contact?	Primary International Relief Coordinating Agency
Australia	No	No	No	Responsibility lies with States/Territories
Cook Islands	Yes	Yes	Yes	Ministry of Foreign Affairs
Federated States of Micronesia	Yes	Yes	No	National Disaster Committee/National Emergency Operations Office
Fiji	Yes	Yes	Yes	Disaster Controller to assign a point of contact
Kiribati	Yes	Yes	Yes	Disaster Controller
Marshall Islands	Yes	Yes	Yes	Central Control Group
Nauru	Yes	Yes	Yes	Department of Foreign Affairs
New Zealand	Yes	Yes	Yes	National Controller
Niue	Yes	Yes	Yes	International Assistance Coordinator
Palau	Yes	Yes	No	Disaster Emergency Committee
Papua New Guinea	No	No	No	Emergency Controller
Samoa	Yes	Yes	No	Disaster Management Office
Solomon Islands	Yes	Yes	No	National Disaster Operations Committee / Recovery Coordination Committee
Tonga	No	Yes	No	Ministry of Foreign Affairs
Tuvalu	Yes	Yes	Yes	Secretary for Foreign Affairs
Vanuatu	Yes	Yes	No	National Disaster Operations Centre

Table 5: Focal points for international disaster assistance in Pacific States

In the New Zealand model, although it is internally complex, the contact point for international assistance is relatively clear (with the National Controller playing the key role – once again in coordination with MFAT). Nauru takes this a stage further by simply establishing one agency as the key point of contact (Niue also takes this approach by appointing an International Assistance Coordinator).

However, one other element that raises a degree of concern is that when specific agencies or individuals are tasked with the coordination of international assistance, it is not entirely clear that they have the powers necessary to manage such assistance, which may require actions by a number of other agencies (as explored below). In the Cook Islands the recently introduced (2017) Disaster Management Plan provides for a cluster system to provide this role, it is unclear what authority the cluster has to provide the assistance required as the legislation itself seems to be silent on these issues.

Overall, the current situation could be clarified, with each state providing a clear and easily recognisable point of contact within the disaster relief framework. It would also benefit the states concerned if, subject to the constitutional and governmental limits, that the contact point is in a position to ensure that the correct assistance is provided and smoothly delivered. The existence of a regional contact point, as developed in South East Asia to provide a degree of regional coordination is therefore worth exploring.

3 Do the laws and regulations outline the roles and responsibilities of different institutions relating to international disaster assistance?

With the exception of Australia and Papua New Guinea, all the states studied provide clear legislative and regulatory guidance around the roles and responsibilities of institutions around international assistance. In Australia's case the lack of clarity is rooted in the federal nature of the Australian governance model, where states and territories will take the lead in disaster response. In the case of Papua New Guinea, in addition to the devolved nature of the state, the Disaster Management Act (and the Disaster Plan) are silent on the issue with the National Disaster Centre (NDC) merely being recognised as having "all powers" in relation to disaster assistance, which one assumes includes matters relating to international assistance. It is not clear the precise role of the National Emergency Committee in this regard and how it relates to the NDC.

State	Legislation provides roles of institutions in international disaster assistance	Disaster Plan provides roles of institutions in international disaster assistance
Australia	No	No
Cook Islands	Yes	Yes
Federated States of Micronesia	No	Yes
Fiji	Yes	Yes
Kiribati	No	Yes
Marshall Islands	Yes	Yes
Nauru	Yes	No
New Zealand	No	Yes
Niue	No	Yes

State	Legislation provides roles of institutions in international disaster assistance	Disaster Plan provides roles of institutions in international disaster assistance
Palau	No	Yes
Papua New Guinea	No	No
Samoa	Yes	Yes
Solomon Islands	No	Yes
Tonga	No	Yes
Tuvalu	No	Yes
Vanuatu	Yes	No

Table 6: legal status of disaster law institutional frameworks

In a number of other examples, the frameworks are set out in disaster management documents. In Palau for example a loose framework exists, while New Zealand has a relatively detailed model set out in the National Civil Defence Emergency Plan. However, although the remaining states largely provide a legal framework, often complemented by planning documents, the details of these arrangements vary significantly. Some provide relatively clear frameworks, such as Niue, where the Emergency Executive Group provides a management or coordination role, cabinet provides requests, customs provides clearance and the police handles security.

In many cases there is a significant and undefined role for the political executive through a National Disaster Committee or some such to provide strategic direction (sometimes working through a Disaster Council of Chief Executives). In one case (RMI), the Chief Secretary is even designated as the Disaster Controller. In these cases, the NDMOs are relegated to support roles. In addition, it is not entirely clear where the role of the NDMO or equivalent fits with these coordinating committees. It is suggested that the unclear role of political leadership in the management of response, and specifically international assistance, is not best practice and risks creating confusion between the roles of the various institutions responsible for coordinating international relief.

The roles and responsibilities of international assisting agencies are only mentioned explicitly in a minority of cases. Nauru, for example, makes specific reference to international assistance having to follow international and regional mechanisms, but this is unusual. More commonly, several states specifically mention international assisting agencies or states in their planning documents. For example, the Cook Islands, Fiji, Tonga specifically make reference to the Red Cross in their planning documents while Vanuatu specifically provides for bi-lateral relationships with France, Australia, NZ and the Melanesian Spearhead Group.

When it comes to providing a clear set of domestic legal frameworks around the coordination of international assistance (and the relationship between the state and such international assistance), it is exceeding difficult to identify a single form of Pacific practice. Instead there is a propensity for frameworks to create rather vague and unclear frameworks around delivery and management which in many cases provide for significant involvement for political committees and high-level civil servants rather than NDMOs. Only New Zealand appears to obviously buck this trend.

4 Do laws and regulations outline a process for requesting/welcoming offers of international disaster assistance, and for terminating international assistance?

In general, Pacific states all have some form of formal process for requesting assistance (as seen in table 7), although the legal basis for this varies considerably. Only Australia, PNG, Solomons and FSM seem to lack a process at all (or have one that is extremely vague). However, others such as Palau operate a framework for such requests, which lacks formal legal status. In most cases, the decision lies at the political level with the national controller or equivalent providing advice only, in some cases via an officials committee. Only New Zealand puts this power primarily with the National Controller, who must take their assessment to Cabinet to be actioned by MFAT. However, the existence of a legal (or quasi-legal) framework in the field does not in itself mean that the process is clear or detailed. As already discussed above, a number of states operate systems which are not particularly clear and, in many cases, are to be found in policy documents that are not easily available to outside actors. When the process sits in a planning document, there is also the issue that it need not be followed within the state concerned.

While the existence of a formal framework for requesting assistance exists in most cases (although the details vary), few states operate a formal mechanism to deal with unsolicited offers of assistance. Nauru and New Zealand are notable exceptions, with Fiji also having an explicit bar upon such unsolicited donations. While other states recognise the issue (particularly Vanuatu), the powers to explicitly address the problem of unwanted or inappropriate offers of assistance, through a formal process, do not currently exist in most states.

State	Legal Framework for Requesting Assistance	Legal Framework for Offers of Assistance	Termination of Assistance
Australia	No	No	No
Cook Islands	Yes	No	No
Federated States of Micronesia	No	No	No
Fiji	Yes	No	No
Kiribati	Yes	No	No
Marshall Islands	Yes	No	No
Nauru	Yes	Yes	Yes
New Zealand	Yes	Yes	No
Niue	Yes	No	No
Palau	Yes	No	No
Papua New Guinea	No	No	No
Samoa	Yes	Yes	No
Solomon Islands	Yes	No	No
Tonga	Yes	No	No
Tuvalu	Yes	No	No
Vanuatu	Yes	No	No

Table 7: Legal frameworks for requesting/welcoming international assistance

The same is true of mechanisms to end international assistance, with only Nauru having a formal explicit process for ending the period of international assistance. The current practice appears highly discretionary and does not provide certainty for international assisting actors and domestic response or recovery agencies.

5 Do laws and regulations provide for necessary legal facilities to be provided to international assisting actors?

Specific legal frameworks in regards to incoming assistance actors, goods and equipment vary across the jurisdictions examined. As can be seen from table 8, very few Pacific Forum states have developed a single legislative framework around legal facilities for incoming assistance. Obviously, this is not to say that the states concerned do not have processes in place to manage these issues, but they are generally disparate and spread across a number of legislative frameworks. This approach treats disaster events as a general exception to business as usual in fields such as immigration and customs (as well as other aspects of the legal system). In some cases (but not all) these are signposted in the relevant plans. This makes research in the area difficult, as to locate where specific legislative elements applicable to international disaster assistance are found requires a survey of the whole legal system. For this reason, it is likely that the summary provided in this section and in the national reports is incomplete.

State	Specific Legal Framework	Immigration	Immunities/Provisions	Customs	Forces legislation
Australia	No	No	No	No	Yes
Cook Islands	No	No	Yes	Yes	Yes
Federated States of Micronesia	No	No	No	No	Yes
Fiji	No	No	No	Yes	No
Kiribati	Yes	Yes	Yes	No	No
Marshall Islands	No	No	No	No	No
Nauru	Yes	Yes	Yes	Yes	No
NZ	No	No	No	No	No
Niue	No	No	No	No	Yes
Palau	No	No	No	No	Yes
PNG	No	No	No	No	No
Samoa	No	Yes	Yes	No	No
Solomons	No	No	No	No	No
Tonga	No	No	Yes	No	No
Tuvalu	No	No	Yes	No	Yes
Vanuatu	No	No	No	No	No

Table 8: Specific Legal facilities for international assistance

However, this difficulty is relevant to the research as a whole, as the lack of a single framework makes the legal situation unclear to international assisting actors. This is compounded in those cases where the possibility of providing legal immunities and processes exists but is within the discretion of a Minister or Official. In these cases, which are often general discretionary provisions (unconnected to the specific needs of international disaster assistance), the assisting actor is still left with a lack of clarity as to the process, its timeliness, the requirements needed and the extent of the exception/immunity likely to be granted. In a few cases they are entirely ad hoc. For this reason, the information included in table 8 only includes specific legislative frameworks and not those aspects included in plans and actioned through discretionary actions. These subtleties are explored in a little more detail below.

A discretionary approach with assisting actors and goods being provided with specific visa or customs exemptions as part of a wider discretionary scheme (or schemes) appears to have been then Pacific norm until recently. There is a clear trend towards a more specific disaster-related model but only a small minority has, as yet, taken the decision to incorporate these elements into a specific disaster law framework (Nauru and Kiribati). In a number of other states, there has been a degree of consolidation through disaster planning documents (e.g. Cook Islands, Fiji), which provide guidelines around specific exceptions and processes for disaster assistance. However, it is not clear that the legislative framework provides the capacity to deliver the aims set out in the plan.

More commonly, the disaster plan provides only vague assistance and the frameworks remain rather un-coordinated with individual custom, immigration and other legal immunities and privileges spread across the national legal framework.

The overall picture is thus one of a complex and unhelpful legal framework for international actors which, except in some specific examples (armed forces and named international organisations), have little certainty around their legal status within the countries concerned, as well as the processes for entry and providing assistance. This leaves the international assisting entity at risk from legal uncertainty, which could limit their activities or leave them exposed to unintentional legal jeopardy. The 2016 Samoan IRDL review concluded that Samoa would benefit from greater consolidation and clarity around legal facilities in relation to international disaster assistance. This conclusion could be applied to most Forum states and the approach taken in Nauru perhaps offers a model pan-Pacific approach.

6 Do laws and regulations set out quality standards for international assisting actors?

Amongst the Pacific Forum states studied, only Nauru provides a clear reference to quality standards in its disaster legislation and Customs Act. The few specific quality standards that do apply to international assistance in the Pacific Island states are applied almost exclusively through this latter means. In a number of states (including Australia, New Zealand, Tonga and Vanuatu), although the standard licensing requirements of medical practitioners and other response professionals apply, there is the possibility of an exemption. However, these exemptions are not specific to disaster response.

A number of states place responsibilities within their planning documents for assisting agents to comply with the requirements of the plan (or develop specific SOPs, as in FSM) and act under the instructions of the national coordinating bodies. These statements seem somewhat vague and the documents themselves do not appear to have the force of formal law. It is therefore questionable the extent to which they can be enforced.

Overall, the lack of a standards framework for international assisting actors appears to be a significant gap in the law and risks unqualified actors providing assistance or qualified ones operating without authorisation. Coherence around quality frameworks for the provision of assisting actors, goods and equipment appears as a legal gap in almost all Pacific Forum states and the establishment of a Pacific-wide standards framework thus seems a logical step to avoid duplication across the various jurisdictions.

7 Do laws and regulations set out eligibility requirements for international assisting actors to receive legal facilities?

With the exception of Nauru, there are no formal eligibility requirements around assisting actors in any of the states studied. In the Nauru case, these facilities are applicable only during the international disaster relief and initial recovery periods. These will be granted to intergovernmental organisations and states (and any other organisation deemed appropriate) directly by the Secretary of the National Emergency Service. A formal application process exists for those outside these categories.

In a number of Pacific states (Vanuatu and Kiribati), offences exist against those who obstruct disaster workers in their duties. This category is defined as those carrying out their responsibilities under the National Disaster Plan, which will include international assisting actors. In addition, some Australian states and Kiribati provide that those working under the disaster plan are provided with immunity for the actions undertaken under the plan. Again, this would apply to international actors, although in Australia the specific nature of the immunity varies according to state/territory in which the disaster occurs.

Given the lack of legal facilities provided to international assisting actors amongst the states examined, it is hardly surprising that eligibility is not something that most states address. However, if legal facilities are to be extended to international actors then this is something that needs to be seriously considered. Again, the approach taken by Nauru offers a model worth applying more broadly, particularly as it includes mechanisms for the removal of such accreditation when the assisting actor breaches its obligations under the disaster plan or legislation. It should also be noted that although some Pacific states do provide (minimal) forms of special legal facilities to international assisting actors the fact that most do not provide clear rules or processes around eligibility (or revocation) should perhaps raise a concern.

8 Do laws and regulations establish a specialised unit for expediting the entry of international disaster assistance?

The provision of a specialised unit to expedite international disaster assistance is not something that has found favour amongst most Pacific Island Forum states. In the majority of the examples studied, there was no specialised unit of any sort addressing these issues. A few examples have established such a unit in the disaster management plan (e.g. Marshall Islands and Fiji) but this agency (the NEOC and the NDC respectively), although tasked with managing these issues, does not appear particularly empowered to do so. Given that these issues are technical questions of Customs and Immigration, it would seem that these departments are crucial to a successful system. In the Fijian example the Department of Customs and Excise is required to facilitate "... entry of all official disaster assistance commodities and waive customs and excise duties, where appropriate", however in the RMI no such legislative backing appears to exist.

New Zealand is unusual for establishing an International Assistance Cell (IAC) within MFAT's international Co-Ordination Centre (ECC), which incorporates Customs Officials. Although, even here, the practical management of international assistance entering into New Zealand is not specifically dealt with.

The lack of a single agency to facilitate international disaster assistance is something that the IDRL report on Tonga (2015) commented upon in relation the Tongan experience.³ However, the evidence of this study suggests that this is a recommendation that could be applied more widely to the Pacific as a whole.

3 IFRC International Disaster Response Law (IDRL) in Tonga: A study on legal preparedness for facilitating and regulating international disaster assistance (IFRC, Geneva, 2016), at 56.

9 Do laws and regulations provide adequate transparency, safeguards and accountability mechanisms governing international disaster relief and initial recovery assistance?

Pacific approaches to the financial accountability of funding vary dramatically. A majority of states (nine of the 16 studied), operate a separate accounting system for external assistance and the establishment of a separate fund for such payments. One (Samoa), though not formally required to established such an entity, does so in practice. However, the exact nature of these funds vary. In the case of Tuvalu, the funds established have a wider range of uses relating to the mitigation and prevention of disasters and climate change. In other cases, such as Niue or Kiribati, the resources of the fund can only be used for the recovery efforts of the specific disaster (including payments to individuals).

State	Specific Financial Mechanisms	Specific Fund
Australia	No	No
Cook Islands	Yes	Yes
Federated States of Micronesia	Yes	Yes
Fiji	No	No
Kiribati	No	No
Marshall Islands	Yes	Yes
Nauru	Audit Required	No
NZ	No	No
Niue	Yes	Yes
Palau	No (but clear accountability)	No
PNG	No	Yes
Samoa	Yes (when State of Emergency)	Yes (in practice)
Solomon Islands	Yes	Yes
Tonga	No	Yes (but legal framework incomplete)
Tuvalu	Yes (for specific funds)	Yes
Vanuatu	Yes	Yes

Table 9: Financial Accountability for Disaster Aid

The same variability is evident as regards the auditing and accountability of international assistance. The arrival in small island states of large amounts of immediate financial resources or assistance in the form of goods, creates significant problems around fraud and misuse of resources. This is recognised in a number of small island states, where specific auditing requirements apply in disaster situations. In some cases, such as Samoa, these can include “fast-track” procedures, whereby expenditure can be authorised swiftly, while the accountability of the Ministry of Finance remains clear. In others, there are specific requirements around auditing (e.g. Niue) but, in some cases, these appear minimal (e.g. PNG). It is noted that in many cases, post-disaster reviews continue to recognise that effective and swift use of international financial assistance remains a problem in some Pacific states.

Neither Australia nor New Zealand have specific legal frameworks around incoming assistance, although both do address other aspects of international aid. One assumes that this is on the basis that the existing domestic frameworks are robust enough to manage even in the post-disaster situation. However, problems around funding for victims of disasters in both of these states and allegations of misuse of funds, suggests that this may be an assumption that needs re-examined.

1. Do the laws and regulations of the states studied outline procedures for international disaster assistance sent from, and transiting through the country concerned?

The legal status of goods and personnel transiting a Pacific Island state was not something that was clearly defined in most of the states studied. This is an important issue given that in many cases the distances required to provide international assistance to many Pacific states may require elements of the response and recovery effort to be based in neighbouring countries.

Despite this, only one Pacific Island state (Nauru) makes specific reference to outgoing assistance or assistance transiting through the state concerned. The novelty of this act (enacted in 2016) appears to explain the inclusion of this element. However, even in this case reference is relatively minimal, with the Nauru DRM Act merely empowering the government to work with other external actors to facilitate such assistance. Such assistance is to be undertaken utilising the Nauruan law which in this case appears to imply that the specific elements within the DRM Act (and others) which apply to international assistance in Nauru will also apply to such goods and materials emanating from or transiting through Nauruan territory.⁴

Beyond this, there were no specific legal frameworks in place, although Fiji noted that the current review of the National Disaster Management Act would likely include consideration of this issue. In addition, the 2015 Review of Tonga's approach to IDRL recommended that such legislation be introduced. As yet this has not occurred.

Samoa also confirmed that, although there was nothing in the Samoan legislation to this effect, the provisions of the Samoan NDMP would apply to assistance transiting Samoan territory. It is possible that similar informal arrangements apply in other states although the researchers were not made aware of them.

Both Australia and New Zealand have relatively sophisticated frameworks around the provision of external assistance and both have adopted the Principles and Good Practice of Humanitarian Donorship. However, neither specifically deals with transshipment (except under generic provisions for the transshipment of goods and equipment).

The lack of consideration of this issue and its potential importance within the region suggests that this another area where regional guidelines or treaty arrangements could be introduced to ensure regional coherence.

4 See Nauru national report for details

Overall Assessment – IDRL in the Pacific Region

The approach of the 16 Pacific Forum states examined towards International Disaster Response Law can be broadly divided into three categories. The majority of states have some form of formal legislative framework around disaster management (the exceptions are Palau and, to some extent, Australia) but amongst the majority there are significant differences. One group exhibits significant alignment with the IDRL guidelines, although the mechanisms by which these are achieved still vary. These examples have been enacted in the last decade (i.e. alongside the development of the IDRL guidelines themselves) and are a reflection of Red Cross encouragement, assistance and support in the development of these legislative frameworks.

The second group have legislative frameworks that predate the IDRL. This latter group can be further divided into two sub-groups. Firstly, there are a number which, although having a legislative framework that might be regarded as “outdated”, have planning documents that do provide some clear guidelines around the management of international assistance. However, much of this is not legislated for or is to be found in a variety of sources. The second subgroup have a limited legislative frame and minimal formal guidance around the provision of international assistance.

However, these broad categories can create a misleading impression. Although a number of states do provide legal frameworks that appear to comply with the IDRL guidelines and (the Pacific draft guidelines), a deeper analysis reveals a slightly different picture. In many cases there remains significant reliance upon discretionary actions by executive (often political) actors and a significant lack of certainty around the detailed operation of many of the elements of IDRL which are outlined in the legislative frameworks or planning documents. This is particularly problematic given the difficulty in sourcing legal and policy documents in many Pacific Island jurisdictions.

The researchers are well aware of the particular challenges that face desktop legal studies of Pacific legal systems and this area of study is no different. These include a lack of online materials and central repositories of Pacific legal documents. In recent years, this situation has been made worse by resourcing issues around PACLII (the Pacific Islands Legal Information Institute). In addition, informal or soft-law documents (plans, guidelines, codes of practice, etc) can be exceeding difficult to source from Pacific island states.

Although this is well a known issue for Pacific Law researchers, in this context an inability to access the rules and regulations around disaster law is particularly problematic. In the event of a disaster, knowledge of national legislation, rules and policies becomes a key issue for assisting actors particularly those outside the state concerned. These, therefore, need to be clearly available to other regional states, international agencies, regional entities and the wider international community to allow effective assistance to be provided. The fact that the research team found it difficult to discover many of the legal details relevant to international assisting actors, despite spending many hours investigating these issues, should ring an alarm bell for states across the region. It is obviously the prerogative of a state to develop disaster law and policy that reflects the needs of the particular community. However, if this

is to be effective, it must be easily accessible (and understandable) to external agencies and states that may be asked to provide assistance in such circumstances.

The experience of the research team is that this is not the case. The three broad types of disaster law framework identified above obscure the fact that there are significant differences across states. International assisting actors therefore cannot assume a “Pacific” approach to IDRL but these differences are often not immediately obvious. The fact that many of the secondary legislation, guidelines and policies are physically difficult to source creates an additional risk. In addition, when the relevant information is available, many of the key details are contained in large policy documents (which can be open to significant interpretation through discretionary decision making). Collectively, this creates the potential for significant problems around international assisting actors understanding the requirements of the national systems and thus ensuring effective assistance, particularly in the response phase.

It is suggested, therefore, that states should seriously consider both aligning their disaster law frameworks (particularly as regards international assisting actors) within an easily understood regional framework and providing a single source of information for out of state actors around the specifics of the process when it differs from the regional norm. In addition, the capacity issues that disasters create for South Pacific island states, mean that it is worth considering a regional agency to coordinate, manage and assist states in these circumstances. Such a cooperation also has the potential to allow the South Pacific states to become leaders in Pacific disaster risk response and management.

It is clear that significant capacity does exist in many Pacific forum states to address these issues effectively on a regional basis, although logistical issues make it difficult to deploy such capacity. Other regional entities have utilised cooperation arrangements to develop logistical arrangements in advance to allow greater sharing of resources and this may be worth considering.⁵

Overall, the research recognises that although disaster law in the Pacific is developing (if slowly), it is doing so in national silos. The current low level of regional cooperation coordination risks being a missed opportunity to develop a truly Pacific approach to Disaster Law and Policy at a time when the South Pacific is facing a significant and increasing level of challenge in the field.

5 See, for example, the case of the EU and ASEAN. WJ Hopkins “Soft Obligations and Hard Realities: Regional Disaster Risk Reduction in Europe and Asia” in Samuel, Aronsson-Storrier and Bookmiller (eds) *The Cambridge Handbook of Risk Reduction and International Law* (Cambridge University Press, 2019).

The Fundamental Principles of the International Red Cross and Red Crescent Movement

Humanity / The International Red Cross and Red Crescent Movement, born of a desire to bring assistance without discrimination to the wounded on the battlefield, endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being. It promotes mutual understanding, friendship, cooperation and lasting peace amongst all peoples.

Impartiality / It makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Neutrality / In order to enjoy the confidence of all, the Movement may not take sides in hostilities or engage at any time in controversies of a political, racial, religious or ideological nature.

Independence / The Movement is independent. The National Societies, while auxiliaries in the humanitarian services of their governments and subject to the laws of their respective countries, must always maintain their autonomy so that they may be able at all times to act in accordance with the principles of the Movement.

Voluntary service / It is a voluntary relief movement not prompted in any manner by desire for gain.

Unity / There can be only one Red Cross or Red Crescent Society in any one country. It must be open to all. It must carry on its humanitarian work throughout its territory.

Universality / The International Red Cross and Red Crescent Movement, in which all societies have equal status and share equal responsibilities and duties in helping each other, is worldwide.



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