

An Examination of the Humanitarianism-Disaster Management Nexus in Tanzania's Policy and Legal Framework

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ABSTRACT

The use of law, the main tool for implementing policy, to regulate and coordinate disaster management, preparedness and response systems features in many jurisdictions. Also, international guidance on the use of effective laws and policies, which emphasize taking on board critical stakeholders, including humanitarian responders is available. Consequently, the government of Tanzania has promulgated a new disaster management law as part of a wider reform of the legal framework to regulate disaster management and response systems which seek to involve stakeholders at all stages. This article analyses the extent to which the restructured legal framework and supporting policy address humanitarian responders who provide informal assistance, often before formal government intervention. The article traces the history of disaster management policies and laws in the country in the context of the humanitarianism – disaster management nexus. It focuses on the aftermath of the earthquake that ravaged Kagera Region in Bukoba district in the northern west part of the country in September 2016. This analysis is supported with field data from Bukoba district. The findings reveal that the legal framework for regulating disaster management and response system does not reflect international and regional clarion calls for engaging informal humanitarian responders. Recommendations on how this gap can be addressed are provided, laying emphasis on incorporating the clarion calls in order to improve the country's legal and policy framework for disaster response and management systems.

Keywords: *Disaster management; humanitarianism; policy and law; Tanzania*

INTRODUCTION

Disasters such as tornadoes, storms, hurricanes, droughts, severe floods and earthquakes occur suddenly within a community, resulting in loss of lives, property and destruction of infrastructure. Often, the affected community, without outside assistance, cannot handle the distraction.¹

On 10 September 2016, the Kagera region, situated on the shores of Lake Victoria in northwestern Tanzania was hit by an earthquake (Kagera earthquake). Then the region had a population of 2,458,023. Out of these, 1,814,481 were residing in six districts affected by the earthquake.² The earthquake led to the loss of 17 lives. Close to 140,000 people were directly affected and 2,500 homes were destroyed.³ In the aftermath, responders, including international and local Non-Governmental Organizations (NGOs) provided emergency relief operations offering food, health care and shelter under the coordination of the government.

Subsequently, humanitarian actors also took part in emergency relief operations being the promptest responders before government intervention. They also took part in burying disaster victims.⁴ They did this out of impulse without expecting favors in return. Despite their critical role, such responders have not been aptly recognized nor appreciated in formal legal and policy frameworks.

In the context of this article, humanitarianisms refers to valuing human beings and providing assistance to ease suffering and improve livelihoods

¹ United Nations and United Republic of Tanzania (2016) Joint Damage and Needs Assessment Report on Earthquake, Kagera Region (Available at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/tanzania_final_joint_needs_assessment_report_26september2016.pdf accessed 30 November 2022)

² United Nations office for Disaster Risk Reduction (UNDRR). (Available at <https://www.undrr.org/terminology/disaster> accessed 30 November 2022)

³ International Federation of Red cross and Red Crescent Societies (2016), Emergency Plan of Action (EPoA) Tanzania: Earthquake (Available at <https://www.globalgiving.org/pfil/25160/projdoc.pdf> accessed 30 November 2022)

⁴ *Ibid.*

of disasters victims, irrespective of differing paradigms.⁵ Consequently, the conceptual framework on humanitarianism adopted reflects historical conventional practices of local actors engaging in providing immediate assistance outside formal structures on impulse.⁶ The article focuses primarily on the relationship between disasters and humanitarianism espoused in the law and policy in Mainland Tanzania (Tanzania).⁷ This is because management of disasters is not a Union matter under the framework of the Constitution of the United Republic of Tanzania.⁸ Zanzibar has a separate legislative, policy and institutional regime.⁹

Although studies on disaster management in Tanzania exist, these have not addressed the policy and legal framework in the context of the intrinsic link between disasters and humanitarianism. This article seeks to fill this lacuna.

METHODOLOGY

Data for this article was obtained through documentary reviews and observations and interviews in Kagera region in a cooperative research project between public Universities in Denmark and the University of Dar-es-Salaam. The project, (*Everyday Humanitarianism in Tanzania - EHTZ*), explores the practices of everyday humanitarianism and attitudes that ground them from the perspective of different disciplines.¹⁰ In terms of documentary review, policies, laws, studies and reports on humanitarian responders in disaster management in Tanzania and other jurisdictions

⁵ See D. Classical humanitarianism and resilience humanitarianism: making sense of two brands of humanitarian action. *Int J Humanitarian Action* 3, 15 (2018). <https://doi.org/10.1186/s41018-018-0043-6>.

⁶ See: Richey, L.A & Chouliaraki, L (Eds.) (2017) *Everyday humanitarianism: Ethics, affects and practices*, *New Political Science*, 39:2, 314-316, DOI: 10.1080/07393148.2017.1304737; Fechter, A. M and Schwittay, A (Eds.), (2020) *Citizen aid and everyday humanitarianism development futures?* Routledge, Oxfordshire; and Čarna Brković (2020) *Vernacular humanitarianism in Antonio De Lauri (Ed.) (2020) Humanitarianism*. Available at: https://doi.org/10.1163/9789004431140_0104 (last accessed on 29 March 2022).

⁷ *National Disaster Management Policy, Ibid.*, see Paragraph 9.4: See also Stoke, K. (2007). *Humanitarian response to natural disasters: A synthesis of evaluation findings*, NORAD, Norway (Available at: <https://www.norad.no/en/tools/publications/publications/2009/humanitarian-response-to-natural-disasters--a-synthesis-of-evaluation-findings/>)

⁸ See the First Schedule of the Constitution of the United Republic of Tanzania, 1977 Cao. 2 [R.E. 2002].

⁹ The Zanzibar Disaster Risk Management Act, No. 1 of 2015 and the Zanzibar Disaster Management Policy, 2011. See also Ame, A. W, (2015). *Assessment of the framework for disaster management in Zanzibar: The case of west district*, MA Dissertation, Open University of Tanzania.

¹⁰ For more details on this Project see: <https://www.everydayhumanitarianismintanzania.org/>

were scrutinized.¹¹ The website was helpful in tracing documents, studies and reports of the Kagera earthquake.¹²

Subsequently, interviews were conducted with identified key respondents sampled in consultation with District Disaster Management officials in Kagera. Consequently, respondents were drawn from Bukoba rural, Missenyi, Karagwe and Muleba Districts, which were severely affected by the earthquake.¹³ During interviews, ethical research principles were complied with to avoid causing psychological harm where respondents were required to recount events. It was made clear to respondents at the outset that they should not respond to questions they found inappropriate or uncomfortable with. Also, researchers were on alert during interviews by ensuring respondents did not recount traumatic events.¹⁴

Interviews focused on individual informal humanitarian responders in the earthquake relief operations. Respondents were probed on the nature of assistance provided to them by individuals, Faith Based Organizations (FBOs), Civil Society Organizations (CSOs), NGOs and Community Based Organizations (CBOs.) during and after the earthquake.

Further, respondents at the Disaster Management Department in the Prime Minister's Office (PMOs) at Dodoma were asked about strategies to include individual humanitarian responders in legal and policy making processes. Also, personnel from the National Coordinator of Disaster Management Unit and legal officers at the PMOs office at Dodoma were interviewed. Similarly, views of the Deputy Attorney General, a member of the National Disaster Management Committee and District and legal

¹¹ The laws that were reviewed and used during interviews with respondents were those that existed during the Earthquake. These laws were repealed just before the article went to print.

¹² See for example: <https://www.globalgiving.org/projects/support-tanzania-earthquake-relief/reports/?subid=95246> (last accessed on 20 February 2022).

¹³ See: <https://reliefweb.int/report/united-republic-tanzania/tanzania-earthquake-emergency-plan-action-final-report-mdrtz020>

¹⁴ Claire Burke Draucker, Donna S. Martsof, and Candice Poole. (2009). Developing distress protocols for research on sensitive topics, *archives of psychiatric nursing*, Vol. 23, No. 5 (October), 2009: pp 343–350

officers at the Attorney General's (AG) Chambers and the National Assembly involved in drafting laws were obtained. At the District levels, interviews were held with the Regional Administrative Secretary (RAS) of Kagera, District Executive Officers (DEOs), members of the Disaster Management Committees (DMCs) and State Attorneys stationed at Districts visited.

Also interviewed were officials from NGOs (Red Cross and World Vision in Bukoba), the Ward Executive Officer (WEO) of Hamugembe, Village and Ward chairpersons in Kashai and Hamugembe Wards and representatives of the Evangelical Lutheran Church of Tanzania at Bukoba. Elder persons from local community members and retired district officials who had witnessed and had been affected by the earthquake were also interviewed.

DATA ANALYSIS

Data was analyzed qualitatively by reviewing laws and policies to allow in depth comprehension of their reflection of humanitarian responders in disaster management and response processes. Documents and reports were analyzed by contextualizing their reflection on humanitarian responders during the earthquake.¹⁵ Data obtained from interviews, on the other hand, was analyzed using the classical content analysis approach from field interview notes.¹⁶ Relevant policies from Rwanda and Kenya were also analyzed for purposes of comparison and to draw lessons from.

FINDINGS AND DISCUSSION

History and Development of Managing Disasters

Global perspectives

The history, evolution and link between disasters and humanitarianism has been traced to the slave trade era, colonialism and the after-math of Battles for conquering Empires in Europe, leading to the emergence of the Geneva

¹⁵ Kohlbacher, F. (2006). The use of qualitative content analysis in case study research, Forum Qualitative Social Research, Vol. 7 No. 1 Art. 21- January 2006 (https://www.researchgate.net/publication/228370291_The_Use_of_Qualitative_Content_Analysis_in_Case_Study_Research/link/0c96052460957f32e5000000/download)

¹⁶ Onwuegbuzie, A. J et al., (2012). Qualitative analysis techniques for the review of the literature

Convention and the International Red Cross.¹⁷ In terms of application of law during disasters, it has been noted that the colonial State *'profoundly altered the legal structure several times in terms of disasters affecting populations as it was required to do more than enforcing conditions of law and order as soon as possible...'*¹⁸ The State simply did not have enough resources and had to resort to outside assistance.¹⁹

Accordingly, historical accounts suggest that volcanoes, floods and other catastrophic events, mainly due to climate change, caused of the earliest forms of disasters.²⁰ Also, disaster management coping systems among communities in the primitive mode of production era (hunter-gatherers) were not fully developed. This was attributed to the use of relatively crude instruments, despite communal arrangements where relations and factors of production were shared. Thus, disasters endangered members of the entire society who pulled forces to address them in social solidarity.²¹ With the development of more advanced tools in the communal mode of production, diverse methods were used to address disasters involving all members of the community.

The agrarian mode of production saw the emergence of private ownership of the means of production and landlord – serfdom relations. The emergence of classes in this set up witnessed a different approach in addressing disasters. Without expecting reward, neighbors who were driven by a sense of duty, assisted victims. The emergence of a fully blown capitalist system saw the emergence of humanitarianism generally, including in Africa.²² During the pre-colonial era, societies in Africa also

¹⁷ Lester A and Dussart, F, (2014). *Colonization and the origins of human governance*, Cambridge University Press, London, pp. 3-5.

¹⁸ *Ibid.*, pp. 18.

¹⁹ *Ibid.*

²⁰ See generally Fitzhugh, B. (2012). Hazards, impacts, and resilience among hunter-gatherers of the Kuril Islands in Cooper J and Sheets, P (Eds.), (2012), *Surviving sudden environmental change: Answers from Archaeology* (pp. 19-42) Chapter 1, Colorado Press.

²¹ Alfridaus, L.K. *et al.* (2015). Theories of social solidarity in the situations of (natural) disasters, *POLITIKA*, Vol. 6 No. 1 April (2015) (Available at: C:/Users/Hp/Downloads/9811-22041-1-PB.pdf) (last accessed on 20 March 2022).

²² Ian Scoones (2021) Pastoralists and peasants: perspectives on agrarian change, *The Journal of Peasant Studies*, 48:1, 1-47, DOI: 10.1080/03066150.2020.1802249 p. 6 (Available at: <https://www.tandfonline.com/doi/pdf/10.1080/03066150.2020.1802249?needAccess=true>) (accessed on 20 March 2022).

practiced humanitarianism, based on spontaneous sense of assisting others in times of need to maintain the social fabric.²³

Background to Humanitarianism and Disasters in Tanzania

Different forms of disasters causing untold hardships have hit Tanzania.²⁴ In an effort to provide relief, some well-intended stakeholders from private institutions, CSOs, NGOs, CBOs, FBOs and individuals have offered humanitarian assistance.²⁵ However, such efforts have not always been accorded a friendly reception by some government personnel. One of the reasons advanced for the cold reception is an allegedly lack of adherence to law and procedures by some responders.²⁶ Sometimes concerns have been raised on the distribution of humanitarian assistance.²⁷ Nevertheless, the government has put in place a Plan to provide guidance on how to provide assistance with roles and responsibilities.²⁸ The plan has been supplemented with the most recent initiatives by government, with the launching of the National Disaster Preparedness and Response Plan (2022), National Disaster Communication Strategy (2022) and National Disaster

²³ Testart, A. (1987). Appropriation of the social product and productions relations in hunter gather societies, dialectical anthropology, Vol. 12 No. 2 (1987) pp. 147-164 & Mati, J.M. (2017). Philanthropy in contemporary Africa: A review, BRILL, Boston (2017) pp. 16-33.

²⁴ See: <https://reliefweb.int/report/united-republic-tanzania/tanzania-floods-emergency-plan-action-final-report-n-mdrtz021>; <https://reliefweb.int/report/united-republic-tanzania/tanzania-earthquake-emergency-plan-action-final-report-mdrtz020>; and International Center for Environmental Monitoring (CIMA) and United Nations Office for Disaster Risk Reduction (UNISDR) (2018), Disaster risk profile for the United Republic of Tanzania. Available at: https://reliefweb.int/sites/reliefweb.int/files/resources/Report_Tanzania_Final-compressed_D8Z1dRe.pdf (accessed on 26 May 2022).

²⁵ See for example media reports on humanitarian assistance to the earthquake victims in Kagera region in 2016 at: <https://mtanzania.co.tz/wafanyabiashara-wachangia-waathirika-kagera/> (last accessed on 26 February 2022).

²⁶ See Paragraph 1.4 of the National Disaster Policy of Tanzania, 2004. A retired DMC in Kagera confirmed this in one of the interviews on the types of assistance for victims of the 2016 earthquake in the region. He was in charge of response operations during the earthquake.

²⁷ Interviews with officials from the Regional and District Disaster Management office in Kagera region noted that in some cases such assistance has been politically motivated or based on religious beliefs with expectation of reciprocity from victims.

²⁸ See United Republic of Tanzania. (2012). Tanzania emergency preparedness and response plan (TEPRP), 2012, Prime Minister's Office, Disaster Management Department.

Management Strategy (2022-2027).²⁹ Despite these initiatives complaints have still persisted.³⁰

Pre-Colonial Era

Disasters in the form of famine (drought) and diseases that faced local communities in Tanzania have been traced to pre-colonial societies - in the mid 1800's and early 1890's. These disasters crippled indigenous systems of control and adjustment that had been developed by some communities.³¹ Humanitarianism assistance during disasters among local inhabitants in the pre-colonial era has also been documented.³² Accordingly, the mechanisms devised to cope with disasters were communal and overseen by institutional arrangements organized around traditional leaders through known customs, rituals and norms.³³ There was no formal system of law to regulate the mechanisms developed that is known today.

Colonial Period

Colonial governments in Tanzania (then Tanganyika) advocated for a general policy and legal regime that encouraged and regulated cash crop production by the local African laborers to meet the demands of metropolitans.³⁴ The unwritten policies that had some bearing on disaster management during this era were reflected in some of the laws.³⁵ There was no comprehensive law to regulate disasters.

Consequently, the colonial approach of indirect rule that was adopted in colonial Tanganyika saw the enactment of laws to regulate local inhabitants - the Native Authorities Ordinances of 1923 and 1927. These granted

²⁹ See: Mwakyusa, A. (2023). Government enhances disaster preparedness. Daily Newspaper. Retrieved at: <https://dailynews.co.tz/govt-enhances-disaster-preparedness/>

³⁰ See: Citizen Newspaper 15th November 2016 updated on April 19 2021: <https://www.thecitizen.co.tz/tanzania/news/bukoba-quake-exposes-gap-in-disaster-response-strategy--2567688>

³¹ Koponen, J. (1988). War, famine and pestilence in later pre-colonial Tanzania: A case for a heightened mortality. *The International Journal of African Historical Studies*, 21, 4 (1988) p. 637 and p. 644.

³² *Ibid.*, p. 644.

³³ UNEP. (2008). *Indigenous knowledge in disaster management in Africa*, Nairobi, pp. 69-70. See also Hambati, H. (2021). *Invisible resilience: Indigenous knowledge systems of earthquake disaster management in Kagera region, Tanzania* *Utafiti*, 16: 247-270.

³⁴ Neal, S. A. (1981). *Colonial dilemma: British policy and the colonial economy of Tanganyika: 1918-1938*, MA Thesis, Department of History, Australian National University (1981) pp. 226 and 177.

³⁵ *Ibid.*, p. 146.

decision-making powers on affairs of local communities (natives) to local chiefs, on behalf of colonial administrators. Some of these powers were aimed at controlling agricultural production through the unwritten policies and laws.³⁶ Laws that had some bearing on disaster management during this era included those related to public health and control of infectious and occupational diseases that affected humans and animals.³⁷

Initially local communities' indigenous management systems, which were based predominately on humanitarianism acts, for addressing other forms of disasters, remained relatively intact during the colonial regime. However, these started to fade progressively with the codification of customary laws by the independence government.³⁸ With the fading away of indigenous systems and its structures, the concept of humanitarianism inherent in them, gradually reduced.

Post-colonial Era

The independence government promulgated policies and legislation to address disasters. These also seek to involve stakeholders and make sporadic reference to humanitarian responders.

Disaster Management Policy and Legal Framework

Policies set out long and short-term strategies to achieve government goals. They also set the foundation for laws.³⁹ Some ancillary sector policies in Tanzania, for example, those relating to forests, land, environment, agriculture and health refer to disasters, such as calamities, emergencies and hazards.⁴⁰ However, there is one framework policy that addresses disaster management.

The National Disaster Management Policy, 2004

³⁶ Bienen, H. (1970). Tanzania party transformation and economic development, Princeton Legacy Library, New Jersey, (1970) p. 38.

³⁷ See for example, the Occupational Health Ordinance, 1953, Animal Diseases Ordinance, Cap. 156, Penal Code, Cap. 16 and Factories Ordinance of 1950 Cap. 297.

³⁸ Harald, S. (1998). "Customary family law in colonial Tanganyika: A study of change and continuity." *The Comparative and International Law Journal of Southern Africa* 31, Volume Number 3 (1998): 373–83. P. 378 (Available at: <http://www.jstor.org/stable/23250262>)

³⁹ Page, E. C. (2009). Their word is law: Parliamentary counsel and creative policy analysis, Sweet & Maxwell, London pp. 1-2 Available at: <https://personal.lse.ac.uk/Page/Papers/PL%202009%204%20E.%20Page%20offprint.pdf>

⁴⁰ See the Land Policy, 1997, Environmental Policy, 1997, Forest Policy, 1998, Agriculture Policy, 2013 and Health Policy, 2017.

The National Disaster Management Policy of 2004 (the Policy) is the pioneer framework Policy regulating disasters in Tanzania.⁴¹ However, the law that was put in place to regulate disasters, the Disaster Relief and Coordination Act,⁴² was enacted before 2004, without a Policy! As noted, policies ought to precede laws to enable legislative drafters enact good laws. Thus, the 1999 Act was destined for disaster! The Policy puts it cogently, admitting the ineffectiveness of the Act, calling for its review to reflect global and regional initiatives.⁴³

The Policy's institutional arrangement has a bearing to humanitarianism actors. Chapter 3 provides for institutions tasked with coordination, guidance, providing direction and approving relief support during disasters. Paragraph 3.1 establishes structures from the national to the local community level. Whereas at the national level, there are the National Disaster Management Committees provided for by paragraph 3.1.1, similar Committees are envisaged at the district levels (Disaster Management Coordination Committees); Villages and Wards have similar committees. Their composition, structure and powers of these are outlined in Annexes 1 and 2 of the Policy. There is some effort to recognize humanitarianism responders as important members of these Committees.

Also, the Fire and Rescue Force established by the Fire and Rescue Act of 2007,⁴⁴ a critical institution in addressing disasters, is recognized by the Policy in Paragraph 3.2.2. This Paragraph calls for amendment of the 1990 Disasters Management Act to permit private sector players and by extension humanitarian actors in fire and rescue operations. The Fire and Rescue Act should be read with the amendments made to it in 2021, which introduce the concept of a 'volunteer fire fighter.'⁴⁵ However, the charitable aspect of this seemingly 'humanitarian' aspect of this 'volunteer' is watered down since such person can be "*ordered by the Minister to fight fire and perform search and rescue services.*"⁴⁶

⁴¹ Available at: <https://www.pmo.go.tz/uploads/documents/sw-1664370353-Disaster%20Management%20Policy%202004.pdf>

⁴² No. 9 of 1999, Laws of Tanzania.

⁴³ Paragraph 1.1 of the Policy

⁴⁴ Cap. 427, Laws of Tanzania [R.E. 2002].

⁴⁵ The Fire and Rescue Force (Amendment) Act No. 8 of 2021.

⁴⁶ Section 3 of the Fire and Rescue Force (Amendment) Act No. 8 of 2021.

The Fire and Rescue Force is required to prepare disaster prevention plans and protect life and property during fire disasters.⁴⁷ Its other main duties that have a bearing to the disaster- humanitarianism nexus are outlined in section 15 (3) (a) - (k). The Minister in charge of the Force by Regulations may extend these powers. The Force is also charged with the overall duty of coordinating Disaster Management Committees established in Districts. This power is provided for by section 15 (3) (e). Section 15 (3) (h) empowers the Force to establish disaster command posts and to organize voluntary groups for preparedness in case of fire disasters under section 15 (3) (k). It is also vested with the power to take charge of private brigades by section 15 (3) (f).

The Minister's power under the Disaster Management Act, in relation to humanitarian assistance, should also be read with the Policy's provisions on fire and rescue. The Minister may order voluntary adult firefighters or private rescue service providers to provide their services or equipment under their control to address a disaster, with provision for compensation, which may not be adequate!⁴⁸ The discretion of the Minister to make such orders removes the element of voluntarism required of humanitarianisms. Thus, discouraging well-intended persons that want to take part in disaster response processes, especially considering that the process of getting compensation may be unduly bureaucratic. Further, the 'compulsory' provision does not augur well with paragraph 1.6.1 (ii) of the Policy's objective, which seeks to enhance involvement of community members in disaster relief operations, ostensibly on a charitable basis.

The Police Force, referred to in paragraph 3.2.4 of the Policy and Local Government Authorities (LGAs) are other important institutions that have a direct bearing on humanitarian actors during disasters. Paragraph 2.1.4 (c) (iii) empowers LGAs to ensure full participation of affected populations in disaster recovery programs. As noted, it is the local community members, in proximity to disaster victims, who are the first responders and help before government moves in. Thus, it is surprising that this is the Policy's only paragraph referring to LGAs. However, laws establishing LGAs give them immense powers in relation to disaster management in their jurisdictions. For example, the Local Government (District)

⁴⁷ Section 5 (m) and 7 (1) (b), respectively of the Cap. 427.

⁴⁸ Section 12 (6) of the Act.

Authorities Act, 1982 which provides for disaster management issues although it does not mention the word ‘disaster.’ Part V of the 1982 Act outlines the basic functions of LGAs including establishing, maintaining and controlling fire brigades, prevention of outbreak of diseases and controlling famine.⁴⁹ Also, the Tanzania Emergency Preparedness and Response Plan (TEPRP) of 2012 recognizes the critical role of LGAs in disaster operations. Further, TEPRP appreciates the role of District Disaster Management Committees and villagers as the first responders in a disaster.⁵⁰

Unlike other Policies in the East African region, which make direct reference to humanitarian actors, the Policy framework for disaster management for Tanzania makes a comparatively indirect reference to humanitarian responders in disasters.⁵¹ Paragraph 1.4 of the National Policy for Disaster Management in Kenya, for example, is explicit:

The contribution of these stakeholders (humanitarian responders in disaster management) in Kenya has been invaluable and the Government will continue to encourage this collaboration...for purposes of realizing synergies, providing linkages, promoting trust, goodwill and ownership of the Disaster Management Systems...

Paragraph 9.4 of Tanzania’s Policy recognizes the Red Cross as an important stakeholder, vested with a defined humanitarian role in disaster operations. However, in some instances, the Policy insinuates a lack of trust and advocates for compulsion, creating a hostile environment for cooperation and coordination.⁵² Also, humanitarian assistance through fundraising to provide relief in disaster-hit areas is sometimes viewed suspiciously.⁵³ For example, Paragraph 2.1.6 (a) of the Policy requires stakeholders to enter into Memorandums of Understanding (MoUs) with the government for provision of aid. Paragraph 3.2.2 of the Policy, outlining the involvement of the private sector in disaster relief efforts

⁴⁹ Sections 118 & the First and Second Schedules to the Act

⁵⁰ Annex 2 of the Plan

⁵¹ See Paragraphs 1.7 and 3.5 on “The Humanitarian imperative” perspective in Rwanda’s National Disaster Management Policy of 2012 and Kenya’s National Disaster Management Policy of 2009, respectively.

⁵² Interview from a respondent in a FBO in Kagera who noted that their organizations predominantly targeted its assistance to believers. To him the government should not interfere in such cases since Tanzania is a secular state and therefore should not take sides in religious issues.

⁵³ Information obtained from interviews with Regional Disaster Management (RDM) officials at the Bukoba District Council on 9th March 2022.

states that such stakeholders should be approached with caution since they are ‘often motivated by profit.’⁵⁴ This clear distrust in an official Policy document is inappropriate.

Other stakeholders who work in collaboration with humanitarian organizations in disaster management operations provided for in Paragraphs 3.2 and 3.2.8 of the Policy are local communities and individuals, respectively. Others are NGOs, Paragraph 3.2.6 (international agencies) and Paragraph 3.2.7 (media), CBOs and LGAs. The role of religion in pre and post disaster relieve operations has been emphasized.⁵⁵ However, the role played by Business Societies and FBOs has been placed at the periphery. These have been recognized only as potential monitors and evaluators of impacts of disasters under Paragraph 3.4.

The bureaucracy that is often faced by humanitarian responders during relief operations is also noted. Paragraph 2.1.7.4 (a) of the Policy provides that there is no clear arrangement for provision of relief to victims and as a result the process is often politicized.⁵⁶ To address this, Paragraph 2.1.7.4 (c) calls for guidelines to address the challenge to address, *inter alia*, eligibility to relief, types of relief and quality of humanitarian assistance.⁵⁷

International and Regional Cooperation

Paragraph 2.1.7.2 of the Policy calls for the need for government to cooperate with stakeholders at the international and regional levels. It calls upon the government to ratify and implement international legal instruments. In terms of the strategy for implementation, Paragraph 3.3 of

⁵⁴ The element of mistrust among those who provided humanitarian assistance in Kagera during the 2016 earthquake was re-echoed by a cross section of respondents, especially from the Disaster Coordination Units. The perception of victims in Missenye and Rwamishenye, however, was different. They argued that humanitarianism actors were the first responders who offered shelter, blankets and mattresses to them even before government moved in.

⁵⁵ Sanne Bech Holmgaard. (2019). The role of religion in local perceptions of disasters: The case of post-tsunami religious and social change in Samoa, *Environmental Hazards*, 18:4, 311-325, DOI: 10.1080/17477891.2018.1546664.

⁵⁶ Information obtained from the interviews with respondents (except those from government) in Kagera region reflects this attitude.

⁵⁷ Respondents, from government, NGOs, CBOs, FBOs and victims lamented that the directive by the government to stop provision of assistance from humanitarianism actors during the 2016 earthquake in Kagera region was very untimely and unreasonable as the government itself took close to two weeks to organize support to victims while the actors’ action was immediate.

the Policy calls for amendment of the Disaster Management Act, 1990 to take on board regional cooperation and ostensibly international as well.

Indeed, the government has implemented the Hyogo Framework for Action (2009-2011) (Hyogo Framework), a global Blueprint that sought to assist countries devise strategies to reduce vulnerability to disasters.⁵⁸ Also, the 2010 Report on implementing the Hyogo Framework captures Tanzania's government efforts in this regard.⁵⁹ Earlier, the government had taken part in global Conferences on disasters. These include the World Conference on Disaster Reduction, held in 2005 in Japan where the Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters was adopted.⁶⁰ The government also signed the Sendai Framework for Disaster Risk Reduction 2015-2030 (Sendai Framework) adopted by the UN, replacing the Hyogo Framework.⁶¹

The Hyogo Framework urged Parties to enact local legislation to effectively implement related policies and encourage compliance.⁶² The Sendai Framework also lays emphasis on Parties to include in their policy and legal framework provisions to recognize humanitarianism responders.⁶³ It also requires Parties to *“pay special attention to the importance of organized voluntary work of citizens... (and) engage private stakeholders, CSOs, CBOs, the elderly and the private sector.”*⁶⁴ In terms of engaging FBOs, the Sendai Framework re-echoes the need to protect religious interests, in disaster management.⁶⁵

At the regional level, Tanzania has also been active in the Africa Regional Strategy for Disaster Risk Reduction and the Africa Regional Platform for

⁵⁸ See: <https://www.unisdr.org/2005/wcdr/preparatory-process/national-reports/Tanzania-report.pdf> (accessed on 20 March 2022).

⁵⁹ United Republic of Tanzania. (2010). National progress report on implementation of the Hyogo Framework for Action (2009-2011) Available at: https://www.preventionweb.net/files/16232_tza_NationalHFAprogress_2009-11.pdf.

⁶⁰ See: <https://www.coe.int/t/dg4/majorhazards/ressources/Apcat2005/APCAT-2005-26-e-rapport-kobe.pdf>

⁶¹ The Sendai Framework is available at: <https://www.undrr.org/publication/hyogo-framework-action-2005-2015-building-resilience-nations-and-communities-disasters>

⁶² The Hyogo Framework is available at: <https://www.unisdr.org/2005/wcdr/intergover/official-doc/L-docs/Hyogo-framework-for-action-english.pdf> & 'Strategic Goals,' Clause C (12) of the 2005 Hyogo Framework for Action 2005-2015: Building the resilience of nations and communities to disasters (Available at: <https://www.unisdr.org/2005/wcdr/intergover/official-doc/L-docs/Hyogo-framework-for-action-english.pdf>

⁶³ See Clauses 36 (v), 24 (i) and 27 (h).

⁶⁴ See Clauses 7, 19 (d) 33 (a) and 27 (h).

⁶⁵ Clause 30 (d).

Disaster Risk Management established with assistance from the United Nations Platform for Disaster Risk Reduction (UNISDR) Africa. The government co-hosted (with the AU and UNISDR) the 4th African Regional Platform on Disaster Risk Reduction (AfRP) in February 2013 in Arusha.⁶⁶ This Meeting adopted Africa's Statement on Disaster Risk Reduction. The government has also participated in the EAC regional initiatives to address disaster management within the framework of the EAC Disaster Risk Reduction and Management Strategy (2012-2016).⁶⁷ Suffice to point out that the regional initiatives on disaster management re-echo the call for the pre and post Hyogo Framework's in addressing disaster management holistically by involving all critical stakeholders, including humanitarian actors.

The above analysis clearly reveals that the government of Tanzania has committed to implementing the Policy's clarion call to engage all key stakeholders at the regional and international levels in addressing disasters. The stakeholders envisaged here include humanitarianism actors. A review of the framework law put in place to implement the Policy would now be undertaken.

Disaster Management Act, 2015⁶⁸

The Disaster Management Act of 2022 has replaced this Act.⁶⁹ However, the 2015 Act still provides a valuable foundation for understanding the legislative framework for disaster management in the context of the humanitarian nexus. In fact, it remains to be a law that can be referred to by courts to interpret subsequent laws.⁷⁰ Thus, its analysis is justified.

Section 4 of the 2015 Act established the Disaster Management Agency (DMA), disaster risk management plans and coordination mechanism for responding, preventing and mitigating disasters. It also established a disaster management fund.⁷¹ The functions of the DMA included coordinating institutions monitoring disaster recovery and assessment of disaster risks (Section 5). The DMA was to be housed at the PMOs but was

⁶⁶ See the Report at: <https://www.undrr.org/publication/report-4th-africa-regional-platform-disaster-risk-reduction-protect-development-gains>

⁶⁷ [https://www.preventionweb.net/files/EAC_DRRMS\(2012-2016\)version_1.4](https://www.preventionweb.net/files/EAC_DRRMS(2012-2016)version_1.4) [1].pdf

⁶⁸ Cap. 242, R.E. [2002] (Act No. 7 of 2015) Laws of Tanzania.

⁶⁹ Act No. 1 of 2022

⁷⁰ See: Seeman, C (1938) "The retroactive effect of repeal legislation," *Kentucky Law Journal*: Vol. 27, Issue 1, Article 3; Case from the High Court of Ireland: *Commissioner for Communication Regulation vs an Post* [2013] IEHC 149 and *R vs. Nott* (1843) 4 QB 768 and *R vs. Vassey* [1905] 2. K.B. 748.

⁷¹ See the Preamble to the Act.

referred to as the Disaster Management Department, not an Agency as envisaged by the law that established it.⁷² It was also required to coordinate inter-ministerial entities engaged in disaster management and mobilize resources.

The 2015 Act also established the Disaster Management Governing Council (DMC) comprising of Permanent Secretaries of Ministries.⁷³ However, there was no representation of humanitarian agencies in the DMC despite making provision for co-opting ‘any person when need arose.’ The DMC, an advisory body to the Minister, was to ensure that disaster risk management matters are integrated into government plans, policies and strategies and recommend policy changes.

In reflecting the Policy, the 2015 Act set up a decentralized system of disaster management by establishing Disaster Management Committees at regional, district, ward and village levels.⁷⁴ To avoid operational conflicts at these levels, the Act made specific reference to ancillary laws that also govern these organs. Organs established under LGA ancillary laws were designated under section 15 of the 2015 Act as Disaster Management Committees. The representatives of the Committees included CBOs, NGOs, Red Cross, FBOs and ‘humanitarian and voluntary organizations’ and ‘prominent persons’ at ward and district levels and humanitarian and volunteer organizations.⁷⁵

Section 29 of the 2015 Act established the Disaster Management Fund whose contributions were to come from, among other stakeholders, voluntary contributions from persons (humanitarianism actors) or organizations. The management of donations and contributions from private persons could be channelled directly to affected communities under section 30 of the 2015 Act but was regulated by the government. The government was to approve and the donor was required to provide a report on the same to it. In this regard, no person could go directly to the community to offer a donation.

Section 40 of the Act established a National Disaster Management Platform, which was to meet at least twice a year. Its functions included providing opportunities for stakeholders to meet and discuss strategic issues on disaster management and advise the government. The Platform

⁷² See: <https://www.pmo.go.tz/pages/disaster-printing-division> (accessed on 30 March 2022).

⁷³ Sections 7 (1) and (2) and section 8.

⁷⁴ Sections 13, 15, 18 and 20, respectively.

⁷⁵ Sections 18 (2) (d)], 18 (2) (c) and 13(2) (c) and (d), respectively.

was composed of Permanent Secretaries in Ministries, CSOs, the Red Cross, private institutions and humanitarian agencies.⁷⁶

As noted from the foregoing analysis, the 2015 Act to some extent recognized various categories of stakeholders who provide instantaneous and informal assistance to disaster victims. To this extent, it was laudable. However, its failure to make even remote reference to international and regional legal instruments, which have been ratified by the government and call for reflection of the humanitarianisms-disaster management nexus is apparent. The attempt to address this shortfall by Regulations made under this Act is also not sufficient, as noted later below.

Disaster Management Act, No. 6 of 2022

The enactment of the Disaster Management Act of 2022 (new Act) was not been preceded by a change of the Policy. The new Act is in Kiswahili, it has not been translated into English.⁷⁷ It does not refer to humanitarianism respondents mentioned in the repealed Act but refers to NGOs, the Red Cross and FBOs at the DMC levels. However, only the Red Cross appears in the disaster management Committees at the regional, district, ward and village levels. Its provisions relating to direct donations to affected communities have retained the repealed law through section 35.

In 2017, in implementing the Sendai Framework, the government enacted Regulations under the repealed Act.⁷⁸ The 2017 Regulations have been repealed by the Disaster Management Regulations of 2022.⁷⁹ Despite having been repealed, a review of the 2017 Regulations is critical for a comprehensive understanding of the foundation upon which Tanzania's disaster management legal regime in the context of humanitarianism is premised.

Disaster Management Regulations, 2017⁸⁰

To a great extent the Regulations re-iterated the Disaster Management Policy of ensuring disaster management planning commenced at the lowest

⁷⁶ Section 40 (2).

⁷⁷ It is available at: <https://oagmis.agctz.go.tz/portal/acts/162>

⁷⁸ The Disaster Management Regulations, G.N. No. 12 of 2017. Available at: <https://www.pmo.go.tz/uploads/documents/sw-1664370655-Disaster%20Management%20Regulations%202017.pdf>

⁷⁹ GN. No. 658A of 11th November 2022

⁸⁰ G.N. No. 12 of 2017.

level of local government structures. They also reflected the Policy's call to involve all key stakeholders, including humanitarian actors, in the disaster management processes at most levels.

Disaster Management Regulations, 2022⁸¹

The Disaster Management Regulations of 2022 are also in Kiswahili and were promulgated together with the Disaster Management Act. Regulation 30 repeals the 2017 Regulations. The repealed Regulations set the basis for the law and as noted above, they can be referred to by courts in the course of interpreting subsequent similar laws.

Compared to the 2017 Regulations, the 2022 Regulations are a major retrogressive step in terms of the humanitarianism-disaster management nexus. They have wiped out the concept of humanitarianism envisaged by the Policy and the 2015 Act and make no reference to international and regional obligations that the government has committed to that require engaging humanitarian actors in managing disasters. Instead, the Regulations introduce a very restricted procedure for engaging volunteers and humanitarian actors in disaster management processes. For example, Regulation 22 requires any person, private institution or NGO seeking to engage in disaster management activities to seek permission from Disaster Management Committees (DMCs) in respective regions, fill special Forms and take an oath of allegiance to signify compliance to ethics. Also, Regulations 26 and 28 provide for registration of all types of assistance intended for disaster victims with the DMCs.

The field findings reveal that personnel charged with managing disasters in Kagera understand the need to engage stakeholders through law. Nevertheless, they could not mention specific laws except for the Disaster Management Act of 2015. Also, none of the officials was aware of the repealed Regulations of 2017, except for some State Attorneys who nevertheless admitted not to have accessed them. None was aware of the nexus between the law and humanitarian responders.

Further, none of the respondents (except for the Deputy Attorney General, State Attorneys in Dodoma and some personnel at the DMA) were aware of the place of individual humanitarian responders in the national and international legal frameworks. However, all respondents from government supported the idea of government screening humanitarian responders before permitting them to engage directly in disaster relief

⁸¹ GN. No. 658A of 11th November 2022

operations. They argued that if not checked some individuals purporting to provide assistance may be detrimental to the interests of victims and government. Incidentally a few respondents from the villages and NGOs in Kagera also supported this view.

All respondents noted that during the Kagera earthquake, individuals aided victims before formal government approval and without government vetting the assistance. Victims also acknowledged support offered by relatives, neighbours and other individuals prior to government intervention and in some cases, they continued helping even after government's order to stop them.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSION

The article has analyzed the link between humanitarianism and disaster management in Tanzania's policy and legal framework, tracing its historical development and revealing how the national and international policy and legal instruments reflected this nexus. We have established that Tanzania has ratified disaster management related international and regional legal instruments recognizing humanitarianism responders.

Our review of Tanzania's disaster management policy and legal frameworks reveal that it does not appreciate humanitarian actors in disaster management. Most of the officials charged with implementing the disaster management legal framework and respondents were not aware of the repealed laws that set out the role of individual humanitarian actors.

We have noted that the Disaster Management Policy makes an effort to refer to humanitarian actors. However, it still needs to be improved to create an enabling environment for humanitarian responders to effectively engage in disaster operations. Further, findings reveal that policies in countries in East Africa, for example Kenya, acknowledge the critical relationship between humanitarianism respondents and governments in disaster operations.

In terms of the law, the new Disaster Management Act of 2022 and Regulations made under it do not recognize humanitarian actors. Thus, they are retrogressive in this regard. They are also not easily accessible. Only a few stakeholders we interviewed, including government officials, knew of the existence of the repealed 2017 Regulations.

Further, the Disaster Management Act of 2022 and its Regulations are written in Kiswahili in compliance with the law, making it difficult for

some stakeholders to comprehend, unless with aid of unofficial translations.⁸² Paradoxically the enactment of the Act and Regulations were not preceded with a review of the Policy. Thus, the government's approach in this regard is awkward as policies usually set the foundation for legislation.

RECOMMENDATIONS

The existing legal and policy framework of Tanzania needs to be reviewed further to adequately address the humanitarianism-disaster management nexus. The unfriendly terms in the Policy should be deleted and replaced as is in the case in Kenya.

The Regulations made under the new law should also be reviewed to reflect current trends at the international and regional planes, including the Sendai Framework. The National Disaster Management Plan, which recognizes indigenous knowledge systems as one of the nexuses between disaster preparedness, response and management and reflected in the repealed 2017 Regulations, should be emulated throughout.

Also, the Attorney General should translate the Disaster Management Act of 2022 and its Regulations into English to enable stakeholders at national and international levels to understand the disaster management legal framework thoroughly, rather than depend on unofficial translations.⁸³ All stakeholders must be able to understand such reports.

⁸² Section 4 (1) of the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2021 provides that the language of the laws in the United Republic of Tanzania shall be Kiswahili.

⁸³ The Attorney General can do this under section 33 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2020 and section 4 (3) of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2021.

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