



Organization of American States

CARIBBEAN EMERGENCY LEGISLATION PROJECT LEGISLATIVE CHECKLIST

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| EMERGENCY/DISASTER PROVISIONS | | | | |
| Disaster and Emergency Related Laws | While most of the project countries have laws which address disasters/emergency, some of the laws or provisions conflict, are outdated, fail to consider overlaps with other laws, etc. Additionally, some countries have not enacted Disaster Management Acts or legislation that addresses the issues within this area in a comprehensive manner. | All laws, regulations, codes, and policies which touch and concern disasters/emergencies should be examined to determine areas of strengths, conflict, overlap, and other challenges. | National constitutions, Emergency Powers Acts, Disaster Management Acts, Building Codes, Public Health Acts, Finance and Administration Acts, Town and Country Planning Acts, Hazard Mitigation Policies, Agriculture Act. | |

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| | <p>Limited or no regulations accompany the disaster/emergency management laws.</p> | | | |
| <p>‘Emergency’ and/or ‘Disaster’ Declaration Clauses</p> | <p>Many such clauses are limited in scope/focus and have not given effect to emerging issues like climate change policy and adaptation plans which have direct links to hazard management, or completely kept pace with contemporary perspectives as espoused in, for example, the Hyogo Framework for Action. Further, in many countries, the constitutional clauses relating to State of Emergency are designed to be very inclusive – applicable to most natural disasters and human-caused pollution, as well as war, political insurrection and even commercial strikes and work-stoppages. While this level of inclusiveness is understandable with regard to the “emergency powers” of the President or head of state, it may be problematic</p> | <p>The coverage of state or emergency and disaster declaration clauses is an important issue. Few, if any, disaster management plans include provisions that can be usefully applied to a national insurrection, for example. In fact, most of the activities required an insurrection, strike or act of war.¹ Consequently, many countries adopt definitions for “disaster” or “emergency” or other terms that are different from the definitions used in the national constitution. Given some countries’ difficulty in changing their constitutions, such laws often focus on creating coordinated terms, and define them in detail.</p> <p>The different roles served by constitutional provisions discussing the declaration of disaster/emergency as compared with the role of a similar provision in national disaster/emergency legislation must be considered and understood. In some countries around the world it is common (but not universal) that the primary purpose of a constitutional declaration of State of Emergency is to address governance matters, while a declaration in national disaster-management legislation will normally be focused on disaster-management objectives.</p> <p>This is not a cut-and-dried distinction, however. Based on a review of both legislation and literature regarding such designations, it appears that the purpose behind any “declaration” provision in either</p> | <p>The emergency legislation in Vanuatu specifically empowers declaration of both (constitutional) “State of Emergency” and “Disaster.” The laws make it clear that these concepts are different in scope, but may overlap. “Disaster” is limited to natural events and “human-caused pollution threatening people and property.”² A “State of Emergency” will be appropriate in the event of a “serious disaster.”³</p> <p>In many countries, operative provisions relating to emergency/disaster declarations focus on natural and ecological disasters. In some cases, however, relevant definitions are not so restrictive, assuming that non-natural /non-pollution situations may also benefit from the involvement of the country’s disaster management authorities and plan. For example, in Ethiopia, the national relief and rehabilitation commission’s role may extend to</p> | |

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| | <p>when applied to national disaster-management authorities. Furthermore, the different roles played by constitutional and other legislative clauses are not often fully understood. Some donors or lenders require that countries issue a state of emergency and/or disaster declaration in order to grant them access to funding for emergency management.</p> | <p>type of legislation will usually be one or more of the following:</p> <ul style="list-style-type: none"> (i) announcing special authority within the governance system regarding emergencies (presidential and other “emergency powers”); (ii) triggering a special system for financial distributions and their approval and oversight; (iii) triggering the disaster management plan’s operation; and/or (iv) informing the public. <p>For legislative drafting purposes, it is worthwhile to ask which declarations are relevant in which particular situations. Is it necessary for the President to issue a constitutional declaration of State of Emergency, before the national emergency plan under disaster-emergency legislation can be triggered? Must the national emergency plan be triggered by every state of emergency (e.g., where a major industrial union has gone on strike)?</p> | <p>“war, and ...any other disaster.”⁴</p> <p>The law in American Samoa defines disaster primarily in terms of the action that it necessitates. Thus, “disaster means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including but not limited to fire, flood, earthquake, wind, storm, wave action, oil spill, or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action.”⁵ This definition is restated, in determining when the Governor may declare a “disaster emergency.”⁶ The law recognizes a potential role for disaster authorities in other emergencies, noting that a “disaster” is essentially any situation that can be benefited by imposition of the emergency response plan, even if it includes aspects of political upheaval such as ‘riot, or hostile military or paramilitary action.’⁷</p> | |

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| | | | <p>In many countries where disaster laws and authorities generally focus on natural disasters, the definition of disaster, for purposes of the application of the national disaster plan, extends beyond natural events and human-caused pollution. One of the most common of these extensions is the inclusion of major accidents.⁷ Thai law goes even further, including “air threats and sabotage” within the law focused on natural disasters.⁸</p> | |
| <p>Definition of ‘State of Emergency’ and ‘Disasters’</p> | <p>The terms are not often clearly defined and the scope sometimes quite limited. Some countries report that present legislation gives a very general definition of disaster and emergency which are sometimes not in line with the internationally acceptable language</p> | <p>‘State of emergency’ and ‘disaster’ should be defined clearly.</p> <p>Emphasis should be placed on the impacts, causes and results of the particular activities which constitute disasters;</p> <p>Categories of natural and man-made disasters should be maintained. Combined with the impacts, causes and results, holistic definitions can be developed; and</p> <p>Emphasis should be placed on threats of disasters and threats of emergencies in definitions. This emphasis will allow for effective pre-emptive action to be taken to address disasters and emergencies before they occur.</p> | <p>Disasters</p> <ul style="list-style-type: none"> • India - Disaster Management Act 2005 (hereinafter referred to “the India Act”) “(d) "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area;” • The Philippines - Presidential Decree No. 1566: Strengthening the | |

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| | | <p>The legislation should also include definitions of other key terms including: hazard, disaster mitigation, specially vulnerable areas, etc.</p> | <p>Philippine Disaster Control, Capability and Establishing the National Program on Community Disaster Preparedness (hereinafter referred to “the Philippines Act”) (d) “Disaster” - an event, natural or man-made, sudden or progressive, which impacts vulnerable communities with such severity on lives and properties, basic services, infrastructures and the environment that the affected community has to respond with exceptional measures.</p> <p>• South Africa - Disaster Management Act 2002 (hereinafter referred to “the South Africa Act”) “Disaster” means a progressive or sudden, widespread or localised, natural or human-caused occurrence which - (a) causes or threatens to cause – (i) disease; damage to property; infrastructure or the environment; or (iii) disruption to the life of a community; and (b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources.</p> <p>Emergency</p> <p>• United States of America - Sec. 102. Definitions (42 U.S.C. 5122)</p> | |

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| | | | <p>“Emergency” means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.</p> <p>• Canada – Emergencies Act 1985 (hereinafter referred to “the Canada Act”) For the purposes of this Act, a “national emergency” is an urgent and critical situation of a temporary nature that (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.</p> <p>• Canada - “Public welfare emergency” means an emergency</p> | |

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| | | | <p>that is caused by a real or imminent (a) fire, flood, drought, storm, earthquake or other natural phenomenon, (b) disease in human beings, animals or plants, or (c) accident or pollution that results or may result in a danger to life or property, social disruption or a breakdown in the flow of essential goods, services or resources, so serious as to be a national emergency.</p> | |
| <p>Authority to Declare</p> | <p>In a few countries it is not clear who has the authority to declare a state of emergency or disaster. So, for example, there may appear to be a legislative conflict between the authority of the Governor General to declare a state of emergency in the event of a natural disaster and the Prime Minister's authority to issue a disaster declaration.</p> | <p>One area of significant difference among countries relates to the person or office that holds the power to make such a declaration. While the majority of the constitutions give this power to the head of state, nearly all of these require that the legislature must be called (if not already in session) and ratify the decision within a few days.⁹ If the legislature does not ratify the decision, the declaration terminates. Some laws give the declaration power to the Cabinet,¹⁰ or require that the President seek the Cabinet's advice before making such a declaration.¹¹</p> <p>The law should</p> <ul style="list-style-type: none"> • clearly specify who has the authority to declare a state of emergency or a disaster. • indicate a hierarchy of officials who can make a declaration in the event that the originally designated official cannot. • contain provisions that require acting on advice and recommendations that support accountability, and reduce arbitrariness and prohibit abuse in the | <p>In most of the project countries, the authority is spelt out in the Constitution. The authority is vested in the Governor-General¹² or President¹³ and the Houses of Parliament. In some instances the Governor-General's declaration is approved by Parliament; in others, Parliament can pass its own resolution.</p> | |

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| | | <p>exercise of powers. For example, in the case of a state of emergency, there should be a requirement that the declaring authority consult with the President/Prime Minister, and the Head of the Disaster Management Office, before exercising authority to declare.</p> | | |
| Manner/Form of the Declaration | <p>The manner/form of the declaration in many countries are sometimes too limited.</p> | <p>The declaration must be in writing with as many particulars and specifics as are necessary to address the specific situation. The practice varies according to country and they include: Order in writing;¹⁴ Executive Order of Proclamation;¹⁵; Gazette Notice.¹⁶</p> <p>Provisions should be made for the declaration to be communicated to the widest possible audience within the shortest period of time</p> | <p>The laws of most project countries require that the declaration be published in the Official Gazette. The requirement for Gazette publication has been done in the following language: “The Governor General may, by proclamation, which shall be published in the Official Gazette, declare that a State of Emergency exists...”¹⁷</p> <p>In the United States of America, an Executive Order accompanied the United States of America’s declaration of a national state of emergency in response to the September 11, 2001 terrorist attacks on that country.</p> | |
| Content of the Declaration | <p>Some declarations are not sufficiently specific regarding the circumstances under which it is being made.</p> | <p>The written declaration must clearly specify the circumstances under which it is made. It should include some of the following details: nature of the disaster, area or areas threatened, duration of the declaration, etc. Additionally, it should clearly express the powers of coordination.</p> | <p>Marshall Islands legislation in Section 1006 makes specific provisions for the form of the declaration in the following manner: “(1) All executive orders or proclamations issued under this Chapter shall indicate the nature of the disaster, the area or areas threatened, and the conditions which have caused such declaration</p> | |

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| | | | <p>or termination of the state of disaster.”</p> <p>A similar approach is adopted in the Canada Act Section 6(2) which provides: “(2) A declaration of a public welfare emergency shall specify (a) concisely the state of affairs constituting the emergency; (b) the special temporary measures that the Governor in Council anticipates may be necessary for dealing with the emergency; and (c) if the direct effects of the emergency do not extend to the whole of Canada, the area of Canada to which the direct effects of the emergency extend.”</p> | |
| <p>Duration of the Declaration</p> | <p>Some laws do not specify the duration for a declaration, nor include provisions on the review of the order for extension or termination.</p> | <p>Nearly all such declarations are time-bound¹⁸ and vary from jurisdiction to jurisdiction with their duration being anywhere from a few days (Samoa)¹⁹ to as long as 2 years (Guyana, Constitution). Often, in order to ensure that action is taken quickly, the law allows a fairly simple process by which the designated person or committee makes the declaration; however, the declaration will normally have a shorter duration where emergency powers triggered by the declaration are more extensive and/or less controlled, or in countries that place a high level of national and/or legislative focus on preventing abuses.</p> <p>The law should also include provisions for extension of the declaration for a sufficient period to meet the nature of the particular emergency which</p> | | |

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| | | <p>would have prompted the declaration.</p> <p>Flexibility should be provided regarding the duration of the declaration with regard to the actual circumstances which originally caused the declaration to be made. Having regard to the far reaching powers which are exercised, a time limit or a review of the order appears to be an important requirement. Furthermore making the duration relevant to the nature of the disaster is a best practice.</p> | | |
| <p>Powers and Responsibilities Relating to the Declaration</p> | <p>There is often confusion as to has the power and responsibility to conduct certain activities once a declaration is made, and the duration of such powers and responsibilities.</p> | <p>Declarations of state of emergency or disasters carry with them the exercise of wide ranging powers, and these powers include the power to make regulations, rules, and orders.²⁰ Powers also relate to the suspension of the effect of certain laws, and the exercise of other powers by other agencies of government²¹ and state.</p> <p>The declaration and accompanying instruments should be specific regarding the powers to be exercised and the person or agency exercising those powers. In the project countries, there is no mandatory statutory requirement for specifics to be stated in the Constitutional instruments authorizing the declaration of disasters. Provisions in this regard should be included in disaster-specific laws, as the amendment of a constitutional provision can be a long drawn-out process.</p> <p>Powers which have been suspended or varied should be clearly identified in the declaration documentation.</p> <p>Powers of coordination should also be clearly expressed in the instrument used to initiate the</p> | <p>Micronesia Act: During a state of emergency, the President is authorized to suspend any regulatory statutes, or any order, rule, or regulation of an executive agency of the National Government. The President shall exercise this authority only if strict adherence to the provisions of the regulatory statute, order, rule, or regulation would substantially prevent, hinder, or delay actions needed to prevent, prepare for or recover from a disaster.</p> <p>Another example is the Executive Order accompanying the United States of America Declaration with respect to the 11 September, 2001 terrorist attacks. The Executive Order expressly “made determinations to suspend otherwise applicable exemptions for certain humanitarian, medical, or agricultural transfers or</p> | |

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| <p>Regulations Relating to Declaration</p> | <p>In situations where there is no prescription, regulation making powers have not often been utilised as an effective stop-gap measure.</p> | <p>declaration.</p> <p>Preserve, where in existence, or introduce where absent, regulation-making powers, as they are essential for the effective introduction of supporting and enabling measures.</p> <p>The scope and vesting authority must be clearly spelt out in the declaration related documentation.</p> | <p>donations.²²</p> <p>Section 9 of the Belize Constitution and Section 7 of the Constitution of the Republic of Trinidad and Tobago are the only Constitutions which make provisions in this regard.</p> <p>In some project countries, provisions regarding regulations and orders can be found in the Emergency Powers Act. For some countries, Emergency Powers Acts are colonial laws saved by the Constitution²³ and in other countries, these laws have been enacted subsequent to the passage of the Constitution.²⁴</p> <p>The Acts make detailed provision for the scope of regulations which can be passed during a declared emergency. These provisions, particularly those in more modern laws, provide useful examples of regional best practices. It should be noted that the Acts vest the powers in the Cabinet and the Minister with responsibility for disasters.</p> <p>These Acts have been effectively used in Indonesia to address matters which were not covered by Law 24 of 2007. As noted, “the Law has been further clarified with</p> | |

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| | | | <p>government regulations: PP 21/2008 – regarding DM Arrangements at National and Sub-national level; PP22/2008 - regarding DM Funding and Management of Relief Aid; and, PP23/2008 – regarding the Participation of International and Non- Government actors in all phases of the DM cycle”²⁵</p> <p>The prescription of this power therefore emerges as a best practice. This was also part of the Executive Order adopted by the United States of America which allowed for the making of regulations, orders, directives, and licenses. Specifically section 7 of the order provided:</p> <p>“The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government are hereby directed to take all appropriate measures within their</p> | |

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| | | | authority to carry out the provisions of this order” | |
| Penalties | Penalties for non-compliance by certain government agencies regarding their responsibilities once a declaration is made are often absent from disaster/emergency legislation. | A number of the laws around the world specify penalties under national disaster legislation. ²⁶ These provisions generally focus on penalizing individuals who violate or interfere with the plans and actions under the legislation and their implementation. The law should also contemplate the possibility of “non-compliance by response agencies,” ²⁷ and impose penalties on agencies for failure to implement. | Botswana - Essential Supplies and Services Act., Chapter 22:05, §4 Canada - New Brunswick, Emergency Measures Act, S.N.B. 1978, c. E-7.1, §§22-24 | |
| INSTITUTIONAL CONSIDERATIONS | | | | |
| National Disaster Council/ Committee | While most of the project countries have provide for the establishment of a National Disaster Committee,the role of such a committee is not always clearly elucidated, and does not always include all relevant stakeholders, particularly those from civil society groups. | The purpose of this Committee would enable relevant governmental and non-governmental actors to collaborate on national disaster management. The role of the Council/Committee should be clearly defined to include creating, inter alia, comprehensive national disaster management policies, plans, and guidelines. | | |
| National Disaster Management Agency/Office | Some legislation do not adequately elaborate on the roles the various bodies are expected to play in disaster management nor do they clearly indicate the action to be taken by empowered authorities in the event of a disaster. In some countries the national disaster | It is important to statutorily establish this office to ensure a central body with primary responsibility for disaster preparedness, mitigation, and response. The law should specify the roles and responsibilities of the agency; provide for a Director and indicate his/her role and functions, rights and responsibilities; provide for the formation and procedures of an Advisory Committee to be established within the agency/office; and include provisions for accountability. | Within the emergency/disaster frameworks studied, there are generally three kinds of bodies: (1) standing agencies or offices (governmental staff); (2) coordination commissions or similar cross-agency/cross-ministerial bodies comprised of representatives of a wide range of governmental and/or non-governmental units that are | |

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| | <p>Management Agency has not been established statutorily.</p> <p>In many project countries there is a lack of cohesion/coordination among response agencies.</p> <p>While in some countries disaster mitigation is being addressed in the country by individual agencies, it is not being done on a comprehensive national basis.</p> <p>Some institutions do not have the capacity to effectively manage/prepare for an emergency/disaster.</p> | <p>Also, the law must carefully delineate the responsibilities and powers of each relevant official or agency in the event of a disaster; and include a requirement that the Director of the agency/office make bi-annual presentations before the Parliament.</p> | <p>potentially involved in disaster/emergency prevention and/or response; and (3) oversight and/or advisory commissions whose membership consists of government or non-governmental members (or both). Any or all of these may be found at all levels or only at one level.</p> <p>In some more developed countries, various types of disaster or emergency (e.g., chemical spills, marine accidents, etc.) are assigned to different agencies, with the particular responsibility of each agency being clearly defined. Also, in some countries, agencies have the right to borrow funds and/or to solicit international assistance, whether for disaster prevention or for response when a disaster has occurred.</p> | |
| <p>National Disaster/ Emergency Management Plan</p> | <p>The disaster/emergency management plans in many of the project countries are not sufficient to address their disaster preparedness, mitigation and response needs. Among the deficiencies in the plans are: Mitigation and response and recovery areas are weak, they do not cover all hazards mostly concentrated on hurricanes,</p> | <p>Such plans are a major contributor to effective emergency frameworks. In this respect, effectiveness of disaster management frameworks is less a function of legislation than of operative experience, dependent less on the legislation than on its implementation. To be effective, any type of governmentally mandated management planning must respond to the unique needs of the country, region, district, village or municipality in which it will be implemented.²⁸ Where plans are adopted through a detailed participatory process, including active participants from all relevant institutions, agencies and communities, the result will often be a</p> | | |

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| | <p>they not sufficiently supported by legislation and the link between the plan and the law is not always clear, reporting structures are provided but not specifically for financial accountability, and operational procedures are not clearly defined. Some project countries do not have a National Disaster Management Policy.</p> | <p>unique instrument that addresses the special needs and characteristics of the country, state, community or village to which the plan applies. Prepare and implement a national disaster management policy as a matter of priority. More specifically, many plans need to undergo a comprehensive review in order to reflect and build on recent disaster experiences, current experiences within disaster and other related agencies, and changes in government; address resource challenges; and revise roles and responsibilities.</p> | | |
| <p>Emergency Operations Center and Shelter Establishment and Management Rules and Procedures</p> | <p>The rules governing Emergency Operation Centers and Shelters often lack clarity and specificity.</p> | <p>The provisions should specify, among other things, the mission and mandates of the Center, types of shelters (e.g. Crown occupation, business owned, etc.) and corresponding rights and responsibilities; Director of Shelters, shelter managers and officers, along with their corresponding responsibilities; liabilities and remedies, etc.</p> | | |
| <p>FUNDING CONSIDERATIONS</p> | | | | |
| <p>National Disaster Fund</p> | <p>Whether combined or from a single source, committed resources for disaster management are woefully inadequate. There are often no reliable, sustainable and substantive funding arrangements for disaster prevention and mitigation.</p> | <p>Disaster funding mechanisms should be supported by sound legislative enactments that clearly define the parameters of any disaster management funding scheme and secure the integrity of the funding mechanism by protecting the funding source from budgetary re-allocation and by legislatively penalising misappropriation.</p> <p>Experts have almost uniformly cited funding</p> | <p>Dominican Republic – Law 147/02</p> <p>United States of America – Disaster Relief Fund</p> <p>India – Disaster Mitigation Fund; Calamity Relief Fund; National Calamity Contingency Fund</p> | |

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| | <p>In some countries the Finance and Administration Act, or other similar legislation does not make clear provisions for disaster emergencies. Further, there are often no laws specifically establishing a National Disaster Prevention, Mitigation or Preparation Fund.</p> | <p>deficiencies as the primary challenge facing national emergency/disaster institutions and frameworks. They note the following: where funding for emergency situations is formally budgeted or otherwise set-aside in advance, funding has often been critical in enabling a country to take rapid response action in particular occurrences.²⁹ Even where available funds are often not sufficient to cover the entire disaster response activity, experts have noted that countries experience better initial “rapid response,” and that this factor appears to have a critical impact on the effectiveness of the overall response, the diminution in damages suffered, and the increase in speed with which the emergency/disaster situation will pass.</p> <p>In general, experts often recommend the creation of such funds. The advanced establishment of an emergency fund can facilitate the creation of streamlined procedures and processes for accessing emergency/disaster funding that will apply only to (or through) disaster/emergency authorities; and only when certain conditions are present (such as, in many countries, a formal declaration of the state of disaster or emergency in the country or some part of it.) It is sometimes presumed that the pre-existence of such a fund will diminish or eliminate the complexity of normal governmental financial processes by which agencies access unbudgeted funds; particularly during a time of disaster/emergency, when the government’s financial system and its employees may not be operating at top form.</p> <p>Thus, provisions on the Fund should include the</p> | | |

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| | | <p>purpose of the Fund, establish a special account for the Fund, establish a body responsible for administering/operating the Fund, specify the functions of the administering Body, who can make a request for disbursement, how Funds can be withdrawn, auditing/reporting requirements, etc.</p> | | |
| <p>Budgetary Line Item</p> | <p>As a matter of policy in some countries, line items are not created for emergency management in the annual budget nor is it provided for in the estimates.</p> <p>Often, where there is a specific line item allocation, it only funds the normal day-to-day activities of the disaster agency but with no special provision for an emergency release of funds to the agency in the event of a disaster.</p> <p>It is difficult to achieve risk reduction on the scale mandated by the ISDR and the St. George's Declaration due to a lack of serious financial commitment on the national level.</p> <p>The procedures that govern funding are not addressed directly in legislation.</p> | <p>Allocating a dedicated percentage of the national budget for disaster/emergency management ensures direct, recurrent/consistent and reliable funding. The laws should specify how such funds are to be applied. For example: the percentage amount should cover funding for the operation of the National Disaster Management agency operations, preparation, mitigation and response efforts, and unexpected costs generated by public calamities or catastrophes.</p> <p>Additionally, the allocation of funds should be based on a realistic risk assessment of future disaster costs.</p> <p>The law should also specify to whom a request for disbursement should be made and other rules and procedures. It should also clearly state how funds from international institutions should be handled.</p> | <p>Dominican Republic – Law 147/02</p> | |

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| ADDITIONAL CONSIDERATIONS | | | | |
| Remedial Measures | Provisions on remedial measures, which can support the recovery from a disaster, are notably absent from disaster/emergency legislation. | Provisions on remedial measures, to prevent, for example, price gouging, should be included in legislation. | Phillipines Act – Section 18: <i>Remedial Measures - The declaration of a state of calamity shall make mandatory the immediate undertaking of the following remedial measures by the member- agencies concerned as defined in this Act: (a) Automatic imposition of price control of basic necessities by the Department of Trade and Industry, in areas declared under a state of calamity; (b.) Monitoring, prevention and control of over pricing/profitteering and hoarding of prime commodities, medicines and petroleum products by the local Price Coordinating Council; (c) Programming/reprogramming of funds for the repair and safety upgrading of public infrastructures and facilities; and (d) The granting of “one-year, no-interest loans” by government financing or lending institutions to the most affected section of the population.</i> | |
| International Aid and Relief | In some project countries there deficiencies in the legislation, policy or procedures with respect to the receipt of international assistance. There are often no clear and effective provisions/mechanisms for | International aid and relief play a significant role in handling most severe natural disasters. In most cases, natural disasters are of such size and magnitude that they can successfully be addressed domestically by national authorities and the local civil society. ³⁰ However, the costs, frequency and magnitude of natural disasters continue to rise, putting significant strain on local and national | | |

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| | <p>the initiation and termination of international assistance. Among other things, the legal status to international organization in domestic jurisdiction (operate, contract, sue) appears to be a major challenge.</p> | <p>governments to meet pre and post disaster management needs. Disasters are sometimes so large that they overwhelm national coping capacities and necessitate the assistance of foreign and international actors in order to ensure that critical humanitarian needs are promptly and adequately met.³¹</p> <p>Legislation and/or regulation should provide the requisite authority and institutional framework for the coordination of international relief efforts.</p> <p>There must be clear provisions for the initiation and termination of international aid relief, privileges and immunities which cover immigration and customs, goods and equipment, taxation and service requirements, infrastructure and communication, transportation and movement, legal standing and validity, legal status, and coordination.</p> | | |
| <p>National Security</p> | <p>In some legislation national security considerations, which are important in providing the scope and basis for effective action, are absent in the definitions of disasters and emergencies. Often overlooked is the interaction among national security interests, established rights, and human rights. Some countries do not have a national security strategy/policy which</p> | <p>There should be a strong definitional basis for national security concerns in legislation. This would provide a sound basis for emergency or disaster action. The absence of clear definitions calls for interpretation of the relevant legislation. Interpretation of legislation prior to action on issues as critical as national security can delay and detract from effective and timely action being taken to address the specific national security emergency which arises.</p> <p>The effective response to national security related emergencies will require the vesting of regulatory power to agencies to support the implementation of measures, vesting provisions should be clearly spelt out in the enabling declaration.</p> | <p>The Marshall Islands- Disaster Assistance Act 1987 (hereinafter referred to “the Marshall Islands Act”) (a) <i>'disaster' means occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause including but not limited to fire, flood, earthquake, wind, storm, wave action, oil spill, or other water contamination requiring emergency action to avert danger or damage, ... explosion, or civil disturbance;</i></p> | |

| ISSUES | CHALLENGES | RECOMMENDATIONS/EXPLANATION | EXAMPLE | COMMENTS |
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| | includes disasters in the framework. | | <p>Canada – Emergencies Act 1985 (hereinafter referred to “the Canada Act”) For the purposes of this Act, a “national emergency” is an urgent and critical situation of a temporary nature that... (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.</p> | |
| Communication Systems | <p>A fully integrated communication system is critical to both pre and post disaster activities and is an essential component to an effective disaster response effort. However, in many countries, current communication system during national disaster emergencies are not effective. Furthermore, some countries do not have an emergency telecommunications action plan and the inventory of telecommunication resources are not often current/up-to-date. Moreover, all the key players not often on one</p> | <p>Prepare and effectively implement a telecommunications action plan.</p> | <p>The Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations is a global treaty which outlines a comprehensive regulatory framework for international cooperation in disasters with respect to the use of life-saving telecommunications equipment.³³ The Convention mandates its signatories to facilitate the provision of prompt telecommunication assistance, to mitigate the impact of a disaster, and covers both the installation and operation of reliable and flexible telecommunication services.³⁴ The uniform regulations of the Tampere Convention have been universally identified and</p> | |

| ISSUES | CHALLENGES | RECOMMENDATIONS/EXPLANATION | EXAMPLE | COMMENTS |
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| | <p>platform and so inter-operability is a key issues. There is also a need to broaden coverage as in the cases where there is an island wide communication system, there are blind spots.</p> <p>Additionally, the use of telecommunication equipment by international and regional disaster relief personnel and humanitarian organizations is generally hampered by complex regulatory barriers in the affected territories that make it extremely difficult to import and rapidly deploy telecommunications equipment for emergency relief efforts without prior approval from the local regulators.³²</p> | | <p>accepted as the best practice for telecommunications use in disaster relief operations.</p> <p>The Convention provides instruction for all relevant participating stakeholders, including, government, non-governmental and other non-state actors. The Treaty recommends,³⁵ among other things:</p> <ul style="list-style-type: none"> • Reduction or waiver of regulatory barriers to the use of telecommunications resources for disaster mitigation and relief (Art. 9) • Granting of certain privileges and immunities to organizations and individuals providing telecommunications assistance under its terms, including immunity from local court jurisdiction, exemption from taxation, duties and other charges, and immunity from seizure (“to the extent permitted by [their] national law”) to provide (Art. 5) • The procedures for requesting and provision of telecommunications assistance, specifically recognizing the right of each disaster affected country to direct, control and coordinate assistance provided | |

| ISSUES | CHALLENGES | RECOMMENDATIONS/EXPLANATION | EXAMPLE | COMMENTS |
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| | | | under this Convention within its territory. | |

¹ It is noted, however, that American Samoa’s Territorial Disaster Assistance Act (Title 26, Chap. 1) includes among covered disasters, both natural and manmade occurrences, “including but not limited to fire, flood, earthquake, wind, storm, wave action, oil spill, or other water contamination requiring emergency action to avert danger or damage, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, or hostile military or paramilitary action.”

² Vanuatu, National Disaster Act , Cap. 267 (Act 31 of 2000) §2.

³ Vanuatu, National Disaster Act , Cap. 267 (Act 31 of 2000) §13.

⁴ Ethiopia, Proclamation to Establish a Relief and Rehabilitation Commission, §2

⁵ American Samoa, Territorial Disaster Assistance Act of 1978 (Chapter 01 of Title 26), 26.0104(a), emphasis added.

⁶ The law does not define “disaster emergency.”

⁷ See, e.g., Lesotho, Disaster Management Act, 1997, Act No. 2 of 1997, §2.

⁸ Thailand, Disaster Prevention and Mitigation Act, B.E 2550 (2007) §2.

⁹ See, e.g., Micronesia, Disaster Relief Assistance Act of 1989. Title 41, Chap. 7 Code of the FSM, § 705. This issue is discussed in greater detail in part II.B of this report, below.

¹⁰ See, e.g., Fiji, Natural Disaster Management Act, No. 21 of 1998, §17; Marshall Islands, Disaster Assistance Act, Chap. 10, §1005

¹¹ See, e.g., Kiribati. National Disaster Act 1993, No. 12 of 1993, §17; Lesotho, Disaster Management Act, No. 2 of 1997 §3.

¹² See Constitution of Antigua and Barbuda section 20(1); Barbados Constitution section 25(2); Belize Constitution section 18(3); The Dominican Republic Constitution Article 37 (Congress); Grenada Constitution section 17(1); Jamaica Constitution section 26(5); St. Kitts and Nevis Constitution section 19(1); St. Lucia Constitution section 17(1); St Vincent and the Grenadines Constitution section 17(1).

¹³ See Constitution of Dominica section 17(3). The Dominican Republic Constitution Article 55(7). Trinidad and Tobago Constitution section 8.

¹⁴ The Vanuatu Act - section 17. The Gambia – Section 70.

¹⁵ The Marshall Islands Act - Section 1005.

¹⁶ The South Africa Act - Section 27. The Fiji Act – Section 18. Singapore – Section 102(2)

¹⁷ See Constitution of St. Lucia section 17(1); Antigua and Barbuda Constitution section 201(1); Belize Constitution section 18(2); Grenada Constitution section 17(1); St. Vincent and the Grenadines Constitution section 17(1);

¹⁸ That is certainly not true of all such provisions, some of which simply state that they may set the duration in the declaration itself. Lesotho, Disaster Management Act, No. 2 of 1997 §3(2); Marshall Islands, Disaster Assistance Act, Chap. 10, §1005.

¹⁹ In Samoa’s Disaster and Emergency Management Act, No.13 of 2007 §19, the declaration of a disaster lasts only 48 hours, unless the government declares a State of Emergency.

²⁰ See for Example The South Africa Act – Section 27(2); The Canada Act Section 8.

²¹ See Section 16(1) of the Vanuatu Act “While a declaration of a state of emergency is in force, the Minister may, on the advice of the National Disaster Committee, direct any government agency to do or refrain from doing any

act, or to exercise or refrain from exercising any function.”

²² See page 3 of the Declaration accessible at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_documents&docid=f:hd126.107.pdf

²³ See for Example the Emergency Powers Act Cap 111 of Jamaica first passed in 1938 and the Emergency Powers Act CAP 161 of Barbados first passed in 1939.

²⁴ See for Example Grenada Emergency Powers Act 1987 and St. Lucia Emergency Powers (Disasters) Act 1995.

²⁵ Lessons Learned: Disaster Management Legal Reform, Indonesia Experience. Available at

<http://www.undp.or.id/pubs/docs/Lessons%20Learned%20Disaster%20Management%20Legal%20Reform.pdf>. As noted at page 18

“Imperfect Law passed at the right time has provided the basis for subsequent ancillary regulations that can repair and refine the Law in its future implementation. There have been numerous critical assessments of the ‘gaps’ in the

DM Law 24/2007, however, few ‘gaps’ have been found that cannot be ‘filled’ by further regulation”

²⁶ See, e.g., Botswana, Essential Supplies and Services Act., Chapter 22:05, §4; Canada, New Brunswick, Emergency Measures Act, S.N.B. 1978, c. E-7.1, §§22-24; India, Disaster Management Act, No. 53 of 2005, §§51-60; India,

Gujarat State Disaster Management Act, Gujarat Act No. 20 of 2003 §§38-40; Kiribati, National Disaster Act 1993 ,(No. 12 of 1993), §§19-23; Thailand, Disaster Prevention and Mitigation Act, B.E 2550 (2007), §§49-55; Tonga,

Emergency Management Act 2007, Act No. 14 of 2007, §§38-40; and Vanuatu, National Disaster Act ,Cap. 267 (Act 31 of 2000), §19.

²⁷ Draft Country Assessment Report, at page 75.

²⁸ See Oglethorpe, 2001.

²⁹ See e.g., Brader, 2006.

³⁰ Katrien Beeckman, IDRL and the Domestic Legal Framework for International Disaster Relief and Initial Recovery, Address at the 2007 Webster University Humanitarian Conference in Geneva available at

<http://www.ifrc.org/docs/news/speech07/kb150207.asp>

³¹ International Federation of Red Cross and Red Crescent Societies, Law and Legal Issues in International Disaster Response: A Desk Study, 2007

³² <http://www.itu.int/ITU-D/emergencytelecoms/tampere.html>

³³ International Federation of Red Cross and Red Crescent Societies, International Regulation of Telecommunications in Disaster Relief, available at

<http://www.ifrc.org/Docs/pubs/idrl/idrl-telecoms-background.pdf>

³⁴ <http://www.itu.int/ITU-D/emergencytelecoms/tampere.html>

³⁵ Tampere Convention in the United Nations Treaty available at <http://www.reliefweb.int/telecoms/tampere/icet98-e.htm>