

Legislation for mainstreaming disaster risk reduction



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Abbreviations

DFID	Department for International Development
IDNDR	International Decade for Natural Disaster Reduction
ISDR	International Strategy for Disaster Reduction
MP	Member of Parliament
NGO	Non-governmental organisation
PRSP	Poverty Reduction Strategy Paper
SA	South Africa
UNDP-BCPR	United Nations Development Programme – Bureau for Crisis Prevention and Recovery
UN-WCDR	United Nations World Conference on Disaster Reduction

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Executive summary

Tearfund's Environment and Disasters advocacy strategy aims to help vulnerable people reduce disaster risks through increasing government commitment to implementing pro-poor disaster prevention policies and practices. The aim of this report is to encourage national and donor governments to develop and improve their disaster risk reduction legislation. Legislating for disaster risk reduction (DRR) is a crucial step in mainstreaming DRR into development.¹

This summary contains four sections covering: an analysis of existing disaster risk reduction legislation; the building blocks of successful legislative reform according to individual nations' experience; a detailed account of the reform process in South Africa from 1994 to 2005; and recommendations for those undertaking legislative reform for DRR.

Existing DRR legislation

Of the 119 national reports submitted to the UN World Conference on Disaster Reduction, Hyogo, 2005, 80 per cent included some form of legislation for disaster management.

These reports show:

- A common outcome of disaster management legislation is the formation of a national platform.
- National platforms can play a role in liaising with line ministries and other actors in shaping risk reduction policies.
- Regional governance can support national-level legislation and its implementation.
- The implementation of risk reduction legislation takes place at the local level, which requires appropriate support.
- The strategic use of development policy to mainstream DRR was only noted in 55 per cent of national returns to the UN-WCDR, suggesting that risk reduction policy continues to be marginalised.
- Only a small number of countries have connected DRR policy with national development planning frameworks such as Poverty Reduction Strategy Papers (PRSPs).

The building blocks of successful legislative reform

Challenges and opportunities for building DRR legislation will be different in each nation's case. Five common aspects shaping successful reforms have, however, been identified:

- Political context and recent disaster events shape the policy environment and can stimulate calls for DRR legislation. The strategy taken to develop legislation will be

¹ See previous Tearfund report *Mainstreaming Disaster Risk Reduction: a tool for development organisations* (2005).

informed by national institutional architecture. This includes formal process but also informal practices that influence processes of legislative change in government.

- The many actors with a stake in DRR policy should be consulted during the drafting of legislation: line ministries, local government, civil defence and the military, emergency services, humanitarian NGOs, grassroots organisations, the private sector etc.
- Clear leadership and a common vision of DRR as developmental and distinct from disaster management with its roots in emergency response can help in maintaining focus and holding a widespread policy coalition together in developing cross-sector legislation for DRR.
- Pre-existing policy that fulfils DRR functions should be recognised, and not duplicated.
- Strategies for implementing DRR are best considered as legislation is developed. This enables those who will enact legislation to buy into reforms and allow the investments in finance and human skills required by DRR to be clearly calculated and planned for.

The experience of South Africa 1994–2005

South Africa's Disaster Management Act, promulgated in 2003, was applauded internationally as a path-breaking example of national legislation that promotes disaster risk reduction. DRR legislation has unfolded in South Africa in an incremental process as part of a larger effort to reorient institutions of government in the post-apartheid era. It has also been influenced by the number of large disasters in the 1990s, as well as by international policy.

Three stages in the history of South Africa's DRR legislation are identified. First, from 1994 to 1999, a period of broad stakeholder consultation and policy configuration. Second, from 1999 to 2003, legislation moved from discussion to formal status. Third, from 2003 to 2005, efforts moved from building legislation to crafting and funding a national implementing framework.

Six preconditions have shaped the success of South Africa's DRR legislation:

- an enabling political and legal context, characterised by high levels of transformative energy and support
- a regional disaster risk context characterised by increasing severity and complexity
- a local professional context seeking to align itself with international best practice
- an international professional context that supported and neither subverted nor undermined local initiative and responsibility
- high levels of local agency, characterised by continuity and individual capacity, skill, integrity and creative initiative
- a change process that enabled gradual professional reorientation and incremental policy adjustment.

Key challenges were fluctuating levels of commitment to full consultation in drafting processes. This led to the exclusion of local authorities who have later reported a lack of financial support for implementation. High levels of introspection demanded of stakeholders may have prevented interdisciplinary engagement so that the legislative reform

process has itself been a barrier to mainstreaming DRR. Despite strong recommendations, the DRR portfolio in implementation has not been located in the highest level of executive authority, making inter-departmental integration of DRR more difficult.

Conclusion and recommendations

South Africa's efforts to build DRR legislation date back to 1994, demonstrating that reform requires long-term perseverance and commitment from those seeking to make change – sustained and supported by political leadership. Experience from South Africa demonstrates the pivotal role of skilled and insightful political stewardship; the sustained individual energy and commitment needed from those at the centre of the reform process; and the positive value of coherent and consistent messages from international partners in supporting the reform process.

Learning from the experience of those who have contributed to this report, especially in South Africa, provides many important recommendations and lessons for those undertaking legislative reform for DRR. A summary of these is provided in Section 4 on page 29. However, to effectively interpret and apply the South African experience in other contexts, it is essential to have a full understanding of the preconditions that facilitated legislative reform as well as the outcomes for 'mainstreaming'. Anyone engaging in legislative reform would therefore benefit from studying the detail of the case study as presented in this paper.



Photo: Jim Loring / Tearfund

1 Introduction

Tearfund aims to help vulnerable people reduce disaster risks through increasing government commitment to implementing pro-poor disaster prevention policies and practices. The purpose of this report is to encourage national and donor governments to develop and improve their disaster risk reduction (DRR) practices by reviewing current experience of undertaking legislative reform for DRR.

Legislation for DRR is fundamental to the enhancement of human security. It is the first step in mainstreaming disaster risk reduction into development. Legislation provides the framework around which strategies to build risk reduction into development and reconstruction activities can be empowered. The law can be used to provide penalties and incentives by enforcing standards in construction, land use, tenants rights and by defining people's rights during relief and reconstruction.

Legislation can also empower agencies with new responsibilities for risk reduction or establish new bodies to advise or undertake risk reduction work. Budget lines as well as policy remits can be set by legislative acts. The legislative process should be a constructive period for generating informed support for disaster risk reduction among the policy community and those who will be entrusted with implementation.

Tearfund is not alone in recognising the critical need for legislative reform and associated implementation strategies. Within the international community, the Secretariat for the International Strategy for Disaster Reduction (ISDR) has supported many countries in establishing national platforms for disaster management. The United Nations Development Programme – Bureau for Crisis Prevention and Recovery (UNDP-BCPR) is also active in promoting legislation for disaster reduction.

In 2005, the Hyogo Framework for Action (2005–2015) called for nation states and the international community to ensure that DRR is a national and local priority with a strong institutional basis for implementation. It identified legislation as a critical component in moving towards a comprehensive and mainstreamed DRR approach: *Adopt, or modify where necessary, legislation to support disaster risk reduction, including regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities.*²

The last decade has seen a growing number of state and local authorities legislating for disaster risk reduction. This provides a critical mass of case study experience from which to draw out lessons and key challenges to support and strengthen ongoing legislative reform. This report is aimed primarily at national governments in disaster-prone countries, as well as bilateral and multi-lateral donor organisations. It will also be of interest to NGOs and agencies engaged in lobbying for legislative reform.

Section 2 analyses existing disaster risk reduction legislation and reviews the generic factors that shape national experiences of developing it. In Section 3, Dr Ailsa Holloway, a central actor in the reform process in South Africa (1994–2005), reviews the South African experience. Section 4 presents a conclusion and recommendations for those undertaking legislative reform for DRR.

2 UN, *The Hyogo Framework for Action 2005–2015* www.unisdr.org/eng/hfa/hfa.htm

2 International experience of legislation for disaster risk reduction

2.1 A review of national disaster risk reduction legislation

The UN World Conference on Disaster Reduction (UN-WCDR), Hyogo, 2005, provides a unique resource for reviewing the global state of disaster risk reduction. Of the 119 national reports submitted to the conference, 80 per cent indicated some form of legislation for disaster management.³ The majority of this legislation is recent, having been drafted or reformed since the mid-1990s, falling within the UN International Decade for Natural Disaster Reduction (1990–1999). The Secretariat for the International Strategy for Disaster Reduction (ISDR) has been a longstanding champion of the national platforms and legislative reform.⁴ However, it should not be assumed that burgeoning national legislation for *disaster management* necessarily includes a *disaster risk reduction* orientation.

Disaster risk reduction (DRR) is developmental. It covers policies aimed at building risk reduction (preparedness, hazard mitigation and human vulnerability reduction) into development policy, including reconstruction.⁵ Key implementing agencies are likely to be those concerned with social and economic development, primary health care, land-use planning, environmental management and critical infrastructure including housing.

The ISDR review of national reports submitted to the UN-WCDR concluded that a growing number of governments had recognised the importance of shifting from an emphasis on disaster management and response to disaster risk reduction. However, ISDR also argues that this shift in attitude has not yet been enshrined in national legislation. It goes further, pointing out that even where risk reduction has been legislated for, lack of financial, human or technical resources and inadequate capacities present tangible obstacles to implementation.⁶

A summary of national submissions to the UN-WCDR on the theme of legislation shows that:

■ A common aspect of disaster management legislation is the formation of a national platform. The relative maturity of the risk reduction debate in Latin America and the Caribbean is reflected in the number of well-established national platforms in this region, for example in El Salvador, Mexico and Nicaragua.

3 ISDR (2005), *UN World Conference on Disaster Reduction: National Reports*, accessed from www.unisdr.org/wcdr/preparatory-process/national-reports.htm

4 ISDR (2004), *Living with Risk* United Nations, Geneva, accessed from www.unisdr.org/eng/about_isdr/bd-lwr-2004-eng.htm

5 DRR should also be factored into disaster relief (see UN *Hyogo Framework for Action*), eg: through strengthening, rather than undermining, local capacity.

6 ISDR (2005), *ibid* (See footnote 3).

- National platforms can play a role in liaising with line ministries and other actors in shaping risk reduction policies. This is the case in Iran, Japan, New Zealand and Switzerland.
- Regional governance can support national-level legislation and its implementation. In Latin America and the Caribbean, national institutions are supported by strong regional institutions including: the Andean Regional Programme for Risk Prevention and Reduction, the Central American Coordination Centre for Disaster Prevention, and the Caribbean Disaster Emergency Response Agency.
- The implementation of national risk reduction legislation takes place at the local level. For this reason it is important that local government is given budgetary support and human skills as well as responsibility for risk reduction. Good practice is reported from Finland, New Zealand, the Philippines and Russia.
- The strategic use of development policy to mainstream DRR was only noted in 55 per cent of national returns to the UN-WCDR, suggesting the continuing marginalisation of risk reduction policy and insufficient legislative weight in a large proportion of participating countries. Haiti, Mongolia, Montserrat, Namibia and Pakistan provide examples of risk reduction being integrated into environmental management portfolios – including that for climate change. South Africa has integrated risk reduction into transport planning.
- A small number of countries have made a connection between disaster risk reduction and national development planning frameworks such as PRSPs, Common Country Assessments and the United Nations Development Assistance Framework. These include Comoros, Djibouti, Ethiopia, Hungary, Ivory Coast, Mauritius, Romania, South Africa and Uganda. The majority of national PRSPs limit provision for DRR to early warning; Vietnam is a notable exception that includes DRR in its developmental agenda.⁷

2.2 The building blocks of successful legislative reform

What strategies have been useful in building national disaster risk reduction legislation? This section looks generically at the influence of political contexts and of the political actors involved in reform.

2.2.1 Political context

Political circumstances shape the space within which new legislative reforms succeed or fail. Disaster events themselves can generate pressure for reform, coming from within the government (as in the case of India in Box 1), from lobby groups outside government, or where disaster events gain widespread media coverage – from a combination of both governmental and popular demands. The reconstruction of legislation in Turkey following the Marmara earthquake is a case in point.

7 White P, Pelling M, Sen K, Seddon D, Russell S, Few R (2005) *Disaster Risk Reduction: a development concern* DFID, London, accessed from www.dfid.gov.uk/pubs/files/drr-scoping-study.pdf

Box 1

India and Sri Lanka: disaster events provoke legislative reform

India's longstanding disaster management legislation is oriented almost entirely towards emergency response, relief and recovery. The super cyclone in Orissa in October 1999 and the Bhuj earthquake in Gujarat in January 2001 put pressure on government to adopt a multi-dimensional approach and incorporate risk reduction in development plans. Specific suggestions made for a risk reduction approach include a proposal in 2001 from the High Power Committee on Disaster Management that at least 10 per cent of disaster plan funds at the national, state and district levels be earmarked for the prevention, reduction, preparedness and mitigation of disasters. The Eleventh Finance Commission has also recommended that medium- and long-term measures be devised by the relevant ministries of the Government of India, the state governments and the Planning Commission to reduce disaster risk by undertaking developmental works.

The Indian Ocean tsunami has had many repercussions for disaster and development planning. In Sri Lanka, in May 2005 the Sri Lankan Disaster Management Act No. 13 of 2005 was enacted. The first of seven themes in the Act covers policy, institutional mandates and institutional development, and includes components on the preparation of a national policy for disaster management, reviewing and formalising mandates and identifying the capacity development needs of agencies designated to perform disaster management functions.

Sources: Government of India submission to the UN-WCDR,
www.unisdr.org/wcdr/preparatory-process/national-reports/India-report.pdf
 Government of Sri Lanka,
www.undp.org/bcpr/disred/documents/tsunami/srilanka/reports/GOSLRoadmapDisManagCentre.pdf

Beyond the influence of disaster events, change in the national political arena can also create openings for legislative reform. One of the most substantial, one-off, opportunities for legislative reform opened with the desire for reform at the end of apartheid in South Africa (see Section 3).

Within any polity, it is the institutional architecture that shapes the kind of dialogue that can be entered into and the speed and depth of any potential process of reform. Institutional architecture determines the rules of the game for policy reform and is made up of formal and informal types of institution. Formal institutions include existing legislation or parliamentary procedure. Informal institutions are cultural rules, for example one political culture might emphasise decision-making by consensus, in another it might be inappropriate for junior officials to challenge more senior colleagues, making change more difficult. Strategies for making legislative change are more likely to be successful when those championing change have an understanding of, and can work through, both formal and informal kinds of institution.

For reformers, parliamentary debate can provide an important opportunity for new ideas to receive a public airing and for encouraging those who are reluctant to support change, perhaps for reasons of culture, to review their positions. The successful development of a Road Map for disaster risk management in Sri Lanka arose from a bipartisan Sri Lankan Parliament Select Committee on Natural Disasters.

The increasing number of local and international stakeholders in risk reduction has complicated the institutional architecture. Now, it is not sufficient to consult interested

parties within government and state agencies. For legislation to be passed, and to foster its implementation, consultation should include: developmental NGOs; business interests; professional associations; regional, ethnic or religious associations; international financial institutions; bilateral donors; and international NGOs.

The role of intra-regional learning can be seen in the cases of Colombia, Bolivia and Nicaragua. Colombia developed DRR legislation in 1989. In 2000 Colombia and Nicaragua both established their own legislation. In each case senior politicians acted as champions and little resistance to change was offered by civil defence institutions. Finally, learning was enabled by the involvement of the same international consultant in Bolivia and Nicaragua that had played a major role in establishing and running the system in Colombia.⁸

Existing legislation creates a context for reform. Many countries that do not have DRR legislation do have a number of positive sectoral policies. These must be taken into account in any reform agenda. Key policy areas include agriculture, wildfire management (for example, Kenya has wildfire management legislation that contributes to prevention, but is not recognised as such in disaster legislation), urban and transport planning, social policy and water resource management. Failure to acknowledge pre-existing sectoral policies with a bearing on DRR can lead to the alienation of those working in these policy sectors, generating perceptions of resource competition that can slow or stop progress.

When discussing DRR it is common for agencies to claim, ‘We are doing it already.’ The art of successful reform is not to generate unnecessary duplication of functions and competition over resources, but to strengthen existing risk reduction activities – even if this is done under another name – while simultaneously identifying legislative and policy gaps. There is a clear need for cross-sectoral thinking and for widespread participation in scoping as well as implementing legislation.

2.2.2 Political actors and strategies

In this section we identify key actors and the roles they can play in building successful legislative reform. Successful legislative reform requires the collaborative action of a range of political actors. Sometimes these groupings form a clearly defined lobby: in other cases they are a loose coalition of interest.

Policy insiders
and outsiders

Policy coalitions work best when they bring together (a) ‘policy insiders’ who have the ear of policy-makers, and may include high-level politicians, but who may not have technical knowledge; and (b) ‘policy outsiders’ who have technical expertise but are not routinely consulted in the policy-making process. The case of Djibouti shows the comparative advantage of bringing insiders and outsiders together in the reform process (Box 2).

Insiders can play the role of policy-navigators, knowing which bodies and key individuals inside government would see proposed changes as a threat or opportunity, and

8 Lavell A (2004) *Analysis of Institutional and Legal Systems for Risk Management and Disaster Response in Latin America: the Cases of Bolivia, Nicaragua and Colombia* Regional Report. UNDP-BCPR, Geneva

Box 2

Djibouti: a national policy community provides strength for reform

The Djibouti national strategy for DRR has its roots in French colonial legislation from the early 1980s. As part of the UN International Decade for Natural Disaster Reduction (1990-1999), Djibouti requested the ISDR assist with establishing a National Platform for Natural Disaster Reduction. The Platform structure included many national stakeholders: line ministries and offices involved included education, finance and planning, environment, health, meteorology and statistics. This format enabled those with a desire for legislation to push for change. This structure meant that members encouraged each other, and strong individual leadership was less important in this case. External input was sought for the development of legislation.

Source: Feng Min Kan, ISDR (personal communication)

consequently who would be likely to be enthusiastic or reluctant to support change. Such awareness is strategically very useful when lobbying for change.

It is important that DRR has a clear policy identity that differentiates itself from pre-existing disaster management work oriented towards response and relief. Policy discussions are also greatly helped by an evidence base to demonstrate the gains to be won in social and economic development and in environmental protection by adding a DRR approach to existing disaster management. DRR will not cancel out the need for disaster response, but it will at least ameliorate the growing scale of vulnerability and loss in society. The role of external facilitators can be important in both clarifying the relationships between DRR and other sectors, and responsibilities in other national contexts, and by illustrating the social, economic and environmental benefits of a DRR approach when home data is limited.

Civil society Policy coalitions can be large and include grassroots actors able to mobilise local resources and popular opinion to advocate for change as well as line ministries. Civil society actors remain important for advocacy: they can provide a vehicle for bringing insights from the grassroots, a mechanism for the representation of popular views, and the potential for popular legitimacy and oversight. Box 3 shows effective coalition building in Morocco.

Policy champions Processes of reform can be greatly facilitated when leadership is provided by policy champions with high political or administrative office. Madagascar's programme for DRR has high-level political support: the President is involved in the design of hurricane-resistant buildings. Its programme has also had some success in implementation with training for district-level officials.

To be most effective in the multi-sectoral environment of risk reduction legislation and policy-making, champions must be respected by a broad range of existing policy actors. Consistency in leadership is a great asset in building trust and technical competency. India's DRR legislation was championed by Shri Shivraj Patil, Minister for Home Affairs, who took the initiative of piloting the legislation and succeeded in guided the drafting of the legislation, introducing the bill and steering it through both houses of Parliament.

Box 3

The kingdom of Morocco: effective coalition building

Following the Yokohama UN conference on disaster management, 1994, Morocco's First National Workshop on Catastrophe Risks drew from a very wide base, as part of a national programme for evaluating need and capacity for natural disaster risk management. Participants included representatives from ministerial departments, local and provincial government, the private sector, developmental NGOs, professional associations, academia, the media and international institutions. One outcome of the workshop was the formation of a National Coordination Committee with the Secretariat in the Division of the Environment at the Ministry of Land Use Planning, Water and Environment. The National Committee held several thematic workshops, for example on housing and urban planning, and development of a national strategy for disaster risk management. Ministries were asked to submit budgeted plans for risk reduction programmes.

In addition to the more tangible outputs of evaluation and programming, the broad-based dialogue enabled through this process encouraged the exchange of ideas and generated support for risk reduction from a wide range of policy actors.

Source: Direction de la Surveillance et Prévention des Risques, Département de l'Environnement, Ministère de l'Aménagement du Territoire de l'Eau et de l'Environnement, Kingdom of Morocco, www.matee.gov.ma

Sub-national
government

If the national system is to be enacted through regional, local or metropolitan governments, then these must be brought in at an early stage to provide a strong basis for implementation. Ghana's disaster management strategy is co-ordinated through a National Disaster Management Organisation located in the Ministry of the Interior and supported by 10 regional, 140 district and 900 zonal (village and metropolitan) offices and contact points.

In some cases legislation for risk reduction might lead to a change in the relationship between national and sub-national governments. India has experienced such uncertainty with state government playing the lead role in disaster relief and reconstruction, but national government leading the debate on risk reduction – through the possible integration of risk reduction in development planning and financing.

Scientific and
technical bodies

Once a decision has been made to explore the possibilities for developing legislation, technical expertise and information are needed. In Iran, scientific and technical interests took an early lead in pushing for the development of the national disaster risk reduction strategy that led to ratification by the Council of Ministers of an Integrated Disaster Plan in 2003.

International actors

There are many examples of countries learning from each other at this scoping stage. Box 4 provides an example of learning between South Africa and Uganda. International actors such as the ISDR and UNDP-BCPR have been active in providing information and bringing together those interested in developing national legislation with experts from other countries where legislation has been drawn up.

Box 4

Uganda and South Africa: learning from others

In 2003, the Ugandan Office of the Prime Minister presented a draft framework for legislation to provide for the integration of disaster risk reduction into line ministry work and the national policy such as the Poverty Eradication Action Plan.

This report built on a project spearheaded by the Department of Disaster Preparedness, together with the Department of Labour and the National Environmental Management Authority, to develop policy, institutional and legal frameworks for DRR. This project ran from 1995 to 1999. The reform process stalled when the project ended. In 2002, the Department of Disaster Preparedness requested Oxfam GB in Uganda to facilitate the review process of the Disaster management policy and institutional frameworks, and the drafting of the Disaster Preparedness and Management Commission Act.

In 2003 the first concrete step towards legislative reform was to create a National Information Centre. The Centre invited South Africa to share experience of legislative reform, which has pushed forward national support.

Source: Feng Min Kan, ISDR (personal communication)

2.3 Implementation

Implementation is at least as great a challenge as legislating for DRR. Implementation requires political support, financial underpinning and the engagement of all actors involved: line ministries, civil defence or the armed and emergency services, local government, private sector and civil society. Turkey, Iran and China are examples of countries with excellent building codes, but barriers to implementation mean that many buildings remain at risk, including those recently constructed.

Implementation can be made more achievable by connecting risk reduction aims to existing policy concerns such as those related to the Millennium Development Goals and PRSPs. PRSPs offer a potential mechanism for raising the profile of DRR policy to reinforce implementation.

The PRSP process is an example of an international initiative that can open a new set of opportunities for risk reduction to be mainstreamed into development.⁹ This connection might usefully be prioritised through the drafting and debating of DRR legislation. As we saw in Section 2.1, Vietnam is among those countries that have led the way in integrating DRR into the PRSP process and development planning more generally (see Box 5).¹⁰

9 World Bank (2006) *Hazards of Nature, Risks to Development: an IEG evaluation of World Bank assistance for natural disasters* World Bank: Washington DC, USA.

10 In 2005 DFID reviewed the potential for promoting risk reduction through the PRSP process. Ethiopia, Malawi, Mozambique, Vietnam and Bangladesh were identified to illustrate potential mechanisms. DFID noted, however, that the current PRSP process has been constrained by limited civil society consultation and by a tendency to be under-resourced; this has tended to reinforce existing development models rather than providing an opportunity for innovation.

Box 5

Vietnam: legislation for the integration of DRR and development planning

The State of Vietnam has integrated DRR aims into the mandate of existing government agencies through integrating risk management into development policy. Examples of risk reduction activities undertaken by line ministries include:

- the Land Use Law, which regulates residential development to avoid construction in disaster-prone areas
- the Law on Forest Protection which includes policy on afforestation and on forest protection, fire prevention and fighting
- government policy on managing coal mining to constrain pollution and environmental destruction
- enhancing the management of water sources, preventing pollution and waste of water, and limiting the impacts of riverine flooding.

Vietnam's PRSP has the stated aim of reducing by half the number of poor people falling back into poverty due to disasters and other risks. This is to be achieved by 2010.

Source: Socialist Republic of Vietnam, National Report on Disaster Reduction, access from www.unisdr.org/wcdr/preparatory-process/national-reports/Vietnam-report.pdf

To aid implementation, the UN-ISDR recommends that legislation should include or be supported by:

- benchmarks for action
- a procedure for evaluating DRR actions
- joined-up planning to assist the coordination of activities across geographical or sectoral areas of responsibility
- a feedback system to monitor risk reduction activities and their outcomes.

Box 6 overleaf details a model developed by Sri Lanka that includes many of these aspects of good planning to enable implementation.

Box 6

Sri Lanka: a National Road Map for disaster risk management

The Ministry of Disaster Management has overall responsibility for implementing Sri Lanka's Road Map, and undertook a widespread consultative process to increase the likelihood of continued support during implementation from line ministries, provincial authorities, international agencies, civil society and private sector stakeholders.

Key elements of implementation planning include:

- a National Steering Committee to meet every two months and provide strategic guidance
- a Technical Advisory Committee, including experts from national and provincial government, academia and national research institutes
- a lead implementing agency for each of the Road Map's seven thematic areas. The National Disaster Management Committee provides overall co-ordination.
- financial management with a number of inbuilt controls and co-ordination from the External Resources Division of the Ministry of Finance.

Monitoring and evaluation functions are designed to ensure multi-stakeholder oversight. Monitoring activities include on-site surveillance, regular reporting and financial expenditure tracking. Results indicators will be developed jointly by stakeholders with overall progress to be reviewed by the National Steering Committee.

Source: Ministry of Disaster Management, Sri Lanka (2005) *Towards a Safer Sri Lanka: Road Map for Disaster Risk Management* Government of Sri Lanka, accessed from www.undp.org/bcpr/disred/documents/tsunami/srilanka/reports/GOSLRoadmapDisManagCentre.pdf

3 The Experience of South Africa 1994–2005

3.1 Introduction

South Africa's Disaster Management Act 2003 predated both the World Conference on Disaster Reduction and the Hyogo Framework for Action. It has generated particular interest as an example of international best practice – especially in profiling the role of legislation in driving integration of disaster risk reduction action across multiple sectors and disciplines.¹¹

This report presents four aspects of South Africa's legal reform-making experience. Section 3.2 describes the overall political and disaster risk context that shaped the process of reform in disaster management legislation. Section 3.3 identifies distinct stages in the legislative reform process. Section 3.4 specifically identifies the conditions and forces that enabled progression – as well challenges to change. Section 3.5 reflects critically on the outcomes of the reform process.

3.2 The context for change

South Africa's disaster management policy and legislation unfolded during a period of massive legislative reform in post-apartheid South Africa. Over eleven years, from June 1994 to April 2005, the country's political, social and administrative landscape was dramatically transformed. There was a systematic dismantling of the institutional architecture of apartheid, the adoption of an all-encompassing Constitution and the revision of local and provincial government. Between 1994 and 2003, more than 800 Acts of Parliament were passed.

DRR legislative reform also took place during a time of intensifying disaster risk in southern Africa. The 1990s were punctuated by severe recurrent droughts – and in 2000, the devastating floods that affected Mozambique as well as other southern African countries generated severe losses, especially in South Africa's Limpopo Province. During this eleven-year period, recurrent wild-land, urban fringe and informal settlement fires became more severe in South Africa – while urban flooding in the country's densely congested informal settlements emerged as a critical urban development concern. Similarly, this period saw South Africa record the highest incidence of HIV of any country worldwide.

In addition, the evolution of policy was significantly influenced by international developments. These included the UNDP's Disaster Management Training Programme in the early mid-1990s, as well as the International Decade for Natural Disaster Reduction and the International Strategy for Disaster Reduction from 2000 onwards.

It was the interplay of powerful internal transformative forces, combined with international consensus-building on DRR that created and sustained an incremental process of progressive reform.

11 For background, see discussion in UN-ISDR (2004) *Living with Risk: A global review of disaster reduction initiatives* Geneva. See also UNDP Bureau for Crisis Prevention and Recovery (2004) *Reducing Disaster Risk: A Challenge for Development* New York

3.3 Key stages in the legislative reform process

Before the DRR reform process commenced, both a professional civil protection association¹² and a formal course in civil defence¹³ were well established in South Africa. These provided institutional precedents for later policy formulation, capacity development and professional advocacy.

Following the first democratic national elections in April 1994, it is possible to identify three distinct stages in the evolution of South Africa's disaster management policy and law. These are reflected in the table below:

	Activities	Outcomes
I: Policy re-orientation June 1994 – January 1999	Focus on broad stake-holder consultation and policy reorientation through: <ul style="list-style-type: none"> • national discussion paper • national policy document 	February 1998: Green Paper on Disaster Management January 1999: White Paper on Disaster Management
II: Legislative process February 1999 – January 2003	Focus on the legislative process through: <ul style="list-style-type: none"> • drafting of legislation and public comment • Portfolio Committee debate 	January 2000: Disaster Management Bill September 2001: Disaster Management Bill [58-2001] May 2002: Disaster Management Bill [B21 -2002] January 2003 Disaster Management Act [No. 57 of 2002]
III: Implementing framework February 2003 – April 2005	Focus on developing a national implementing framework through: <ul style="list-style-type: none"> • drafting of national implementing framework 	April 2004 National Disaster Management Framework I April 2005 National Disaster Management Framework
IV: Implementation May 2005+	Piloting roll-out of implementation framework	

12 The Directorate of Civil Protection and Fire Brigade Services located within the Department of Local Government and Housing. This directorate was responsible for overseeing the implementation of the Civil Protection Act 67, of 1977.

13 A Management Course in Civil Defence was offered by distance-learning from the University of South Africa.

Stage I: June 1994 – January 1999

Evolution of national disaster management policy

Just two months after the 1994 national elections, severe flooding occurred in the informal settlements of Cape Town's Cape Flats. This benchmark is frequently cited as the beginning point for South Africa's legislative process. It is partly true that the Cape Flats floods motivated Cabinet to formally assess South Africa's ability to deal with risk reduction and disaster management (Green Paper, 1998).¹⁴ However, other processes and relationships that developed in the early 1990s due to the severe region-wide drought of 1991–93 also significantly informed subsequent policy.

Moreover, it was not until 1996–1997 (two years later) that the then Minister of Provincial Affairs and Constitutional Development tasked Janet Love (MP), chairperson of the Portfolio Committee for Agriculture, Water and Forestry, with driving the reform process in disaster management. In her capacity as Chairperson of the Disaster Management Task Teams that generated both the discussion paper in 1998 (Green Paper) and policy document (White Paper¹⁵) a year later, Love's political stewardship was key. Moreover, her technical knowledge of South Africa's disaster risk profile – combined with political skill, explicit commitment to stakeholder consultation and focused ability to guide policy drafting teams – generated progressive policy documents that, even then, were fully consistent with current international thinking on disaster risk reduction.

The 1998 Green Paper was consultative in nature and set out to open discussion on a conceptual framework for national disaster management and DRR, and to begin to establish different management requirements for different types of disasters. Just one year later, the 1999 White Paper set out government disaster management policy. It aimed to inform the public of the government's objectives and to inform government agencies of their responsibilities in meeting these goals.

These discussion and policy documents also illustrated an early understanding of the significant conceptual differences between DRR and disaster management. In this context, they explicitly and intentionally avoided subsuming DRR within the disaster management paradigm which dominated South Africa at that time. The progressive thinking is reflected in Box 7 overleaf.

Stage II: February 1999 – January 2003

The legislative process

The years 1999–2000 experienced an ideological retreat away from DRR. This was partly due to the re-deployment of Janet Love, which reduced the level of political leadership and consultative engagement in the legislative reform process. In addition, the National Department's focus in this period was on averting Y2K (1999), and on responding to flooding and cyclones (2000). This reversal was reflected in marked discontinuities between the overall orientation of the White Paper and subsequently gazetted Disaster Management Bills.

14 Government of South Africa, Ministry for Provincial Affairs and Constitutional Development (1998) *Green Paper on Disaster Management* Pretoria

15 Government of South Africa, Ministry for Provincial Affairs and Constitutional Development (1999) *White Paper on Disaster Management* Pretoria

Box 7

South Africa: drawing a clear distinction between DRR and disaster management

‘A further fundamental purpose of the policy is to advocate an approach to disaster management that focuses on reducing risks – the risk of loss of life, economic loss and damage to property, especially to those sections of the population who are most vulnerable due to poverty and a general lack of resources. It also aims to protect the environment. This approach involves a shift away from a perception that disasters are rare occurrences managed by emergency rescue and support services. A shared awareness and responsibility needs to be created to reduce risk in our homes, communities, places of work and in society generally ...

... The policy seeks to integrate this risk reduction strategy into existing and future policies, plans and projects of national, provincial and local government, as well as policies and practices of the private sector.’

Source: *White Paper on Disaster Management* 1999, p13

The reversal was compounded by a pronounced decline in consultation. The generation of the Green and White Papers had been informed by remarkably consistent drafting teams to ensure technical continuity and policy alignment with international best practice. In contrast, the Disaster Management Bills, gazetted first in January 2000 and then again in August 2001, were drafted primarily by legal advisers within the national department, without consulting the White Paper drafting team.

Fortunately, the impact of this significant decline in stakeholder consultation was reversed once the Disaster Management Bill reached the Parliamentary Portfolio Committee for Provincial and Local Government. As required by law, both written and verbal submissions in response to the Bill were openly and transparently presented to the Portfolio Committee. Moreover, under the skilled leadership of the Portfolio Committee Chair, special provisions were made to ensure that Committee members were technically aware of the Bill’s implications.

It was the insightful political leadership and facilitation of these hearings that created the opportunity for strengthening the risk and vulnerability reduction themes in the eventual Disaster Management Act. This was only possible through the skilled and strategic mediation of the Portfolio Committee Chair who negotiated the often juxtaposed positions of the national department and the independent technical adviser.¹⁶ With his committee colleagues, he was able to successfully generate ‘bridging legislation’ that was broadly acceptable to both conservative disaster management and progressive risk reduction constituencies.

The Disaster Management Bill was eventually promulgated as the Disaster Management Act in January 2003. The nuanced adjustment of the gazetted Bill to generate the subsequent Act is illustrated below, with selected text underlined.

¹⁶ The independent technical advisor was recruited from outside government. This was important given the potential for conflict over access to resource and influence in government that changes to legislation can bring.

Disaster
Management
Bill 2002¹⁷

Contents of the national disaster management framework

6. The national disaster management framework must outline a coherent, transparent and inclusive policy on disaster management for the Republic as a whole with proportionate emphasis on disasters of different kinds, severity and magnitude that occur or may occur in Southern Africa, and must –

...

(f) facilitate –

- (i) the involvement of the private sector, non-governmental organizations, communities and volunteers in disaster management; and
- (ii) partnerships in this regard between organs of state and the private sector, non-governmental organizations and communities

Final Disaster
Management Act
(57 of 2002)¹⁸

Contents of the national disaster management framework

7. (1) The national disaster management framework must provide a coherent, transparent and inclusive policy on disaster management for the Republic as a whole.

(2) The national disaster management framework must reflect a proportionate emphasis on disasters of different kinds, severity and magnitude that occur or may occur in southern Africa, place emphasis on measures that reduce the vulnerability of disaster-prone areas, communities and households, and must –

...

(f) facilitate –

- (i) the involvement of the private sector, non-governmental organisations, traditional leaders, technical experts and volunteers in disaster management.
- (ii) Community participation in disaster management; and
- (iii) Partnerships for purposes of subparagraphs (i) and (ii) between organs of state and the private sector, non-governmental organizations and communities

Stage III: February 2003 – April 2005

Generation of a coherent national disaster management framework¹⁹

While the process of legislative reform that began in 1997 had required serious perseverance and commitment, it had been sustained and supported by enabling political leadership during both the policy formulation phase and generation of the Disaster Management Act. In contrast, especially in its early development, the national implementing framework lacked any form of political oversight, direction or support.

17 Republic of South Africa, *Government Gazette* 2001, No. 22937. Notice 2374 of 2001: Ministry for Provincial and Local Government: Disaster Management Bill, 2002

18 Republic of South Africa, *Government Gazette* 2003, No. 24252. No 57 of 2002: Disaster Management Act, 2002

19 Republic of South Africa, *Government Gazette* 2005, No. 27534. Notice 654 of 2005: National Disaster Management Framework

Moreover, the drafting team was not resourced, lacked authority or opportunity to initiate stakeholder consultation and had no clear terms of reference. In addition, both internationally and nationally, there were no clear precedents of similar frameworks that could be used as guidelines. Despite this, and particularly following the more active involvement of the National Department, a draft framework was gazetted for comment in April 2004 and then finalised in April 2005. The development of the national disaster management framework was significantly enhanced by the technical capacity of the editor, document management specialist and contributing specialists from the last quarter of 2003.

The framework-generating process provided a platform for once again aligning South Africa's Disaster Management Act with international best practice and terminology so these were broadly consistent with contemporary global thinking on risk reduction and disaster risk management.

3.4 Enabling factors for legislative reform

This section outlines six key themes that shaped legislative reform in South Africa:

- an enabling political and legal context, characterised by high levels of transformative energy and support
- a regional disaster risk context characterised by increasing severity and complexity
- a local professional context seeking to align itself with international best practice
- an international professional context that supported, and did not subvert or undermine, local initiative and responsibility
- high levels of local agency, characterised by continuity and individual capacity, skill, integrity and creative initiative
- a change process that enabled gradual professional reorientation and incremental policy adjustment.

Each theme is discussed in turn below.

3.4.1 An enabling political and legal context

As described earlier, for much of the 1990s, South Africa was characterised by far-reaching political, social and administrative transformation. The dynamic character of this period provided both an enabling environment and political energy for policy and legislative reform. It was also reflected in the establishment of transparent legal processes and administrative systems to accelerate wide-ranging reform. These included mechanisms to facilitate public consultation and debate, including the generation of Green and White Papers and opportunities for verbal and written submissions as part of parliamentary hearings.

These conditions safeguarded public participation in response to the Green and White Papers, and as part of the Parliamentary Portfolio Committee hearings. In this way, they provided a direct interface between the public and law-makers that was neither mediated nor obstructed by departmental interests.

The one disadvantage, however, to implementing legal reform in the midst of massive political transformation is the temporary lack of institutional architecture with which to execute change. Under conditions of major political transformation – when new politico-legal structures and systems are being established – second-order legislation is clearly a subordinate priority and must wait until the macro-politico-legal frameworks are in place.

This staggered unfolding of the country's 'new' institutional architecture had particular implications for the implementation of disaster risk reduction within the municipal sphere, when significant second-order legislation was later generated. This followed the designation in Part A of Schedule 4 of the Constitution of the Republic of South Africa that 'disaster management' should be an area of concurrent *national and provincial competency*, and *not* a municipal competency. The decision to restrict disaster management to concurrent national and provincial competencies reflected an appreciation in the early mid-1990s that it was premature to require the municipal sphere to take on functions such as disaster management when the nascent municipal structures were very weak.

Subsequently, implementation was delayed because it was argued by many municipalities that although the Disaster Management Act defined explicit risk management obligations for the municipal sphere, this was an 'unfunded mandate'; this was because disaster management was not originally defined as a concurrent municipal competency in the National Constitution.²⁰

3.4.2 A regional disaster risk context characterised by increasing severity and complexity

The urgency for disaster management reform was significantly motivated by the severity of weather-related disasters in southern Africa, 1991–2000. However, early critical thinking on vulnerability reduction was driven by the experience of severe droughts in the early 1990s. Within South Africa, this was strongly influenced by the multi-sectoral Drought Relief Forum, established in response to the 1991 drought.

'The media invariably only reports on major disasters. This gives the public a sense of being witness to a spectacle. On occasions, there is a great deal of emotion and members of the public make donations.

However, it is the smaller community disasters that very often escape our attention. These occur frequently in the townships, informal settlements and in the remote rural areas. It is at the level of these "localised disasters" where the financial and human costs are hardest felt and the need for urgent attention is greatest.'

Source: *White Paper on Disaster Management*, Foreword by Mohammed Valli Moosa, Minister for Provincial Affairs and Constitutional Development, 1999, p8

²⁰ By 2005, the initial inertia generated by conceptions of an unfunded mandate had largely been resolved, in part through multiple stakeholder consultations and increasing appreciation that in the South African context, the most effective sphere of intervention to manage disaster risks was the local one.

Similarly, South Africa sought to profile the urban vulnerability of historically disadvantaged households that sustained recurrent losses to small-scale fires and flooding in informal settlements – events that seldom attracted international attention and ‘did not fit’ neatly into the then prevailing global paradigm on disaster risk reduction.

In this way, DRR policy formulation reflected a synthesis of knowledge related to drought and food insecurity, information from the UN’s IDNDR, combined with national experience of responding to large flood emergencies and commitment to alleviating the hardships of the urban poor. While risk reduction policy was indeed informed by international trends, the priorities were very much defined internally – reflecting an independence of thought and initiative.

3.4.3 A local professional context seeking to align itself with international best practice

South Africa’s national disaster management professional association and associated institutions of higher learning supported, facilitated and in part led the reform process. In addition, they have enabled the wide dissemination of the policy changes beyond South Africa.²¹

The drive to take on board international best practice in disaster-related work in these institutions is indicated by chronological changes in the orientation of disaster management in South Africa: what began as ‘civil protection’ in the early 1990s, transformed into ‘disaster management’ in the mid 1990s, and is now represented as ‘disaster risk management’ in the mid-2000s. The Civil Protection Association also reoriented itself three times and, in the ten years after 1994, became the Emergency and Disaster Management Association of Southern Africa, the Disaster Management Association of Southern Africa, and eventually the Disaster Management Institute of Southern Africa.

By the late 1990s, the establishment of several teaching, learning and training initiatives related to disaster risk – all based in institutions of higher learning – was a critical juncture in professional development related to disasters.²² Since the mid-late 1990s, capacity development initiatives at Technikon SA, and the Universities of Cape Town, the Free State and North-West have reached hundreds of disaster management practitioners as well as associated disciplines.

3.4.4 An international professional context that supported local initiative and responsibility

During the ten years that spanned the legislative reform process, three major international initiatives indirectly facilitated the change process. These were the UNDP’s Disaster Management Training Programme, the International Decade for Natural Disaster Reduction (IDNDR) and the International Strategy for Disaster Reduction.

21 Including through the attendance of non South Africans in formal disaster risk-related academic programmes, short courses and professional conferences offered in South Africa

22 Eg: the establishment of the Disaster Management professional course at Technikon SA in the mid 1990s, based on the thirteen UNDP Disaster Management Training Programme modules

UNDP's Disaster Management Training Programme – which was launched in southern Africa in 1993 – was pivotal in establishing Technikon SA's Disaster Management professional courses. Support from both Cranfield University and the University of Wisconsin built internal capacity and credibility. Moreover, Cranfield provided disaster management training in the United Kingdom for selected South Africans – several of whom later became key drivers of internal professional reform in South Africa.

The IDNDR spanned the 1990s. Janet Love actively participated in the National IDNDR Committee, with two representatives from South Africa being members of the IDNDR's Scientific and Technical Committee. This allowed for an almost seamless information flow between the IDNDR Secretariat and the policy development process.

Since 2000, several of those drafting the national disaster management framework worked closely with ISDR. This involved contributing to the flagship ISDR publication *Living with Risk*, receiving professional training grants, and the co-facilitation of short professional courses by ISDR personnel in South Africa.

The hallmark of this international support was its enabling character that did not undermine local responsibility. Although it may not have been channelled through a formal national platform, this clearly informed and supported individual initiative.

Moreover, since the early 2000s, the closer convergence in the messages from UNDP and ISDR has provided a more uniform global framework for directing national disaster risk reduction efforts.

Lack of coherence in international approaches to disaster risk has potential to severely strain, distract and derail country efforts from the focused development of national policy – especially when external funding is linked to agency-specific agendas and disparate disaster management paradigms. Fortunately, in South Africa's case, where the policy development and legislative reform were funded internally, this financial independence provided a platform for policy innovation that might not have occurred otherwise.

3.4.5 High levels of local agency and capacity

One of the most compelling factors that facilitated legislative reform was the high levels of local agency for change – specifically, the skills, moral and professional integrity as well as creative initiative of the people involved.

It must be recalled that the profession now identified in South Africa as 'disaster (risk) management' evolved from civil protection, which itself emerged from civil defence. The historic links between civil defence and national defence in South Africa underline the sheer magnitude of the legislative challenge – to completely reorient the field of disasters away from a preoccupation with militaristic response – to developmental risk and vulnerability reduction. Such an accomplishment was largely achieved due to the individuals at the heart of the transformation process, or as one respondent recalled, 'a handful of people in the arena who wanted to get the thing done right'.

This is evidenced at the political level by the skilled policy navigation and stakeholder negotiation undertaken by Janet Love and skilful non-partisan consensus-building by the

Portfolio Committee chairperson. In both these instances, their skills, energy and personal ethics successfully steered the process from concept through policy to its conclusion as a progressive law.

In addition, a small group of individuals remained committed to the process from the first discussions in 1997 to the eventual generation of the national framework in 2005. With extensive disaster risk experience, administrative knowledge and technical skill, they provided input consistently throughout the process, ensuring both continuity and robustness to the policy, law and framework that resulted.

These individuals were also linked to South Africa's professional disaster management body or to university-based teaching and learning programmes in disaster risk reduction. This enabled informal consultation on possible policy options among a wide range of audiences, along with rapid dissemination across a diversity of stakeholders. The high level of committed involvement was motivated by the powerful ethics and integrity of the individuals concerned.

In the South African case it is noteworthy that key change-makers were all women. The gendered character of the reform process was significant, given the protracted time-frame involved as well as the highly constrained financial resources made available to those who drafted the policy and informed the legislation. Gender dynamics were also critical to the processes of stakeholder consultation which were characterised by strongly opposed interest groups and ideologies. Certainly, the South African context was built on individuals who were patient, little motivated by monetary gain and capable of navigating through the complex interpersonal, technical, organisational and ideological aspects of reform. This said, gender politics added to tensions between the framework drafting team and the national department which temporarily delayed completion of the framework and its possible resourcing.

3.4.6 A change process that enabled gradual professional reorientation and incremental policy adjustment

The duration of the policy and legislation reform process extended over eight years. On one hand, this potentially undermined sustained momentum for change. On the other, it allowed for incremental adjustments in thinking and understanding across a wide range of stakeholders. In addition, it allowed the framework drafting process to incorporate key lessons learned in the early implementation of the Disaster Management Act.

3.5 Legislative reform and disaster risk reduction: outcomes for mainstreaming

The reform process included the establishment of institutional arrangements, the implementation of risk assessment and a priority on risk reduction. In this regard, a complete national reorientation of the disaster management discipline was internally effected.

However, the transversal 'mainstreaming' of disaster risk management into all organs of state across national, provincial and municipal spheres has not significantly progressed, although it was required by the Disaster Management Act. There are several explanations for this.

First, the absence of nationally led stakeholder consultations both prior to the Parliamentary Portfolio Committee deliberations and during the formulation of the national disaster management framework may have prevented other stakeholders, including government departments and non-governmental organisations, from acting on their respective risk reduction obligations.²³ Limited consultation led to weaknesses in the funding framework approved by National Treasury, which has constrained implementation and contributed to a sense of frustration and disempowerment.

Second, the legislative reform process itself may have militated against mainstreaming – by demanding high levels of sectoral introspection in the course of the reform. This pressure to rapidly transform within one institutional silo may have prevented interdisciplinary engagement with other sectors, perversely discouraging subsequent cross-sectoral mainstreaming. On one hand, the Disaster Management Act explicitly demanded that all organs of state take on key disaster management functions; on the other, the government department tasked with overseeing this transformation was so focused on its own reform process that it had little capacity to support the DRR ‘mainstreaming’ obligations of other sectors and departments.²⁴

Moreover, high levels of ‘background’ internal departmental introspection associated with the larger reorientation of post-apartheid South African policy significantly limited institutional capacity to absorb the strategic requirements of other legislation that is not viewed as directly linked to a department’s ‘core business’.²⁵

Third, despite strong representations to the Portfolio Committee that the Disaster Management Function be located at the highest level of executive authority (ie: in the Office of the President or Vice President), and similar guidance from the national disaster management framework, the function has remained embedded within the national department of Provincial and Local Government. The limited authority and status associated with this location has significantly constrained cross-sectoral integration. An alternative institutional arrangement is the establishment of a national disaster management agency.

It is possible that future transversal mainstreaming of DRR will be significantly facilitated by role-players who are not viewed as sectorally based. This includes non-governmental organisations, research institutions, universities and the private sector. These role-players may well have greater capacity to strategically identify the specific elements of the Disaster

23 This was evidenced by the limited number of written and verbal submissions presented to the Portfolio Committee, with only 12 submissions received. Not one of these was generated by a national or provincial government department, humanitarian assistance agency or nationally recognised non-governmental organisation.

24 Legislating for the ‘mainstreaming’ of DRR does not automatically mean this will occur – especially when other line departments are simultaneously under pressure to reform in response to their ‘own’ legislation.

25 An exception to this is section 26G of the Municipal Systems Act (No. 32 of 2000) that requires that disaster management plans are incorporated into Integrated Development Plans in the municipal sphere. This legislation actually predates the Disaster Management Act by three years, but was also informed by Janet Love who was a member of the respective portfolio committee that debated the Municipal Systems Bill at the time.

Management Act and national framework that are selectively meaningful to other government entities and can be successfully integrated.²⁶

This has already been evidenced in the pilot-testing of the ‘roll-out’ of the National Framework in the Eastern Cape of South Africa – where many of the critical elements of the National Framework are being applied. This aims at developing practical strategies for implementation of the Framework at a sub-national level. Much of the technical support for this pilot-process is being provided by non-governmental role-players.

26 One such example is the Western Cape’s Strategic Infrastructure Plan which, implemented by the Provincial Department of Transport and Public Works, includes a sub-sector on ‘Risk Reduction and Emergency Management’

4 Conclusion

South Africa's Disaster Management Act, promulgated in January 2003, has been applauded internationally as a path-breaking example of national legislation that promotes disaster risk reduction. Moreover, as the Act's promulgation predated the World Conference on Disaster Reduction, it has generated particular interest as an example of international best practice. The case study presented in this paper offers a new and unique source of material for those involved in legislative reform for DRR.

South Africa's efforts to build DRR legislation date back to 1994, demonstrating that reform requires long-term perseverance and commitment from those seeking to make change – sustained and supported by political leadership. Maintaining focus and pressure over the long term requires considerable effort. Experience from South Africa demonstrates the pivotal role of skilled and insightful political stewardship; the sustained individual energy and commitment needed from those at the centre of the reform process; and the positive value of coherent and consistent messages from international partners in supporting the reform process.

Learning from the experience of those who have contributed to this report, especially in South Africa, provides many important recommendations and lessons for those undertaking legislative reform for DRR. A summary of these is provided below. However, to effectively interpret and apply the South African experience in other contexts, a full understanding of the preconditions that facilitated legislative reform as well as the outcomes for 'mainstreaming' is essential – and anyone engaging in legislative reform would benefit from studying the detail of the case study as presented in this paper.

- 1 Reform requires sustained, high-level political support.

In South Africa's experience, when political direction and support fell away, momentum for reform slowed, stakeholder buy-in diminished and those involved became dispirited.

- 2 Reform is greatly facilitated by a well-placed and respected policy champion with technical knowledge, skill, commitment and creative initiative.

Ideally policy champions should have high political or administrative office, and have an understanding of, and be able to work through, both formal and informal kinds of institution. The body driving the legislation should be located at the highest level of executive authority in order to drive cross-sectoral integration.

- 3 The leadership of the reform process must be explicitly committed to broad stakeholder consultation.

All potential stakeholders²⁷ must be brought into the scoping and drafting process to increase the likelihood that reform will become institutionally fixed and succeed in implementation. Local government as well as line ministries will be key actors in

27 Consultation should include developmental NGOs, business interests, professional associations, regional, ethnic or religious associations, international financial institutions, bilateral donors and international NGOs.

government. Procedures for engaging with potential partners from civil society and the private sector should also be developed. It is important to engage with those who oppose change, as well as to build a strong base of support. The absence of stakeholder consultation can prevent stakeholders from acting on their respective risk reduction obligations.

4 Review pre-reform policy and legislative context.

As far as possible, legislation should fit into existing government planning cycles and procedures for implementation and monitoring. Pre-existing sectoral policies and activities relevant to DRR must be taken into account in any reform agenda. This avoids DRR legislation and its implementation being perceived as costly and reduces the likelihood of competition over resources. PRSPs should be used to raise the profile of DRR and to assist with mainstreaming DRR into development.

5 External facilitators can enable the reform process.

Because DRR is a new policy area it can easily be perceived as a threat or as duplicating existing policy and budget lines. In addition the need to build high-level and cross-sectoral support is challenging for sectoral actors. International expertise or neutral but informed national actors such as academics may be well placed to act as technical advisors for dialogue. While external actors are useful, for implementation to work it must be led by national stakeholders.

6 Create a clear identity for DRR.

To prevent participants losing sight of the goal, DRR should have a clear identity that differentiates it from pre-existing relief-oriented disaster management. The identity of DRR should fit national contexts and be arrived at through dialogue with disaster management and development stakeholders from all policy sectors with a stake in development or risk reduction. This includes those engaged with disaster reconstruction, who should be empowered through legislation to integrate disaster risk reduction into their planning and practices.

7 Use DRR National Platforms and regional institutions.

Well-established national platforms can play a key role in developing DRR legislation, liaising with line ministries and other actors in shaping risk reduction policies. Regional institutions can support national-level legislation and its implementation.

8 Align DRR legislation with international best practice and use terminology consistent with contemporary global thinking.

Those centrally involved in the reform process should be linked to disaster risk reduction constituencies – such as national professional associations and disaster risk management-associated teaching and learning institutions. In South Africa this was essential for enabling and facilitating a ground swell of support for change. International actors and other country experts can foster learning.

9 Messages from international partners should be coherent and consistent.

Guidance from international agencies should not converge, conflict with or undermine national efforts to generate meaningful policy and law.

10 Develop an implementation plan during the development of legislation.

This should clearly demarcate responsibilities, timelines for action, commitment to joined-up planning, and agreed benchmarks and protocols for review and evaluation in order to monitor performance. Implementation requires political support, financial underpinning and the engagement of all actors involved from line ministries, civil defence or the armed and emergency services, local government, private sector and civil society.

11 DRR legislation must explicitly state required outcomes at community-level,²⁸ and result in reform at the lowest administrative level along with investment of financial resources in local-level activities.

The implementation of national risk reduction legislation takes place at the local level, so it is important that local government is given budgetary support and human skills as well as responsibility for risk reduction.

There is no one-size-fits-all set of prescriptive recommendations that will suit all national contexts, and each reform process will throw up its own challenges. However, these recommendations are based on the experience of those who have paved the way, and offer a framework for the planning of legislative reform for DRR.

The South African experience illustrates that even progressive legislative reform does not automatically translate into the 'mainstreaming of risk reduction'. In fact, it shows how the reform process itself, at least in the short term, can force high levels of sectoral introspection – which directly militate against wider collaboration with and transversal integration into other disciplines. Such an experience may particularly be the case in countries undergoing far-reaching legislative transformation, as the pressure to rapidly transform within institutional silos effectively discourages interdisciplinary engagement with other sectors. In this context, the South Africa case study concludes, the process of 'mainstreaming' may best be undertaken as a gradual process that strategically integrates those elements of the risk reduction agenda that are selectively meaningful to a particular organisation or government department's core business – and sets aside those elements that are less relevant.

Finally, for DRR to effectively reduce vulnerability amongst those most at risk, who are often also the most economically poor and politically marginalised in society, partnership is essential. National legislatures can provide an over-arching framework for risk reduction and can enable risk reduction strategy in line ministries, but regional, local and municipal governments with powers to draw up locally enforceable legislation are best placed to

28 Eg: local-level early warning systems, community-based disaster contingency plans, the incorporation of DRR in school education curricula, livelihood diversification, etc

encourage risk-reduction behaviour among public agencies, private companies, voluntary groups and citizens. Regional, local or metropolitan governments must be brought in at an early stage to provide a strong basis for implementation.

As stated in the recommendation above, if DRR legislation is to bring about change in behaviour among the most vulnerable, it must explicitly state required outcomes at community level, and result in reform at the lowest administrative level, along with investment of financial resources in local-level activities. A key determinant of the effectiveness of the South African DRR legislation will be the extent to which it results in good practice and change at the local level.

The diversity of challenges and opportunities at the national level for building and implementing DRR legislation that will reach the most vulnerable is matched by the urgency with which DRR legislation is required.

Legislation for mainstreaming disaster risk reduction

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