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STAKEHOLDER INPUTS INTO THE DISASTER MANAGEMENT AMENDMENT BILL AND RESPONSE BY THE NATIONAL DISASTER MANAGEMENT CENTRE

26 May 2015

Reference is made to the comprehensive National Disaster Management Centre’s (NMDC) 55-page clause-by-clause response to the stakeholder inputs into the Disaster Management Amendment Bill as heard by the Portfolio Committee on Cooperative Governance and Traditional Affairs between 21 April and 20 May 2015. Tabulated below are the stakeholder inputs into the Bill, including the relevant clauses considered problematic as well as the response by the Department. The areas for which the Department has not provided an adequate response are highlighted.


RELEVANT CLAUSES	STAKEHOLDER INPUTS	RESPONSE BY THE DEPARTMENT
<p>Clause 1 [Definitions]</p>	<p><i>Climate change:</i> The Bill should instead make reference to ‘global change’ to encompass population change, migration patterns, and economic and market realities, among other things.</p> <p><i>Ecosystem:</i> The term ‘socio-ecological linked systems’ would be much better suited for the context in which ‘ecosystems’ is currently used. Socio-ecological linked systems acknowledge the interaction between humans and nature in the Anthropocene and the interaction between both human and natural processes in the risk creation equation.</p> <p><i>Mitigation:</i> The definition of this term should be amended</p>	<p>“Global Change” is a different concept which is not (or cannot be) dealt with through disaster management legislation. In the context of the Bill, climate change is used in the various clauses and it remains the preferred term to use</p> <p>Not responded to</p> <p>Not responded to</p>





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	<p>to mean '<i>lessening of the potential impacts of physical hazards through actions that reduce hazard, exposure or vulnerability.</i>'</p> <p><i>Disaster risk reduction:</i> The definition should be changed to read as follows: Disaster risk reduction <i>means the concept and practice of reducing disaster risks through systematic efforts to analyse and manage the causal factors of disasters, including through reduced exposure to hazards, lessened vulnerability of people and property, wise management of land and the environment, and improved preparedness for adverse events.</i> This is in order to take cognisance of the fact that disaster risk reduction is not only about anticipating future risks but that it should also be aimed at understanding the underlying factors which create disasters in the first place. This definition also makes provision for the inclusion of environmental factors as risk creators and drivers.</p> <p><i>Adaptation:</i> The definition of this term is only linked to climate change as though there was no need for adaptation to other disaster risks and global change.</p>	<p>The Department is comfortable with the use of this definition</p> <p>The Department has only responded to the 'global change aspect'. It does not address adaptation in relation to other disaster risks</p>
<p>Clause 2 (b) [National Disaster Management Advisory Forum]</p>	<p>This clause provides for the NDMAF to serve as a National Platform for Disaster Risk Reduction in line with obligations in terms of the Hyogo Framework of Action the UN adopted in 2005. A suggestion has been made that the NDMAF should be a National Platform for both disaster risk reduction and disaster response at least, if not disaster management as defined in the principal Act.</p>	<p>National Platforms for DRR are the recognised formal entry points of the International Strategy for Disaster Reduction (ISDR) System at national level. Where National Platforms for DRR exist, the ISDR System will build on them at national level. This is a specific term used in global agreements to provide an official platform for disaster risk reduction. The provision in the Bill is only an acknowledgement of</p>



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		our international commitments. It does not exclude response or any other aspect of disaster management. The functions of the NDMAF are clearly set out in the principal Act and it will continue to function as such
Clause 3 [Placement of the NDMC]	This clause removes the provision that the NDMC 'forms part of, and functions within, a department of state for which the Minister is responsible.' No specific provision is made for where the NDMC should be located. The majority of experts were of the view that the NDMC is best placed in the Presidency, in line with the practice in many other countries. In particular Prof Van Niekerk, Prof Jordaan, Dr Steyn & Dr Minnie raised the notion of placing the NDMC in an office where appropriate authority and independence could be established for the effective functioning of the NDMC. They pointed out that the existing provision in the principle Act limits the placement and subsequent functioning of the NDMC to one option and supported the amendment as it widens the options available within the Public Service Act for any future placement of the NDMC should the need arise.	Although it is advisable that the Disaster Management Centre is located in the highest office with an unbiased overview of the municipality, disaster management is a concurrent legislative competence of National and Provincial government in terms of the Constitution. There is an understanding within the national sphere that it does not advance good intergovernmental relations to predetermine the design of the organisational structure of the local government sphere and legislation should thus not prescribe the placement of a Disaster Management Centre within a municipal organisation. The strategic importance of issues of disaster risk reduction and management of allocated disaster funding was however highlighted by prescribing reporting requirements to IGR structures. This legislative provision should ultimately also raise the profile of disaster management centres within the respective spheres. It is furthermore suggested that the executive leadership in the various spheres of government gives careful consideration to the placement of disaster management centres in the organisational structure in view of its coordination role within that sphere of government. It is strongly recommended that the Head of the Disaster Management Centre

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		<p>forms part of the decision-making structures and ideally reports to the highest office within a municipality, to fulfil its strategic role to effectively reduce the risk of disaster for the municipality.</p>
<p>Clause 7 [Provision for the SAPS, SANDF and any other organ of state to assist the disaster management structures]</p>	<p>This clause inserts the provision that the NDMC 'may in any event of disaster, or a potential disaster, call on the South African National Defence Force, the South African Police Service and any other organ of state to assist the disaster management structures.' This an important improvement but the specific mention of the SAPS and the SANDF may deter the involvement of other stakeholders.</p>	<p>The Department welcomes the improvement remark but does not respond to the concern about specific mention of SAPS and the SANDF.</p>
<p>Clause 10 [Provision to strengthen reporting requirements]</p>	<p>It was suggested that specific reference to women, children and disability could be considered as part of reporting requirements as well as within disaster management planning processes in line with the recently adopted Sendai Framework for Disaster Risk Reduction. One of the priorities for action of the Sendai Framework also alludes to the principle to "Build Back Better" in recovery, rehabilitation and reconstruction</p> <p>Dr Holloway suggested to add spatial/temporal information on hazard under S 24 (4) and not restrict this to the areas affected. She proposes that the clause should read 'the spatial and temporal attributes of the associated hazard processes'... (and areas, communities and households affected).</p>	<p>The Department believes that consideration can be given to heed the call in the Sendai Framework for a gender, age, disability and cultural perspective in all policies and practices. The following proposal can be considered:</p> <p>Clause 10(b) Insert (4)(c): <i>An analysis of the impact of the disaster in accordance with gender, age, disability and cultural perspectives.</i> and insert (4)(d): <i>list measures implemented to "Build Back Better" in recovery, rehabilitation and reconstruction.</i></p> <p>In terms of the suggestion to include spatial information on hazards, the Department agrees that this is ideal in terms of theory, but not necessarily</p>

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	<p>The FFC furthermore recommends that Clause 10 (5) on disaster expenditure reporting requirements must be aligned to the Municipal Finance Management Act (MFMA).</p>	<p>implementable within the capacity of many municipalities.</p> <p>Clause 10 (4) makes provision for: (b) the spatial attributes of the areas, communities and households affected by the disaster;</p> <p>This clause was included subsequent to the analysis of the comments received after the publication of the Bill for public comments. The recommendation of Dr Holloway at that time was partially included. The Department therefore believes spatial information is adequately addressed in the Bill.</p> <p>In terms of the view expressed to align reporting to the MFMA, the Department is of the opinion that whilst Section 123 of the MFMA makes provision for the annual reporting of intergovernmental fiscal allocation, Section 74 of the MFMA obligates the accounting officer of a municipality to submit to the National Treasury, the provincial treasury, the department for local government in the province or the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required. The amendments are therefore in line with these provisions of the MFMA and the views expressed by the FCC.</p>
<p>Clause 14 [Provision for a</p>	<p>In terms of Schedule 4 of the Constitution, disaster</p>	<p>National Treasury advised that there was no</p>


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 <p>local municipality to establish capacity for the development and coordination of a disaster management plan]</p>	<p>management is concurrent provincial and national function. The principal Act is also very specific in giving the responsibility disaster risk management to metropolitan and district municipalities. By amending Section 43 of the principal Act to provide for a local municipality to establish capacity for the development and coordination of a disaster management plan, the Bill was assigning a new legislative function to local municipalities. In terms of Section 9 of the Municipal Systems Act of 2000, in any assignment of functions or powers to any category of municipalities the Financial and Fiscal Commission must be requested to assess the financial and fiscal implication of the legislation. According to SALGA, this was not undertaken. Consequently the fiscal and financial implications of the legislation for local municipalities are not known. The existing financial framework, including the equitable share, does not provide for disaster risk reduction but for disaster relief. Even if the equitable share did provide for disaster risk reduction, this would not assist those municipalities whose equitable share has been withheld by National Treasury owing to their indebtedness to Eskom.</p> <p>National Treasury argued, and maintained, that various funding sources exist for the different components of disaster management. For instance, local government has access to two conditional grants providing funding for declared disasters to provide immediate response and longer term rehabilitation respectively, should their own resources prove to be inadequate. Similarly, the local government's own revenues and the institutional and community services components of the local government equitable share are available to municipalities to co-fund the development of disaster management plans which forms</p>	<p>funding available for new undertakings and that existing funding arrangements must be used. Had Treasury allowed a funding provision on this Bill it would become a Money Bill, which can only be introduced by the Minister of Finance. The Amendment Bill is not assigning new functions or powers to municipalities, but is working with existing functions or powers. The provision of section 9 of the Municipal Systems Act in this instance was therefore not relevant. A document of support from the Financial and Fiscal Commission was also received and this will be furnished to the Committee.</p>




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	<p>part of the normal operational activity that is performed by municipalities. National Treasury is also of the view that the possible inappropriate prioritisation of disaster management by municipalities should not be addressed through legislation, but rather through strengthened policy advocacy and the development of norms and standards. Furthermore, flexibility in the use of funds from different sources should also be retained and as such should not in all cases necessarily be fixed or prescribed through legislation.</p> <p>Prof van Niekerk also confirmed the view that funding for disaster risk reduction is available from various sources, and people must understand and utilise the existing financial mechanisms to access the funding.</p> <p>Prof van Niekerk alludes to the varied interpretation of the Disaster Management Act and uncertainties of roles and responsibilities between district and local municipalities. He welcomes the legal clarity and certainty that the Bill seeks to provide.</p> <p>He further indicates that from their research, it is clear that local municipalities feel left out and disempowered from the disaster risk management debate. In an extensive research project for the South African Local Government Association (SALGA) in 2011, more than half of the local municipality respondents indicated that they are never or rarely consulted by their district disaster risk management structures. He believes that disaster risk management can only be effective at local level. He commends the changes proposed by the Amendment Bill to section 43 of the Disaster Management Act.</p> <p>The FCC indicated that this section requires a municipality</p>	<p>Capacity building will be done in accordance with the</p>



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	<p>to build capacity for managing, coordinating and implementing the disaster management function/plans and the establishment of disaster management centres. The FFC advises that the constitutional obligation for national and provincial government to provide capacity building assistance must be acknowledged. It is further stated that Disaster Management is a concurrent function with each sphere having a role to play and that there is a need to clarify roles for the other spheres in this regard.</p> <p>SALGA indicates that disaster management is not an area of executive authority for municipalities in terms of the Constitution and argues that any powers or function imposed on municipalities in this regard will have to be done through general legislative assignment. SALGA concedes that the Principle Act already places certain obligations with regards to disaster management on district and metropolitan municipalities but argues that the Amendment Bill places new obligations on local municipalities and municipal organs of state which results in a new general legislative assignment. SALGA points out that they support the assignment of disaster management functions to all municipalities but express their reservations with regards to the process followed (to assign the functions) as well as the funding provisions for the 'newly' imposed obligations.</p>	<p>municipality's existing human resources skills development plans and Integrated Development Plans.</p> <p>A few Local Municipalities have recognised the need for dedicated disaster management capacity and have appointed officials to coordinate and implement the disaster management function in the municipality with positive results. (e.g. Tlokwe LM in NW; Polokwane LM in Limpopo; Kwadukuza LM in KZN; Greater Giyani LM in Limpopo; Rustenburg LM in NW; Mafikeng LM in NW.) The Amendment Bill re-emphasizes the requirement to establish capacity to implement disaster management effectively.</p> <p>From an Departments perspective, the following need to be highlighted:</p> <p>SALGA has been part of the amendment process from the beginning. They even conducted joint workshops with the NDMC on the proposed amendments. They were also part of the team who analysed the comments received during the public comments period. They never raised the issue of a "new assignment"</p> <p>The Departments (in consultation with the legal unit) does not believe that it is a "new assignment". In terms of current legislative provisions, organs of state across the spheres and sectors of government already have a responsibility to provide for developing disaster management plans and the implementation thereof.</p> <p>In terms of current legislative provisions, the following</p>

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		<p>can be confirmed pertaining Provinces and Municipalities:</p> <p>Assignment of function to Municipalities through Principal Act,</p> <p>Municipality has executive authority in respect of and has the right to administer the function (Constitution section 156(1)(b))</p> <p>Not a new function</p> <p>In terms of the Disaster Management Act, 2002, each provincial organ of state (s38) and each municipality (s53), is required to develop a comprehensive disaster management plan and has the responsibility to perform disaster management functions for its area of responsibility. The Municipal Systems Act, 2000 (Act no 32 of 2000) also stipulates that the disaster management plan is a core component of the Integrated Development Plan of the municipality (s26).</p> <p>The amendment of section 43 of the Act will therefore re-affirm the function of municipalities regarding the responsibility to establish capacity for the development and coordination of a disaster management plan and the implementation of a disaster management function for the municipal area. The capacity building will be done in accordance with the municipality's existing human resources skills development plans and Integrated Development Plans.</p>
<p>Clause 21 [Title of the Amendment Bill]</p>	<p>The Amendment Bill is currently titled as the 'Disaster Management Amendment Bill.' International emphasis on 'disaster management' has changed significantly to</p>	<p>The views expressed by some PC stakeholders and the CSLA that 'disaster management' is listed in the Constitution and changing the term would require a</p>

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	<p>that of disaster risk reduction. The majority of experts in the disaster field felt strongly that the title should change to 'Disaster Risk Management/Reduction Amendment Bill' to signal a shift to prevailing global best practice.</p>	<p>Constitutional amendment must also be considered since the existing definition of disaster management in the Disaster Management Act, 2002 captures the broader risk reduction, the response to incidents as well as the post disaster recovery and rehabilitation components defined by the UNISDR.</p> <p>In light of this, the Department is of the opinion that the amendment of the definition of a disaster, the insertion of definitions for disaster risk reduction and emergency preparedness captures the key phases and components set out in the UNISDR terminology and therefore provides greater clarity in the context of the implementation of these terms in South Africa's policy on disaster management.</p>

LIST OF ADDITIONAL AMENDMENTS PROPOSED THAT ARE NOT IN THE BILL

[Please note that should the Committee intend to include any of these amendments, then NA Rule 249(3)(b) must be adhered to – unless any of them can be linked to current amendments or are considered consequential]

Rule 249(3)(b) states that: The Committee, if it is a bill amending provisions of legislation, may seek the permission of the Assembly to inquire into amending other provisions of that legislation.

ISSUE	STAKEHOLDER INPUT	COMMENTS BY DEPARTMENT
Definitions	<p>It was proposed that the following terms used in the Amendment Bill be defined:</p> <ul style="list-style-type: none"> • Community or society • Administrative areas • Hazard • Exposure 	<p>Some terms proposed for definitions are not in the Amendment Bill. However, the Department does not specify which of the terms are not in the Amendment Bill.</p>



	<ul style="list-style-type: none"> • Climate variability: A proposed definition for this term is '<i>variations in the mean states and other statistics (such as standard deviations, the occurrence of extremes etc.) of the climate on all spatial and temporal scales beyond that of individual weather events.</i>' • Resilience: The accepted international definition for this term is '<i>the ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions.</i>' • Early warning systems: Reference to any early warning system should be changed to 'multi-hazard early warning systems.' 	<p>The definition for Climate Change in the Bill incorporates the concept of climate variability</p> <p>Not responded to</p> <p>Not responded to</p>
<p>'May' versus 'must'</p>	<p>The presence of 'may' and 'must' in the principal Act is confusing and leaves it open for interpretation. This bears reference to Sections 37(1), 43(2)(b), 51(1), 54(2) and 58(1). A suggestion was made for the State Law Adviser to brief the Committee on when it was appropriate to use 'must' and 'may.'</p>	<p>Not responded to</p>
<p>Disaster management volunteers</p>	<p>The volunteer problem is not properly addressed in the amendment Bill. Volunteers are not volunteers anymore. They receive compensation and labour laws provide a challenge with the deployment of volunteers, especially when they receive compensation. The problem with insurance is also not addressed.</p>	<p>Not responded to</p>

ADDITIONAL MATTERS STAKEHOLDERS FELT WERE NOT ADDRESSED ADEQUATELY		
ISSUE	STAKEHOLDER INPUT	COMMENTS BY DEPARTMENT
<p>Recording of disasters</p>	<p>Over 50 percent of disasters are not recorded in official statistics</p>	<p>Not responded to</p>
<p>Involvement of the private sector</p>	<p>The Amendment Bill is silent on the roles, responsibilities and obligations of the private sector in disaster risk reduction.</p>	<p>Not responded to</p>