



International Federation of Red Cross and Red Crescent Societies  
Fédération internationale des Sociétés de la Croix-Rouge et du Croissant-Rouge  
Federación Internacional de Sociedades de la Cruz Roja y de la Media Luna Roja  
الاتحاد الدولي لجمعيات الصليب الأحمر والهلال الأحمر

## Background study to the Pan-African Forum on IDRL

# REGIONAL (AFRICA) SURVEY OF DISASTER RESPONSE LAWS, POLICIES AND PRINCIPLES

## Findings and recommendations

(April 2007)





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## LIST OF ABBREVIATIONS

ADB	African Development Bank
AMCEN	African Ministerial Conference on the Environment
AMU	Arab Maghreb Union
AU	African Union
CAADP	Comprehensive Africa Agricultural Development Programme
CEN-SAD	Community of Sahelo-Saharan States
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOMOG	ECOWAS Ceasefire Monitoring Group
ECOWAS	Economic Community of West African States
EERT	ECOWAS Emergency Response Team
EU	European Union
ICDM	Intergovernmental Committee on Disaster Management (SA)
IDRL	International Disaster Response Law
IFRC Societies	International Federation of Red Cross and Red Crescent Societies
IGAD	Inter-governmental Authority on Development
NDMAF	National Disaster Management Advisory Forum (SA)
NDMC	National Disaster Management Committee (Ghana)
NDMF	National Disaster Management Framework (SA)
NDMO	National Disaster Management Organization (Ghana)
NEMA	National Emergency Management Agency (Nigeria)
NEPAD	New Economic Partnership for Africa's Development
OAU	Organization for African Unity
RECs	Regional Economic Communities
SADC	Southern African Development Community
UN/ISDR	United Nations International Strategy for Disaster Reduction



## INTRODUCTION

The International Disaster Response Laws, Rules and Principles (IDRL) Programme was initiated in 2001 by the International Federation of Red Cross and Red Crescent Societies in order to examine ways in which international and national regulatory frameworks can best promote speedy, effective and accountable international response to disasters (excluding armed conflict) with the ultimate aim of reducing the vulnerability and suffering of people affected by disasters. Its overall goal is to analyze and promote awareness, implementation and improvement of the existing IDRL frameworks, starting from the premise that legal preparedness for disasters is crucial in ensuring the speedy and efficient delivery of aid to disaster-affected victims.

In 2003, the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent - bringing together the States Parties to the 1949 Geneva Conventions, the Red Cross/Red Crescent National Societies, the International Federation and the International Committee of the Red Cross - officially mandated the International Federation and National Societies to lead collaborative efforts, involving States, the United Nations and other relevant bodies, in conducting research and advocacy activities in the IDRL field. The IDRL Programme is in line with the International Federation's Global Agenda 2006-2010 goals 1, 3 and 4.<sup>1</sup>

In furtherance of the above-mentioned objectives, the present research was undertaken to:

- (a) examine African regional legal and policy frameworks relating to the initiation, facilitation, co-ordination and regulation of international response to slow and fast onset disasters with a view to underlining strengths and weaknesses of existing frameworks in the field and identifying potential avenues for improvement or further development; and
- (b) undertake a brief comparative survey of the national disaster policies and laws of selected African States to determine 'best practice' in regard to the facilitation of international humanitarian activities in disasters and the extent to which national and regional frameworks were in synergy.

This Volume presents the main findings and recommendations in respect of these two objectives. The accompanying Volume II (available on the internet) provides a detailed and comprehensive overview of the laws and policies on which such findings and recommendations are based.

The research involved answering three important questions:

- What does 'international response to disasters' mean in operational terms? And specifically, what does it mean in an African context?
- Which regional frameworks should be chosen for analysis?
- Which national frameworks should be chosen for analysis?

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<sup>1</sup> In line with the International Federation's Global Agenda 2006-2010, the IDRL Programme's overall goal is to enable international emergency assistance, when needed, to be delivered as efficiently as possible with a view to reducing the number of deaths, injuries and impact from disasters and alleviating the suffering of disaster-affected populations. Cutting across disaster preparedness, disaster response and the promotion of humanitarian principles and values, the IDRL Programme seeks to advocate for regulatory frameworks underlining the need for international humanitarian response to respect cultural diversity and human dignity and to strengthen local community capacities and domestic disaster coping mechanisms.

## TERMS and DEFINITIONS – SCOPE OF THE PRESENT STUDY

The IDRL Programme looks at the international, regional and national regulatory frameworks pertaining to international response to disasters (excluding armed conflicts), *ie* response provided by international actors such as, foreign Governments, UN and other international organizations, NGOs and the Red Cross/Red Crescent family.

IDRL focuses in particular on four areas: initiation, facilitation, coordination and regulation of international response. In the context of initiation, it examines requests for and offers of international assistance, assessments of needs, as well as exchange of information concerning the disaster. Facilitation of international aid pertains to how IDRL removes or minimizes legal and administrative obstacles which generally slow down or impede the delivery of humanitarian aid. As such, it covers entry of foreign relief and recovery personnel, import of goods and equipment, recognition of professional qualifications, imposition of taxes, fees and tolls on relief activities, use of equipment, and acquisition of legal status to operate within the affected country. Facilitation equally includes the issue of privileges and immunities which enable international actors to carry out their humanitarian mandate without excessive constraints. Third, IDRL examines how laws, rules and principles ensure effective coordination first, between international actors providing relief themselves, and secondly, between international and domestic authorities' response, bearing in mind that the primary responsibility and role to address the disaster is entrusted to the latter under international law. Finally, IDRL analyses regulation of international aid so as to ensure the quality of both goods and equipment sent as well as foreign humanitarian relief workers, relevance and cultural adequacy of international aid, articulation with local knowledge and capacities, and accountability towards both beneficiaries and donors.

It is a finding of the study that African States have been concerned with establishing regional mechanisms in terms of which States could capitalize on collective action in responding to disasters. Since the (recent) scope of cooperation includes both the provision of emergency relief and recovery assistance, as well as preventative action in the form of disaster risk reduction,<sup>2</sup> the present study has opted to use the term „disaster management“ as a holistic concept, embracing both.<sup>3</sup>

## CHOICE OF REGIONAL FRAMEWORKS

In 2000, the African Union (AU) succeeded the Organization of African Unity (OAU) as the premier institution and principal organization for the promotion of accelerated socio-economic integration on the African continent.<sup>4</sup>

One of the key aims of the founders of the AU was to consolidate the large number of continental and regional institutions established in the preceding 50 years. This 'institutional cacophony' had resulted in

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<sup>2</sup> The AU Strategy defines disaster risk reduction as: '[T]he systematic development and application of policies, strategies and practices to minimize vulnerabilities and disaster risks and avoid (prevent) or limit (mitigate and prepare) the adverse impacts of hazards, within the broad context of sustainable development'.

<sup>3</sup> The South African legislation for instance, uses the term „disaster management“ in a holistic way, defined as follows,:

*'a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at-*

- a) preventing or reducing the risk of disasters;*
- b) mitigating the severity or consequences of disasters;*
- c) emergency preparedness;*
- d) a rapid and effective response to disasters; and*
- e) post-disaster recovery and rehabilitation.'*

<sup>4</sup> See [www.africa-union.org/root/au/AboutAu/au\\_in\\_a\\_nutshell\\_en.htm](http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm).

a confused state of interlocking and overlapping mandates, hampering coordinated action on behalf of the African continent.<sup>5</sup> The AU has pursued this goal through a selective recognition of Regional Economic Communities (RECs). On the occasion of its 2006 Summit, the AU Assembly decided to suspend the recognition of new RECs with the exception of the following eight:<sup>6</sup>

- i) Economic Community of West African States (ECOWAS);
- ii) Common Market of East and Southern Africa (COMESA);
- iii) Economic Community of Central African States (ECCAS);
- iv) Southern African Development Community (SADC);
- v) Inter-Governmental Authority for Development (IGAD);
- vi) Arab Maghreb Union (AMU);
- vii) Economic Community of Sahelo-Saharan States (CEN-SAD); and
- viii) East African Community (EAC).

The implication of the AU's decision is that the foregoing eight RECs are most significant for purposes of continental integration. The analysis of regional frameworks pertaining to disasters in this report focused, therefore, on these eight RECs in addition to the AU. The New Partnership for Africa's Development (NEPAD) was also included in the research because although not a REC, it has the status of a 'special project' of the AU and establishes an institutional framework for the development of continental development strategies.

## CHOICE OF NATIONAL FRAMEWORKS

The following criteria informed the choice of national frameworks:

- Whether the state had recently developed (or was in the process of developing) dedicated and comprehensive disaster management legislation, as supplemented by an implementation strategy (e.g. integrated disaster management plan);
- Whether the state had a leading role to play in RECs of which they were members;
- Whether the above were easily accessible and available, in particular on the internet and in English language to facilitate the English-speaking researcher.

Based on these criteria, it was decided to focus on the national policy and legal frameworks of Ghana, Kenya, Nigeria and South Africa respectively.

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<sup>5</sup> Commission of the African Union *Strategic Plan of the Commission of the African Union – Volume 2: 2004 – 2007 Strategic Framework of the Commission of the African Union* (May 2004) 8. Available at [www.africa-union.org/root/au/AboutAu/Vision/volume2.pdf](http://www.africa-union.org/root/au/AboutAu/Vision/volume2.pdf).

<sup>6</sup> Assembly of the African Union *Decision on the Moratorium on the Recognition of Regional Economic Communities (RECs)* Doc.Ex.CL/278(IX).

## Part 1. Regional Frameworks

The first step in the research entailed analyzing regional legal and policy frameworks dealing with disaster management of slow and fast onset disasters in Africa. In order to be effective a 'regional legal and policy framework' usually comprises:

- A regional legal and institutional basis for developing regional policies and/or laws relating to disaster management. The question here is whether the continental or regional organization has been given a clear mandate by its founding members to develop more detailed policies and laws in these areas. Normally, such a mandate can be located in the legal agreement establishing the continental or regional organization concerned (constitution or constitutive act). Section 1.1. addresses this issue.
- Legal agreements pertaining to disaster management. The importance of regional legal agreements, as opposed to regional policies, is that they create binding legal obligations in international law for the States party thereto. In the RECs examined in this study, such legal agreements are usually designated as either 'treaties' or 'protocols'. Section 1.2. turns to this issue.
- Policies pertaining to disaster management. These can be developed where a REC has a specific legal agreement on these topics in place and the policy is intended to indicate how such agreement should be implemented, or if no specific legal agreement is in place where the members of the REC merely wish to define a common policy without creating binding legal obligations. Section 1.3. studies the different policies adopted by the AU and the RECs.

Part 1 will illustrate that "disaster management" is incorporated - to a smaller or larger extent - in the mandate of the majority of the 8 RECs. However, none have yet adopted any binding legal agreements in this regard. Only few have disaster management policies in place, which are characterised by a common understanding of the disaster problem in Africa and similar overarching principles. However, they have not benefited so far from actual implementation.

Part 1 will also underline a shift of approach towards "disaster management". In fact, at the outset when the RECs were created, the overall focus lay only on emergency relief and response as reflected in their constitutive act (with the exception of IGAD). Recently adopted policies in contrast, reflect a shift of approach towards disaster management as a holistic concept embracing both emergency relief and response and disaster risk reduction.

Finally, this first part will show that the continental and regional legal and policy frameworks on disaster management do not encompass the issue of international (*ie* from outside the continental or regional borders). Rather, they seek to improve disaster response mechanisms and capacities within the continent or region and to improve coordination among Member States. As such, they are in line with the overarching principles adopted by the AU Commission in its Strategic Plan which should guide the development of more detailed policy and legal regulatory frameworks: 'self-reliance', 'afro-centeredness' and "afro-responsibility'. As such, the strategic plan states that the inter-African solidarity which was so critical to achieving the continent's political liberation "*should be intensified more than ever before, not*

only in regard to countries emerging from conflicts but also those that are victims of natural disaster. To this end, the integration process should pay special attention to humanitarian action and civil protection.”<sup>7</sup>

## 1.1 LEGAL AND INSTITUTIONAL BASIS FOR DEVELOPMENT OF DISASTER MANAGEMENT POLICIES AND LAWS

### 1.1.1. Legal basis for the development of disaster management policies and laws

The question here is whether the continental or regional organization has a clear mandate to develop regional policies and laws relating to disasters. The constitutions or constitutive Acts of the AU and the eight RECs can be divided into four broad categories in this regard:

- A clear primary overall mandate, where ‘disaster response’ or ‘disaster management’ features among the organization’s primary areas of co-operation (AU; IGAD) (1.1.1.A)
- A sector-specific secondary mandate, where the reference to disasters is not found among the organization’s primary areas of co-operation, but is nevertheless referred to in provisions that describe aspects of co-operation in areas such as agriculture, food security, the environment and health (ECOWAS; COMESA; EAC) (1.1.1.B)
- A mandate based on a general or ‘catch-all’ provision (ECOWAS; SADC) (1.1.1.C).
- No discernible mandate in terms of the organization’s constitutive Act or primary objectives (AMU; CEN-SAD; ECCAS) (1.1.1.D).

#### 1.1.1.A. A CLEAR PRIMARY OVERALL MANDATE

##### 1.1.1.A.1. AU

In terms of article 13(1)(e) of the AU Treaty, ‘environmental protection, humanitarian action and disaster response and relief’ is an area of common interest to Member States. The AU Executive Council (comprising the Ministers of Foreign Affairs of the Member States) can take decisions on common policies in these areas.<sup>8</sup>

The AU Commission is responsible for undertaking the groundwork necessary to develop a common policy because its functions include elaborating draft common positions of the Union, preparing strategic plans and studies for consideration of the Executive Council, and harmonizing the policies of the Union with those of the RECs.<sup>9</sup>

The strength of the AU provision lies in its generality and in the scope of the AU’s membership. Any common policy developed under the auspices of the AU would of course apply to almost all African States

‘Disaster response and relief’, as indicated in ulterior practice should here be interpreted as broader than emergency relief. Indeed, grounded in this mandate, the AU has recently adopted the *Africa*

<sup>7</sup> Available at [www.africa-union.org/root/au/AboutAu/Vision/volume1.pdf](http://www.africa-union.org/root/au/AboutAu/Vision/volume1.pdf)

<sup>8</sup> However, they would still probably need to be approved by the Assembly (supreme organ of the AU), because article 9(1)(a) states that the Assembly ‘determine[s] the common policies of the Union’.

<sup>9</sup> See [www.africa-union.org/root/au/AboutAu/au\\_in\\_a\\_nutshell\\_en.htm](http://www.africa-union.org/root/au/AboutAu/au_in_a_nutshell_en.htm).

*Strategy for Disaster Risk Reduction* which pertains to disaster management as a whole and as such includes disaster risk reduction as well as post-disaster rehabilitation.

#### 1.1.1.A.2. IGAD

Article 13A of the IGAD Treaty provides a clear and comprehensive mandate for the further development of policies and laws relating to disaster response. It reads:

*"Member States agree to develop and expand cooperation and undertake to:*

*q) respect the fundamental and basic rights of the peoples of the region to benefit from emergency and other forms of humanitarian assistance.*

*r) at the national level and in their relations with one another, be at all times guided by the objectives of saving lives, of delivering timely assistance to people in distress and of alleviating human suffering. In this regard, Member States shall facilitate the movement of food and emergency supplies in the event of man-made or other natural disasters from surplus of deficit areas.*

*...*

*t) work out programmes and projects that could help establish a relief, rehabilitation and development continuum."*

The strength of the IGAD provision lies in its clear affirmation of rights and obligations, of the need for facilitation in order to ensure timely assistance and in the *express* linkage of relief, rehabilitation and development. It is clear from article 13 that IGAD's focus approach was meant to be holistic from the outset.<sup>10</sup> This is furthermore reflected in its policy framework elaborated in 2002, named "Disaster risk management Programme" analysed below.

#### 1.1.1.B. A SECTOR-SPECIFIC SECONDARY MANDATE

In the ECOWAS, COMESA and EAC Treaties, disaster-related references are nested in sections dealing with the following areas of co-operation:

- ECOWAS Treaty (agricultural development and food security; environment);
- COMESA Treaty (agricultural production; health);
- EAC (agriculture; environment).

These provisions arguably confer only a sector-specific mandate to develop regional laws and policies on disasters. These sector-specific mandates either **limit the types of disaster** in respect of which regional policies and laws can be developed (e.g. ECOWAS), or the **types of response** on which co-operation is pursued.

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<sup>10</sup> Establishing a 'continuum' between relief, rehabilitation and development entails that post-disaster development initiatives be informed by what was learned about the impact of a disaster; which is a form of disaster risk reduction.

### 1.1.1.B.1. Environment-related mandate

The ECOWAS Treaty, contrasted with the EAC Treaty, provides an example of the first type of limitation (according to disaster type). Both treaties list the environment as an area of co-operation and refer to disasters in outlining the scope of co-operation within this area. Article 29 of the ECOWAS Treaty requires Member States *'to protect, preserve and enhance the natural environment of the region and to cooperate in the event of natural disasters.'* To this end they must co-operate to control erosion, deforestation, desertification, locusts and other pests. These are all natural disasters, which leaves unanswered the question of co-operation in the event of man-made disasters.

In contrast, article 112(1)(d) of the EAC Treaty provides that in co-operating on matters dealing with the environment, partner states will *'take necessary disaster preparedness, management, protection and mitigation measures especially for the control of natural and man-made disasters'* (including oil spills, bio-hazards, marine accidents, drought and bush fires). Clearly, the mandate of the EAC is broader.

### 1.1.1.B.2. Agriculture and food security

The provisions dealing with co-operation in the area of agricultural production in the ECOWAS, COMESA and EAC Treaties provide an example of the second type of limitation (according to type of response). Areas of potential cooperation in agriculture and food security as identified in the respective treaties are:

ECOWAS	COMESA	EAC
strengthening of institutions,	production and supply of foodstuffs	establishment of a mechanism to exchange information on food security matters
conclusion of regional agreements on food security	establishing an early warning system on food security in the region	harmonization of supply, nutrition and food security policies and strategies
provision of food aid		maintenance of strategic food reserves.

Specifying clear and specific forms of co-operation presents the advantage of making it easier to measure States' performance and hold them accountable. On the other hand, they reflect a partial approach towards cooperation concerning food security, which constitutes a potential weakness.

### 1.1.1.B.3. Health

One of the 'concerted measures' COMESA Member States agree to undertake in pursuit of their cooperation in health is *'the control of pandemics or epidemics, communicable and vector borne diseases that might endanger the health and welfare of citizens of the Common Market'*. To this end, they will *'evolve mechanisms for joint action in combating outbreak of epidemics such as aids, cholera, malaria, hepatitis and yellow fever ...'*<sup>11</sup>

### 1.1.1.3. A GENERAL OR 'CATCH-ALL' PROVISION

The ECOWAS and SADC Treaties contain provisions which allow for co-operation in areas not specifically identified in the treaties themselves. For example, article 67 of the ECOWAS Treaty states

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<sup>11</sup> Article 110(2)(b).

that Member States agree to consult one another *'for the purpose of harmonizing and co-ordinating their respective policies in all other fields not specifically covered by [the] Treaty ...'*.

The strength of such a catch-all provision is its flexibility – it can ground co-operation in *any* area, and thus includes disaster response; however areas of co-operation specifically listed in a Treaty are likely to be accorded greater priority.

#### 1.1.1.4. NO MANDATE

The strategic objectives of the AMU relate to common defense, economic and cultural matters – not broad enough to constitute a 'catch-all' that might include disaster response. The constitutive Acts of CEN-SAD and ECCAS could not be studied because they were not available on the formal websites of these organizations, in the UN Treaty Database or elsewhere on the Internet. However, the objectives of each organization, as listed on their official websites, do not include disaster response as a specific area of co-operation.

### 1.1.2. Institutional basis for the development of disaster management policies and laws

The institutional basis for the further development of laws and policies on disaster response is similar in all the organizations surveyed: development of policy/legal proposals by a Secretariat; consideration of these by a Council of Ministers and (in most cases) final approval by a Summit or supreme Authority comprising the Heads of State or Government.

A weakness seems to lie in the manner in which implementing arrangements can then be made binding on Member States, for example, through the issuing of legally binding regulations or directives. Only the ECOWAS and COMESA Treaties make further provision in this regard. In the ECOWAS Treaty the Council can make regulations (which must however still be approved by the Authority). The COMESA Treaty, however, empowers its Council with a more flexible range of instruments. The institutional structure for the further elaboration of policies and laws relating to disaster response is therefore somewhat unwieldy, depending always on the final approval of the meeting of Heads of State.

### 1.1.3. Conclusion

In five of the eight RECs included in the study there is some form of legal and institutional basis for the development of regional laws and policies relating to disasters, ranging from the very clear mandate in the IGAD Treaty to the 'catch-all' provisions of the SADC Treaty. The lack of such a mandate in the AMU, CEN-SAD and ECCAS Treaties should not be of too great a concern given the clear mandate established in the AU Treaty. Common policies developed under the auspices of the AU apply to 53 African States as well as certain island states.

It is recommended that the further development of disaster management policies should ideally take place under the auspices of the AU given its greater geo-political impact. This would not prevent the formulation of more detailed policies by a particular REC.

In light of the findings of this section, the next sections will mainly focus on those organizations which have elaborated specific legal agreements or policies in the context of the disaster management: *ie* AU, IGAD, ECOWAS and SADC. Information relating to the other RECs is contained in Volume II.

## 1.2. LEGAL AGREEMENTS RELATING TO DISASTER MANAGEMENT

Legal agreements pertaining specifically to disasters – in the form of a written text signed and ratified by the Members States belonging to a particular regional grouping – would constitute a valuable tool in disaster management on the continent. Indeed, they signify a high level of state commitment to a particular issue, help to clarify rights and duties, and establish structures and procedures for implementation and enforcement.

However, neither the AU, nor any of the RECs considered in the study has concluded a legal agreement pertaining specifically to disasters. The dearth of legal instruments in this area is a serious weakness. In light of the findings in section 1.1 above, it is evident that the AU and five the RECs have a mandate to develop legal agreements relating to disasters. The problem is therefore not the lack of legal authority, but rather the failure to prioritize disaster-related issues, lack of sufficient political will, or lack of capacity and resources to undertake the admittedly long and arduous process of developing a legal agreement. Notwithstanding, there is mention – as a strategic objective - of the need for formal legal agreements on disaster response in the policy frameworks developed by ECOWAS and SADC.

While policy development seems to sit most appropriately with the AU, a legal agreement at this level might be overly-broad and general, having to accommodate too many diverse interests. It is therefore recommended that work aimed at the development of disaster-specific legal agreements be focused at the level of the RECs, with priority being given to those who have already taken steps towards formulating a regional policy; *ie* ECOWAS, IGAD and SADC.

## 1.3 POLICIES RELATING TO DISASTER MANAGEMENT

Of the organizations included in the study, the AU and three RECs (ECOWAS; IGAD; SADC) have developed policy instruments relating to disaster management. These are:<sup>12</sup>

- *AU Commission Strategic Plan*
- *AU/NEPAD Africa Regional Strategy for Disaster Risk Reduction (2004);*
- *ECOWAS Common Policy and Operational Mechanism for Disaster Reduction (2006);*
- *IGAD Disaster Risk Management Programme (2002); and*
- *SADC Draft Regional Multi-sectoral Disaster Management Strategy (2001).*

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<sup>12</sup> The *Strategic Plan* of the AU Commission as well as a couple of the NEPAD policy initiatives (the Environment Initiative and the *Comprehensive Africa Agricultural Development Programme*) also contain policy statements relating to disasters, but these are less directly relevant to the findings and recommendations in this section. More detailed information on all policies can be found in Vol. II.

The AU Commission Strategic Plan contains two priority Programmes relevant to disaster management: n° 11 (Food Security and self-sufficiency) and 21 (Stop HIV/AIDS, Malaria and Tuberculosis). The objectives of the former include creating enabling conditions and facilitating actions to improve agricultural productivity and reducing food insecurity and poverty. Activities under this programme include the development of a framework for disaster reduction, prevention and management.<sup>13</sup> The objectives of Priority Programme 21 'Stop HIV/AIDS, Malaria and Tuberculosis' relate to fighting the high prevalence of these diseases in Africa and effectively managing outbreaks thereof. Activities include creating surveillance systems for the major diseases in Africa, while planned 'major events; includes the holding of a workshop for the establishment of a 'rapid reaction mechanism' in the event of natural disaster.<sup>14</sup> It seems fair to assume however that 'natural disaster' in this context would be confined to outbreaks of such 'major diseases' as malaria and tuberculosis.

The latter 4 frameworks were developed with the assistance of the UN/ISDR programme underlining the salience of international co-operation in this regard. The AU and ECOWAS frameworks are the most recent. The *SADC Strategy*, on the other hand, is already outdated, as it was concluded in 2001 prior to the institutional restructuring of SADC. The development of these policy frameworks has been beneficial in leading to the establishment of the following new structures: The Africa Working Group on Disaster risk Reduction; the Africa Advisory Working Group on Disaster Risk Reduction; 'National platforms' for disaster risk reduction in certain African states; the ECOWAS Technical Committee on Disaster Management; the SADC Disaster Management Steering Committee. However, it is not clear – at least from information available on the Internet – whether such Working Groups and Committees are still active.

While not advocating a regional institutional framework for disaster response, the AU *Strategy* does advocate the need for establishing national platforms for disaster risk reduction, preparedness and response and the formulation of Programmes of Action. These would comprise representatives from major line ministries. Fourteen such national platforms have apparently been established.<sup>15</sup>

In fact, these policy frameworks should not be regarded as a detailed prescription for regional mechanisms or national action, but rather as the expression of agreed principles and priorities. For instance, the AU/NEPAD *Strategy* emphasizes that its focus is not to establish a regional mechanism for disaster risk reduction, but to facilitate initiatives by RECs and countries to develop and implement their own strategies in line with the regional *Strategy*. The ECOWAS *Common Policy* states that it is not intended as a 'detailed prescription or blueprint for national action' but rather as 'an expression of agreed principles, objectives, priorities and institutional aspects for developing effective, efficient and sustainable disaster risk management in the sub-region'. On the one hand, this approach promotes flexibility for states to implement arrangements suited to their own special needs. On the other hand, the establishment of effective, regional and continental disaster management initiatives requires national commitment, a reality which these documents do not seem to emphasize enough.

At present, therefore, the greatest value of the disaster management policies lies in the information they contain on the following matters, the main findings on which are set out below.

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<sup>13</sup> See Commission of the African Union *Strategic Plan of the Commission of the African Union – Volume 3: 2004 – 2007 Plan of Action: Programmes to speed up integration of the continent* (May 2004) Available at [www.africa-union.org/root/au/AboutAu/Vision/volume3.pdf](http://www.africa-union.org/root/au/AboutAu/Vision/volume3.pdf)

<sup>14</sup> Ibid.

<sup>15</sup> According to the UN/ISDR Programme these are: Djibouti, Uganda, Madagascar, Kenya, Nigeria, Tanzania, the Republic of Congo, Senegal, Botswana, Mali, Niger, Gabon, Algeria and the Seychelles. See [www.unisdr.org/africa/af-about/about-isdr-activit-02-05.htm](http://www.unisdr.org/africa/af-about/about-isdr-activit-02-05.htm).

- the perception of the disaster problem on the continent and within specific regions (1.3.1.);
- the main needs and challenges as regards disaster management (1.3.2.);
- the preferred strategic approach and underlying principles in dealing with such needs and challenges (1.3.3.);

The policy frameworks differ on how the policy proposals will be funded. While the IGAD *Programme* simply states that the implementation of the programme is dependent on donor funding, the ECOWAS framework identifies the need for a regional funding mechanism, which is more in line with the ethos of afro-responsibility and self-reliance.

### 1.3.1. THE DISASTER PROBLEM: A COMMON UNDERSTANDING OF "DISASTER" AS THE INTERACTION OF HAZARDS AND VULNERABILITY CONDITIONS

There is a clear awareness that disasters have a significant impact on the African continent. For instance, the AU *Strategy* notes that Africa is the only continent where the regional share of reported disasters in the world has increased over the past decade. This has had a devastating impact on the continent's fragile development gains.

All of the policy frameworks convey the insight that disasters occur at the intersection of hazards and vulnerability conditions. As regards natural hazards, all recognize the significance of hydro-meteorological hazards, particularly drought, desertification and flooding. The ECOWAS policy further notes that such hazards are likely to worsen with the impact of climate change. The AU, IGAD and SADC policy frameworks also identify epidemics, particularly HIV/AIDS, as a natural hazard. Other recognized natural hazards include pests, wildfires, and earthquakes. Apart from the AU *Strategy* all the policy frameworks also recognize man-made hazards such as transportation and industrial accidents.

#### *Box 1: Typology of Disaster Risks – IGAD Programme*

##### Level One (most serious hazards):

- § Pandemics and epidemics (notably HIV/AIDS at the time of writing);
- § Drought; and
- § Conflict (external and internal).

##### Level Two (of significant but lesser importance):

- § Environmental hazards (covering desertification, deforestation and ecosystem degradation);
- § Pest infestations;
- § Floods; and
- § Fires (rural and urban).

##### Level Three (rare, but potentially posing serious risk or posing risk to smaller segments of national communities):

- § Earthquakes;
- § Livestock disease; and
- § Transport and industrial accidents.

All the policy frameworks recognize conflict as a hazard condition. However, there is also recognition that structures and processes already exist to deal with conflict situations and that the focus in the policy framework should hence fall on non-conflict disasters.<sup>16</sup> As they fall outside the scope of the IDRL research focus, conflict related frameworks are not analysed in the study.

<sup>16</sup> For example, in formulating the AU *Strategy* it was decided that conflict resolution and peace building should best be left to the AU Commission on Peace and Security. However, a hard and fast line separating out conflict conditions cannot always be easily drawn. As such, the *Strategy* does address disasters caused by natural hazards induced by mass population movement resulting from conflicts.

The *SADC Strategy* contains the most succinct and comprehensive listing of the vulnerability conditions which make the African continent so susceptible to these hazards. These include: high-levels of multi-dimensional poverty, environmental degradation, climate change, slow economic growth and political instability.

Recognition of the linkages between hazards and vulnerability conditions seems to have played a significant role in shaping the main reference of recent policy frameworks to disaster risk reduction and in shifting the focus towards "disaster management" as a holistic concept.

### 1.3.2. NEEDS AND CHALLENGES REGARDING DISASTER MANAGEMENT

Each of the policy frameworks was developed on the basis of an assessment of current problems that beset disaster management on the continent and identification of the resultant challenges that need to be addressed.

A first problem relates to the lack of adequate participation of disaster-affected people. It is highlighted, for instance, in the *AU/NEPAD Strategy for Disaster Risk Reduction* which was preceded by a *Regional Review of Disaster Reduction (Baseline Study)* seeking to establish the status of disaster risk reduction in Africa. The Baseline Study raised a number of critical issues, amongst which was the perception that '*often citizens are mere recipients of disaster management activity outputs*', mainly relief delivery by governments and donors, and do not adequately participate in the design and implementation of disaster reduction programmes.<sup>17</sup> MARTIN OWOR: is this addressed in the policy? Two of the underlying principles of the IGAD Programme also pertain to the need for broad-based community participation and to the necessity of targeting beneficiaries in sub-groups in accordance with their specific needs, as will be seen in 1.3.3.

A second type of problems consistently emerging in the delivery of emergency response, include limited physical and institutional infrastructure for emergency management; logistical problems in the management of emergency assistance (a question of facilitation) and imbalances between the mix of food and non-food assistance (a question of response quality). These problems call for the improvement of the effectiveness of response through stronger disaster preparedness, for instance through the integration of early warning systems into emergency management, as underlined by the ECOWAS Common Policy. In this regard, the *Common Policy* highlights the need for improved initiation, ie better management of the process of making appeals or requests for humanitarian assistance and facilitation of the subsequent international response, particularly flows of food aid and other relief services, such as medicine, shelter and emergency clothing.

A third problem regarding disaster management is the current lack of inter-state cooperation, and the need to improve it as recognised by the AU Strategy, IGAD Programme and SADC Strategy. However, it is important to note that all three strategies identify different reasons for the lack of such cooperation to date. The AU Strategy cites the fact that countries are at different stages in the development of institutional frameworks for disaster management, while the IGAD Programme refers to lack of mutual support agreements – which leads to insufficient articulation of regional responsibilities and policies, and the lack of regional standardization of disaster management training. The SADC Strategy also points to the lack of technically oriented, disaster management training for professionals

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<sup>17</sup> *Africa Regional Strategy for Disaster Risk Reduction.*

from different sectors as well as the lack of clearly defined mechanisms for country-to-country interventions in emergency situations. The ECOWAS Common Policy sees enhancing the capacity for sub-regional emergency response and contingency planning as well as harmonizing national emergency systems<sup>18</sup> - both of which implicitly emphasise the need for better inter-state cooperation, as major challenges in developing strong and efficient response preparedness.

A fourth type of major problem relates to the absence of linkages between disaster emergency response, rehabilitation and development. Awareness of this problem which would seem to be one of remaining preoccupied with the effect, rather than dealing with the cause – *ie* unsustainable development that increases individuals' and communities' vulnerability to disasters - has introduced a shift of focus towards the integration of disaster risk reduction within emergency response, and to *regard the risk scenario rather than the disaster itself*.<sup>19</sup>

The AU/NEPAD *Strategy for disaster risk reduction* explains:

*'Substantial amounts of humanitarian assistance flow into Africa, partly to provide relief assistance in emergencies. But ... disaster response activities remain largely divorced from mainstream development activities in Africa. Relief agencies often focus on immediate emergency needs, with an emphasis on food aid distribution. They concentrate less on bridging the relief-rehabilitation gap or investing in developing people's capacities to cope with future disasters. Consequently, the underlying causes of chronic food insecurity and vulnerability remain.'*<sup>20</sup>

Disaster risk reduction has hence been introduced in order to enable disaster emergency response to contribute to rehabilitation and sustainable development, and led towards a holistic approach to disaster management. This shift of focus also resonates with the ethos of the AU and NEPAD to promote self-reliance, afro-responsibility and afro-centeredness.<sup>21</sup> The goal is to transcend reliance on aid from the developed world by addressing the socio-economic and political factors that cause Africa to remain vulnerable to disasters.

The different policy frameworks highlight the underlying reasons for the (previous) lack of such an approach in African regional and national disaster management systems. One of the most important of these is the weak state of information/knowledge management systems concerning disasters. The AU *Strategy*, for instance, holds that risk identification and assessment in Africa is under-developed, recently developed and/or incomprehensive. In fact it views this as a *result* of the focus on emergency response, which causes people to place greater emphasis on post-disaster *loss* assessment than on *anticipatory risk* assessment. The IGAD *Programme* similarly highlights the need for proper impact and needs assessments. Related to this, is the problem of weak communications systems. The SADC *Strategy* accordingly talks about 'gaps in information dissemination' and the need for information-sharing through a centralized point.<sup>22</sup> Institutional and other obstacles equally explaining the lack of linkages between disaster response, development and disaster risk reduction, as highlighted by the policy frameworks are: inadequate financial support (AU Strategy), lack of national disaster management plans, strategies, policies and legislation (IGAD programme) and finally absence of conceptual clarity on the meaning of 'disaster management' (SADC Strategy). The latter can

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<sup>18</sup> In addition to strengthening interaction between disaster managers and development practitioners; and developing voluntarism in emergency management

<sup>19</sup> Such as stated in the IGAD Programme.

<sup>20</sup> Ibid 8.

<sup>21</sup> See Vol. II, p.

<sup>22</sup> Another consequence is lack of broad public disaster awareness and preparedness, which leads to the situation, identified in the AU *Strategy* where citizens are mere recipients of disaster management outputs and do not actively participate in the design and implementation of disaster reduction programmes, as mentioned above.

indeed be defined narrowly to refer only to response and relief operations, or more broadly to include preparedness, mitigation and prevention and recovery and rehabilitation.

### 1.3.3. STRATEGIC APPROACH AND UNDERLYING PRINCIPLES

The strategic objectives set out in the various policy frameworks respond to some of the needs and challenges highlighted in the previous section. Those common to two or more of the policy frameworks include the following:

- Strengthening disaster preparedness so as to improve the effectiveness of emergency response (through, for example, the development of national disaster preparedness strategies);
- Improving sub-regional collaboration for preparedness and response (through, for example, developing regional disaster assessment, emergency response and recovery teams);
- Developing the supporting policy and legal framework through elaboration of supporting policies, legislation and agreements
- Improving knowledge management in relation to disaster management, which encompasses:
  - improving impact and needs assessment
  - developing and inventory and database of regional resource capacities;
  - implementing effective information management systems;<sup>23</sup>
- Developing education and training programmes in disaster risk reduction, preparedness and response;

The strategic objectives outlined above would go a long way towards strengthening the Africa region's capacity to respond to disasters using its own resources. The development of such capacity will take time, so the objectives would seem to be mostly long-term in nature. The strategic objective that is perhaps manifest in its absence is collaboration and co-operation with international relief and humanitarian organizations to improve the facilitation, co-ordination and regulation of emergency response initiatives over the short- to medium-term.

As the principles which underlie the different policy frameworks, there is a large degree of consistency. The underlying principles of the IGAD Programme are stated here, as most comprehensive in the area of disaster management:

- 1) Disaster management is a basic responsibility of national government:<sup>24</sup> The point here is not merely that it is a national responsibility, but that it is a fundamental national responsibility. In this regard, the *Programme* observes that '[u]nless a disaster is in progress, disaster management is a low priority for both governments and donors'<sup>25</sup> is pertinent.
- 2) Regional disaster management initiatives must build on the strength of national disaster management systems.
- 3) Within a Member State, disaster management planning and capacity should extend down to the lowest level of governance.<sup>26</sup>

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<sup>23</sup> As well as: improving risk identification and assessment; strengthening vulnerability analysis;

<sup>24</sup> Ibid 30 As is evident in the *Programme's* emphasis on the need to develop national disaster management plans, strategies, policies and legislation.

<sup>25</sup> Ibid 22.

<sup>26</sup> cf. also the *Africa Regional Strategy for Disaster Risk Reduction*, which emphasizes decentralization.

- 4) Disaster management must address the full range of hazards that threaten a country.
- 5) Disaster management must be founded on the concept of risk management and extend beyond a focus on immediate response and relief.
- 6) Disaster management must build on existing and local capacity within the region. This principle encompasses the following aspects: the need for a regional programme to take account of the strengths, weaknesses, cultural, governmental and traditional features of participating nations; the need to build on existing expertise in member nations; the need to adapt internationally accepted principles to meet local needs; the need to encourage widespread examination of locally appropriate strategies and their formalization in appropriate plans at every level.
- 7) Disaster management should entail regional collaboration in addition to articulation of the roles and responsibilities of the REC. For instance, the *Programme* calls for improved collaboration among national disaster management agencies in the region and the strengthening of regional scientific agencies such as the Drought Monitoring Centre in Nairobi. In this way knowledge of and expertise in disaster management theory and practice can be spread.
- 8) Broad-based access to comprehensive, timely and relevant information pertaining to hazards and vulnerabilities: This principle underlies the *Programme's* recommendations regarding the strengthening of early warning information systems.<sup>27</sup>
- 9) Holistic, systematic, standardized and coordinated training in disaster management.<sup>28</sup>
- 10) Integration of immediate disaster response and medium-term rehabilitation: The *Programme* notes the gap that exists between meeting essential needs in the immediate disaster period when humanitarian assistance begins to taper off, and medium-term rehabilitation aid is still in the planning phase. While this is due to a variety of political, institutional and financial factors, the most commonly-cited is that of the 'mandate gap' between humanitarian relief and development agencies.<sup>29</sup> The problem emerges as a result of issues on the part of both beneficiaries and donors. However, 'the most significant gaps may result simply from a lack of effective targeting, implementation, monitoring and evaluation as well as coordination in program planning and implementation within the member states of the region.'<sup>30</sup> For this reason, the *Programme* proposes a comprehensive set of interventions aimed, inter alia, at developing among beneficiaries and donors a common set of objectives and principles for relief, rehabilitation and recovery and a set of regionally and nationally owned indicators for monitoring and evaluation of relief programmes.<sup>31</sup>
- 11) Mainstreaming gender into all disaster management activities: The *Programme* notes that the 'current approach' adopted by most humanitarian agencies is that disasters affect

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<sup>27</sup> The envisaged strengthening of such systems would therefore entail expanding their scope to provide information on all forms of hazards, and improving the dissemination of results to a wider range of stakeholders..

<sup>28</sup> Interestingly, this should include a focus on counselling in recognition of the impact of disaster on the psychological well-being of affected populations. IGAD *Programme* 32 – 33.

<sup>29</sup> Intergovernmental Authority on Development *Disaster risk management program in the IGAD region: Volume VIII – Project 7 Improving preparedness for targeting, implementation and monitoring and evaluation of relief and rehabilitation assistance in IGAD member countries* (June 2002) 22. Available at: [www.unisdr.org/africa/af-partners/partners-af-drr.htm](http://www.unisdr.org/africa/af-partners/partners-af-drr.htm).

<sup>30</sup> Ibid.

<sup>31</sup> Ibid 21 – 23.

'communities' and that there is no need to target interventions for specific sub-groups.<sup>32</sup> However, in recognition of women's particular vulnerabilities in situations of disaster (as victims of gender-based violence, heads of single-parent households, and being pregnant) and in light of the key role women play in environmental management, agriculture and food security, the *Programme* advocates the systematic incorporation of gender issues into disaster management.<sup>33</sup> This would impact on, for example, the collection and analysis of information relating to disaster information (disaggregated so as to make women's vulnerability and role more visible) and the promotion of women as integral members of disaster management groups.<sup>34</sup>

- 12) Disaster management decision-making should be based on broad-based community participation.

#### 1.4. IDRL ANALYSIS OF CONTINENTAL AND REGIONAL LEGAL AND POLICY FRAMEWORKS ON DISASTER RESPONSE

##### 1.4.1. INITIATION

The ECOWAS *Common Policy*, as noted above, holds that requests for international humanitarian assistance should be better managed and it foresees the need to define access arrangements to its proposed 'Mechanism for Disaster Reduction'. However the issue is deferred because the policy simply states that the ECOWAS Technical Committee on Disaster Management, together with the Member States, will agree on the triggers and conditions of access to the mechanism such as (a) eligibility criteria (b) the quantum of support to be provided under each access, (c) number of times a country can access the facility, (d) expected cost-sharing and other complementary inputs by accessing countries.

The *SADC Strategy* identifies the lack of clearly-defined mechanisms for country-to-country interventions in emergency situations as a shortcoming, but does not put forward more detailed criteria or arrangements in this regard.

The IGAD Programme emphasises the need to strengthen early warning information systems and in this context broad-based access to comprehensive, timely and relevant information pertaining to hazards and vulnerabilities. We saw also above how this REC's constitutive act affirms the basic right of the peoples of the region to benefit from emergency and other humanitarian assistance.

The policy frameworks are thus not extremely vocal on this issue. An exception would seem to be the mention of the need to improve impact and needs assessment as a common strategic objective; this is not explicitly put in a context of triggering outside humanitarian assistance however.

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<sup>32</sup> IGAD *Programme 20*.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

#### 1.4.2. FACILITATION

Overall, references to issues of facilitation are sparse and isolated. As was seen above, the IGAD constitutive act explicitly underlines the State obligation to facilitate the movement of food and emergency supplies and the ECOWAS Common Policy highlights the need for improved facilitation of the international response, particularly flows of food aid, medicine, shelter and emergency clothing, after an appeal or request for humanitarian response has been made.

#### 1.4.3. COORDINATION

The ECOWAS *Common Policy*, IGAD *Programme* and SADC *Strategy* address the need for coordination of their proposed regional disaster response mechanisms and assign institutional responsibility for this task. In all cases, the emphasis is strengthening regional co-ordination among States, rather than co-ordination between States and other role-players such as international humanitarian organizations providing disaster relief and other assistance.

The most sophisticated proposal in this regard is the ECOWAS' Mechanism for Disaster Reduction, which is to assume coordination. The *Common Policy* outlines its key structures two of the most salient of which are the Disaster Management Unit (DMU) and the ECOWAS Emergency Response Teams (EERTs).

The DMU will be established within the ECOWAS Secretariat's Department of Humanitarian Affairs. This Unit will undertake the coordination of regional and national development agendas to ensure the integration of a risk management approach. In an emergency, the DMU will manage and coordinate requests from member states for emergency assistance and mobilize sub-regional emergency management procedures. During regional and very serious national disasters, however, a Disaster Management Task Force – comprising the Directors of the ECOWAS Departments of Humanitarian Affairs, Defence and Security, the Observation and Monitoring Centre, Political Affairs, and Agriculture and Environment – will be activated as a coordinating body to plan and manage activities of the Mechanism. The Task Force will be coordinated out of the office of the Deputy Secretary for Political Affairs, Defence and Security and will be serviced by the DMU.

The EERTs would be teams of 'first responders' which could be mobilized in the event of a national or regional cross-border emergency. They will be formed by developing the capacity of 'fire, medical, police, military and medical services within member states; by nurturing a spirit of volunteerism among civil society at community levels; and supporting the development of effective civilian-military cooperation in emergency management.

In the case of the IGAD *Programme*, a unit within the Political and Humanitarian Affairs Division of the IGAD Secretariat would undertake regional coordination functions. The *Programme* also stresses the need for the establishment of generic national disaster management agencies to ensure horizontal coordination amongst ministries and agencies in the member states.

In the SADC *Strategy*, the proposed Disaster Management and Emergency Response Unit – which would either be a stand-alone unit or situated within the directorate of social and human development and special programmes, would coordinate disaster management initiatives at regional level.

#### 1.4.4. REGULATION

The IGAD *Programme* contains several references to regulation of disaster response. As such, one of its underlying principles is that disaster-management decision-making should be based on broad-based community participation. It emphasises in particular, the need to mainstream gender issues into disaster management. Furthermore, identifies the need for developing, among beneficiaries and donors, a common set of objectives and principles for relief, rehabilitation and recovery and a set of regionally and nationally-owned indicators for monitoring and evaluation of relief programmes.

Finally, the IGAD Programme lays emphasises how disaster management is to be built on existing local capacity within the region, an underlying principle which echoes the need already enshrined in the IGAD Treaty link immediate relief with rehabilitation and development, today adopted by of all RECs which have policies in the area of disaster management. Equally related to this are the following types of interventions discussed by the Food Security Summit held in December 2006 under the auspices of the *Comprehensive Africa Agricultural Development Programme (CAADP)*<sup>35</sup>: better coordination of relief food management in alleviating hunger so that it does not lead to distortions in the local production and market and increasing local procurement of food commodities to cover emergency food needs, while also expanding the agricultural market for home-grown food commodities.

#### 1.5. CONCLUSION AND RECOMMENDATIONS

In sum, the recent development of a continental and three regional policy frameworks on disaster-related matters is certainly a positive development. However the strategic objectives and principles outlined in these documents will remain little more than good ideas if positive action steps such as formalizing consensus in legal agreements, dedicating funding, formalizing processes and putting institutional arrangements in place are not taken. This is particularly important as regards establishing the proposed regional mechanisms for disaster response. Given that the AU *Strategy* does not intend to establish regional mechanisms for disaster response, it is recommended that these steps should be taking place primarily at the level of the RECs.

The choice of a long-term perspective that aims to reduce the vulnerability conditions that cause disasters in Africa to have such a devastating impact is laudable and should be encouraged. The shift towards integrating disaster risk reduction as a means to correct the initial focus on emergency response reflects opting for viable, self-sustaining solutions. It is important to continue to pursue the set track towards holistic disaster management, of which both disaster reduction and response are essential

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<sup>35</sup> The *Comprehensive Africa Agricultural Development Programme (CAADP)* is aimed at urgently addressing Africa's chronic, appalling state of widespread food insecurity and spans the entire spectrum of agriculture and food security interventions. An estimated 27 per cent of Africans are undernourished. See AU Commission/NEPAD Secretariat *Towards a Prioritised Outcomes-based Approach to Implementing Africa's Food Security Commitments* (2006). Prepared in support of the Preparatory Meeting of Officials Attending the Food Security Summit from 4 – 7 December 2006 in Abuja, Nigeria 5. The Food Security Summit was held in December 2006 in order to prioritize and sequence interventions. The discussion paper circulated before the Summit noted that most food in Africa is produced under rain-fed conditions, making production vulnerable to variations in rainfall. This in turn is a major cause of food shortages. However the problem also lies in the fact that 'current food reserves and early warning systems are not functioning efficiently and therefore, fail to smooth the food deficits during drought or erratic rainfall years'.<sup>35</sup> The Summit therefore aimed to discuss the following types of interventions

components. However, it is unfortunate that none of the regional frameworks have addressed international – *ie beyond the regional mechanism* - relief and recovery assistance to disasters.

It is recommended that the example provided in the ECOWAS *Common Policy* should be followed; which is to recognize the need not only to improve disaster risk reduction, but also to improve efficiency in the supply and utilization of emergency response. This will include better management of the process of making appeals for assistance, as well as facilitation of relief flows. It is further recommended that the lead set by the IGAD *Programme* of developing mechanisms for monitoring and evaluating relief assistance and regulating assistance should be followed.

## PART 2. National Frameworks

### 2.1. NATIONAL INSTITUTIONAL FRAMEWORK

All the States in the survey have established a national agency responsible for disaster management (see Box 2), affirming the principle that disaster management is a national responsibility. In all cases the national disaster agency is also responsible for co-ordinating disaster management at sub-regional levels. In all the States (except from Kenya which still has only a draft law), the status of the agency is established by national legislation.

The mission of the national agency is stated comprehensively in the South African national framework where the legislation provides that the NDMC is responsible for promoting:

*'an integrated and co-ordinated system of disaster management, with special emphasis on prevention and mitigation, by national, provincial and municipal organs of state, statutory functionaries, and other role-players involved in disaster management and communities'.*

The explicit reference to 'other role-players in disaster management' can be interpreted to mean a responsibility to involve non-governmental as well as international relief agencies in the creation of such a system. This legal provision best gives effect to the principle that while disaster management is the responsibility of domestic authorities, other actors, such as local civil society, play a key supporting role.

#### Box 2: National Institutional Frameworks

##### Ghana

- Legislation: National Disaster Management Organization Act 517 of 1996
- National Agency: National Disaster Management Organization (NDMO)

##### Kenya

- Legislation: Pending National Disaster Management Bill (2002)
- National Policy on Disaster Management (October, 2001)
- National Agency: Disaster Management Agency (NDMA)

##### Nigeria

- Legislation: National Emergency Management Decree, 1999
- National Agency: National Emergency Management Agency (NEMA)

##### South Africa

- Policy: White Paper on Disaster Management, 1999
- Legislation: Disaster Management Act 57 of 2002
- Plan: National Disaster Management Framework (2005)
- National Agency: National Disaster Management Centre (NDMC)

The national frameworks differ, however, in the structures established for governance of the national agency.

- The Ghanaian legislation establishes separate structures in the NDMO and the National Disaster Management Committee (NDMC), where both seem to have operational roles. The NDMO, headed by a National Co-ordinator, is statutorily responsible for developing national disaster plans, promoting education and awareness campaigns, disaster response, and co-ordination. The NDMC, comprising senior national government officials, is headed by the Minister of the Interior, and is responsible for such matters as assessing the extent of damage and the needs of affected areas in the event of any disaster; identifying, receiving, managing and supervising relief items; and collecting and preserving data on disasters in the country, amongst others. The governing body of the NDMO is the National Security Council, a constitutional body comprising high level political and security personnel.
- The Kenyan draft national institutional framework is similar to the South African model, explained below. Operational responsibilities vest in the Director-General of the NDMA. He or she is supported in this regard by an advisory board comprising representation of an array of government departments, a representative of the Kenya Red Cross Society, and a representative of a non-governmental organization nominated by the non-governmental organizations Council. In contrast to South Africa, however, the board does not advise on operational but on policy matters.
- The Nigerian framework does not establish separate structures for policy-making and operational matters. The NEMA has both policy-formulation and operational-type functions. According to the Decree, the NEMA is headed by a governing council comprising high-level state officials, a representative of the Nigerian Red Cross Society and 'such voluntary organizations as may be determined from time to time'.
- In South Africa, there are separate structures for policy-making and operational matters. Operational responsibility is first and foremost in the hands of the Head of the NDMC. He/she is, however, assisted in this function by the National Disaster Management Advisory Forum (NDMAF). Along with the Head of the NDMC and the heads of provincial and local disaster management government agencies, the membership of the NDMAF includes 'representatives of other disaster management role-players designated by the Minister of Provincial and Local Government. These may include representatives of religious and welfare organisations and of 'other relevant non-governmental and international organizations and relief agencies'. Through the vehicle of the NDMAF, and depending on 'designation' by the Minister, international humanitarian and relief agencies are given a voice in operational matters pertaining to disaster management. The legislation also establishes an Intergovernmental Committee on Disaster Management (ICDM) which only comprises high-level State functionaries. The ICDM plays a role in policy formulation and strategy development and is responsible for advising the South African Cabinet in this regard.

All the national frameworks make provision for inputs from non-state actors such as relief organizations, although the level at which such actors can make an input differs. In Kenya, it is through the advisory board of the NDMA, which mainly advises the Director-General on policy matters. In Nigeria, it is through the governing council of the NEMA. In South Africa representation is through the NDMAF, which is an advisory, consultative body on operational matters. In Ghana, the membership of the NDMO not only comprises officers and employees of public institutions, but also non-governmental organizations and volunteers, amongst others. The NDMO thus seems to denote a loose association of

institutions and individuals concerned with the management of disasters in Ghana. In this case, non-state actors are not so much voices that need to be heard on policy, strategic and operational matters, as component parts of a broader organization.

## 2.2. DEFINITION OF 'DISASTER' IN NATIONAL FRAMEWORKS

All of the national frameworks define the term 'disaster' (see Box 3). All the definitions accommodate the recognition of natural and human-caused disasters, and both slow- and fast-onset disasters. The Nigerian definition hints at the inclusion of conflict as a hazard condition ('mass deportation or repatriation of Nigerians from any other country'), while the Ghanaian definition explicitly includes 'war' and 'civil strife'. In South Africa, the disaster legislation provides that it will not apply if a state of emergency (associated with political conflict) has been declared in terms of the State of Emergency Act 64 of 1997. In this way the South African legislation avoids potential overlapping mandates between structures established to deal with political unrest and non-conflict disasters respectively. The Kenyan draft legislation specifically provides that the statutory powers defined in the Bill may not be used for conflict purposes, other than for controlling a riot or disturbance resulting from or occurring during a state of disaster.

### *Box 3. Definitions of 'disaster' in national legislation*

#### **Ghana**

*'any occurrence by which there is a serious disruption of general safety endangering the life and health of many people or large material interests which requires co-ordinated action by services of different disciplines and includes, floods, earthquakes, drought, rainstorm, war, civil strife, industrial accidents'*

#### **Kenya**

*'a serious disruption of the functioning of a society or community, causing widespread human, material or environmental loss, which exceed the ability of the affected society or community to cope without outside intervention.'* (Policy)

*'a natural or human caused occurrence whether actual or imminent (such as fire, flood, storm, earthquake, explosion or accident) which –*

- (a) endangers or threatens to endanger the safety or health of persons or animals in the nation; or*
- (b) destroys or damages or threatens to destroy or damage, property in the nation;*

*being an event or occurrence which requires a significant and coordinated response.* (Draft National Disaster Management Bill)

#### **Nigeria**

*'any disaster arising from any crisis, epidemic, drought, flood, earthquake, storm, train, roads, aircraft, oil spillage or other accidents and mass deportation or repatriation of Nigerians from any other country'.*

#### **South Africa**

*'a progressive or sudden, widespread or localized, natural or human-caused occurrence which –*

- (a) causes or threatens to cause-*
  - (i) death, injury or disease;*
  - (ii) damage to property, infrastructure or the environment; or*
  - (iii) disruption of the life of a community; and*

*(b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources'.*

A further difference between the national definitions lies in the extent to which they define a disaster. This is either done generically – by laying down qualitative criteria in terms of which a phenomenon can be evaluated to determine whether it attains disaster status – or specifically, by listing hazard conditions. The Nigerian definition fits with the latter model. A disadvantage of this approach arises when a situation arises that is not amongst the listed hazards (e.g. pest infestation or wildfires). The question will then be whether the situation falls within one of the broader categories listed in the definition (e.g. ‘any crisis’ or ‘epidemic’). The Ghanaian legislation moves closer to a generic definition by establishing at least three criteria for an occurrence to qualify as a disaster (*i.e.* it must involve a serious disruption of general safety by endangering life and health; it must affect many people or large material interests; and it must require co-ordinated action by services of different disciplines). The definition in the pending Kenyan National Disaster Management Bill is similar to this model by listing specific types of disasters along with qualitative criteria. The definition in the Kenyan Policy and the South African definition are fully generic in managing to define disaster without referring to any particular hazard condition. This promotes flexibility but not necessarily certainty as decision-makers will still need to determine whether the criteria apply.

It is interesting to note that only the South African legislation and the Kenyan Policy come close to one of the key elements of regional definitions of disasters; *ie* that disasters arise from the intersection between hazards and vulnerabilities. In the South African legislation this is accommodated through the criterion that a situation only qualifies as a disaster if it is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects. A similar as explicit focus is evident in the Kenyan Policy, referring to disasters which “*exceed the ability of the affected society or community to cope without outside intervention.*”

The South African and Kenyan national frameworks also contain definitions of ‘disaster management’. In terms of the South African legislation, this means:

*‘a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at-*

- a) preventing or reducing the risk of disasters;*
- b) mitigating the severity or consequences of disasters;*
- c) emergency preparedness;*
- d) a rapid and effective response to disasters; and*
- e) post-disaster recovery and rehabilitation.’*

This definition encompasses the full range of measures associated with disasters, from risk reduction, through mitigation, preparedness and emergency response, to post-disaster recovery and rehabilitation. It is therefore a good example of a framework based on a holistic understanding of disaster management, aligned with the regional frameworks’ integration of disaster risk reduction, and without losing sight of the other elements of disaster management. The definitions of disaster response in the Kenyan Policy and pending National Disaster Management Bill similarly emphasize the full range of disaster-related actions.

### 2.3. ARTICULATION WITH REGIONAL LEGAL AND POLICY FRAMEWORKS

In fact, only the South African national framework gives express consideration to regional matters. This focus comes through in both the legislation and in the national plan – the National Disaster Management Framework (NDMF).

The Disaster Management Act 57 of 2002 prescribes the content of the NDMF and states that it must: reflect a proportionate emphasis on disasters of different kinds, severity and magnitude that occur or may occur in southern Africa; and facilitate regional co-operation in disaster management in southern Africa. It also includes, among the general powers of the national agency, the NDMC, the capacity to act as an advisory and consultative body on issues concerning disasters and disaster management to other governments and institutions in southern Africa and the capacity to exchange disaster management information with institutions performing similar functions in the Republic and elsewhere. Furthermore, it provides for the establishment of a disaster management information system which must contain extensive information concerning disasters that occur or may occur in southern Africa and disaster management issues. The ensuing list of information categories includes emergency response resources and capacity in neighbouring and relevant international agencies. This provision, which establishes a clear legal obligation on the part of the NDMC, raises interesting possibilities regarding the manner in which the identified regional need for better information systems on risks, vulnerabilities and resources can be met by strong national players in various regional blocs through the outworking of their own national responsibilities.

The NDMF states that regional cooperation for the purpose of disaster risk management is essential, and proposes in this regard to establish a SADC forum for disaster risk management in the region, tasked with pursuing objectives in the following areas:

- **Information and communication:** sharing information on disasters and important disaster risk reduction issues; developing and monitoring early warning systems for the region and issuing advisories so that precautionary measures can be taken timeously in the event of threats; establishing strategic communication links and emergency telecommunication procedures and protocols due to natural hazards, technological accidents or environmental degradation; and sharing expertise in disaster response and recovery.
- **Joint operations:** concluding bilateral and multilateral agreements with clearly defined protocols to provide for shared disaster risk reduction interventions, preparedness and cross-border disaster response and recovery operations; ensuring the clear definition of responsibilities between the various regional and international role players in cross-border disaster response.
- **Facilitating joint operations:** establishing joint standards of practice across the region in respect of:
  - disaster risk reduction;
  - disaster risk assessment;
  - response management systems and the establishment of regional disaster operations centres to ensure effective co-ordination of disaster response and recovery management;
  - humanitarian assistance and mitigation interventions.

There is a strong emphasis in these proposals on both emergency preparedness and response and disaster risk reduction. While the *SADC Strategy* provides a lot of information on the institutional aspects of establishing a regional mechanism, the South African NDMF provides much more detail on the functions of such a mechanism. It seems, therefore, that the SADC regional and South African national policy are not yet aligned on the issue of regional co-operation in disaster response, and the structural, functional and procedural ramifications thereof.

The NDMF not only envisages regional co-operation between the South African national government and states in the region, but also between various South African provincial governments and the

governments of neighbouring states, e.g. between the provincial governments of the Eastern Cape and Free State and the national government of Lesotho.

## 2.4. IDRL ANALYSIS OF NATIONAL LEGAL AND POLICY FRAMEWORKS

The Nigerian and South African national frameworks expressly acknowledge linkages to international disaster management role-players and processes. Firstly, both acknowledge the importance of participating in strategies and efforts of the international community to reduce disaster risk.<sup>36</sup> The South African NDMF also assigns responsibility in this regard by recognizing the Department of Foreign Affairs (DFA) as the lead national department responsible for promoting and facilitating South Africa's role in international co-operation on disaster risk management. In liaison with the NDMC and other organs of state, it holds that the DFA must forge links with national agencies that render relief assistance internationally, and with international organizations involved in disaster risk management. The IFRC is among the organizations cited in this regard.

Both also acknowledge the State's role in providing humanitarian assistance (for example, to other States in the region), but without much further elaboration. For example, the South African NDMF simply provides that appeals must be directed to and mobilized through the NDMC.

While the importance of international co-operation is acknowledged, neither framework provides detailed and comprehensive guidelines on how such international co-operation will proceed, especially as regards requests for assistance from the international community.

### 2.4.1. INITIATION

None of the national frameworks address the issue of how requests for international assistance should be made or how the needs of international role-players might be met in terms of access to information and needs assessments. The South African NDMF at least recognizes the need by stating that South Africa must establish as a matter of priority 'appropriate protocols to clarify procedures for requesting external assistance and to discourage ad hoc and unsolicited appeals for relief'.

### 2.4.2. FACILITATION

The national frameworks make use of a common mechanism in this regard, which is to establish a legal authority to make, amend, suspend or revoke rules in the event of a national disaster, as such all relying on the adoption of *ad hoc* measures.

In the Nigerian legislation, this power rests with the governing council of NEMA who may exercise it 'for carrying on the functions of the Agency'. In Ghana, the Minister of the Interior may make regulations for the requisitioning of goods in time of disaster. This may facilitate the movement of goods across borders, but leaves aside the issue of relief personnel. In Kenya, a general regulatory power is vested in

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<sup>36</sup> The South African NDMF mentions the UN Millennium Development Goals and the Africa Regional Disaster Risk Reduction Strategy in this regard while the Nigerian legislation cites the United National (sic) Disaster Reduction Organization (presumably a reference to the United Nations International Strategy for Disaster Risk Reduction).

the 'Minister' (although without an indication of ministerial portfolio) and the President is empowered to direct that available resources of the state are made available to cope with disasters.

In the South African legislation, the Minister of Provincial and Local Government may make regulations or issue directions on, amongst others, the following:

- The regulation of traffic to, from or within the disaster-stricken or threatened area;
- The maintenance or installation of temporary lines of communication;
- Emergency procurement procedures;
- The facilitation of response and post-disaster recovery and rehabilitation; and
- Steps to facilitate international assistance.

These grounds establish, unambiguously, that the Minister's regulatory powers can be used to facilitate international disaster response. However, they may only be used after the Minister has declared a national disaster, and the issuing of regulations and directions must be necessary for the purpose of assisting and protecting the public, providing relief to the public, protecting property, preventing or combating disruption, or dealing with the destructive and other effects of the disaster. The Minister is also required to consult the responsible Cabinet Minister.

### 2.4.3. CO-ORDINATION

Most of the national frameworks recognize that the need for co-ordination arises at different levels.

The Nigerian legislation, for example, assigns responsibility to the NEMA for co-ordinating:

- policy and programme development;
- the provision of necessary resources for search and rescue and other disaster operations; and
- the activities of all voluntary organizations engaged in emergency relief operations in any part of the Federation

As noted above, the South African legislation establishes the NDMAF, which plays a co-ordinatory role on operational matters; and the ICDM, which co-ordinates policy development. An additional mechanism provided by the South African legislation, is the obligation resting on the NDMC to establish a directory of institutional role-players that are or should be involved in disaster management in southern Africa. Amongst others, the directory must include particulars of 'foreign non-governmental organizations and international organizations involved in disaster management in southern Africa'. The NDMC must also establish 'effective communication links' with contact persons identified by the role-players included in the directory. This appears to be the only consequence or advantage of being included in the directory.

### 2.4.4. REGULATION

The national frameworks do not go into this area. Notwithstanding, the South African legislation empowers and requires the NDMC to monitor, measure performance and evaluate disaster management plans as well as prevention, mitigation and response initiatives. For instance, it must monitor formal and informal prevention, mitigation and response initiatives by organs of state, the private sector, non-governmental organizations and communities. The NDMF is more specific on the need for comprehensive disaster reviews and reports and holds that these must be conducted routinely

after all significant events and/or events classified as disasters. The NDMC is required to develop a review programme which must be designed to ensure a uniform, consistent approach in the manner in which such reviews are undertaken; evaluation of actual performance during disasters; learning from the occurrence of disasters to inform the review of disaster management plans, and dissemination of such information to all relevant stakeholders.

## 2.5. CONCLUSION AND RECOMMENDATIONS

- The creation of a national agency responsible for disaster management is one of the ways in which States manifest the principle that disaster management is a national responsibility. It is recommended that the mission of the agency be expressed in more rather than less detail.
- In establishing the governance structures of the national disaster management agency, the distinction between policy development and operational functions should be borne in mind. These may be vested in the same structure (as in the Nigerian NEMA) or in separate structures (the South African ICDM and NDMAF respectively). A disadvantage of the former model is that the policy development function should preferably be the responsibility of the highest (or at least very senior) political functionaries and that it might be inappropriate and unwieldy to be involving such individuals in the more hands-on field of operations.
- Further, in defining the governance framework of the national disaster management agency, it is recommended that States carefully consider the level at which input from non-state actors is required.
- The manner in which national legislation defines the term 'disaster' is important as it determines the legislation's scope of application. The term can be defined in a specific (with reference to specific hazards) or generic (establishing qualitative criteria to determine whether a situation constitutes a disaster) fashion. It is recommended that that generic approach is preferable on account of its greater flexibility. It is further recommended that States consider defining terms such as 'disaster management' or 'disaster response' so as to clarify the range of actions encompassed under the use of the term. The Kenyan and South African national frameworks are noted as best practice here.
- The survey showed there is not always a great deal of synergy between national and regional frameworks (eg the definition of 'disaster'). It is recommended that synergy be established by ensuring consistency in approach, strategic objectives and underlying principles. However it can also be established by expanding the focus of national plans and information systems to encompass a regional in addition to a national focus, as in the South African example.
- One of the most glaring gaps in the national frameworks surveyed is the lack of mechanisms defining the manner in which requests for international assistance should be made. While it is important to have representation of international humanitarian and relief organizations on national structures, this does not do away with the urgent need for having clear guidelines on who within a State is responsible for initiating such requests, the threshold at which such requests will be made, the content of such requests and the manner in which the information needs of international humanitarian and relief organizations will be met. It is recommended that States flag this issue as an area of priority action.

- The need for facilitation of disaster response can be met by giving powers to a political functionary (such as a Minister) or group (such as the governing council of the national disaster management agency) to make, amend, suspend or revoke certain rules in situations of disaster. This allows for rule 'adaptation' to be tailored to the needs of specific disaster scenarios. It is recommended that, where ad hoc ruling has been adopted as a solution, national legislation expressly states that these powers can be used to facilitate international response. It is furthermore recommended that having a comprehensive national legal framework on disaster management, incorporating how international assistance, when needed, is to be facilitated, is to be preferred as the optimal solution as this will avoid lack of clarity, confusion, lack of appropriate dissemination and frequent revision which characterize "ad hoc" decision-making. The Draft Guidelines on the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, developed within the context of the International Federation of Red Cross and Red Crescent Societies IDRL Programme, can here constitute a useful tool of reference.
- It is important to underline that the need for co-ordination in disaster response arises at different levels and establish appropriate forms of institutional responsibility for each type of co-ordination. Further, that co-ordination might be hampered in the absence of information concerning stakeholders with whom the State should be co-ordinating and clear lines of communication with such stakeholders. The manner in which the South African legislation addresses these needs - the directory of institutional role-players - is noted as good practice.

The function of regulating disaster response not only entails assigning responsibility for this task, but also establishing the criteria in terms of which response is to be provided, evaluated, and the manner in which evaluations are carried out, so as to ensure consistency.