



**CARIBBEAN EMERGENCY
LEGISLATION PROJECT (CELP)**



Legal Framework

Constitution of the Republic of Trinidad and Tobago Chap. 1:01, Act 4 of 1976

The Constitution of the Republic of Trinidad and Tobago includes provisions pertaining to state of emergency and/or disaster, and vests the powers and duties with regard to its Proclamation in the President.

Chapter 1, Part III, Section 7 provides the emergency powers and exceptions for emergencies. It provides: “Without prejudice to the power of Parliament to make provision in the premise, but subject to this section, where any period of public emergency exists, the President may, due regard being had to the circumstances of any situation likely to arise or exist during such period, make Regulations for the purpose of dealing with that situation and issue orders and instructions for the purpose of the exercise of any powers conferred on him or any other person by any Act referred to in subsection (3) or instrument made under his section or any such Act.” The Section further provides that an Act or Regulation passed during a period of public emergency “shall have effect even though inconsistent with Sections 4 and 5 except in so far as its provisions may be shown not to be reasonably justifiable for the purpose of dealing with the situation that exists during that period.”

Section 8 presents the proclamation powers of the President. It states that “the President may from time to time make a Proclamation declaring that



a state of public emergency exists.” In order to be effective, a Proclamation so made must set out specific grounds for its issuance included among which is as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or of infectious disease, or other calamity whether similar to the foregoing or not; or a public emergency has arisen as a result of action being taken, or is immediately threatened, by any person, of such a nature and so extensive a scale, as to be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life.

Section 9 provides that within 3 days of making the initial Proclamation, the President must deliver to the Speaker for presentation to the House of Representatives, a statement detailing the basis for the declaration. Section 10 provides for the extension of a Proclamation from time to time by resolution supported by a simple majority vote of the House of Representatives. However, no extension granted may exceed 3 months and the extensions in aggregate do not exceed 6 months. The Proclamation may be further extended for not more than 3 months at any one time, by a

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resolution passed by both Houses of Parliament and supported by the votes of not less than three-fifths of all the members of each House. The Proclamation may be revoked at any times by a resolution supported by a simple majority vote of the House of Representatives.

Section 12 requires publication of the Proclamation, Notice, Regulation or Order, unless it is impracticable or inexpedient to publish in the Gazette, in which case, the President may cause the same to be published by notices affixed to public buildings or distributed amongst the public or by oral public announcements.

Disaster Measures Act, Chap. 16:50, Act 47 of 1978

This Act provides for the taking of prompt and expeditious measures for the alleviation of the effects of disaster and for matters connected therewith. In the event of a conflict, this Act takes precedence and has effect even though it is inconsistent with Sections 4 and 5 of the Constitution.

The Act authorizes the President to declare by Proclamation where local circumstances (not necessarily national) demand, declaring such area to be a “disaster area”. A disaster is defined to be an area affected or is imminently likely to be affected by any fire, flood, landslide, hurricane, earthquake, disease or other calamity. The Proclamation must define the disaster area and specify the circumstances giving rise to the declaration. Section 3 of the Act authorises the President to (i) assume control of and regulate communication, transport, supplies, water, fuel

and power installations; (ii) enter into and take possession of any building; (iii) prohibit or restrict the possession or use of any specified articles; (iv) impose restrictions on persons leaving or entering the disaster area; and (v) take all other measures which are reasonably necessary to mitigate the effects of the disaster.

The Act empowers the President to make Regulations and Orders in pursuance of the Act, and provides immunity from suit for persons acting under the Act’s lawful authority. Compensation can also be provided for loss or damage incurred as a result of exercise of the Act’s powers. As with the Proclamation pursuant to Section 8 of the Constitution declaring a state of public emergency, the President must deliver to the Speaker for presentation to the House of Representatives a statement setting out the specific grounds that exist for declaring a disaster area.

Defence Act, Chap. 14:01, Act 7 of 1962

The Defence Act establishes the Trinidad and Tobago Defence Force, which is “charged with the defence of Trinidad and Tobago and with such other duties as may from time to time be defined by the Council.” The Defence Force supplements the protective services as needed during a state of

disaster or emergency. This Act also establishes the Coast Guard and their powers of stop and board and search, as well as the authority to pursue and detain.



Telecommunications Act, Chap. 47:31

Section 84 of this Act outlines the powers of the President with respect to telecommunications in Trinidad and Tobago during a state of emergency. Where such a state exists, the President may, on the advice of the Ministry of National Security “authorize the taking of possession and control by the Government of any telecommunications equipment, installation, service, apparatus or station to be used for Government service” or for such ordinary service as the Minister may determine.

Other statutory instruments include -

- Trinidad and Tobago Electricity Commission, Chap. 54:70
- Regional Health Authorities Act, Chap. 29:05
- Trinidad and Tobago Emergency Mutual Aid Scheme, Act No. 8 of 2000

Institutional Framework

Office of Disaster Preparedness and Management (ODPM)

The Office of Disaster Preparedness and Management (ODPM) was established by Cabinet in January, 2005, ostensibly to replace the National Emergency Management Agency (NEMA), which was also established by Cabinet, in 1988. The ODPM falls under the ambit of the Ministry of National Security, which hosts such law enforcement agencies as the TTPS, TTFS and TTDF. ODPM implements the fully comprehensive Disaster/Emergency Standard Operating Procedures and Contingency Plan.

The ODPM is committed to a comprehensive, all-hazard approach to disaster management, which focuses on the 4 major phases of the disaster management cycle: preparedness, response, mitigation and recovery. The ODPM’s key role, therefore, is to function as a coordinating entity, responsible for mobilizing all the key players and leading the national effort to protecting public health and safety, restoring essential government services and providing emergency relief to those affected by severe disasters.

Tobago Emergency Management Agency

The Tobago National Emergency Management Agency was established by Executive Council Minute #64 of 1988, and renamed the Tobago Emergency Management Agency (TEMA) by Executive Council Minute #722 of 2008, after the dissolution of the NEMA and formation of the ODPM. Its stated mission is to “*coordinate a network of agencies and individuals within the island of Tobago to direct their efforts to the maximum preservation of life and the protection of property in times of disaster.*”

TEMA views the components of disaster management in Tobago as: 1) command and control 2) coordinating of resources 3) ability to communicate and 4) planning and as such operates under the Incident Command System, spearheaded by the Tobago Disaster Management Committee. As part of its management duties, TEMA engages in risk assessment, which includes an Impact Assessment Special Needs Survey, which is constantly updated to provide information on the most vulnerable on the island. TEMA has

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successfully launched its Community Emergency Response Team (CERT) programme, which aims to provide communities with an immediate response during times of disaster/emergency. In many instances, the CERT technicians are the first to arrive on the scene and are thus “first responders.” Upon the arrival of the appropriate agency from the protective services, the technicians hand over command pursuant to the Incident Command System. TEMA then engages in its primary role of coordination, which is triggered only when the capacity of the appropriate agency is exceeded. The

TEMA has executed Memoranda of Understanding with first responders such as the TTFS and EHS, which memorializes the collaborative response between those respective agencies and the CERT technicians.

TEMA has established a fully functional EOC at its headquarters, prides itself on its use of two software programmes for Incident Management, which installs redundancy in its operations in the event of a disaster/emergency.

Tobago Disaster Management Committee.

This Committee meets on the basis of need and comprises of the Heads of each relevant agency involved in disaster management, including government agencies such as the protective services, NGOs such as the Red Cross and other public entities such as the State Boards and the Chamber of Commerce.

Trinidad and Tobago Emergency Mutual Aid Scheme

The scheme is responsible for coordinating the response activities of the relevant agencies in the event of industrial emergency situations and the Trinidad and Tobago Red Cross Society and other volunteer organizations – assist in shelter management, first aid and distribution of food and supplies.

Other key agencies

Other key players involved in national or local disaster/emergency management are include the Trinidad and Tobago protective services, the Trinidad and Tobago Electricity Commission – responsible for ensuring adequate provision of electricity for operations; the Water and Sewerage Authority – responsible for ensuring adequate provision or water and sewerage services to the public and operations; Ministry of Works and Transport – responsible for the clearance of roads and restoration of infrastructure and for traffic

flow and the Ministry of Health – responsible for the provision of medical and public health services and the control of contagious diseases from the site of event to health facilities.

In other instances, supporting agencies have departments that are established specifically for engaging in disaster preparedness, mitigation, recovery and response for that agency. Such organizations include, WASA and the Ministry of Health, which both boast of Disaster Preparedness Units. In the case of WASA, the department operates primarily through the Authority’s Emergency Operations Procedures Manual and consists of eight employees, four of whom are engineers. The Department is responsible for developing, implementing and monitoring the water systems throughout Trinidad and Tobago to ensure that in the event of a disaster or emergency, the country is provided with an adequate water supply.



Budget appropriation and execution

The ODPM is afforded specific line items in the Ministry of National Security's Estimates of Expenditure as an agency under its purview. However, this allocation funds the normal, day-to-day activities of the ODPM, with no special provision for an emergency release of funds to the ODPM in the event of a disaster. There has been some consideration given to establishing a disaster management fund in the event that additional emergency funds are required. However concern has been expressed over the lack of procedures for the emergency release of funds. The lack of such a process raises the issues of accountability and transparency. While theoretically there is no procedure for an emergency release of funds, the tacit process is that the agency generally receives what is necessary to perform the functions devolved to it in times of emergency. This amounts to a process that is no more transparent

or accountable than a formalized procedure, which would undoubtedly be accompanied by strictures for ensuring control and accountability.

A National Disaster Relief Fund (NDRF) was established by Cabinet in 1997, and is accessible by the Government upon declaring a national disaster. The Fund was established to release funds to another government unit or to homeowners, for the construction of homes. The administration of the Fund is managed by an established Coordinating Committee, which establishes the procedure/guidelines to determine the qualification of applicants. A summary of the procedure for the release of funds under the NDRF is at Box 1 below while a summary of agency appropriation mechanisms is at Box 2.

Box 1

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SUMMARY OF PROCEDURE FOR RELEASE OF FUNDS UNDER NDRF

- i. NEMA activates a team of technical experts to assess the damage and submit findings to NEMA. The Agency compiles reports for consideration and approval of the Coordinating Committee¹.
- ii. Owners of the building are held responsible for the repairs to their property and for providing the labour required. The owners would ensure that invoices are prepared for the purchase of the materials.
- iii. The Honourable Minister of National Security, based on the recommendations of the Coordinating Committee, considers the approval of sums based on agreed criteria.
- iv. On approval by the Minister, NEMA would prepare invoices for amounts up to \$25,000 or less; whichever applies. Identification card numbers would be noted on the invoices.

¹ Compensation for losses suffered are calculated on the basis of 75% of the original estimate to a maximum of \$25,000.00 or on the value of the materials required to undertake the repairs - whichever cost was lower

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v. Claims will be honoured by way of supplying building materials to claimants. The following steps are required to be followed. These involve the submission of claims to municipal corporation(s) or the Tobago House of Assembly for onward transmission to NEMA.

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vi. The Director, NEMA prepares departmental Vouchers in respect of each quotation. These Vouchers shall bear the name of the claimant and the date of the Honourable Minister's approval. The commitment should be entered into the accounting records (scheduling of the Vote). The submitted voucher, together with the quotation and a copy of deposit account receipt is then forwarded to Comptroller of Accounts to prepare the cheques.

vii. Comptroller of Accounts prepares cheques to the suppliers and transmits them to Accounting Executive, Ministry of National Security. The Ministry of National Security will in turn forward cheques to the municipal corporation(s) or the Tobago House of Assembly for delivery to suppliers.

viii. Materials are issued directly to the claimants from the supplier. The municipal corporation(s) or the Tobago House of Assembly will verify the purchase and delivery of the materials to the claimants.

ix. The Committee monitors construction work on buildings to ensure proper construction practices are followed and that materials are used for the purposes for which they were supplied

Box 2

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SUMMARY OF AGENCY BUDGETARY APPROPRIATION MECHANISMS

ORGANIZATION	DISASTER/EMERGENCY FUND	DISASTER/EMERGENCY DEPARTMENT
Trinidad and Tobago Police Service	No	No
Office of the Disaster Preparedness and Management	No	Yes
Trinidad and Tobago Fire Service	No	No
Trinidad and Tobago Defence Force	No	No



ORGANIZATION	DISASTER/EMERGENCY FUND	DISASTER/EMERGENCY DEPARTMENT
Tobago Emergency Management Agency	No, but use of Vote 36 'Extraordinary Expenditure'	Yes
Ministry of Works and Transport	No	No
Ministry of Health	No	Yes
Ministry of Energy and Energy Industries		
Trinidad and Tobago Electricity Commission	No	No
Water and Sewerage Authority	No	Yes

TEMA follows a budgeting procedure that is mandated for all divisions under the Tobago House of Assembly. TEMA first produces a strategic plan in preparation for the upcoming fiscal year and the accounting process is begun by an accounting clerk who prepares requisitions and departmental vouchers, which are then forwarded to the Accounts Department in the Office of the Chief Administrator for processing. TEMA is afforded a line item in the Assembly's annual Estimates for Expenditure, and generally receives the amount requested. In the last fiscal year, however, presumably due to poor economic conditions, it only received IT\$11 million of the IT\$25 million sought. This allocation is utilized to fulfill TEMA's strategic plan and day-to-day operations, with the majority of expenditure going for materials/supplies and training of staff. Other headings include minor equipment, maintenance/rental of vehicles and fees.

In the event of an emergency or disaster, TEMA utilizes Vote 36, which is devoted to 'Extraordinary Expenditure.' Much like the NDRF, these funds "covers all materials and emergency items that are needed to aid victims during recovery and equipment purchased for emergency relief."

Discussions with the Deputy Coordinator indicate that this Vote is heavily utilized, albeit not as much as TEMA's management would like. TEMA is disappointed with the limits that are placed on Vote 36, which reflect the concerns of the accounting department that items purchased under the Vote are not extraordinary or of an emergency nature. The procedure that the applicants follow for release of funds under Vote 36 is similar to that for release of funds from the NDRF (Box 2). However, it appears that in practice, there are no guidelines to determine which requests qualify as 'extraordinary' under the Vote.

TEMA is usually awarded 35-40% of the budget requested from the Ministry of Finance, which is usually insufficient to perform the Department's necessary duties and is usually supplemented by the Authority. The funds released are used for procuring installments and equipment such as 48-hour continuous stand-by generators for plants throughout the country, as well as staffing and office needs. Maintenance is recognized as an integral part of mitigation, and the upkeep of equipment and installments is routinely included as standard in all contracts for tender

Even though they have responsibilities as first

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responders in the event of a disaster, none of the other agencies under the umbrella of the Ministry of National Security have departments that deal specifically with their particular activities for disaster preparedness response. Instead, this is done on an ad hoc basis; with the broader aspects left solely up to the ODPM. As a result, these agencies also lack specific budgetary appropriation for disaster preparedness and response activities. Instead, they utilize the general budget allocated to them in order to finance their response to disasters/

emergencies. This applies to the protective services such as the Police Service, Fire Service and Defence Force, as well as other ministries such as the Ministry of Works and Transport. In these instances there are no procedures established for the emergency release of funds; rather, even in the event of a disaster, these government agencies are required to follow the same accounting procedures as during normal times for the acquisition of emergency goods and services.

Recommendations

Specific

- Enact the Disaster Management Act
- Statutorily establish the Office of Preparedness and Disaster Management to give it definitive legislative authority as the coordinating agency for disaster management
- Establish regulations or subsidiary legislation which clearly define the various roles of the many agencies responsible for ensuring public health and safety in the event of a disaster or emergency
- Each supporting public agency should have a plan or manual for disaster preparedness, mitigation, response, and recovery.
- Address disaster mitigation on a comprehensive national basis

General

- Establish adequate legislative authority for disaster management
- Enact legislation to promote the implementation of improved standards for all buildings and infrastructure
- Establish adequate funding mechanisms for disaster management
- Create mechanisms for transparency and accountability of external agencies
- Promote capacity building and strengthen institutional arrangements
- Enhance risk management and insurance coverage for disasters
- Promote the transfer and exchange of disaster information
- Improve access to information and promote effective communication
- Update National Emergency Plans and Procedures
- Strengthen Community Committees
- Improve capability of disaster and emergency personnel



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