



CARIBBEAN EMERGENCY LEGISLATION PROJECT (CELP)



Caribbean
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Legal Framework

Antigua & Barbuda Constitutional Order of 1981

Section 20 of the Constitution provides the framework for governmental action during emergencies. It:

Vests the Governor-General with the power to declare, by Proclamation, a state of public emergency;

sets out the circumstances under which a declaration of public emergency may lapse, be extended, endure, cease to have effect or be revoked by the Governor-General or the House of Parliament;

requires a declaration of emergency to be published in the Official Gazette.

The fundamental rights and freedoms of the citizens of Antigua and Barbuda are established in Sections 4 and 5 of the Constitution. Once a public emergency is declared it may invariably result in the infringement of the fundamental

rights and freedoms of the citizen. Section 16 of the Constitution allows for the government to interfere with personal liberty under these circumstances. However it limits the interference to what “...are reasonably justifiable, for dealing with the situation that exists... during that period.” In other words this section gives the authority to infringe upon the rights stated in Sections 5 and 14 only in emergency situations. Section 17 is also particularly instructive because it imposes certain responsibilities on the government as it relates to the infringement of individual rights and freedoms.

Emergency Powers Act, Cap 147 of the 1992 Revised edition of the Laws of Antigua & Barbuda.

This Act gives life to the provisions of Section 20 of the Constitution which provides for a declaration of a public emergency. The Act refines

the provisions by establishing the criteria by which the Governor General may establish proclaim a state of emergency. According to Section 3 of the

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Act if it appears to him [the Governor General] that conditions in the State are

“... likely to endanger the maintenance of public order or the defence of Antigua and Barbuda or the maintenance of the public safety or the defence of the community or any substantial portion of the community or any supplies or services essential to the life of the community,..” [Section 3]

The exercise of the power by the Governor General must be on the advice of the Cabinet. A declaration by the Governor General if not earlier revoked stays in effect for a maximum of one month but can be extended by resolution of Parliament supported

by a majority of its members but not beyond six months at any one time. Further, under the Act a declaration of a state of emergency whether proclaimed by the Governor General or by the Parliament through extension by resolution may be revoked at any time.

Section 6 of the Act gives the Cabinet powers to regulate and control a wide range of activities for state of emergency. Any regulations issued by Cabinet must be published in the Gazette in the first instance but if not practicable be displayed on public buildings. A corresponding administrative framework for regulating activities prescribed under section 6 is however lacking.

Emergency Powers (Hurricane, Earthquake, Fire or Flood) Act Cap 148 of the 1992 Revised Edition of the Laws of Antigua & Barbuda

This Act supplements the Emergency Powers Act specific to natural disasters. It allows the Cabinet of Antigua and Barbuda to declare a State of Emergency where any hurricane, earthquake, fire or flood occurs. It provides for one month’s duration of the state of emergency subject to further extensions. Section 3 of the Act gives wide ranging powers to the Cabinet “...to make orders securing the essentials of life to the community and for the preservation of the health, welfare and safety of the public.” This provision empowers

the Cabinet to take effective measures to address disasters when they occur. Section 4 of the Act grants immunity to persons who take actions in good faith pursuant to any orders issued under the Act.

Disaster Management Act, 2002

This Act creates the local body and at the same time sets the framework for regional cooperation in disaster management and response in Antigua and Barbuda. This 2002 Act sets up the administrative framework to respond to disasters; which is administered by the National Office of Disaster Services (NODS).

In indicating its seriousness about emergency management, the Act allows for the appointment of a Director of Disaster Preparedness to execute the responsibilities provided for under the Act. The Director is assisted by a number of public officers or other persons to discharge the functions of hazard inspectors, shelter managers or officers with enforcement powers. The functions of these



personnel can also be executed by the Director, any deputy or assistant director, any police officer or any member of the Antigua and Barbuda Defence Force under sections 30 and 35 (3) (b) of the Act.

The Act also contains provisions that implement the country's obligations appropriate to its membership to the Caribbean Disaster Emergency

Management Agency (CDEMA). The Act further defines national policies and priorities in the event of disasters and establishes and maintains a national relief organization capable of responding swiftly, efficiently, and in a coordinated manner to disasters.

Finance Administration Act, 2006

The objective of this Act is to make government more accountable and to crystallize the government's policy relating to government financing. The Act however, does not make any clear provision for emergency and disasters. Section 30, which deals with emergency expenditure, special warrants and the Contingency Fund, may however, be deemed to apply to emergencies.

It provides -

30 (1) Subject to section 31, when in a financial year it appears to the Minister that—

(a) an expenditure for a service not foreseen and not provided for, or not sufficiently

provided for, is urgently required for the public good; and

(b) the circumstances are such that the expenditure cannot, in the opinion of the Minister, be postponed without injury to the public good, the Minister may cause estimates of the amount of the expenditure to be prepared and—

(i) may, in anticipation of approval of the expenditure in a supplementary appropriation

Act, issue a special warrant under his hand authorizing the expenditure to be made out of the Consolidated Fund, but the aggregate of the amounts authorized by special warrants issued under this section in the financial year and not approved in a supplementary appropriation Act shall not exceed 25% of the annual estimates for the current year; and

(ii) may make advances from the Contingencies Fund by contingency warrants under his hand to meet the requirement referred to in paragraph (a) but so that the total balance available to the Contingencies Fund is not over drawn.

(2) When any expenditure has been authorized under subsection (1), supplementary estimates showing the expenditure shall be laid before the House as soon as reasonably possible after the date of the warrant and section 27(b) applies in relation to the estimates.

Institutional Framework

The disaster preparedness structure in Antigua and Barbuda comprises the:

National Office of Disaster Services (NODS)

NODS is the national agency responsible for disaster preparedness. The entity is headed by a Director with a complement of administrative staff according to the mandate of the Act. The Act gives the Director the authority, subject to the policy directives of the Prime Minister (Section 5), the responsibility for co-coordinating the general policy of the unit relating to the mitigation of, preparedness for, response to and recovery from emergencies and disasters in Antigua and Barbuda

National Emergency Operations Committee (NEOC)

The National Emergency Operations Committee is established under NODS and is equipped to execute the Disaster Management Plan. Members include the protective services (police, coast guard, fire services) and essential services (health, public utilities, solid waste management, disaster preparedness). The Red Cross, Office of National Drug Enforcement Policy, and the Environment Division are also members of the Committee.

Budget appropriation and execution

NODS does not have funding at its disposal for responding to disasters when they occur. As a matter of policy a line item is not created for emergency management in the annual budget nor is it provided for in the estimates. Disbursements are made out of the Contingency Fund pursuant to Section 30 of the Finance Administration Act discussed above. According to the established procedure when a disaster occurs, NEOC becomes activated and the Prime Minister is informed. The Prime Minister then contacts the Minister of Finance to make an advance from the Contingency Fund; it is at that time that \$150,000.00 becomes immediately available to NODS. The funds become available in a separate account for which the Director and the Permanent Secretary in the

Ministry under whose portfolio disaster falls, are the signatories. As the management of the disaster progresses a determination would be made as to whether more funds are needed.

The amount disbursed to the NEOC must not exceed twenty-five percent of the total national budget of that year. A special warrant showing the expenditure must be laid before the House of Representatives as soon as reasonably possible after the date of the warrant.

In responding to the demands for funding for disaster management, the funds are sourced from every ministerial head in the amount of ten per cent of their approved budget.



Recommendations

Specific

- Constitution Order, 1981
Eliminate ambiguities in the legal and administrative processes in some areas to clarify the steps to be taken whenever a disaster occurs.
- Disaster Management Act, 2002
Establish penalties for non-compliance by response agencies
- Finance Administration Act, 2006
Include clear provision for emergency and disasters

General

- Establish adequate legislative authority for disaster management
- 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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