



CARIBBEAN EMERGENCY LEGISLATION PROJECT (CELP)



Legal Framework

Constitution of Jamaica, 1962

According to Section 26(5) of the Constitution, where the Governor General is satisfied that, a public emergency has arisen as a result of the imminence of a state of war between Jamaica and a foreign State or as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence, outbreak of infectious disease or other calamity whether similar to the foregoing or not; or that action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the

community, of supplies or services essential to life he may make a Proclamation declaring that a state of national emergency exists.

Unless otherwise resolved by a majority vote of all the members of the House of Representatives, such a Proclamation will be in force for a period of one month and can be extended in like manner for up to twelve months. In this respect the Governor General acts in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet.

Emergency Powers Act (EPA) 1938

This Act provides the procedural framework for giving effect to a Proclamation. It defines a Proclamation specifically for the purposes of Section 26 (4) of the Constitution in the following terms -

“Proclamation” means a Proclamation, effective for

the purposes of Section 26 (4) of the Constitution of Jamaica, which is issued upon the Governor-General being satisfied –

- (a) *that a public emergency has arisen as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence,*

outbreak of infectious disease or other calamity whether similar to the foregoing or not; or

(b) those actions had been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be likely to endanger the public safety or to deprive the community, or any substantial portion of the community, of supplies or services essential to life.

In Jamaica, the Governor General is the representative of the Queen who is still the sovereign of the country and therefore its ultimate Head of State.

Section 3 for the Act provides that the Governor General may make Regulations (by Order) for securing the “essentials of life to the community” and in so doing he can confer or impose on any Government Department or any persons in Her Majesty’s Service such powers and duties as the Governor General may deem necessary or expedient for “the preservation of the peace, for securing and regulating the supply of food, water, fuel, light and other necessities, for maintaining the means of transit or locomotion, and for any other

purposes essential to the public safety and the life of the community, and may make such provisions incidental to the powers aforesaid as may appear to the Governor General to be required for making the exercise of those powers effective.”

Without prejudice to the generality of those powers, the Act also allows the Governor General to make more specific Regulations as necessary or expedient to carry them out. Section 3(4) provides that the Regulations must be laid before the Senate and the House of Representatives as soon as they are made and expire seven (7) days from the time when they are so laid before the Senate and the House of Representatives, whichever shall be the later unless a resolution is passed by the Senate and the House of Representatives, providing for the continuance thereof.

Further, Section 3(7) provides that the expiry or revocation of the Regulations does not affect any action taken under them nor does it invalidate any such action or any penalty or punishment incurred in respect of any contravention or failure to comply therewith or any proceeding or remedy in respect of any such punishment or penalty.

Disaster Preparedness and Management Act, 1993

The Act itself sets out provisions that outline legal, operative and administrative guidelines and instructions for the response of all relevant bodies to natural disaster and emergency events and provides a framework for accountability for disaster responsibilities. A notable and significant component of the Act is that it establishes the office of Preparedness and Emergency Management (ODPEM). The National Disaster Plan is prepared pursuant to this Act.



Institutional Framework

The disaster management and emergency framework in Jamaica consists of a multi-tiered framework involving different institutional entities which have different areas of primary responsibility. All such institutions are recognized in the National Disaster Action Plan which gives detailed breakdowns of levels, and sub-levels and roles and responsibilities both before and after such events. Additionally, many agencies such as the National Works Agency have their own internally produced documents outlining their view of their roles and responsibilities and general position in the entire scheme. As such, the framework will be described here in a general sense.

At the Ministerial level, virtually all Ministries of Government have some place in disaster and emergency response. The necessity of that arrangement was recognized in the power of

the Governor General to impose any function as necessary on any Department of Government or person in Her Majesty's service. Notwithstanding, the following Ministries have key roles in emergency and disaster response: the Ministry of National Security, Ministry of Land, the Ministry of Health, Ministry of Local Government, the Ministry of Housing and the Ministry of Transport and Works. The Office of the Prime Minister (OPM), though not a Ministry per se, has the responsibility for several relevant portfolios such as Environment and reposes in the Prime Minister the duty of being the relevant 'Minister' as referred to in the enacting legislation of several statutory bodies which also play key roles in the disaster and emergency frameworks.

The Office of Disaster Preparedness and Emergency Management, Office of the Prime Minister

The Office of Disaster Preparedness and Emergency Management (ODPEM) is a statutory body created by the Disaster Preparedness and Emergency Management Act (1993). Its principal object, according to Section 4 of the Act, is "to advance disaster preparedness and emergency management measures in Jamaica by facilitating and coordinating the development and implementation of integrated disaster management".

The ODPEM is headed by a Director General who is responsible for spearheading its coordinating role in emergency and natural disaster events. The Prime Minister is the responsible Minister for ODPEM. Although it is the Governor General that is reposed with the power and responsibility

of making a Proclamation in the event of a [public emergency], it appears to be the Office of the Prime Minister to which agencies and bodies must look for practical guidance and command in disaster and emergency situations.

The Prime Minister may also direct the enforcement of any measures recommended by the ODPEM or any other measure he thinks expedient for removing or guarding against the relevant condition and its probable consequences and for mitigating any such damage as far as possible. An Order under this section of the Disaster Preparedness and Management Act can extend to all or any part of the island and can remain in force for any period.

Local Disaster - Related Declaration

In terms of local conditions, whenever the ODPEM reports to the pertinent Minister the existence of any local condition in any part of the island tending to endanger public safety and there is no other law to guard against or remove that condition; or where it reports that any part of the island appears to be threatened with or affected by a natural or

technological hazard and that measures apart from or in addition to those referred to in the Disaster Preparedness and Management Act should be taken promptly, that Minister must report to the Prime Minister (one and the same at this time) who may cause that area to be declared a Disaster Area by order published in the Gazette.

National Disaster Committee (NDC)³

The Prime Minister is the Chairman of the NDC and it is his Office that activates the National Disaster Preparedness and Emergency Plan. The NDC plays a coordinating role in disaster and emergency responses. Under the Act, its functions include –

- (a) developing and implementing policies and programmes to achieve and maintain an appropriate state of national and sectoral preparedness for coping with all emergency situations which may affect Jamaica.
- (b) encouraging and supporting disaster preparedness and mitigation measures in all the parishes in collaboration with the local government authorities, community based organizations and the private and voluntary agencies respectively;

- (c) providing appropriate training programmes and consulting services related to all aspects of disaster preparedness, disaster mitigation, loss reduction, and disaster management;
- (d) planning and implementing programmes to enhance public awareness and understanding of disaster related issues, emergency management, hazard prevention and other similar matters;
- (e) identifying and analyzing hazards or emergency situations and conducting related operational research into their effects;
- (f) establishing, maintaining and managing mutual assistance and co-operation agreements.

The Ministry of Local Government and its Agencies

The Ministry of Local Government (MLG) is the agency responsible for the country's fourteen parish councils each headed by an elected Mayor. There is no budget allocation to the MLG specifically for disaster response⁴.

Parish councils also act as local health authorities and in this respect there is some overlap in the institutional framework. They also host the Parish Disaster Committees Agencies which are critical components of local level responses and act as coordinators within parishes. Other agencies

under the remit of this Ministry that are also involved in emergency and disaster response include the Jamaica Fire Brigade and the National Solid Waste Management Agency. The Jamaica Fire Brigade's role is to deal primarily with fire management, evacuation and leading search and rescue efforts. The Solid Waste Management Agency is responsible ordinarily for solid waste management throughout the island and undertakes emergency clean up activities as needed and allowed by its resources.

3 National Disaster Action Plan 1997



Ministry of Transport and Works: The National Works Agency

The National Works Agency is an executive agency that falls under the Ministry of Transport and Works. Its main function in ordinary times is to help build and maintain the nation's roadways. In emergency situations it acts as first responder to clear roads, repair bridges, etc. It is guided by a Corporate Plan and Framework document and receives funding from its parent Ministry but not

specifically for disaster preparedness or emergency management. In the last financial year it received a budgetary allocation of J\$200,000,000 million for the cleaning of drains and flood control in the event of a hurricane. The NWA accesses additional funding if necessary from the Caribbean Development Bank (CDB) and the Inter-American Development Bank (IDB).

Ministry of Health

The Ministry of Health is responsible for all local health authorities, whose remit includes public health, and the provision of emergency medical services by public hospitals, clinics and other providers of medical services to the public at large. Local Boards are given wide powers under Section 7 of the Act to make regulations relating to, among other things the overcrowding of buildings and related measures, and the closure of buildings dangerous to the inhabitants thereof or to public

health. They are given wide powers to carry on all activities that appear necessary, advantageous or convenient in the interest of public health. The Minister has the power to make regulations in relation to the prevention, mitigation and suppression of disease including the closure or destruction of buildings and the restriction of movement of persons in and out of infected areas.

The Security Forces

Jamaica's security forces are critical to the country's management and response to disaster and emergency situations. Its major components are the Jamaica Defence Force and the Jamaica Constabulary Force.

The JDF is charged with the defence of and maintenance of order in Jamaica by the Defence Act (1962). It consists of a regular force and a reserve force known as the Jamaica National Reserve. The Act allows the Prime Minister to give the Chief of Staff directions with respect to the operational use of the JDF for the purpose of maintaining and securing public safety and public order. The Minister responsible for Defence sits on the Board of the JDF, which is responsible for

its administration. It is the Governor General who appoints the Chief of Staff.

The Jamaica Constabulary Force is mandated by the Constabulary Force Act 1935 to keep watch day and night and to preserve the peace. Constables have a wide range of powers including powers of search and arrest with or without a warrant and along with the JDF have historically been the agents through which many of the Governor General's Regulations have been put into effect. The Minister of National Security is the relevant Minister.

Other Statutory Bodies

Other partners in disaster and emergency response plans include the National Water Commission, a statutory body charged with the provision and maintenance of water supply and sewerage service; and the Jamaica Public Service Ltd, a private body which is the sole provider of island wide electricity services. The Water Resources Authority (WRA) is also mandated to deal with management of the country's freshwater resources and is recognized as a partner in emergency and disaster response in the National Disaster Plan 1997.

Non - Governmental Bodies

Non - governmental bodies are also part of the natural disaster framework, most notably the Seismic Unit of the University of the West Indies (UWI). It notifies the ODPEM and the media of the fact and location of earthquake occurrences. It has no budgetary provision for disaster planning or response. J\$18million is provided in the current financial year for salaries and equipment repairs or update. Budget augmentation from the UWI is

for research purposes only. The Salvation Army, Red Cross, Meteorological Office, and faith based organizations are also recognized in the National Disaster Plan.

Budget appropriation and execution

It is the Finance Minister who must authorize by warrant the payment of any monies out of the Consolidated Fund, which is the Fund into which all revenues of the country are paid. The Finance Minister has ultimate responsibility for disbursements out of the Consolidated Fund for the general running of the country including to the various Ministries of Government, which must then in turn disburse for their own needs as well as that of their subordinate agencies. Ultimately, it is also the Finance Ministry that must ensure that adequate funds are available and disbursed at times and in the amounts needed to address emergencies. This is partly because there is no

across the board standard for how each agency or Ministry with a role in disaster and emergency management is allocated funds to carry out its function in this respect. Some entities such as the ODPEM may have specific budgetary allocations for this, while others such as the NSWMA must either absorb it as part of their ordinary operations or must request that the Finance Ministry advance or reimburse monies as the case may be. Box 1 below is indicative of the 2004-2005 National Budget



Box 1

(\$JMD)

EXTRACTS FROM THE NATIONAL BUDGET 2004-2005	MINISTRY OF FINANCE AND PUBLIC AFFAIRS (JAMAICA)
Ministry of Health \$37.7 Million	Ministry of Land and Environment \$57.5 Million
ODPEM/ Seismic Unit \$12 Million	Ministry of Water and Housing --- (since 2002)
Community Development (Agriculture Ministry) \$500,000	Ministry of Transport and Works \$110 Million
Flood Damage Rehabilitation Project funded by	CDB, IDB. CDB Allocation \$1,668,500.00
Allocation from IDB \$784,000	Government of Jamaica \$196,000
Ministry of Local Government \$165 Million	

With regard to the OPDEM, its statutory framework provides at Section 9 that its funds and resources consist of such sums that may from time to time be placed at its disposal by Parliament (ostensibly the Consolidated Fund) and any other monies and other property which may be vested in or become payable to it. Its budgetary allocations from government appear to be for the purpose of dealing with salaries and general expenses, while much of the funding for disaster response comes from international donor agencies including the Inter-American Development Bank (IDB), the Canadian International Development Agency (CIDA), the World Bank, and the Japan International Cooperation Agency (JICA). Project grants are also used to supplement the ODPEM’s income.

The annual budget for the ODPEM is approximately J\$170million, and for the past three years. The

government allocation remains under the control and administration of the Ministry of Finance and Public Affairs to whom requests must be made for sums from it. Table 1 is indicative of the 2009-2010 budgetary allocation for Disaster Management which is given specifically to the ODPEM for its recurrent expenses⁵. Additionally, the Section 118 (1) of the Jamaican Constitution authorizes the creation of the Contingencies Fund and allows the Finance Minister to make advances from that Fund if he is satisfied that there is an unforeseen need for expenditure for which no provision or no sufficient provision has been otherwise made by an Appropriation law.

5 This is approximately J\$30,000,000 more than its ordinary sum, due to the purchase of office space in this financial year.
(Source: Ministry of Finance)

Table 1

(\$JMD)

EXTRACTS FROM THE NATIONAL BUDGET 2009-2010	
MINISTRY OF FINANCE AND PUBLIC AFFAIRS (JAMAICA)	
Office of the Prime Minister:	
Disaster Management	154 Million
Environmental Protection & Conservation	33.5 Million
Earthquake Unit (UWI MONA)	19 Million
Natural Resources Conservation	13.3 Million
Projects:	
An integrated approach to the marine Coastal and Watershed Resources of East Portland (GOJ/UN Office For Project Services)	14.9 Millio
Natural Hazard Management in Urban Coastal areas (IADB)	27.5 Million
Building Disaster-resilient Communities (GOJ)	13.2 Million
Solid Waste Management	678.5 Million
Ministry of Health – Disaster Management	46.1 Million
Ministry of Water & Housing – Disaster Management	356 Million

Regarding the procedure to be followed by the ODPEM for the disbursement of funds during a declared emergency, the ODPEM would make a request to the Ministry of Finance who would then approve the recommendation. In making the request, the ODPEM submits a program detailing the objective, cost outline, etc. This would then be measured against the requirements of the Fund and a recommendation would be made for support from the Fund.

All additional voluntary or loan funds that become available in the event of a disaster are accessed via the Ministry of Finance and the Planning Institute of Jamaica (PIOJ). The Caribbean Development Bank for example has a US\$20, 000, 000 loan assistance fund which can be applied to assist in recovery efforts.



Recommendations

Specific

- Prepare a National Disaster Management Policy or conduct a comprehensive revision of the National Disaster Plan to reflect current circumstances.
- Outline clearly in legislative framework, the necessary steps to be taken before and after a disaster declaration
- Establish more sustainable and substantive sources of funding to enhance the effectiveness of Jamaica's response to natural disasters
- Consider the Tampere Convention.
- Specify mechanisms for the termination of international assistance/aid relief
- Eliminate blind spots in island wide communication systems relied upon during a disaster or other emergency.
- Establish a National Building Code.
- Explore different financing mechanisms for a sustainable disaster funding.

General

- Enact legislation to promote the implementation of improved standards for all buildings and infrastructure
- Establish adequate funding mechanisms for disaster management
- Create mechanisms for transparency and accountability of external agencies
- Promote capacity building and strengthen institutional arrangements
- Enhance risk management and insurance coverage for disasters
- Promote the transfer and exchange of disaster information
- Improve access to information and promote effective communication
- Update National Emergency Plans and Procedures
- Strengthen Community Committees
- Improve capability of disaster and emergency personnel



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