

Legal and regulatory responses

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LET'S GROW SOUTH AFRICA TOGETHER

Three choices

- Disaster Management Act
 - Disaster management → disaster risk reduction
 - Co-ordinated response: spheres of government & government and civil society
- State of emergency
 - “to restore peace and order”
- National Health Act
 - Only medical side

LEGISLATIVE OPTIONS

The options

- Disaster Management Act (DMA)
 - Disaster Risk Reduction
 - Co-ordinated response
- State of Emergency Act
 - “restore peace and order”
- National Health Act

Suggestions

- Implement DMA consistently, also when no “state of disaster”
- Disaster management should be in the presidency
- Provide more explicitly for parliamentary oversight

Rule of law: principles during emergencies

1. Ensure legal certainty and clarity in public communication
2. Ensure decision-making is transparent
3. Act in compliance with international law
4. Deliver rapid, coordinated and collective action
5. Ensure that emergency measure focus on crisis only, not other policy goals
6. Protect oversight mechanisms
7. Engage with external expertise and stakeholders
8. Protect freedom of expression
9. Reform the law based on best practices – locally and abroad

Ensure legal certainty and clarity in public communication

Content

- Regulations and rules and restrictions must be clear and certain
- Consistent application
- Justification clearly communicated
- Changes announced in advance

Evaluation

- Regulations not always clear
- Justification not always clearly communicated
- Consistent application
- Usually announced in advance

Ensure decision-making is transparent

Content

- Who makes decision on what basis
- Transparency

Evaluation

- Role of the NCCC initially unclear
- Presentation by Prof Karim helped understand the science of decision-making
- Staged approach – indicate when we will move to different levels

Act in compliance with international law and human right norms

Content

- Measures – necessary, proportionate, temporary
- Respect human rights
- Principle legality
- Executive powers must not outlast crisis

Evaluation

- Human rights dealt with later
- Khosa case
- Focus on vulnerable groups disproportionately affected (eg women).

Deliver rapid, coordinated and collective action

Content

- Co-ordinated response

Evaluation

- Yes, but not in terms of the legislative framework of the DMA

Measures must not drive other policy goals

Content

- Measures should not be discriminatory
- Protect vulnerable groups
- Applied equally and consistently

Evaluation

- “strictly necessary” s 27(2)(n) DMA
 - Tobacco
 - BBEEE criteria for relief
- Vulnerable groups
 - Asylum seekers
 - Waste-pickers
 - Informal traders
 - ECD centres
- Rules were applied consistently – minister / premier

Oversight mechanisms must be protected

Content

- Parliament
- Judiciary

Evaluation

- Helen Suzman Foundation case – parliament
- Judicial oversight – online, also on measures

Engagement with external experts and stakeholders

Content

- WHO & civil society

Evaluation

- Did well
- Civil society – engagement on questions can be improved on

Protect freedom of expression

Content

- Accurate information critical
- Freedom of scientific expression important

Evaluation

- Silencing of dissenting voices should be cautioned against
- Second ed: how to foster and encourage society based on scientific thinking

Law reform based on best practices locally and abroad

Content

- Evaluate response, and reform if needed

Evaluation

- What this project is about

Human rights

- Health
- Information and privacy
- Financial and economic implications
- Gender based violence
- Education

RECOMMENDATIONS

- DMA was good choice → but cannot only *respond* to disasters, must reduce risks also during time of no disaster
- DMA moved to Presidency
- Health strategy → cognisant of socio-economic context
- Trust and trustworthiness → government should speak from one voice
 - Excessive force, tobacco, precooked food, alcohol
 - Allow and engage with critical voices
- Strengthen culture of freedom of scientific research