



MINISTRY
COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

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**SUBJECT: AMENDMENT OF THE DISASTER MANAGEMENT
ACT, 2002 (ACT NO. 57 OF 2002).**

1 PURPOSE

- 1.1 To brief the Select Committee on the Disaster Management Amendment Bill introduced into Parliament by the Minister.

2 BACKGROUND

- 2.1 In terms of Section 44(1)(a)(ii) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), the national legislative authority has concurrent competence with a provincial legislative authority within the functional areas listed in Schedule 4. "Disaster management" is listed as a functional area in Schedule 4 to the Constitution.
- 2.2 The Disaster Management Act, 2002 (the principal Act) is internationally reputed for its emphasis on prevention and its relative comprehensive approach to Disaster Risk Reduction (DRR).
- 2.3 The main thrust of the principle Act and the National Disaster Management Framework, 2005 (NDMF) centres around the creation of appropriate institutional arrangements for disaster management. It is argued that the ideals of disaster management cannot be achieved without structures to support its myriad of actions.
- 2.4 However, the implementation has posed significant challenges, particularly at the level of local municipalities. The purpose of the review is to tackle these challenges by maximising the effect of disaster management legislation to communities, especially those most at risk.

3 EXECUTIVE SUMMARY

- 3.1 The aim of the Disaster Management Act, Act no 57 of 2002 (hereinafter referred to as "the principal Act") is to ensure an integrated and coordinated approach to disaster management and

disaster risk reduction in each and across all spheres of government involving all relevant stakeholders.

- 3.2 Since the promulgation of the principal Act in 2003 and during the subsequent commencement of the legislation in the various spheres of government, the legislation and guiding policy framework have been implemented to a varying extent across the spheres of government. Some challenges were experienced in implementing all aspects of the legislation effectively which necessitated that the principal Act be amended to make it simpler to implement, strengthen certain regulatory provisions, avoid ambiguity, and provide greater legal certainty.
- 3.3 Cabinet approved the publication of the draft Disaster Management Amendment Bill for public comment in June 2013 and the Amendment Bill was published in Government Gazette number 36580 (Notice No. 637 of 2013) on 19 June 2013.
- 3.4 The key issues that were raised during the consultation process and in the comments subsequent to the publication of the Disaster Management Amendment Bill for public comments, were incorporated in the current Bill. Cabinet approved the submission of the final Bill to Parliament on 17 September 2014.
- 3.5 Following certification by the office of the Chief State Law Advisor, the necessary processes were put in place to comply with the rules of the National Assembly and the Joint Rule of Parliament to introduce the Bill to Parliament. The explanatory summary of the Bill, as required by Rule 241, was published in the Government Gazette on 30 January 2015

4 STRATEGIC FOCUS OF THE MEMORANDUM

- 4.1 The review of Disaster Management legislation formed part of the strategic plan of the Department of Cooperative Governance (Strategic Plan: 2009-2014), under the focus area of reviewing and strengthening the current policy and legislation so as to arrive at an integrated, coordinated and coherent system of policy and legislation across the three spheres of government and the implementation of service delivery.
- 4.2 Due consideration was given to, among other things, the Government's Programme of Action and the 18 key targets of the National Development Plan. It augments the priority areas of building a capable and developmental state through improving relations between national, provincial and local government on issues of disaster management, as well as building environmental sustainability and resilience particularly through improved disaster preparedness for extreme climate events. Furthermore, a preventive function of social protection acts as an economic stabiliser that seeks to help people avoid falling into deeper poverty thereby reducing vulnerability to disasters.

- 4.3 The disaster management approach of the Department of Cooperative Governance pays specific attention to the pressing needs of poor communities in relation to both natural and human induced disasters in the context of a developmental and capable state. The principal Act is being amended in order to address the need for better coordination, more involvement of sectors, improved disaster management planning capacity of local municipalities, better mainstreaming in development policies, plans and programmes, and more emphasis on preventive measures.
- 4.4 The proposed amendments to the principal Act provide more impetus on aspects of disaster management planning that support these priorities.

5 DISCUSSION

5.1 Views on amending the principal Act were expressed by the political leadership, the South African Local Government Association (SALGA), the Disaster Management Institute of Southern Africa (DMISA), the National Disaster Management Advisory Forum (NDMAF), practitioners, academics and others in the disaster management fraternity. Key issues highlighted by these stakeholders have also been emphasised in a number of research reports and submissions, including those from the SALGA, the International Federation of the Red Cross and Red Crescent Societies (IFRC) and the Financial and Fiscal Commission (FFC). In considering the above views, reports and implementation challenges, the need was acknowledged to call for a review of the principal Act.

5.2 Following an extensive consultation process the Disaster Management Amendment Bill was drafted. The Bill provides for the Amendment of the principal Act which is aimed at-

- (a) Clarifying policy focus on rehabilitation and functioning of disaster management centres;
- (b) Fulfilling its obligations in terms of the Hyogo Framework of Action adopted by the United Nations in 2005 to provide for the National Disaster Management Advisory Forum to serve as the South African National Platform for Disaster Risk Reduction to coordinate and give policy guidance on disaster risk reduction;
- (c) Emphasising the need for organs of state to assist the disaster management structures in any event of a disaster or a potential disaster;
- (d) Strengthening the representation of traditional leaders in disaster management advisory forums;
- (e) Strengthening reporting on implementation of policy and legislation relating to disaster risk reduction and management of allocated funding to municipal and provincial intergovernmental forums established in terms of the Intergovernmental Relations Act, 2005;

- (f) Expanding the contents of disaster management plans to include conducting disaster risk assessments for functional areas, mapping of risk areas and communities vulnerable to disasters and providing for measures to reduce the risk of disaster through adaptation to climate change and developing of early warning mechanisms;
- (g) Re-affirming the role of municipalities to establish capacity for the development and coordination of a multi-sector disaster management plan and the implementation of a disaster management function for the municipality;
- (h) Providing for the establishment of a disaster management centre for a Local Municipality (LM) in terms of a service level agreement with the relevant district municipality.
- (i) Providing authority to the Minister regulate on matters concerning disaster management education, training and research as well as the declaration and classification of disasters.

5.3 The key issues that were raised in the comments subsequent to the publication of the Disaster Management Amendment Bill for public comments, include the following:

- (a) The use of terminology. Definitions for adaptation, climate change, disaster risk reduction, ecosystem, emergency preparedness, mitigation, organ of state and vulnerability were subsequently refined.
- (b) Clarity on the roles and responsibilities of organs of state in terms of disaster management. (See clauses 7, 11 and 15 of Bill)
- (c) Clarity on specific information and reporting requirements to municipal and provincial intergovernmental forums, the National Disaster Management Centre (NDMC) and the National Treasury. (See clauses 9 and 10 of the Bill)
- (d) Clause 10 of the Bill which seeks to strengthen reporting on the implementation of policy and legislation relating to disaster risk reduction and management of funding allocated for disasters to municipal and provincial government was generally accepted by stakeholders and in particular welcomed by SALGA.
- (e) The contents of disaster management plans by organs of state and making applicable information available to relevant disaster management centres. The Bill was subsequently enhanced to provide for the logical sequence of events, i.e. conducting a risk assessment prior to planning and to ensure that disaster management plans of organs of state indicate the way in which the concept and principles of disaster management are to be applied in its functional area, including expected climate change

impacts and risks for the organ of state. Organs of state should also identify and map risks, areas, ecosystems, communities and households that are exposed and vulnerable to physical and human-induced threats. (See clauses 11, 13, 17 and 18).

- (f) Authority to the Minister to make regulations on certain matters. Clause 19 of the Bill seeks to amend section 59 of the Act to provide authority to the Minister to regulate on disaster management education, training and research matters and the declaration and classification of disasters.

5.4 Two key implementation challenges were raised by several organisations which could not be dealt with through the amendment of the legislation, being the location of disaster management centres and funding of disaster risk reduction. These are discussed in more detail below.

- (a) In terms of the location of disaster management centres within the organisational structure of the provinces and municipalities, strong arguments were made for prescribing the placement of Disaster Management Centres within the organisational structure of a municipality through legislation. 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 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.
- (b) Another topical issue was related to funding, especially to provide funds for disaster risk reduction. It is however argued that funding should be provided for within normal budget planning of municipalities as the development of disaster

management plans is part of the normal operational activity that is performed by provinces and municipalities. Section 77(1) (a) of the Constitution states that "a Bill is a money Bill if it appropriates money". The proposed provision for funding for disaster risk reduction could thus result in the Minister of Finance being required to introduce the Bill as a Money Bill, whereas the Minister of Cooperative Governance and Traditional Affairs (COGTA) is assigned to administer disaster management legislation and does not have the necessary powers to appropriate funds. National Treasury is also of the view that the possible inappropriate prioritisation of disaster management by provinces and 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.

6 IMPLEMENTATION PLAN

- 6.1 The Bill is concerned with the amendment of the principal Act which, amongst other things, provides for-
- (a) An integrated and co-ordinated 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;
 - (b) The establishment of national, provincial and municipal disaster management centres;
 - (c) Disaster management volunteers; and
 - (d) matters incidental thereto.
- 6.2 The Chief State Law Adviser suggests that the Bill can be effectively dealt with by the procedure contemplated in section 76 of the Constitution since the Bill contains provisions affecting the interests of the provinces. It is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Government Framework Act, 2003 (Act no. 41 of 2003), as it does not contain provisions which may impact on customary law or customs of traditional communities.
- 6.3 Once the Bill is passed into law, the Department of Cooperative Governance will have provincial sessions to engage with provinces and municipalities (including SALGA) on the substance of the Amendment Act as well as the strengthened monitoring provisions contained therein. Circulars will also be distributed to provinces, municipalities and stakeholders.

7. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

- 7.1 No new implications. However, the principal Act already requires all organs of state to have capacity to develop and implement disaster management plans and perform the disaster management function. In many instances, especially in sector departments and local municipalities, little or no organisational capacity for disaster management currently exists. 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.

8 FINANCIAL IMPLICATIONS

- 8.1 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.

In terms of current legislative provisions, the following can be confirmed:

(a) National Organs of State

Each national organ of state already has a responsibility to perform disaster management functions which includes amongst others, the development of a disaster management plan for its area of responsibility in terms of section 25 of the principal Act. One of the requirements of the plan is to set out its capacity to fulfil its role and responsibilities. Furthermore, it is stipulated that the disaster management plan must form an integral part of the planning of respective organs of state.

Departments have the responsibility of allocating sufficient resources to fund key activities. Given that expenditure estimates must be kept within the aggregate ceiling provided for in the 2015 medium term expenditure framework indicative baselines, the strengthening of any existing or new programmes should be accommodated within existing budget baselines. This may require the reallocation of funds from non-essential and/or lessor priority items.

(b) Provinces and Municipalities

In terms of the principal Act, 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).

The amendment of section 43 of the Act will 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. Local municipalities may also establish a Disaster Management Centre in consultation with the District Municipality which is primarily responsible for the Disaster Management Centre. This provision of services will be aligned with other disaster management activities in the district. Service level agreements should be entered into to support such arrangements. The Minister of Cooperative Governance and Traditional Affairs will issue norms and standards in this regard. These norms and standards will take cognisance of the funding available on budget baselines and will be limited by what is affordable. This assignment of a function, must be done in accordance with the processes outlined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and will include a financial impact study and approval from the Financial and Fiscal Commission and the Minister of Finance.

- 8.2 Funds for disaster prevention and mitigation management activities are mainly provided for through the local and provincial equitable shares and the own budgets of provinces and municipalities. Provinces and municipalities need to ensure that sufficient funding is adequately incorporated in their budget determination processes for disaster risk reduction activities from within aggregate existing budget baselines. As in the case of national government departments, funding key disaster management activities may require the reallocation of funds from non-essential and/or lessor priority items.
- 8.3 The NDMC is working in close collaboration with the National Treasury to ensure that budget baselines are utilised in the most efficient manner, including by providing municipalities and provinces with technical expertise, where appropriate.

9 COMMUNICATION IMPLICATIONS

Once the Disaster Management Amendment Act has been promulgated, appropriate communication mechanisms will be activated through the Department of Cooperative Governance and Traditional Affairs (COGTA) and the Government Communication and Information System (GCIS).

10 CONSTITUTIONAL IMPLICATIONS

The Bill seeks to give effect to the principles of co-operative government set out in chapter 3 of the Constitution through clear guidance on issues of disaster management across the spheres of government. Furthermore, by placing emphasis on reducing the risk of disasters, it also affirms the collective duty on the part of each

sphere of government and all organs of state within each sphere to 'secure the well-being of the people of the Republic'.

11 IMPLICATIONS FOR VULNERABLE GROUPS

The interest of vulnerable communities and groups are protected through a focus on disaster risk reduction across the spheres and sectors of government.

12 SECURITY IMPLICATIONS

None

13 DEPARTMENTS AND PARTIES CONSULTED, RESPONSES AND COMMENTS

13.1 Several provincial workshops were conducted in collaboration with SALGA and culminated with a National Consultative Workshop where the Bill was presented and discussed with stakeholders across the spheres and sectors of government.

13.2 The NDMC wrote letters to the Heads of Departments of all the national departments, the nine provincial departments responsible for disaster management as well as key stakeholders such as the FFC, SALGA, Eskom, the South African Weather Services, etc. of the publication of the Bill and a request to provide comments.

13.3 Subsequent to the period for public comment, the Department received a range of comments which have been documented and discussed by a task team established to work through the comments.

13.4 By the end of the public comment period, 20 organisations including all spheres of government, the South African Local Government Association, tertiary institutions and the Disaster Management Institute of Southern Africa, provided comments on various clauses of the Bill. Generally, the proposed amendments to the principal Act were supported by these organisations. Public submissions by and large improved the technical substance of the Bill.

13.5 The Bill was also presented and discussed at the National Disaster Management Advisory Forum (NDMAF). The forum serves as the multi-disciplinary stakeholder platform in which national, provincial and local government as well as other disaster management role-players consult one another and coordinate their actions on matters relating to disaster management.

13.6 Throughout the process of reviewing the principal Act, experts from all three spheres of government, academic institutions, sector departments as well as other stakeholders such as relevant public entities were consulted and had the opportunity to provide input and comments.

- 13.7 Throughout the process, reports on the progress on reviewing the legislation were submitted to the intergovernmental structures such as MinMec and the National Disaster Management Advisory forum.
- 13.8 The departments of Justice and the National Treasury were consulted on the proposed amendments to the draft Bill. The Chief State Law Adviser also provided preliminary certification for the Bill.