



Strathmore University
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**AN ANALYSIS OF THE LEGAL FRAMEWORK GOVERNING DISASTER
MANAGEMENT IN KENYA**

**A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE BACHELOR
OF LAWS DEGREE**

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DISSERTATION DECLARATION FORM

I, **SHARON CHEPTOO LANG'AT** declare that this dissertation is my original work and has not been submitted for the award of a degree in any other university.

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This dissertation has been submitted for examination with my approval as a university supervisor.

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ABSTRACT

This study sought to examine the legal framework governing disaster management in Kenya. The study appreciates the gravity of disasters and the need for legislation of disaster management activities, in a bid to curb and reduce the effect of disasters, in the event that they occur.

The objective of the study was to establish the extent to which a functioning legal framework for disaster management adequately facilitates the management of disaster.

The study finds that a good legal framework, could go a long way in effectively managing disaster. Looking at the Disaster Management Act, 2002 (South Africa), the study observes that some of its provisions are key to ensure a functioning system, such as the express allocation of funds to be used in disasters and the establishment of key bodies, vital in managing disasters.

The study then proposes a National Disaster Management Bill for drafting and assent for use in Kenya.

LIST OF ABBREVIATIONS

ALRM- Arid Lands Resource Management
DMA - Disaster Management Act
EAC-East African Community
FAO- Food and Agriculture Organisation
ICGDM-Intergovernmental Committee on Disaster Management
KFSG- Kenya Food Steering Group
KFSSM- Kenya Food Security Meeting
NADIMA-National Disaster Management Authority
NDAF-National Disaster Advisory Forum
NDCC-National Disaster Coordinating Committee
NDEC-National Disaster Executive Committee
NDOC-National Disaster Operations Centre
UN- United Nations
UNDP-United Nations Development Programme
UNEP-United Nations Environmental Programme
UN-HABITAT- United Nations Human Settlement Programme
UNICEF-United Nations Children's Fund

CHAPTER ONE: INTRODUCTION

1.1 Background of the study

The Black's Law Dictionary has defined Disaster as a calamity or a catastrophic emergency. Disaster has both human and natural origins. Natural disasters are those that occur due to natural processes of the earth. They include floods, drought, earthquakes, volcanic eruptions, tsunamis and even epidemics. Man-made disasters are those which occur as a result of deliberate or negligent human actions. They include mass murders and massacres.

Disaster Management involves the organization and management of resources and responsibilities for dealing with all humanitarian aspects of emergencies.¹ It particularly includes prevention, preparedness, relief and recovery. Preparedness includes activities designed permanent protection.

Kenya, like any other country, is prone to disaster. It, therefore, follows that there should be a good legal and institutional framework to manage the same. However, this is not the case. Kenya has been faced with numerous disasters that have caught it unprepared, and has caused it to react slowly and ineffectively, leading to widespread suffering. For example, in 2006, civil conflicts in Molo left 2 people killed, and 5000 displaced.² Flash floods in Isiolo also displaced 3000 people.

1.2 Statement of the Problem

Kenya has been on the receiving end of jokes portraying its unpreparedness and how uneducated its people are in disaster situations.³ There is no law enacted to govern disaster management in this country. There, however, exists a draft National Policy on Disaster Management, 2009. The policy objective is to establish guiding principles and policy architecture for disaster management in Kenya by presenting the institutional structures, roles, responsibilities,

¹ International Federation of Red Cross and Red Crescent Societies, *Disaster and Crisis Management*, <http://www.ifrc.org/en/what-we-do/disaster-management/> on 4 March 2015.

² Draft National Policy on Disaster Management in Kenya, February 2009.

³ Stephen Derwent Partington, Random Blues, Kenya's greatest disaster is its disaster management ' 20 October 2015, <http://www.sde.co.ke/thenairobi/article/2000180192/random-blues-kenya-s-greatest-disaster-is-its-disaster-management> on 17 November 2015.

authorities and key processes required to achieve a coordinated, coherent and consistent approach. This policy, however, has never been effected and, therefore, none of its recommendations have been put in place. During the Third United Nations (UN) World Conference on Disaster Risk Management⁴, the President of Kenya, H.E Uhuru Kenyatta, alluded to this.⁵ In his speech, he stated that we can, in fact, reduce the effects of disaster because scientific knowledge and information is now advanced and available. He stated that there is a need for investments to facilitate this and strengthening of institutions responsible for disaster preparedness and management. His speech, therefore, suggests the need for an effective policy and legislation (to establish and give power to the institutions and to facilitate investments.)

This study, therefore, seeks to analyse the Draft National Policy on Disaster Management, identify the shortcomings and come up with suitable recommendations for the future drafting of disaster management legislation.

1.3 Research Objective

1.3.1. General Objective

The general objective of this study is to establish the extent to which a functioning legal framework in relation to disaster management adequately facilitates the management of disaster.

1.3.2. Specific Objectives

- i. To assess the adequacy of the legal framework for disaster management in Kenya
- ii. To compare the Kenyan legal framework with South Africa's legal framework on disaster management
- iii. To recommend legislative and policy reforms for disaster management.

1.4 Research Questions

- i. How adequate is the legal framework for disaster management in Kenya?

⁴ 14 – 18 March 2015, Sendai, Japan.

⁵ <http://allafrica.com/stories/201503161053.html> on 17 November 2015.

- ii. How does the Kenyan situation compare with that of South Africa?
- iii. What are the recommendations for legal and policy reform for disaster management?

1.5 Hypotheses

The hypotheses this study proposes to test are:

- i. The existing legal framework does not adequately facilitate disaster management in Kenya.
- ii. The challenges faced in managing disaster are related to the absence of a proper legal framework.

1.6 Justification of the Study

This study is justified on the basis that although there are many disasters that hit Kenya, there exists no legal framework to guide how disaster shall be managed and risk reduced. While there are many laws that address different disasters separately, there is an apparent scarcity regarding disaster management as a whole. There is need for cohesion and it is that that this paper seeks to address. South Africa was the selected country as it has a legal system similar in structure and in form to that of Kenya, and is within similar geographical conditions, and has a promulgated disaster management law. Given this, it constitutes a good country for comparison to Kenya.

1.7 Literature Review

Several books and articles exist on the topic of disaster management. However, literature on disaster management law to be specific is rather limited.

Joachim Ahrens and Patrick M. Rudolph⁶ identify institutional failure as the main cause for vulnerability to disaster and explore the relationship between disaster management and institutional failure. They argue that sustainable livelihoods and a reduction in susceptibility to disasters will only be achieved if a country's governance structure enables the implementation

⁶ Ahrens J and Rudolph PM, The Importance of Governance in Risk Reduction and Disaster Management, *Journal of Contingencies and Crisis Management*, Vol. 14 No. 4, (2006) 207–220.

and enforcement of public policies conducive to a country's economic and social development. This article is relevant to the study as it affirms that for effective disaster management, a system for implementation of policies needs to be in place, which is laws.

In a critique of the Indian Disaster Management Act, Subhradipta Sarkar and Archana Sarma⁷ observe that before its implementation, some issues should be looked into, to avoid greater disaster. They suggested that declaration of disasters or disaster-prone zones and classification of disasters are mandatory. Further, the qualifications for the members to be appointed to the national authority should be stated. Also, incorporation of some experienced people outside the government mechanism should also be mandatory. The powers and functions of the various authorities and committees need to be worked out carefully so that there are not many overlapping areas. Creation of too many plans and policies should be avoided. The entire system must have a budget of its own with provisions for accounts. Similarly, to ensure transparency an audit of the funds referred to in the Act should be provided.

In addition, they suggested that penal provisions for false claims be removed, considering the plight of the people during disasters and the careless response of the authorities in many cases. The involvement of the local authorities and voluntary organizations regarding the ground level activities needs to be stressed. The emphasis of disaster management efforts should focus on rights of the communities and the people who live in them. This article is of particular importance to this study as it addresses critical aspects of disaster management law that ought to be included in the legislation for it to fulfill the purpose for which it was intended.

Damon P. Coppola,⁸ provides a comprehensive overview of the players, processes and special issues involved in the management of disaster. He discusses the special issues encountered in the management of international disasters and explains the various agencies that assist in the preparedness, mitigation, response and recovery during national and regional events. This book is vital to this research as it concentrates on the four phases of disaster management, that is,

⁷ Subhradipta S, and Archana S, Disaster Management Act, (2005): A Disaster in Waiting? *Economic and Political Weekly* Vol. 41, No. 35 (2006), 3760-3763 .

⁸ Damon P, *Introduction to International Disaster Management*, Butterworth-Heinemann, 2006.

mitigation, preparedness response and recovery. It also contains many case studies useful to this research.

Butt, Nasu, and Nottage,⁹ outline the regulatory environment for disaster prevention and management in social, economic and political contexts. They explore the question of whether social-legal norms play different roles in preventing and managing responses to natural disasters compared to man-made disasters. They look into how disaster law interacts with society across very diverse societies in the disaster-prone Asia-Pacific region. In addition, they examine the increasingly important roles played by international law and regional regimes for cross-border cooperation in disaster prevention and relief. This is informative literature to this study as it explores the relationship between disaster management and the law.

Farber and Faure¹⁰ explore the intricate relationship between legal issues and disaster. They build recognition of the shortcomings of the legal systems, turning their attention to how these failings can and should be addressed. The essays focus on the legal and economic aspects of disaster and pay particular attention to the legalities of catastrophes. It is of importance to this study as it highlights the flaws of various legal systems with regard to disaster and suggests how these flaws should be dealt with.

1.7 Limitations

The topic of disaster management has not been exhausted and therefore material may be limited. Moreover, there were some time constraints, as this research involved reading and comparing different. In addition, some of the information may be biased and this may limit the findings of this research.

⁹ Butt S, Nasu H, Nottage L, *Asia-Pacific Disaster Management, Comparative and Socio-legal perspectives*, Springer, 2014

¹⁰ Farber D, Faure M, *Disaster Law*, Edward Elgar Publishing, 2010.

1.8 Chapter Breakdown

CHAPTER ONE: INTRODUCTION

This is the introductory chapter and it includes the background to the study, statement of the problem, research objectives, and justification of the study, literature review and limitations of the research.

CHAPTER TWO: THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY

This chapter will explain the theories upon which this research is grounded. It will also describe how the research will be carried out.

CHAPTER THREE: DISCUSSION OF THE CASE STUDY

Chapter three will be a critique of the legislative and policy framework in Kenya. It will address its adequacy in disaster management.

CHAPTER FOUR: COMPARATIVE ANALYSIS: KENYA AND SOUTH AFRICA

Chapter four will be a comparative analysis of the Kenyan situation, and the South African situation, which has a disaster management law. It will compare the Kenyan draft policy with the South African Act.

CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

This will have the conclusion of the study. It will also include recommendations, which shall be for further research and from this study.

CHAPTER SIX: PROPOSED DISASTER MANAGEMENT BILL

This chapter will give a draft proposal for a disaster management bill for future drafting.

CHAPTER TWO: THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY

2.1 Theoretical Framework

The study is grounded on the classical natural law theory and the human rights theory.

Aquinas, the main proponent of the classical natural law theory, defines law as a certain ordinance of reason for the common good, meaning it burdens the community equally and is made by him who has the care of the community with the power to coerce others to obey it and promulgated.¹¹ Further, it is created by a being with reason and must have an end or goal. The law should be for the common good, therefore, it should benefit the society as a whole rather than the private good of individuals. In addition, the law is made by him with the authority to do such. The law should be promulgated. Promulgation of laws basically means that it should be made known to those being ruled by it.

This theory justifies this study as its definition of law describes how the law managing disaster ought to be. The law should be created within reason, with a particular end or goal, it being, in this case, preventing and effectively managing disaster in the event of disaster.

In addition, Aquinas goes on to suggest that law should be for the common good. Disaster has an effect on each and every person in society, whether or not they are directly affected. A law to manage the same would, therefore, be for the common good because it would seek to curb disaster and reduce the effects of disaster.

According to Aquinas, the laws must be made by a person or body with the authority to make the law. The body responsible for the making of law is the legislature. The law has the force of law only when it is promulgated.¹² The disaster management law ought to be made known to the public for it to fulfill the purpose for which it was intended.

¹¹Prof. James E. Mabon: The Philosophy of Law' <http://home.wlu.edu/~mahonj/PhilLawLecture1NatLaw.htm> on 26 February 2015.

¹² Maritain J, *Man and the State*, The Catholic University of America Press, (1951), 82.

The study is also informed by the various theories of human rights. Human rights can be defined as rights derived from the inherent dignity of the human person.¹³ Although the expression 'human rights' had its origin in international law, dating back to around 1945 after World War II, the concept of an individual having basic, inalienable rights against a sovereign state had its origin in the doctrines of natural law and natural rights. Thomas Hobbes and John Locke are the main scholars who developed the Natural Rights Theory.

According to Thomas Hobbes, no individual could ever be deprived the right to life which he enjoyed in the state of nature. He asserted equality amongst human beings, without any consideration.¹⁴ John Locke further developed this, arguing that every human being has a personal right to life, personal liberty and property and that no government authority has the power to deprive individuals of these rights, because they are inherent, meaning they enjoyed them, even before the creation of a civil or political society.¹⁵

Jack Donnelly states that human rights are held universally by all human beings. They are the highest moral rights and they regulate the fundamental structures and practices of political life. In ordinary circumstances, they take priority over other moral legal and political claims. These dimensions encompass what he calls moral universality of human rights.¹⁶

The Constitution of Kenya 2010 provides for the right to life, the right to property, freedom and security of the person and economic and social rights.¹⁷ The economic and social rights provided for include the right to be free from hunger, the right to clean and safe water, the right to social security and the right to the highest social attainable standard of health. Disasters deprive the population of these rights, and it is therefore on this, that the study is based.

¹³ Preamble, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966.

¹⁴ Hobbes T, *Leviathan*, Oxford: Oxford University Press, (2012), 72-73.

¹⁵ Locke J and Whiston J, *Two Treatises of Government*, London printed: Reprinted the seventh time by Whiston Strahan W, Rivington F, Rivington J, Davis L, Owen W, Hawes, Clarke and Collins, Johnston W, White B, Caslon T, Crowder S, Longman T, Law B, Rivington C, E. and C. Dilly, Wilkie J, Cadell T, Baker S, Payne T, Davies T, Robinson G, Becket T, and Robson J, (2012), 427.

¹⁶ Donnelly J, The Relative Universality of Human Rights, *Human Rights Quarterly* 29 (2), (2007), 281-306.

¹⁷ Article 26,29, 40, 43, *Constitution of Kenya*, (2010).

2.2 Research Design and Methodology

The study required data to describe and interrogate the legal framework governing disaster management in Kenya, and comparing it with the legal framework governing disaster management in South Africa. The study contains data from a desk-based review.

The desk-based research included a review of a wide range of material pertaining to disaster management; both local and international. The desk-based research also included a study and critique of various policies and legislation, mainly the Draft National Policy on Disaster Management (2009). This is a policy that was formulated with the intention of reducing vulnerabilities to risks. In addition, it included a study of the Disaster Management Act, 2002 (South Africa), and a comparison of this act with the Draft Policy.

In this study, the relevant international, regional and national legal frameworks were reviewed. At the international level, it was found that there indeed exists a legal framework, and several United Nations organisations have disaster management functions. At the regional level, it was found that there was a bill, the East African Community Disaster Risk Reduction and Management Bill, 2013, which was halted and there is no timeline as yet on when it will be re-introduced. Nationally, it was found that there has been a County Disaster Management Bill which has been adopted and assented by a few counties, but the majority of the counties are yet to. There also exists a draft policy, the Draft National Policy for Disaster Management in Kenya, which formed the bulk of the research. However, this policy is yet to be implemented.

The study also collected data from various reports from disaster management conferences, such as the World Conference on Natural Disaster Reduction(23-27 May 1994) in Yokohama, Japan, the World Conference on Disaster Reduction(18-22 January 1994) in Hyogo, Japan and the World Conference on Disaster Risk Reduction (14- 18 March 2015) in Sendai, Japan.

The study also included scholarly articles from journals and relevant books from the Strathmore library, online libraries such as Hein online, Lexis Nexis, Jstor and other online sources. Some of the data included laws from other Nations and open source publications from International Organisations.

CHAPTER THREE: CRITIQUE OF THE KENYAN LEGISLATIVE FRAMEWORK ON DISASTER MANAGEMENT

3.1 LEGISLATIVE FRAMEWORK

3.1.1 International

With reference to our *grund norm*, Article 2 (5) states that the general rules of international law apply. A key element of the general guidelines is the acceptance of the International Federation of Red Cross and Crescent Societies International Disaster Response Laws, Rules and Principles commonly known as Red Cross.¹⁸ The first Parliament that sat after Kenya attained independence, adopted the Kenya Red Cross Society and passed the Kenya Red Cross Society Act, Chapter 256. Its independence is engraved by section 7 of the Act.¹⁹

3.1.2 Regional

The East African General Assembly has a Bill in the House identified as The East African Community Disaster Risk Reduction and Management Bill, 2013. This is as per requirement of the Treaty of the Establishment of the East African Community, Article 112 (1) (d).

The East African Legislative Assembly had the second reading of this Bill in August 2013 when it was halted after the Council of Ministers sought to consult the impact of its policies. It is to be re-introduced as a Council of Ministers' Bill.²⁰ The current position of not having any timeline indicating when the Bill will be re-introduced creates a pseudo-moratorium that inhibits progress.

¹⁸ Though IDRL Guidelines are not binding, their purpose is to influence international comity and obligation in certain disaster situations.

¹⁹ [T]he independent and voluntary nature of the Society shall at all times be respected in accordance with the resolution relative to National Red Cross Societies adopted by the General Assembly of the United Nations on the 19th November 1946.

²⁰ 'Bobi Odiko, Eala Sitting To Be Held In Kigali Next Week', <http://www.eala.org/new/index.php/media-centre/press-releases/887-eala-sitting-to-be-held-in-kigali-next-week>, on 8 December 2015.

3.1.3 National

There is no single Act that covers disaster management and disaster risk reduction in Kenya. There is, however, the National Drought Management Authority Bill, 2013, the *El-Nino* Multi-Sectoral Task Force for the 2015 – 2016 *El-Nino* under the Ministry of Interior and National Government, the National AIDS Control Council and their mandate to reduce AIDS-related mortality and HIV Stigma.

There is also a draft County Disaster Management Bill which some counties have adopted and assented. The Counties include Siaya, Elgeyo Marakwet, Kakamega, Bomet and Wajir.

The objects of this Act are articulated in Section 3 of the Bill. The Act is to establish an efficient structure for the management of disasters; enhance the capacity of the county government to effectively manage the impacts of disasters and emergencies and to take all necessary action to prevent or minimise threats to life, health and the environment from natural disasters and other emergencies; ensure that the county government effectively coordinates with other relevant agencies to mitigate the impacts of disasters; vest authority in persons to act during times of disaster in accordance with this Act, and to require the observance and implementation of directives given and initiatives taken by persons authorised under this Act; and implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster situations in the county.

The Bill also establishes a committee and directorate in charge of disaster management in the respective counties. The Bill is a step in the right direction and several counties need to adopt it. However, the National Government should have a leading hand in this as the Fourth Schedule of the Constitution of Kenya gives both levels of Government a responsibility in Disaster Management.

3.2 Policy Framework

There exists a draft policy, which was formulated in February 2009, the Draft National Policy for Disaster Management in Kenya. The policy was formulated with the intention of reducing Kenya's susceptibility to disasters by institutionalising mechanisms for addressing disasters.²¹ It encompasses the entire disaster cycle, from preparedness, relief and rehabilitation to mitigation and prevention. It marked a shift from the short term relief responses to development, emphasising resilience preparedness on the part of the government, communities and other stakeholders in disaster risk reduction activities. The policy's main aim therefore was to preserve life and to alleviate suffering by providing timely and appropriate response mechanisms to disaster victims.

3.3 Analysis of the Draft Policy

Dr. Nivedita P. Haran, IAS in the Prologue to *Strategic Disaster Risk Management in Asia* states that a disaster does not respect boundaries nor does it show any consideration towards the haves. The best way is to be well prepared and adopt practices that make us resilient towards disasters.²²

The preamble to the Sendai Framework for Disaster Risk Reduction 2015 – 2030 paragraph 14 states that in order to reduce disaster risk, there is a need to address existing challenges and prepare for future ones by focusing on monitoring, assessing and understanding disaster risk and sharing such information and on how it is created; strengthening disaster risk governance and coordination across relevant institutions and sectors and the full and meaningful participation of relevant stakeholders at appropriate levels; investing in the economic, social, health, cultural and educational resilience of persons, communities and countries and the environment, as well as through technology and research; and enhancing multi-hazard early warning systems, preparedness, response, recovery, rehabilitation and reconstruction. To complement national action and capacity, there is a need to enhance international cooperation between developed and developing countries and between States and international organizations.

²¹ Draft National Policy for Disaster Management in Kenya, February 2009.

²² Huong H, R. Lalitha S. Fernando, Mohamood A, *Strategic Disaster Risk Management*, Springer, 2015, vii

The Draft Policy's intentions were to show the current state of disaster management and risk reduction in Kenya and give proposals on what is the best way forward.

3.3.1 Chapter One: Introduction

The drafters start off by giving a history of the various occasions the country was marred by disasters and classifying the main hazards; Environmentally triggered, that is, climate-related such as soil erosion and drought; biological epidemics on livestock and humans; human-made disasters such as deforestation and pollution and geologic disasters (earthquakes).

As per the Policy analysis, the disasters to have frequent occurrences between 1974 – 2006 are floods, drought, illicit brew, road accidents and terrorist attacks.

The Legislature has lagged in producing any law to curb these major disasters. The most recent attempt is with The Security (Laws) Amendment Act, 2014 that gave overwhelming powers to the Kenyan Police, Army and Executive Arm of the Government. These new provisions left many skeptical and alarmed at the human rights that would be broken in a bid to implement these amendments to the fullest extent of the law.²³

The next and only attempt is with the National Drought Management Authority Bill, 2013 that after the 2nd Reading on 5th November 2012, is not seen in the Parliament Bill Tracker²⁴. In the East African Community Disaster Risk Reduction and Management Bill, 2013 no timeline has been provided as to when it will be re-introduced. The effort to mitigate disaster and create efficient strategy has been left to humanitarian international bodies, Foundations like Swiss Re Foundation and private persons.²⁵

3.3.2 Chapter Two: Contextual Analysis

The draft policy lists down the current disaster management system and their weaknesses in the implementation of their duties.

²³ 'Human Rights Watch: Kenya Security Bill tramples basic rights', <https://www.hrw.org/news/2014/12/13/kenya-security-bill-tramples-basic-rights>, on 10 December 2015.

²⁴ <http://kenyalaw.org/kl/index.php?id=525> on 15 December 2015.

²⁵ http://www.swissrefoundation.org/what_we_do/global_programmes/social_entrepreneurship/Swiss_Re_Start_Up_Academy.html on 15 December 2015.

The Organisations within the scope of strategy disaster reduction are: Kenya Food Security Meeting (KFSM), Kenya Food Steering Group (KFSSG), Arid Lands Resource Management Project (ALRMP), National Disaster Operation Centre, The Police, Department of Defence and National Youth Service, Fire Brigades, Occupational Health and Safety Services, Kenya Wildlife Services and National Environment Management Agency.

The major challenges and existing gaps in their duties are, first and foremost, that there is a lack of coordinated policy, where some organisations fall under the same purview but do not coordinate with each other or have overlapping duties. Secondly, there is an inadequate legal and institutional framework. As seen in chapter two of the policy, laws are lacking in disaster management. The institutions have multiple duties but no ‘teeth’ to implement. Third, there are weak disaster management capabilities within communities and institutions. There is a weak linkage between various levels of government and the people making any strategy not well addressed, well received hence weak impact. An example used in the Draft Policy is the crisis of the Internally Displaced Persons (IDP) after the 2007 – 2008 Post Election Violence. Where some of the IDP’s have settled is prone to disease and floods and the government is not doing enough.²⁶ Fourth, there is inadequate integration and co-ordination. Finally, there is inadequate funding. Section 18 (2) of the County Disaster Management Bill states that the County Management Fund shall be financed by monies or assets as may accrue to the Directorate in the Course of the exercise of its powers or performance of its functions, grants made by the national government or other county government, loans, aid or donations from national or international agencies and All monies from any other source provided or donated or lent to the Directorate. An inquisitive eye will notice that in all the four sources, none expressly states that the source is obliged. There is need to further delve into the financial, legal and institutional backing of the organisations tasked in disaster risk reduction.

²⁶ United Nations Development Programme, *Durable Solutions to Internal Displacement, Reconciliation and Restoration of Human Dignity of IDPs in Kenya*, 2011, ii.

3.3.3 Chapter Three: Current Disaster Management Initiatives

The chapter cited features of an effective disaster management system_ goals and objectives, guiding principles and a code of conduct that are relative to an efficient disaster management system. These are in line with the principles of the Hyogo Framework for Action that will be discussed later into the paper and was a precept to the drafting of this policy. -

The Draft National Policy cites major features of an effective disaster management system. It states that government should play a leading role in the strategic planning and management of disaster risk reduction. A proactive approach that encourages preparation, prevention and when the disaster occurs, mitigation should also be taken. It suggests that complementary, collective and harmonised response methods should be used. In addition, an operational early warning system that triggers quick and calculated response would be a telling feature of an effective disaster management system. Educating the people on prevention and mitigation of disasters is also vital to ensure efficiency of the system. Also, creating stronger and more efficient institutions in charge of disaster risk reduction would go a long way in ensuring efficiency of the system. Lastly, provision of a legal framework that gives the legal institutions powerful and legally bound backing would work to promote the efficacy of the system.

Its main objectives are to establish a policy/legal and institutional framework for management of disasters, promote efficient linkages between disaster management institutions, promote a culture of disaster awareness and preparedness, mobilise sustainable resources, including establishment of specific funds for disaster risk reduction strategies and to make institutional provisions to ensure productive networking and sharing of information.

Its key policy elements encompass what the four main phases in an efficient disaster management proposal and strategy are; prevention, preparedness, response and recovery.

The policies relied on by the Draft National Policy fall within the same scope with an essential element in Disaster Response: the process of recovery.

During the rehabilitation phase, there is dire and expeditious need for temporary housing, trauma medication and counselling, food and clean water to drink and security to prevent looting. The process of recovery encompasses the rehabilitation, restoration and reconstruction post disaster. The policy further recognizes the impact of the Private Sector by citing the fundamental role the Insurance Industry will play post-disaster.

3.3.4 Chapter Four: Policy, Legal And Institutional Arrangements

This chapter scrutinises and analyses the current organizational structure and legal framework and what is required for a more efficient approach to Disaster Management.

3.3.4.1. Legal Framework

As earlier stated, there is no legal framework for disaster risk reduction. The Draft Policy proposes the establishment of The National Disaster Management Agency (NADIMA). The powers, functions and funding of the Agency will need to be prescribed by law.

There are, however institutions whose Acts of Parliament include a duty to act on disaster management and disaster risk reduction: Explosives Act, (CAP 115), ensuring licensed usage of explosives and firearms to curb terrorism, Firearms Act, (CAP 114) which ensures licensed usage of explosives and firearms to curb terrorism, Public Health Act, (CAP 242) which ensures that biological diseases are kept at bay, Radiation Protection Act, (CAP 243) which ensures that biological diseases are kept at bay, Pharmacy & Poisons Act, (CAP 244) which ensures that biological diseases are kept at bay, Use of Poisonous Substances Act which ensures that biological diseases are kept at bay, The Wildlife (Conservation and Management) Act, (CAP 376) which provides for conservation of wildlife, The Forest Act, (CAP 385) which provides for conservation of forest cover and the National Environmental Management Act which establishes an Agency that is to conserve the environment.

3.3.4.2. Institutional Framework

National Disaster Executive Committee (NDEC)

This is a body under the executive arm chaired by the President of Kenya. The NDEC makes decisions on national disaster Management issues, especially during emergencies. As things stand now, it is the only body with the power to advise his Excellency the President on whether to declare a national disaster and to make international appeals for assistance. Its members are as the Ministers of State Special Programmes, Provincial Administration & Internal Security, Foreign Affairs, Health, Water and Irrigation, Agriculture, Livestock, Defense, Environment, Information, Planning, and the Treasury. This committee should be meeting on a quarterly basis to make decisions on issues emanating from the Disaster Coordinating Committee.

The body should, however, act in a supervisory manner. Ensure compliance with the Policies and strategies to be implemented. This ensures that during emergencies, the executive body ensures smooth running and management of the disaster.

National Disaster Coordination Committee

This Committee constitutes the Permanent Secretaries of the ministries under the National Disaster Executive Committee. They are tasked with implementation of the policies from National Disaster Executive Committee.

The Ministry of State for Special Programmes

This is a ministry under the Office of the President.

Their duties are to establish the National Disaster Management Resource Centre to collect, analyse and monitor relevant data to prevent future disasters and prepare an early warning system. They have the task of implementing policies. They also coordinate with sectoral committees. In addition, they prepare a budget for the duties that fall under the disaster risk reduction purview. Moreover, they develop guidelines in conjunction with the private sector,

civil society organisation and other stakeholders in Disaster Risk Reduction. They too have the mandate to establish the National Disaster Management Agency (NADIMA).

The National Disaster Management Agency

This Agency is yet to be established but is bestowed with many duties and obligations. It is responsible for the day to day management of all disasters management activities. They act as support to the Ministry of Special Programmes being that they were established under it. They also operate an effective and efficient national early warning system. The agency is to support the Ministry of Special Programmes in fund-raising activities outside the scope of the Government. They also document, publish and disseminate all relevant disaster management data and information. A sheer example of government laxity is shown as this Agency is vital to any valid attempt to mitigate disaster yet, years later, no sign of its establishment is yet to be seen.

National Disaster Management Authority (NADIMA) Directorates

This proposal and its drafting seem like a correction or amendment to the current National Disaster Operation Centre. Its validity and function are not clearly explained as there is also the National Disaster Management Agency proposed. This is a misguided approach as there is a possibility that there will be a juggle up of functions and duties by the two institutions. The proposed framework as shown below clearly shows that the NADIMA will be devolved, just as the National Disaster Management Agency.²⁷

NADIMA is to be operated within a board of representatives drawn from key ministries and other relevant bodies, including the private sector, civil society organisations, development partners and other stake holders. There are to be five directorates within NADIMA.

Directorate of Early warning and Disaster Risk Profiling Response

This directorate has the function of monitoring regularly, collection, analysis and evaluation of information on the most frequent disasters in the country. They are also expected to produce

²⁷ Country's Position Paper on Risk Reduction, Republic of Kenya.

Figure 1: The Organizational Structure of the Proposed National Disaster

Management Authority (NADIMA)

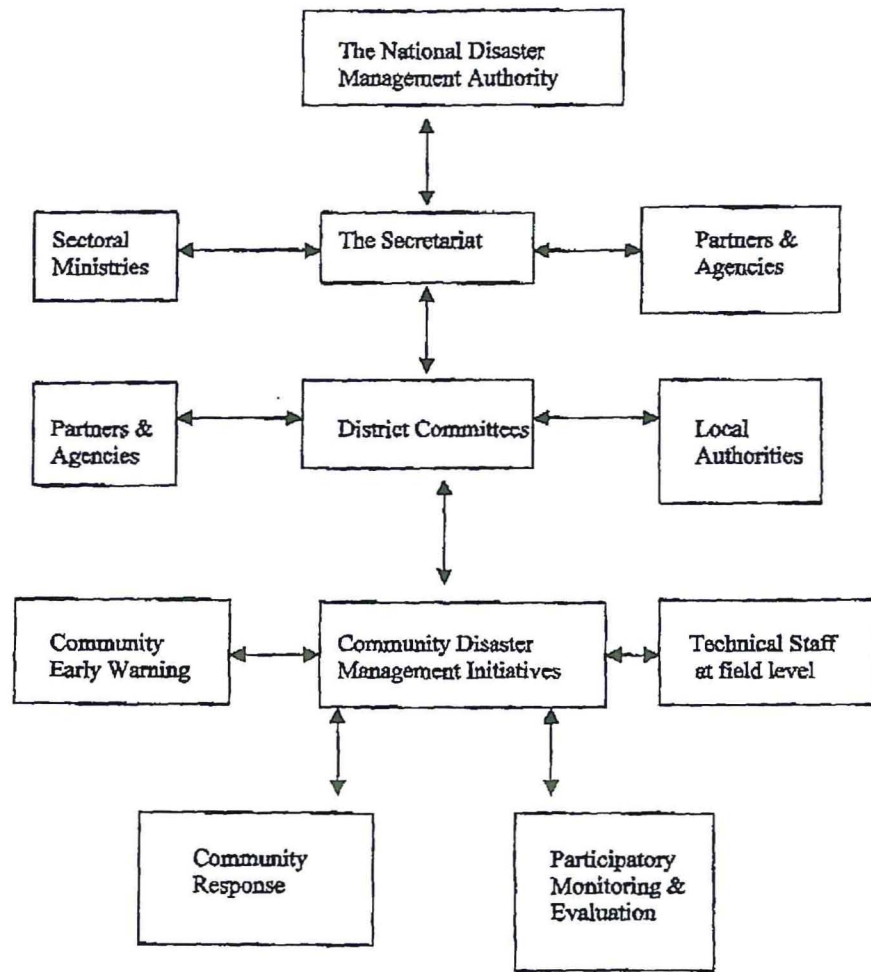


Figure No.1: Adapted from the Kenya Report: Country's Position Paper on Risk Reduction

regular early warning disaster management bulletins and publications. Moreover, they are to maintain a database of information and trends on disaster management in the country.

Directorate of Coordination

The directorate has the responsibility of facilitating coordination and collaboration amongst relevant stakeholders, for example disaster monitoring and early warning information service providers, disaster risk profilers and planners for disaster risk reduction in order to link early warning to response more strongly.

Directorate of Disaster Response

This directorate was given the duty to establish and maintain a national disaster response capacity database, and to coordinate all stakeholders in disaster response. They are also to facilitate preparation of disaster response contingency plans at the various levels of administration.

Directorate of Disaster Management Education, Training and Capacity Building

This directorate is expected to promote systematic functional education for disaster in formal and public educational systems. They are also to promote sensitization and public awareness in disaster management together with the government and all stakeholders.

Directorate of Administration and Management

The responsibilities of the directorate are to establish and facilitate administrative and financial procedures and guidelines for the running of NADIMA.

The current main operations centre during disaster is the National Disaster Operations Centre (NDOC) currently based in the Ministry of State for Provincial Administration and Internal Security. Its main functions are search and rescue in the event of a disaster and collection of data. Their impact is however not being felt as during most disasters in Kenya, their presence is faint if any is felt. Throughout the research, there was no available report or paper by the Centre. Surprisingly, they do not have a website or an Act detailing their function.

3.3.5 Chapter Five: Resource Mobilization, Management & Accountability

For any efficient disaster management system to work, availability of funds is a necessity. The study has earlier indicated how section 18 of the County Disaster Management Bill does not bind the State to provide funds to this machinery.

The Draft Policy proposes the creation of two funds, that is, the National Disaster Management Trust Fund where a proposal of 5% of the annual budget should be allocated to and the District Disaster Management Fund of which one is to be opened in every district and 5% of CDF be contributed to the same.

Though the policy was drafted prior to the new constitution, its implementation will embrace the spirit of devolution. Accountability of these funds should fall under National Disaster Management Agency. The Agency answers to the Ministry of State for Special Programmes. The National Assembly exercises oversight over national revenue and its expenditure as per Article 95 (4)(c) of the Constitution of Kenya.

3.3.6 Chapter Six: Monitoring, Evaluation And Research

Monitoring, evaluation and research are key guidelines in all prudent risk management systems. Monitoring refers to the process of systematic and continual observation and recording of data on evolution and occurrences of hazards and disasters. A key problem in monitoring is the poor recording system that leads to inconclusive research hence unpreparedness when disaster strikes. Evaluation goes hand in hand with research using monitored data on hazards and disaster occurrence. Evaluation of research collected makes the difference between data collected and data analysed. Such analysis is important as they aid in preparation for the Disaster. Also, through these, government and other developing partners get to know the level of preparedness required to what is on the ground and act appropriately. This is with regards to finance, manpower and equipment necessary. These tasks will be taken over by the proposed National Disaster Management Agency when set up.

3.3.7 Conclusion On The Draft National Policy

The draft policy should be adopted as its proposals, if heeded to, could ensure Kenya's current dark joke is bested. The three key policy proposals will ensure Kenya has a centre for data collection to ensure enough information for disaster prone areas is known before hand. They will also enable adequate funding for disaster preparation, post-restructuring and trauma patients. Moreover, they would engrain a culture where people are well prepared.

After a series of natural disasters, Bangladesh developed a disaster risk reduction strategy to cope with their severe shifts in weather and climate. The country set up a seven point strategy to ensure there are better prepared²⁸. First, they were to professionalise the Disaster Management System. Secondly, they were to mainstreaming disaster risk reduction. Third, they decided to strengthen institutional mechanisms. Fourth, the strategy suggested empowering at-risk communities. Fifth, they were to expand risk reduction programs across all hazards and sectors. Sixth, they were to strengthen emergency response systems and finally seventh, develop and strengthen the regional and global network. Bangladesh has since then set up a Disaster Preparedness Centre and has a legal and institutional framework we hope Kenya will be able to achieve²⁹.

²⁸, Huong H et al, *Strategic Disaster Risk Management in Asia*, 15-28.

²⁹ <http://www.bdpc.org.bd/index.php/homepage/our-strategy> on 15 December 2015.

CHAPTER FOUR: COMPARATIVE ANALYSIS OF SOUTH AFRICA'S DISASTER MANAGEMENT ACT, 2002 AND KENYA'S DRAFT NATIONAL DISASTER MANAGEMENT POLICY

South Africa, like its counterpart Kenya is faced with a plethora of disasters including drought, marine and coastal threats, storms, floods and mining accidents. After devastating floods in 1994 in Cape Flats, the legislature, concerned private sector and civil society had a green paper drafted by the Department of Constitutional Development and Directorate Disaster Management, published for comment and a more refined document was presented to aid in drafting the law, the White Paper.³⁰ The White Paper outlines the scope and purpose of government policy and its key policy proposals. Its introduction and proposals culminated to the assent of the Disaster Management Act, No. 57, 2002. (DMA.)

Chapter four of the Draft National Policy calls for a legal framework and establishment of an Act of Parliament that would establish the National Disaster Management Agency, proffer it with functions, powers and funding for the m mmj purpose of streamlining disaster management.

4.1 The Disaster Management Act, No. 57, 2002 in Comparison and Contrast with the Draft National Policy for Disaster Management in Kenya

South Africa's DMA was assented on 30 December 2002. Keeping in line with the United Nations International Decade for Natural Disaster Reduction, the Act is to provide an integrated and coordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery.³¹ The Act should provide the establishment of national, provincial and municipal disaster management centres to facilitate the disaster management functions. The Act also should provide for disaster management volunteers and all matters incidental thereto.

³⁰ Department of Constitutional Development, *White Paper on Disaster Management*, 1999.

³¹ *Disaster Management Act*, 2002 (South Africa).

Chapter one of the Act deals with interpretation, application and administration of the Act which has been delegated by the President to a Cabinet Member. In Kenya, this delegation will fall into the Ministry of Special Programmes under the Office of the President: This Ministry is currently under the Ministry of Devolution and Planning.

Chapter two enables the creation of the Intergovernmental Committee on Disaster Management (IGCDM) and the National Disaster Advisory Forum (NDAF). The constitution of the IGCDM includes representatives from the three levels of the South African Government the national level which comprises of the cabinet members; members of the executive council of each province from the provincial level and members of the municipal council from the local sphere.

In Kenya, there is no equivalent to the IGCDM. The Draft National Policy, however, touches on strengthening of the District and Division Disaster Management Committees and better mobilization of the location and community level disaster management.

Under the 2010 constitution, the fate of the Provincial Administration has been referred to Section 17 of the Sixth Schedule on the Transition and Consequential provisions of 2010 Constitution stating that within five years of the effective date, the national government shall restructure the system of administration commonly known as the Provincial Administration to accord with respect the system of devolved government established under the Constitution.

Discourse has been on whether ‘restructure’ means scrapping or molding it to comply aid in the promise and goals to be met under devolution. For disaster management and disaster risk reduction to be successful, coordinating with the local community is vital and devolution will be the guiding hand.

South Africa’s NDAF consists of Senior Representatives from the same levels of government as the IGCDM and other representatives from what the Act defines as ‘disaster management role – players designated by the minister’. They include representatives from organised business, chamber of mines, organised labour, the insurance industry, organised agriculture, traditional leaders, religious and welfare organisations, medical, paramedical and hospital organisations and other relevant non-governmental and international organisations and relief agencies. Kenya too

does not have such a forum/committee so far in our history, disaster management and disaster risk reduction has been under the purview of the Executive Arm of Government.

A collected and organized structure, inclusive of all levels of government and other stakeholders should be part of the Board where Disaster Management and Disaster Risk Reduction is tackled. The Fourth Schedule of the Constitution of Kenya, 2010 delegates the function of Disaster Management to both the National Government and County Government making it a joint effort. The Draft Policy for Disaster Management is silent on the persons the National Disaster Management Agency should consist of. It could have parties similar to the IGCDM and NDAF. It could then be their duty to come up with a National Disaster Management Forum.

Chapter three establishes the National Disaster Management Centre whose objective is to promote an integrated and coordinated system of Disaster Management with emphasis on prevention and mitigation at all levels of government.

In Kenya, the National Disaster Coordinating Committee (NDCC), The Ministry of Special Programmes co-ordinate the system of disaster management. The proposed National Disaster Management Agency is vital to the Disaster Management activities as it shall, as per the policy, be in charge of the day to day disaster management activities.

Section 4.3.4 of the Draft National Policy for Disaster Management covers duties very similar to the South African National Disaster Management Centre as articulated from Section 16 – 24. Its functions are day to day management of all disaster management activities, acting as a repository of, and conduit for, information concerning disaster and disaster management, documenting and publish levels of risk, assessing the vulnerability of the affected area and monitoring the state of alertness, giving advice and guidance to the relevant stakeholders and managing the contingency fund. Part 2 of the DMA, 2002 outlines the powers and duties of the national government i.e. The leading role in Disaster Management plans. As earlier indicated, in Kenya, responsibility on Disaster Management falls on both levels of government: the national and county government. The National Government, similar to South Africa takes the leading role.

Chapter four and five of The DMA, 2002 shows the decentralized system of South Africa Government with the establishment of provincial and municipal disaster management frameworks and disaster management centers who offer assistance to the National Centre.

There is no indication that the proposed National Disaster Management Agency, Kenya will have devolved machinery. The District and Division Disaster Management Committee will, however, be altered to align with the devolved system with a preferable title of 'County Disaster Management Agency'.

Sadly, no funding can be termed 'adequate'. When a disaster has hit, lives and property are lost. People lose homes and could have trauma that renders them impossible to do any quality work. Post disaster funding of recovery and rehabilitation is pertinent.

Chapter six of the Act provides guiding principles on to whom the situations lie: all levels of government and the organ of state responsible in replacing the destroyed public infrastructure. The Draft National Policy proposes the establishment of a common basket contingency fund open to all willing to contribute but with specific percentage of the National and County budget being allocated to that, that is, 5%. The accountability of such funds should fall onto the Agency and its devolved agencies with the Parliament have supervisory powers as established by the Constitution of Kenya under Article 95 (4) (c).

Chapter seven gives legal backing to those persons willing to be Disaster Management Volunteers. The Act states that they must be registered with the National Centre and that they are trained to handle particular disasters in their municipality. The duty to train and organize volunteers in the Draft National Policy has fallen to the District, Division and Location Disaster Management Committee. On national level, the Kenya Defence Forces can be called upon to assist in times of disaster or emergency as per Section 8 of the Kenya Defence Forces Act³². They could be called in and be assisted by the National Youth Service.

Chapter eight deals with the miscellaneous; giving powers to the Minister, citing consequences of not complying with the Act and giving indemnity to the Minister, the centre or its employees while performing their duties as per the Act and in good faith.

Kenya too should set up such an Act. The inclusion of all levels of government, provision of disaster management funding and post funding, volunteer training are among the aspects the study found most capturing and should be included in every law of disaster management and disaster risk reduction.

CHAPTER FIVE : CONCLUSION AND RECOMMENDATIONS

Disasters have indeed evolved in the 21st Century. They have become recurrent and more disastrous. In the age of nuclear powered generators, one earthquake could make an entire area uninhabitable for over 100 years!

The international community acknowledges that a global approach is required to mitigate such disasters. Policies and programmes addressed and driven from an international perspective bend countries through obligation, duty and the international customary law of comity to comply.

The United Nations has taken a leading role in coming up with programmes and mandates in assisting disaster prone areas. Its main secretariat in advocating and coordinating disaster management and disaster risk reduction is United Nations Office for disaster risk reduction. Its Agencies, in their respective mandates also shoulder some responsibilities e.g.³³

UNITED NATIONS AGENCY	DISASTER REDUCTION GOALS
1. The Food and Agriculture Organisation of the United Nations (FAO)	<ul style="list-style-type: none"> • Forecasting and providing early warning of adverse conditions in the food and agricultural sectors. • Assessing need and formulating programmes for agricultural relief and rehabilitation. • Reducing vulnerability and enhancing resilience by strengthening local capacities

³³ United Nations Office for Disaster Risk Reduction, *Disaster Risk reduction in Africa: Status Report on Implementation of Africa Regional Strategy and HYOGO Framework for Action.*

	and coping mechanisms for disaster risk reduction
2. United Nations Development Programme UNDP (Bureau for Crisis Prevention and Recovery)	<ul style="list-style-type: none"> • Offer support through legislation and operation system to ensure integration of risk reduction.
3. United Nations Environment Programme (UNEP)	<ul style="list-style-type: none"> • Aid in legislation and system management and bring out the best environment lessons • Enhanced capacity of Member States in environmental management in order to contribute to natural and manmade risk reduction. • To conduct rapid and reliable post crisis assessment following conflicts and disasters as requested
4. United Nations Human Settlement Programme (UN - HABITAT)	<ul style="list-style-type: none"> • Increasing investment in disaster prone areas. • Training the inhabitants of a disaster prone area.
5. United Nations Children's Fund (UNICEF)	<ul style="list-style-type: none"> • Development and promotion of every child have access to post disaster funding and pre-disaster preparedness teaching.

Table No.1: *United Nations Agencies with Disaster Management Roles.*

For a more systemised approach globally, an international agenda was required. Hyogo Framework for Action was adopted in 2005 in Hyogo, Japan and was to be active for 10 years.

Before Hyogo Framework for Action, there were others.³⁴ Their gaps and failures were to be corrected and better fostered under Hyogo Framework for Action and its five priorities for action were to; ensure that disaster risk reduction is a national and local priority with a strong institutional basis for implementation; identify, assess and monitor disaster risks and enhance early warning; use knowledge, innovation and education to build a culture of safety and resilience at all levels; reduce the underlying risk factors and strengthen disaster preparedness for effective response at all levels.³⁵

The Draft National Policy for Disaster Management was drafted during the era of Hyogo Framework for Action. The Draft Policy cites Hyogo Framework for Action and a paramount policy and calls for governments to ratify Hyogo Framework for Action. Hyogo Framework for Action has been an important instrument to the East African Community with the drafting of the East Africa Community Disaster Risk Reduction and Management Strategy (2012 – 2016) establishment of the EAC Climate Change Fund and Climate Change Coordination United at the EAC Secretariat.³⁶

The timeline for Hyogo Framework for Action lapsed in 2015 and taking on the success of Hyogo Framework for Action, Sendai Framework for Disaster Risk Reduction focuses on four priorities for action; understating disaster risk, strengthening disaster risk governance to manage disaster risk, investing in disaster risk reduction for resilience and enhancing disaster preparedness for effective response and to ‘Build Back Better’ in recovery, rehabilitation and reconstruction. Its guiding principles are a further advancement from the Yokohama Strategies and Hyogo Framework for Action and relate some to a proposal in the Draft National Policy for disaster management in Kenya.

³⁴ *The Yokohama Strategy for a Safer World: Guidelines for Natural Disaster prevention, preparedness and Mitigation and its Plan of Action, World Conference on Natural Disaster Reduction, Yokohama, 23-27 May 1994.*

³⁵ *United Nations International Strategy for Disaster Reduction, Hyogo Framework for Action 2005 – 2015: Building the Resilience of Nations and Communities to Disasters, Extract from the Report of the World Conference of Disaster Reduction.*

³⁶ *United Nations International Strategy for Disaster Reduction, Disaster Risk Reduction in the United Nations: Roles, Mandates and areas of work of key United Nations Entities, 2009 .*

Each State has the primary responsibility to prevent and reduce disaster risk, including through international, regional, sub regional, trans-boundary and bilateral cooperation. The Draft Policy advocates for better internal structure and also as a member of the East Africa Community, some actions are as a collective group. e.g. The East African Community Disaster Risk Reduction and Management Bill, 2013.

Disaster risk reduction requires that responsibilities be shared by Central Governments and relevant national authorities, sectors and stakeholders. The Draft Policy proposes the establishment of the National Development Management Agency that will have the day to day duty to ensure risk is evaluated and appropriate measures are taken. It also requires an all-of society engagement and partnership. Private entities, the civil society and devolved government are all pertinent to the disaster management and disaster risk reduction.

The development, strengthening and implementation of relevant policies, plans, practices and mechanisms need to aim at coherence. The Draft Policy advocates for a more streamlined structure of institutions and a legal framework to support it. The draft outline prepared could be a guideline to a legal framework very much required in Kenya.

As above seen, the Draft National Policy for Disaster Management in Kenya falls in line with the priorities and guidelines of the United Nations framework for Disaster Management. The most prudent of Action would be to adopt the draft policy after amendments discussed in Chapter 3 and implementing the same. First, by drawing up and assenting a Disaster Management Act, Kenya.

RECOMMENDATIONS

The study recommends that a bill be drafted and assented by the legislature. The bill should contain the following provisions:

1. It should provide for the establishment of the National Disaster Management Agency, its powers and functions; its composition and appointment and qualification of the Chairperson of the Agency.
2. To avoid conflict, it should also provide for the County Disaster Management Agency, their composition, function and powers different from the National Disaster Management Agency.

3. It should contain provisions to guide the measures by both levels of government for disaster management.

3. It should also provide for the establishment of National Disaster Management fund and the County Disaster Management Fund, the allocation of funds to both of the funds, emergency procurement, accounts and audits and the financial year.

4. It must provide for offences and penalties under disaster management. For example, obstruction, false claim, misappropriation of money and material and false alarm.

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