

# Legal perspectives on the function of public- private partnerships in local disaster management in South Africa

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This study reflects the legal position in South Africa on 1 April 2014.

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## List of abbreviations

AFDB	African Development Bank
AISS	Advances in Information Sciences and Service Sciences
APEC	Asia-Pacific Economic Cooperation
ARSDRR	African Regional Strategy for Disaster Risk Reduction, 2004
ASB	Accounting Standards Board
ASR	African Security Review
AU	African Union
CE	Civil Engineering
CNDR	Corporate Network for Disaster Response
COGTA	Cooperative Governance and Traditional Affairs
CJLG	Commonwealth Journal of Local Government
CRED	Centre for Research on the Epidemiology of Disasters
CSR	Corporate Social Responsibility
DMA	Disaster Management Act 57 of 2002
DMISA	Disaster Management Institute of South Africa
FBSA	Fire Brigade Services Act 99 of 1987
HFA	Hyogo Framework for Action
ICJ Statute	Statute of the International Court of Justice, 1945
IFRC	International Federation of Red Cross and Red Crescent Societies
IJPDLM	International Journal of Physical Distribution and Logistics Management
IoDSA	Institute of Directors Southern Africa
JCCU	Japanese Consumers' Co-operative Union
JPA	Journal of Public Administration
LDM	Local Disaster Management
MFMA	Local Government: Municipal Finance Management Act 56 of 2003
NBI	National Business Initiative
NDMC	National Disaster Management Centre
NDMF	National Disaster Management Framework of 2005

NEPAD	New Partnership for Africa's Development
NVFFA	National Veld and Forest Fire Act 101 of 1998
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-operation and Development
PFMA	Public Finance Management Act 1 of 1999
PPP(s)	Public-private partnership(s)
PPV(e)	Publiek-privaat vennootskap(pe)
RTF-URR	Asian Regional Task Force on Urban Risk Reduction
SADC	South African Development Community
SADCC	South African Development Coordination Conference
SAFMA	South African Facilities Management Association
SAHF	South African Housing Foundation
SAHR	South African Health Review
SAJHR	South African Journal of Human Rights
SALGA	South African Local Government Association
SPV	Special purpose vehicle
SSREA	Safety at Sports and Recreational Events Act 2 of 2010
Stell LR	Stellenbosch Law Review
UNDP	United Nations Development Programme
UNISDR	United Nations International Strategy for Disaster Reduction

## Summary

It is anticipated that the occurrence and intensity of disasters will increase globally and in South Africa where typical disasters include droughts, floods, extreme hailstorms, gales, structural fires, as well as earthquakes and the occurrence of sinkholes in dolomitic areas arising from mining activity. Disasters such as these, result in human suffering and damage to the resources and infrastructure on which South Africans rely for their survival and the maintenance of their quality of life. In addition, such disasters impact severely on people's economic and social activities and have particularly negative consequences for those living in vulnerable conditions due to their high levels of poverty, their lack of access to resources, their lack of education, the degradation of the environments in which they live, and the nation's slow economic growth.

Section 24 of the *Constitution of the Republic of South Africa*, 1996 affords to everyone the right to an environment that is not harmful to his or her health and well-being. It may be argued that a person's sense of environmental security in relation to the potential risks and danger of disaster falls within the scope of the protection provided by section 24. The responsibility to intervene for the protection of the interests inherent in the constitutional environmental right lies with the government of South Africa. Disaster management specifically is a functional area of competence of national and provincial government, but, practice has shown that the actual implementation of and planning for disaster management happens in the local government sphere.

Against the backdrop of these introductory discussions and, given the fact that several municipalities in South Africa are under-resourced this study very specifically aims to question from a legal perspective, the potential and function of public-private partnerships (PPPs) between local government (municipalities) and the private sector (industries etc.) in fulfilling the legally entrenched disaster management duties of municipalities. Through a critical evaluation of some existing PPPs, this study illustrates that the private sector has a key role to play in assisting municipalities to fulfil their legally entrenched disaster management duties.

**Key words:**

Public-private partnerships; local disaster management; disaster management

## Opsomming

Daar word verwag dat die voorkoms en hewigheid van rampe regoor die wêreld en in Suid-Afrika gaan toeneem. Rampe kenmerkend aan Suid-Afrika sluit in byvoorbeeld droogte, vloede, ernstige haelstorms, wind, strukturele vure en die ontstaan van dolomietiese areas en aardskuddings wat veroorsaak word deur mynaktiwiteite. Sodanige rampe lei tot menslike lyding en veroorsaak skade aan die hulpbronne en infrastruktuur waarop mense steun vir oorlewing en die instandhouding van hul lewenskwaliteit. Bowendien veroorsaak sulke rampe skade aan ekonomiese en sosiale aktiwiteite en hou dit besondere negatiewe gevolge in vir mense in Suid-Afrika wat in kwesbare omstandighede leef as gevolg van hoë vlakke van armoede, 'n gebrek aan toegang tot hulpbronne, 'n gebrek aan opvoeding, omgewingsagteruitgang en stadige ekonomiese groei.

Artikel 24 van die *Grondwet van die Republiek van Suid-Afrika*, 1996 voorsien aan elkeen die reg tot 'n omgewing wat nie skadelik is vir sy of haar gesondheid of welsyn nie. Daar word aangevoer dat binne die strekwydte van hierdie reg 'n persoon se gevoel van omgewingsekuriteit en beskerming teen potensiële risiko's en die gevaar van rampe, ingesluit is. Die verantwoordelikheid om by die beskerming van artikel 24 in te tree berus by die regering van Suid-Afrika. Alhoewel rampbestuur 'n funksionele area van bevoegdheid van die nasionale en provinsiale owerhede is, wys praktyk dat die fisiese implementering van en beplanning vir rampbestuur in die plaaslike owerheidsfeer berus.

Teen die agtergrond van hierdie inleidende besprekings en met inbegrip van die feit dat 'n aantal munisipaliteite in Suid-Afrika onvoldoende hulpbronne tot hul beskikking het, beoog hierdie studie spesifiek om vanuit 'n regsperspektief ondersoek in te stel na die funksie van publiek-privaat vennootskappe (PPVe) tussen *plaaslike* regering (munisipaliteite) en die privaat sektor (industrieë, ens.) om die rampbestuur-pligte van munisipaliteite ingevolge die reg uit te voer. Hierdie studie evalueer bestaande PpVe vir rampbestuur ten einde te illustreer dat die privaat sektor 'n belangrike rol speel in die bystand aan plaaslike regering in die uitvoer van hul rampbestuurverpligtinge ingevolge die reg.

**Trefwoorde:**

Publiek-privaat vennootskappe; plaaslike rampbestuur; rampbestuur

# 1 Introduction

Since the dawn of their existence human beings have been affected by the occurrence of disasters.<sup>1</sup> Disasters result in a serious disruption of the functioning of a community or society, as they involve widespread human, material or environmental loss and damage, which often exceeds the ability of an affected community to cope by using its own resources.<sup>2</sup>

Disasters arise from both natural<sup>3</sup> and anthropogenic<sup>4</sup> causes. Over the past decades there has been a rapid increase in the number of disasters affecting the lives and livelihoods of communities all over the world.<sup>5</sup> While the numbers of disasters have increased, so has their intensity.<sup>6</sup> Worldwide, disasters are reported to have caused more than seven hundred and eighty thousand fatalities and to have destroyed property and infrastructure worth an estimated minimum of nine hundred and sixty billion dollars over the last decade.<sup>7</sup> It is anticipated that should the number of disasters continue to increase at this rate, one hundred thousand lives

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1 Coppola *Introduction to International Disaster Management* 1.

2 This is the internationally accepted definition for 'disaster'. See UNISDR *Terminology on Disaster Risk Reduction* 9. This definition has also been adopted in South Africa in the *Disaster Management Act 57 of 2002* (hereafter the DMA), which provides the country's framework for disaster management.

3 A 'natural disaster or hazard' can be defined as any natural process or phenomenon such as an extreme geophysical and biological event that may cause loss of life, injury or other health impacts, property damage, loss of livelihoods and services, social and economic disruption or environmental damage. Examples of natural disasters are earthquakes, volcanic eruptions, landslides, avalanches, cyclones, tornado's, floods, drought and wildfires. See *Smith Environmental Hazards: Assessing Risk and Reducing Disaster* 4 – 5.

4 Natural disasters generally cannot be produced, influenced or prevented by man. 'Anthropogenic disasters or hazards', however, arise from human activities and are often categorised as 'technological'. See Uys 2005 *JPA* 407 – 408. Technological disasters or hazards are hazards or disaster originating from technological or industrial conditions, including accidents, dangerous procedures, infrastructure failures or specific human activities that may cause loss of life, injury, illness or other health impacts, property damage, loss of livelihoods and services, social and economic disruption or environmental damage. Examples of anthropogenic or technological disasters are rail and air crashes, shipwrecks, explosions, fires, the release of toxic or radioactive materials, and oil spills. See *Smith Environmental Hazards: Assessing Risk and Reducing Disaster* 5 – 7.

5 Van Niekerk "Disaster Risk Reduction and Climate Change Adaptation Towards Community Resilience" (on file with author). Also see Hagelsteen and Becker 2013 *International Journal of Disaster Risk Reduction* 4.

6 McClean *World Disasters Report 2010: Focus on Urban Risk* 11.

7 Bang 2013 *Jamba: Journal of Disaster Risk Studies* 1. Also see Guha-Sapir *et al Annual Disaster Statistical Review 2010: The Numbers and Trends* 1 – 2.

could be lost each year with the costs of disasters reaching three hundred billion dollars by the year 2050.<sup>8</sup>

Although South Africa is generally not regarded as a country at high risk of disasters, the country is struck from time to time by damaging disasters such as runaway veld- or wildfires, severe weather events, drought, floods, extreme hailstorms, gales, structural fires, as well as earthquakes and the occurrence of sinkholes in dolomitic areas arising from mining activity.<sup>9</sup> Increasingly, such disasters are having an impact on the lives of South Africans as well as on their property, environment, infrastructure, economic and social development and activities.<sup>10</sup> Typical consequences of such disasters include human suffering and damage to the resources and infrastructure on which people rely for their survival and the maintenance of their quality of life.<sup>11</sup> Moreover, the majority of South Africa's population lives in vulnerable conditions due to their high levels of poverty, their lack of access to resources, their lack of education, the degradation of the environments in which they live, and the slow economic growth of the country, which factors render them particularly vulnerable to the effects of disaster.<sup>12</sup> The scope of the impact and the consequences of such disasters serve to emphasise the pressing need for improved disaster risk reduction and disaster management.<sup>13</sup>

According to section 24 of the *Constitution of the Republic of South Africa*, 1996 (hereafter the Constitution) everyone has the right to an environment that is not

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8 Bang 2013 *Jamba: Journal of Disaster Risk Studies* 1.

9 Botha and Van Niekerk 2013 *Jamba: Journal of Disaster Risk Studies* 2 – 3. For general information on the disaster risk profile of South Africa, also see Meyer 2011 *Official Journal of the Disaster Management Institute of South Africa* 1 – 27.

10 Louw and Van Wyk 2011 *Civil Engineering* 16.

11 Louw and Van Wyk 2011 *Civil Engineering* 16. Also see Botha and van Niekerk 2013 *Jamba: Journal of Disaster Risk Studies* 3.

12 Botha and Van Niekerk 2013 *Jamba: Journal of Disaster Risk Studies* 3.

13 It is important to note that the term 'disaster management' is no longer used in the international arena as it suggests a response to disaster as opposed to disaster risk reduction. See UNISDR *Terminology on Disaster Risk Reduction* 10. In this regard it has now also become common practice in South Africa to use the more inclusive term 'disaster risk management' as evidenced by research and policy. See Coetzee *The Development, Implementation and Transformation of the Disaster Management Cycle* 54 and Van Niekerk "Disaster Risk Reduction and Climate Change Adaptation Towards Community Resilience" (on file with author). To the extent that the DMA does not provide a definition for either disaster risk reduction or disaster risk management, the author chooses to refer where relevant to both 'disaster management' and 'disaster risk reduction'.

harmful to their health or well-being and to have the environment protected for the benefit of present and future generations.<sup>14</sup> In this context the term 'health' refers to the health of individuals or of the public at large and includes being in a state of complete physical, mental and social well-being – i.e. it does not refer exclusively to the absence of disease or infirmity.<sup>15</sup> People's health can be negatively affected by external factors such as pollution, exposure to hazardous substances or the provision of insufficient access to safe drinking water or sanitation.<sup>16</sup> Environmental changes and ecosystem impairment as a result of disasters such as floods and landslides, for instance, can, however, also lead to direct health impacts (the risk of infectious disease) and displaced health impacts (the health consequences of livelihood loss and population displacement.)<sup>17</sup> It is therefore suggested that because of their health impacts, disasters and their concomitant effect on people's work and living spaces fall within the regulatory scope of section 24 of the Constitution.<sup>18</sup>

The constitutional environmental right further provides for the protection of a person's well-being, which encompasses those environmental interests that do not necessarily have health implications.<sup>19</sup> The reference in section 24 to well-being implies that people should also be protected against environmental harm which may impact on their ability to be content and at ease.<sup>20</sup> In addition, someone's knowledge or reasonable anticipation or fear of a threat to his or her environment and natural resources anywhere may also impact on his or her environmental well-being.<sup>21</sup> It follows that the meaning of the term 'well-being' is very wide,<sup>22</sup> which renders it valid to argue that section 24 also affords protection of a person's sense

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14 S 24(a) and (b) of the Constitution.

15 Du Plessis 2011 *SAJHR* 293. Also see Currie and De Waal *The Bill of Rights Handbook* 519 and Feris "Environmental Rights and Locus Standi" 135 – 138.

16 Du Plessis 2011 *SAJHR* 293.

17 Currie and De Waal *The Bill of Rights Handbook* 519

18 Van der Berg and Du Plessis 2013 *SAPL* 449 – 450.

19 This is illustrated by the court in *Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelts Products and Others* 2004 2 SA 393 (E) para B – E (hereafter the *Hichange*-case) where it was held that no one should be obliged to work in an environment of stench and that to be in such an environment is adverse to one's well-being. For a discussion of the *Hichange*-case see Kotzé 2007 *Reciel* 302 – 303.

20 Du Plessis 2011 *SAJHR* 295.

21 Kidd *Environmental Law* 23.

22 Glazewski *Environmental Law in South Africa* 5 – 16.

of environmental security – including in relation to the potential risks and danger of disaster.<sup>23</sup>

The right to an environment that is not harmful to people's health or well-being forms part of the Bill of Rights in chapter 2 of the Constitution and must be read with section 7(2), which places an obligation on the state (i.e. the entire government) to respect, protect, promote and fulfil the rights contained in the Bill of Rights.<sup>24</sup> Section 41 of the Constitution further requires all spheres of government to secure the well-being of the people.<sup>25</sup> Based on the view that protection against the impacts of disaster falls within the scope of the rights-based protection afforded by the Constitution,<sup>26</sup> it is argued that the state has an enforceable constitutional duty to ensure the health (personal and environmental) and safety of the people in South Africa.<sup>27</sup> Thus, it may be argued that the authorities have the duty to intervene for the protection of people's health and safety *inter alia* in the event of and in preparation for potential disaster.

While disaster management is a functional area of competence of national and provincial government;<sup>28</sup> local government is not exempted from disaster management and disaster risk reduction responsibilities. Section 152 of the Constitution provides that the objects of local government include the promotion of a safe and healthy environment.<sup>29</sup> Section 156 of the Constitution further provides for the assignment to a municipality, by agreement and subject to any conditions, of the administration of any matter listed in part A of Schedule 4 (i.e. disaster management) that necessarily relates to local government, if that matter would most effectively be administered locally and if the municipality has the capacity to

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23 Van der Berg and Du Plessis 2013 *SAPL* 450.

24 S 7(2) of the Constitution.

25 S 41(1)(b) of the Constitution.

26 In the *Fuel Retailers Association of Southern Africa v Director General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 6 SA 4 (CC) (hereafter the *Fuel Retailers-* case) the idea of the environmental right as a foundation for basic human existence was confirmed when the court held that 'the importance of the protection of the environment cannot be gainsaid as it is vital to the enjoyment of the other rights contained in the Bill of Rights and must therefore be protected.' See the *Fuel Retailers-* case par 102. In the light of the court's view in this case it is submitted that the protection of the environmental right is vital to protection against disaster.

27 SALGA 2011 <http://bit.ly/1bhyoPA>.

28 Schedule 4 A of the Constitution.

29 S 152(e) of the Constitution.

administer it.<sup>30</sup> It is generally accepted that to ensure effective disaster management and disaster risk reduction, the actual implementation of disaster management practice and planning must be focussed in the local government sphere.<sup>31</sup> In this regard practice has shown that it is in the sphere of local government where disaster management and disaster risk reduction can in principle be executed most effectively.<sup>32</sup> This thinking has also pervaded chapter five of the DMA, which provides with respect to local government for example that each district and metropolitan municipality must establish a Municipal Disaster Management Framework and a Municipal Disaster Management Centre<sup>33</sup> and that municipal entities should have disaster management plans.<sup>34</sup> Section 54 of the DMA creates a number of responsibilities for different categories of municipalities in the event of a local disaster.

The duties of municipalities in terms of disaster management and disaster risk reduction may be amended and may even increase when the recently *Disaster Management Amendment Bill* comes into effect.<sup>35</sup> The Bill re-defines key definitions for disaster management, for example, and places a significantly increased burden on local government by expanding the contents and scope of disaster management plans to include risk assessments.<sup>36</sup> Bearing the range of existing and possibly expanded duties of local government in mind, it appears that municipalities, which are generally considered to be under-resourced,<sup>37</sup> may face increased challenges with the effective implementation of compulsory local disaster management<sup>38</sup>

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30 S 156(4) of the Constitution. It is suggested that s 156(4) is in keeping with the principle of institutional subsidiarity which entails that governance should take place as close as possible to the citizens and that national and provincial government fulfil a subsidiary role. The principle translates into a preference for placing functions and powers at lower spheres of government where possible. See De Visser 2010 *Stell LR* 90 90 – 115.

31 SALGA 2011 <http://bit.ly/1bhyoPA>.

32 SALGA 2011 <http://bit.ly/1bhyoPA>.

33 S 42 of the DMA. The DMA and all applicable provisions will be discussed in section 2, par 2.3.2.1.1 below.

34 S 52(1) of the DMA.

35 This Bill is currently a draft version submitted for comments by the Department of Cooperative Governance and Traditional Affairs on 19 June 2013 as GN 637 in GG 36580 of 19 June 2013.

36 GN 637 in GG 36580 of 19 June 2013.

37 Phago and Malan 2004 *JPA* 481. For a discussion of the full scope on the under-resourcing of local government in general see COGTA 2009 <http://bit.ly/Pd6evf>, and with regard to local governments being under-resourced in relation to disaster management in particular also see SALGA 2011 <http://bit.ly/1bhyoPA>. Also the discussion in section 2, par 2.4 below.

38 Hereafter LDM.

strategies. Disaster management is furthermore not an isolated activity.<sup>39</sup> The scope of disaster management is as broad as the risks that society faces, and it is becoming increasingly complex and multi-faceted.<sup>40</sup>

Given the background provided above, it may be useful to explore and evaluate the extent to which municipalities in South Africa could benefit from partnering with other role players in order to effectively manage the risk of disaster and the occurrence and impacts of actual disasters. The purpose of this study is therefore to question the function of public-private partnerships<sup>41</sup> between local government (municipalities) and the private sector (industries etc.) specifically in fulfilling the legally entrenched disaster management duties of municipalities. This question is considered from a legal perspective, while the study is premised in part on the increasing trend for government to use PPPs as a vehicle for the successful development and implementation of government (public sector) projects.<sup>42</sup> PPPs in all three spheres of government have to date been entered into with respect to urban development, transportation, the provision of water and waste water services, utilities and financial management, for example.<sup>43</sup>

This study is based on a literature review of textbooks, journal articles, legislation, government policy, case law, international reports and internet sources. Primary and secondary source material relating to LDM and PPPs is critically analysed and incorporated into the eventual recommendations and conclusion of this study. The meaning and growing relevance of LDM is explored in section 2. Subsequently, PPPs as local governance tools are examined in section 3. Section 4 consists of a critical and illustrative discussion on the relevance of PPPs for LDM. Finally, the study concludes with a discussion of what the function of PPPs is in LDM, which includes the making of a number of findings and recommendations.

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39 Van Niekerk "Disaster Risk Reduction and Climate Change Adaptation Towards Community Resilience" (on file with author).

40 Uys 2005 *JPA* 409 and UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 34.

41 Hereafter PPP or PPPs.

42 Metcalfe 2013 *Civil Engineering* 30.

43 Stewart, Kolluru and Smith 2009 *IJPDLM* 346.

## 2 LDM: meaning and growing relevance

### 2.1 Introduction

Local communities are becoming increasingly vulnerable to disasters.<sup>44</sup> Together with climate change,<sup>45</sup> factors such as the sheer scale of the number of people and assets concentrated in urban areas<sup>46</sup> as well as inadequate basic services, food security challenges, problems with law enforcement and disrespect for local laws such as building codes<sup>47</sup> cause disasters to be more acutely experienced at local level.<sup>48</sup> Municipalities are often the first in line of response when disasters occur and generally have a wide range of responsibilities regarding the prevention and management of disasters, including the restoration of disaster stricken areas.<sup>49</sup>

Examples of recent disasters in South Africa affecting communities and illustrating the relevance of the role and function of municipalities in LDM include floods, droughts, dolomite instability and oil spills. In June 2007 heavy rain in the Western Cape caused flooding in the municipal areas of Saldanha Bay, Cederberg, Matzikama, Bergrivier and Swartland as well as in the West Coast District Municipality, for example.<sup>50</sup> These floods resulted in injuries, loss of life and damage to municipal infrastructure, agriculture, roads and houses and prompted a concerted response from all of the above mentioned municipalities to provide search and rescue, evacuation and shelter to the disaster stricken communities.<sup>51</sup>

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44 Van Niekerk "Local Government Disaster Risk Management" 229.

45 It is generally accepted that climate change has an increasing effect in the frequency, intensity and patterns of disaster. See Zetter *World Disaster Report 2012: Focus on Forced Migration and Displacement* 16. For general information on the duties of local government in relation to climate change see Du Plessis "Climate Governance in South African Municipalities: Opportunities and Obstacles for Local Government" 353 – 387.

46 UNISDR *Making Cities Resilient: Summary for Policy Makers* 4. In urban areas the causes of disasters include rapid growth and inadequate planning, the population density, ecological imbalances caused by poor environmental management, and inadequate investment in infrastructure. See NDMC Date Unknown <http://bit.ly/O2W00s>.

47 McClean *World Disasters Report 2010: Focus on Urban Risk* 8. In rural areas the causes of disaster are often related to poor land-use management, erosion, deforestation, and a lack of employment and development. See NDMC Date Unknown <http://bit.ly/O2W00s>.

48 Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level" 293.

49 UNISDR *How to Make Cities More Resilient: A Handbook for Local Government Leaders* 7.

50 Department of Local Government and Housing 2007 <http://bit.ly/O2YsEa>.

51 Department of Local Government and Housing 2007 <http://bit.ly/O2YsEa>.

In addition, in 2009 a reduction in rainfall caused severe drought in the area across the Eden and Central Karoo District Municipalities.<sup>52</sup> This drought affected livestock farmers due to the compromised grazing conditions and severe lack of water.<sup>53</sup> The impact of the drought necessitated wide ranging municipal efforts to reduce urban water demand as well as to increase water supply through emergency interventions.<sup>54</sup> Furthermore, in 2011 the formation of potentially life threatening sinkholes in Bapsfontein compelled the Ekurhuleni Metropolitan Municipality to remove residents from the hazardous area after the municipality commissioned engineers to conduct an investigation of the sinkholes and the possible risks involved.<sup>55</sup>

In 2013 a leaking tank on a cargo ship spilled three tons of oil into the sea off the Knysna coast, resulting in a high risk of the pollution of the surrounding estuaries.<sup>56</sup> The Knysna Municipality together with various other stakeholders had to clean the oil spill and put protective measures in place to prevent pollution and subsequent risks to the surrounding communities, environment and wildlife.<sup>57</sup> Most recently, in March 2014 the Gauteng Province experienced the heaviest rainfall in fourteen years.<sup>58</sup> The rain resulted in severe flooding and washed away roads and bridges in Johannesburg.<sup>59</sup> Local municipalities were furthermore forced to declare a local

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52 Holloway *et al* *Eden and Central Karoo Drought Disaster 2009 -2011 The Scramble for Water* 4.

53 Holloway *et al* *Eden and Central Karoo Drought Disaster 2009 -2011 The Scramble for Water* 1.

54 Holloway *et al* *Eden and Central Karoo Drought Disaster 2009 -2011 The Scramble for Water* 33.

55 *Pheko and Other's v Ekurhuleni Metropolitan Municipality* 2012 2 SA 598 (CC). Hereafter the *Pheko-* case. In the *Pheko-* case the Ekurhuleni Metropolitan Municipality found itself at odds with the residents it removed from a potential disaster stricken area, because of the way the Municipality went about removing them. See the *Pheko-* case para's 5 – 11. The Constitutional Court found *inter alia* that because the Ekurhuleni Metropolitan Municipality removed the residents without a court order, the removal of the residents was unlawful. See *Pheko-* case para 49. It is suggested, however, that municipalities play an imperative role in preventing loss of life or injury in circumstances where municipalities do take note of impending disaster and consequently take preventative steps such as removing residents (following the correct procedure) from potential disaster situations. More recently the situation in the *Pheko-* case as well as the growing risk for disaster caused by dolomite instability in the area of the Ekurhuleni Metropolitan Municipality has prompted the Municipality to draft a by-law on Dolomite Risk Management as announced in LAN 1110 in PG 228 of 14 August 2013.

56 Matyalana 2013 <http://bit.ly/1kQO3bY>. For further information regarding the oil spill also see Scholtz and Engelbrecht 2013 <http://bit.ly/1jAn8hc>.

57 Matyalana 2013 <http://bit.ly/1kQO3bY>.

58 Ngobeni 2014 <http://bit.ly/OnUg1e>.

59 Anastasiou 2014 <http://bit.ly/1nQWIKy>.

state of disaster in Lephalale (formerly Ellisras) and had to evacuate five thousand residents who were in danger due to the rising water levels of the Mokolo dam.<sup>60</sup>

The examples above illustrate the impact that disasters have on municipalities and local communities.<sup>61</sup> Disasters have the potential to destroy years of development and often slow down municipal planning and service provision.<sup>62</sup> These effects, along with the proximity and scale of disasters, make it possible to infer that not only does local government play an important role in preventing and managing disasters, but as organs of state municipalities also have a range of responsibilities or duties related to disaster management. There are, however, no explicit or concentrated terms of reference to collectively describe the nature and extent of all of local government's duties in managing disaster.

In order to identify and evaluate the said duties of local government, the remainder of this section is devoted to defining LDM and to a discussion of the LDM responsibilities of local government as provided for in international and South African law.

## **2.2 LDM defined**

Defining the term LDM first requires a brief consideration of the notions of local government and disaster management.

### *2.2.1 Local government*

The term 'local government' cannot be understood without explaining the mother concept, government, which may be best described as a group of people or a body governing a country or state and responsible for the control or direction of public affairs.<sup>63</sup> No universally accepted definition of local government exists, mainly because of the variation of state powers and functions within different countries'

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60 Mailovich and Louw-Carstens 2014 <http://bit.ly/1fUY85R>.

61 NDMC Date Unknown <http://bit.ly/O2W00s>.

62 NDMC Date Unknown <http://bit.ly/O2W00s>.

63 Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 141.

state structures.<sup>64</sup> Local government, however, owes its existence to the notion of decentralisation, which denotes the transference of authority, whether legislative or administrative/executive authority, from a higher level of government to a lower level of government.<sup>65</sup>

Local governments are usually the smallest government institutions in any state and are regarded as the corner stones of modern democratic systems.<sup>66</sup> Local government serves as an effective counterweight to the over-concentration of government authority in the other spheres of government.<sup>67</sup> Some characteristics of local government include locality, legal personality, autonomy, governmental power, and participation and representation.<sup>68</sup> Local government usually consists of a number of constituents or separate local authorities that are responsible for governance in different dedicated geographical and or thematic areas in a country.<sup>69</sup> Reddy<sup>70</sup> defines local government as:

the level of government deliberately created to bring government to the local populace as well as to give its members a sense of involvement in the political processes that control their daily lives

A more comprehensive definition of local government is provided by Meyer:<sup>71</sup>

local democratic units within the democratic system which are subordinate members of the government vested with prescribed, controlled governmental powers and sources of income to render specific local services and to control and regulate the geographic, social and economic development of identified local areas

In South Africa, local government is one of three spheres of government in which government authority is exercised.<sup>72</sup> The local sphere of government consists of municipalities, which have been established for the whole of the territory of the

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64 Du Plessis 2010 *Stell LR* 271.

65 Reddy 2010 *Politeia* 66.

66 Rautenbach and Malherbe *Constitutional Law* 227.

67 Bekink *Principles of South African Local Government Law* 61.

68 Reddy *Local Government Democratisation and Decentralisation* 10.

69 Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 142.

70 Reddy *Local Government Democratisation and Decentralisation* 9.

71 Meyer in Reddy *Local Government Democratisation and Decentralisation* 10.

72 Rautenbach and Malherbe *Constitutional Law* 227.

Republic.<sup>73</sup> These municipalities govern within specific areas of jurisdiction<sup>74</sup> and consist of the political structures and administration of the municipality as well as the local community.<sup>75</sup> While the community is regarded as an integral part of the functioning of municipalities,<sup>76</sup> municipalities have separate legal personalities, a fact which excludes liability on the part of the community for the actions of the municipality.<sup>77</sup> The councils of municipalities are entrusted with the authority to exercise legislative and executive authority in their jurisdictions within the limits of the Constitution and subject to national and provincial legislation.<sup>78</sup> Local government also has the power to provide and function of providing services such as waste and water management, energy (electricity), and disaster management services, and is responsible for the maintenance of amenities such as schools and medical centres and municipal planning, all of which in turn promotes and maintains the well-being of the relevant community.<sup>79</sup> Local government can therefore be aptly described as the 'sphere' of government closest to the people and as a part of government with very specific developmental duties and functions.<sup>80</sup>

### 2.2.2 Disaster management

Crucial to defining LDM is the definition of disaster management. Over the past years the field of disaster management has become increasingly researched in the pursuance of achieving a better understanding of the hazards that shape our natural and built environments and to set standards to bring about a safer world.<sup>81</sup> Disaster management as a function of government entails the establishment of structures within the public sector which assume administrative functions and operational

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73 S 151(1) of the Constitution.

74 The jurisdiction of municipalities in South Africa is determined by the Demarcation Board, which functions in terms of the *Local Government: Municipal Demarcation Act 27* of 1998. See s 2(a) of the *Local Government: Municipal Systems Act 32* of 2000 (hereafter the Systems Act).

75 S 2(b)(i)-(ii) of the Systems Act.

76 Steytler and De Visser *Local Government Law of South Africa* 1 – 24.

77 S 2(d) of the Systems Act.

78 Van der Walt "Metropolitan Management: An Orientation" 3. Also see s 151(3) of the Constitution and Steytler and De Visser *Local Government Law of South Africa* 1 – 26.

79 Van der Walt "Metropolitan Management: An Orientation" 4. Also see Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere* 145 and Botha and Van Niekerk 2013 *Jamba: Journal of Disaster Risk Studies* 1 – 10.

80 Rautenbach and Malherbe *Constitutional Law* 227.

81 Section 2 paragraph 2.1 of the *White Paper on Disaster Management* of 1999. Also see Wisner, Gaillard and Kelman "Challenging Risk" 1.

activities and that guide, oversee and advise on issues related to disaster management.<sup>82</sup>

Jeggle<sup>83</sup> explains disaster management as the organisation and management of resources and responsibilities for dealing with all aspects of emergencies, and states that it involves preparedness, response and rehabilitation. In addition, the term 'emergency management' is used by some as a synonym for 'disaster management'. Emergency management involves plans, structures and arrangements established to bring together the normal endeavours of government with voluntary and private agencies in a community in a comprehensive and coordinated way to address the whole spectrum of emergency needs.<sup>84</sup> Further, Coburn, Spence and Pomonis<sup>85</sup> state that disaster management is a collective term encompassing all aspects of planning for and responding to disasters, including both pre- and post-disaster activities. They believe that disaster management consists of managing both the risks and the consequences of disaster.

Internationally, the United Nations Development Programme<sup>86</sup> defines disaster management as 'the body of policy and administrative decisions and operational activities which pertain to the various stages of disaster at all levels.'<sup>87</sup> Of particular relevance to this study, as focussed in the South African context, is the legal definition of disaster management provided in the DMA:<sup>88</sup>

- a continuous and integrated multi-sectoral, multidisciplinary process of planning, and implementation 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.

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82 Van Niekerk 2006 *Politeia* 101. Also see NDMC Date Unknown <http://bit.ly/O2W00s>.

83 Van Niekerk citing Jeggle in Van Niekerk "Local Government Disaster Risk Management" 232.

84 Van Niekerk "Local Government Disaster Risk Management" 232.

85 Coburn, Spence and Promonis *Vulnerability and Risk Assessment* 67.

86 Hereafter UNDP.

87 UNDP *An Overview of Disaster Management* 21.

88 S 1 of the DMA.

The DMA definition of disaster management suggests that it encompasses the management of resources and responsibilities for dealing with all aspects of disaster prevention and mitigation as well as preparedness, response and recovery.<sup>89</sup> The reference to ‘reducing the risk of disasters’ indicates that disaster risk management or disaster risk reduction forms part of disaster management.<sup>90</sup> Disaster risk management aims to avoid, lessen or transfer the adverse effects of disasters<sup>91</sup> and refers to the concrete application of disaster risk reduction.<sup>92</sup> Disaster risk reduction, on the other hand, aims to reduce the risk of disaster through systematic efforts for example to analyse and manage the causal factors of disasters, including through reduced exposure to hazards, wise management of land and the environment, and improved preparedness for adverse events.<sup>93</sup> It follows that disaster management includes disaster risk reduction and that LDM should correspondingly include (local) disaster risk reduction.

### 2.2.3 LDM

As is evident from the wording in the DMA, the responsibility to manage disaster applies to all spheres of government in South Africa<sup>94</sup> while the DMA definition of disaster management therefore encapsulates such management in the local sphere of government. Based on the definitions already discussed, the term LDM is adopted in this study for the purposes of appraising disaster management in the local government context.

LDM is defined for this purpose as follows:

A continuous and integrated multi-sectoral, multidisciplinary process of planning and implementation measures undertaken by local government (municipalities) as the sphere of government closest to the people, aimed at: preventing or reducing the risk of disasters; mitigating the severity or consequences of disasters; emergency preparedness; a rapid and effective response to

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89 Holloway 2003 *ASR* 33. Also see Burnham “Disaster Definitions” 37.

90 Van Niekerk 2006 *Politeia* 99.

91 UNISDR *Terminology on Disaster Risk Reduction* 9.

92 Van Niekerk “Disaster Risk Reduction and Climate Change Adaptation Towards Community Resilience” (on file with author).

93 UNISDR *Terminology on Disaster Risk Reduction* 10 – 11.

94 Preamble to the DMA.

disasters; and post-disaster recovery and rehabilitation. LDM necessitates a collection of legislative, executive and administrative functions used by local government not only to alleviate the effects of disaster but also to utilise all resources in minimising the possibility of the risk and/or occurrence of disasters by managing the causal factors of disasters, reducing exposure to hazards, and improving preparedness for adverse events.

LDM encapsulates the decentralised and devolved legislative, executive and administrative functions of municipalities in order to reduce the risk of potential disasters and to manage the effects of disaster in the local sphere of government. Applying the principle of subsidiarity<sup>95</sup> in this context, it may be said that disaster management is a typical government function that can in many instances, depending of the nature of disaster, be best dealt with at the most local level or sphere of government.<sup>96</sup>

The successful implementation of disaster management generally requires all aspects of planning for and responding to disasters, including hazard analysis,<sup>97</sup> vulnerability reduction,<sup>98</sup> preparedness,<sup>99</sup> prevention,<sup>100</sup> mitigation,<sup>101</sup> response,<sup>102</sup> and recovery and rehabilitation.<sup>103</sup> With regard to LDM, municipalities have very specific legal duties in terms of prevention and mitigation, preparedness, response, and recovery and rehabilitation.<sup>104</sup> Prevention and mitigation are often used

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95 See the discussion in section 1 above.

96 Lavell *et al* "National Planning and Disaster" 638.

97 Hazard analysis entails the gathering of information from assessments of risks and their consequences in a particular environment. See Burnham "Disaster Definitions" 37.

98 Vulnerability reduction involves actions aimed at lowering the propensity to incur harm in the event of a disaster. See Coppola *Introduction to International Disaster Management* 29.

99 Preparedness refers to the knowledge and capacities developed to effectively respond to and recover from the impacts of disasters or potential disasters. See UNISDR *Terminology on Disaster Risk Reduction* 21.

100 Prevention entails activities that provide outright avoidance of the adverse impact of natural and anthropogenic disasters. See UNISDR *Terminology on Disaster Risk Reduction* 22.

101 Mitigation measures entail the lessening or limitation of the adverse impacts of disasters. See UNISDR *Terminology on Disaster Risk Reduction* 19.

102 Response necessitates the provision of emergency services and public assistance during or immediately after a disaster in order to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the people affected by disaster. See UNISDR *Terminology on Disaster Risk Reduction* 24.

103 Donohue, Masilela and Gear 2000 SAHR 457. Recovery and rehabilitation entail decisions and actions taken after a disaster with a view to restoring the living conditions of the stricken community, while encouraging and facilitating adjustments to reduce disaster risk. See UNISDR *Terminology on Disaster Risk Reduction* 23 and Holloway 2003 ASR 34.

104 NDMC Date Unknown <http://bit.ly/O2W00s>. Examples of the local government duties in terms of each of these areas are discussed below.

interchangeably and are regarded as pre-disaster activities involving the assessment of risk and the lessening of the potential effects of disasters, but also include post-disaster activities aimed at reducing the potential damage of future disasters.<sup>105</sup> Municipalities are particularly well-positioned to prevent disaster by conducting or initiating certain activities before a disaster occurs, e.g. constructing a dam or levee to control flood water, or establishing control-burning programmes in a veld fire area.<sup>106</sup> Critically important is spatial development planning as part of municipalities' integrated development planning.<sup>107</sup> Additional prevention or mitigation activities include the development of building codes which aim to protect against certain disasters by restricting certain types of activities that may be performed in a building, for example.<sup>108</sup>

Preparedness measures such as the maintenance of inventories or resources, the training of personnel to manage disasters, ensuring that timely and effective early warning systems are in place, and the temporary removal of people from property in a threatened location are examples of essential components of managing and fostering preparedness for disaster.<sup>109</sup> In addition, risk assessments are essential in enabling municipalities to be prepared for disaster.<sup>110</sup> As part of their LDM functions, municipalities should carry out detailed risk assessments in order to identify the appropriate preventative actions that can not only reduce the impacts of particular disasters but also ensure that they can adequately prepare for disaster.<sup>111</sup>

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105 Uys 2005 *JPA* 410. Also see Holloway 2003 *ASR* 29 – 36.

106 NDMC Date Unknown <http://bit.ly/O2W00s>.

107 See the recently decided case of *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others; Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v City of Cape Town and Others* (117/13) [2014] ZACC 9 (4 April 2014) where the Constitutional Court confirmed that municipalities have the final say on how land inside their boundaries is developed. Against the contextual background of the study thus far it is submitted that spatial development planning is an important tool utilised by municipalities in the prevention and mitigation of potential disasters.

108 Coppola *Introduction to International Disaster Management* 211.

109 Holloway 2003 *ASR* 34. Also see NDMC Date Unknown <http://bit.ly/O2W00s>.

110 Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level" 302. Also see NDMC Date Unknown <http://bit.ly/O2W00s>.

111 Burnham "Disaster Definitions" 36. Risk assessments are useful both in preventing and mitigating disaster and in aiding preparedness for disaster. See NDMC Date Unknown <http://bit.ly/O2W00s>.

Response processes begin as soon as it becomes apparent that a disastrous event is imminent and last until a disaster is declared to be over.<sup>112</sup> Response includes the provision of services that directly address immediate needs (such as first aid, search and rescue, and shelter) and includes systems developed to coordinate and support such efforts.<sup>113</sup> Moreover, in responding to disaster municipalities must ensure that the community can resume their use of critical infrastructure. This allows recovery to take place, reduces further injury and loss of life, and speeds up the return to a normally functioning society.<sup>114</sup> Typical response activities for this purpose includes opening transportation routes, restoring communications and electricity, and ensuring the distribution of food and clean water.<sup>115</sup>

Recovery and rehabilitation include actions that seek to establish or re-establish the everyday life of the community affected by the disaster.<sup>116</sup> Actions and activities commonly performed in the recovery period of disaster include for example the assessment of damages and needs, the provision of temporary shelter, the demolition of damaged structures, the clearance, removal and disposal of debris, the establishment of social rehabilitation programmes and the reassessment of disaster risks.<sup>117</sup> In addition to the reestablishment of public services and infrastructure, it is essential that municipalities recover the social and public space of the community, such as parks and treasured landmarks.<sup>118</sup>

This brief introduction to the meaning and components of LDM serves to show that LDM is a multi-dimensional and complex local government function which requires forward thinking, response capabilities and a range of resources. To be effective, LDM efforts should address all of the aspects of disaster management including prevention, mitigation, preparedness, response, recovery and disaster-related development.<sup>119</sup> The LDM-related duties of local government referred to above are

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112 Coppola *Introduction to International Disaster Management* 305.

113 Coppola *Introduction to International Disaster Management* 306. Also see Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level" 299.

114 Coppola *Introduction to International Disaster Management* 307.

115 Coppola *Introduction to International Disaster Management* 307. Also see Dash, Mishra and Mishra 2013 *International Journal of Supply Chain Management* 55 – 57.

116 Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level" 301.

117 Coppola *Introduction to International Disaster Management* 378.

118 Wisner, Gaillard and Kelman "Framing Disaster" 30 – 31.

119 NDMC Date Unknown <http://bit.ly/O2W00s>.

merely a sample of a range of responsibilities regarding disaster management. Several pieces of legislation further provide for local government duties and responsibilities with respect to disaster management. The discussion below turns to an outline of the applicable legal framework and its provisions on local government.

## **2.3 LDM through the lens of the law**

Different policy and legal tools or instruments are used to manage disasters. These tools are powerful capacitors in ensuring that disaster management as a function of government is carried out and administered effectively.<sup>120</sup> The tools which are applicable in ensuring effective disaster management include *inter alia* policies, strategies and frameworks often found in law.<sup>121</sup> In moving forward to the topic of these instruments and the duties (mandates) of local government to which they pertain, this section discusses the applicable international, regional and South African law framework.

### *2.3.1 LDM mandate of municipalities as provided for in the international and regional law context*

#### 2.3.1.1 International context

In South Africa the implementation of international disaster management instruments is essential.<sup>122</sup> The South African National Disaster Management Centre<sup>123</sup> has listed important international law instruments which regulate disaster management and disaster risk reduction in the international context as well as in South Africa.<sup>124</sup> These instruments were created by the United Nations<sup>125</sup> and include the *Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation*,<sup>126</sup> the *United Nations*

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120 Llosa and Zodrow 2011 <http://bit.ly/1cjwV6B>.

121 Llosa and Zodrow 2011 <http://bit.ly/1cjwV6B>.

122 S 7(2)(c)(i) of the DMA.

123 Hereafter NDMC.

124 NDMC Date Unknown <http://bit.ly/1kQu64T>.

125 Hereafter UN.

126 Of 1994. Hereafter the Yokohama Strategy.

*Millennium Declaration*,<sup>127</sup> and the *Hyogo Framework for Action: Building Resilience of Nations and Communities to Disasters*.<sup>128</sup>

#### 2.3.1.1.1 International instruments created by the UN<sup>129</sup>

In 1994 the UN expressed deep concern about the continuing human suffering and disruption of development due to natural disasters.<sup>130</sup> In an attempt to address these concerns the UN held the World Conference on Natural Disaster Reduction, in Yokohama, Japan from 23 May to 27 May 1994, where the member states developed the Yokohama Strategy.<sup>131</sup> This strategy places emphasis on a multi-sectoral, multi-stakeholder approach for developing a culture of prevention to reduce physical, social, economic and environmental vulnerability and hazard impacts through the enhancement of national and local capabilities.<sup>132</sup>

The Yokohama Strategy contains mainly provisions imposing disaster management responsibilities at the national levels of member states.<sup>133</sup> It does, however, explicitly recognise that local authorities play an important role in preventing disaster by enforcing safety standards and rules<sup>134</sup> and further provides that disaster assessment and reduction plans must be implemented at the local level of governments.<sup>135</sup> In addition, the Yokohama Strategy provides for a set of principles which are applicable to disaster management.<sup>136</sup> Of particular interest to local government is the tenth principle, which provides that each country bears the primary responsibility for protecting its people, infrastructure and other national assets from the impact of natural disasters.<sup>137</sup> The tenth principle thus formalises the requirement that each country's government accepts responsibility for

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127 Of 2000. Hereafter the Millennium Declaration.

128 2005 – 2015. Hereafter the HFA.

129 The main objective of the UN is to foster and maintain international peace and security. See UN *Basic Facts about the United Nations* 9-10. South Africa became a member of the UN on 7 November 1945. Member states must accept the obligations imposed upon them by the UN and must be able to carry out the obligations. See UN Date Unknown <http://bit.ly/1jAp7Sp>.

130 UN 1994 <http://bit.ly/1gdCVQK>.

131 UN 1994 <http://bit.ly/1gdCVQK>.

132 Paragraph 1C of the Yokohama Strategy. Also see UN 2005 <http://bit.ly/1iV0l0a>.

133 Paragraph 2 A12 – A 13 of the Yokohama Strategy.

134 Paragraph 2 A11 of the Yokohama Strategy.

135 Paragraph 2 A11 of the Yokohama Strategy.

136 Paragraph 1 of the Yokohama Strategy.

137 Paragraph 1 of the Yokohama Strategy.

protecting its people from the consequences of disaster<sup>138</sup> and it may be argued that local authorities are included in fulfilling this responsibility.

Further relevant to disaster management and possibly LDM is the Millennium Declaration, which was unanimously adopted on 8 September 2000 by the member states of the UN.<sup>139</sup> While the main objectives of the Millennium Declaration are by the year 2015 to halve the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger,<sup>140</sup> it does include a declaration to 'protect the vulnerable.'<sup>141</sup> In this regard the Millennium Declaration provides that no effort will be spared to ensure that children and all civilian populations that suffer disproportionate consequences *inter alia* from natural disasters are given every assistance and protection so that they can resume normal life as soon as possible.<sup>142</sup> The Millennium Declaration does not discuss which spheres of government of each member state are responsible for its fulfilment, which suggests that the responsibility to uphold and fulfil the declaration lies within the discretion of the national government of each member state.<sup>143</sup>

The declaration of intent to 'protect the vulnerable' and to assist populations affected by disaster may, however, correspond with the rehabilitation and response duties associated with LDM. In terms of these duties municipalities often provide temporary shelter and social rehabilitation programmes and must ensure the rapid resumption of the services provided by critical infrastructure to allow recovery to take place and speed a return to a normally functioning society.<sup>144</sup> It is thus suggested that by fulfilling their rehabilitation and response duties, local government in South Africa may be contributing to the fulfilment of the declaration to 'protect the vulnerable' as provided for in the Millennium Declaration. Following the adoption of the Yokohama Strategy and the Millennium Declaration, the UN

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138 Coppola *Introduction to International Disaster Management* 6 – 7.

139 Discerning the Times Digest Date Unknown <http://bit.ly/1e3ryYV>.

140 Paragraph 19 of the Millennium Declaration.

141 Paragraph 26 of the Millennium Declaration.

142 Paragraph 26 of the Millennium Declaration.

143 This suggestion is based on paragraph 1 of the Millennium Declaration which provides that the heads of state of each member state affirm their support of the UN and the Millennium Declaration.

144 See the discussion of 'response' and 'rehabilitation' under section 2, par 2.2.3 above.

renewed its commitment to disaster management and disaster risk reduction.<sup>145</sup> This newly found commitment resulted in the World Conference on Disaster Risk Reduction in Hyogo, Japan from 18 to 22 January 2005, where the member states of the UN adopted the HFA.<sup>146</sup> The HFA appeals specifically to states, and provides that all tasks related to disaster risk reduction should be implemented at national and *local* level (own emphasis).<sup>147</sup> The HFA identifies five priorities for action which apply to all government levels of each member state.<sup>148</sup> These priorities are: ensuring that disaster risk reduction is a priority;<sup>149</sup> monitoring disaster risks and enhancing early warning systems;<sup>150</sup> building a culture of safety and resilience;<sup>151</sup> reducing the underlying risk factors;<sup>152</sup> and strengthening disaster preparedness for effective response.<sup>153</sup>

Should the HFA and its priorities for action be incorporated into national legislation in South Africa such as the DMA, for example, the implementation of these priorities may indirectly create specific duties for local government both in managing and reducing the risk of disaster.<sup>154</sup> It appears that these duties include local government's *inter alia* engaging in a multi-stakeholder dialogue (i.e. with civil society, the media and academic institutions) to establish foundations for disaster management and disaster risk reduction and to allocate appropriate resources for

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145 Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* 4.

146 Paragraph 1 of the HFA. It is important to note that the HFA is currently under review and will be renegotiated through a series of meetings in 2014 before a new agreement, the 'HFA2', is signed in March 2015 in Sendai, Japan. See UNISDR 2013 <http://bit.ly/1fRm3mH>.

147 Paragraph 30 of the HFA.

148 Paragraph 14 of the HFA.

149 Paragraph 14 of the HFA. Hereafter HFA-1.

150 Paragraph 14 of the HFA. Hereafter HFA-2.

151 Paragraph 14 of the HFA. Hereafter HFA-3.

152 Paragraph 14 of the HFA. Hereafter HFA-4.

153 Paragraph 14 of the HFA. Hereafter HFA-5.

154 Based on an explanatory document drafted by the UN on implementing the HFA - 'Words Into Action: A Guide for Implementing the Hyogo Framework'- the Kyoto University, UNISDR and RTF-URR have drafted a document which specifically explains how the priorities of the HFA must be implemented at local level in circumstances where the HFA and its priorities are incorporated into a member state's national disaster management legislation. This document ('A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders') explains how implementing the priorities in the HFA creates specific duties for local government throughout disaster management and disaster risk reduction. See Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* 7 – 87.

the prioritisation of disaster management and disaster risk reduction;<sup>155</sup> reviewing the availability of risk-related information and the capacities for data collection;<sup>156</sup> raising the awareness of disaster risk reduction by developing education programmes in schools;<sup>157</sup> establishing measures to incorporate disaster management and disaster risk reduction in environmental management and urban or spatial planning;<sup>158</sup> and reviewing and improving disaster preparedness capacities and mechanisms.<sup>159</sup>

Considering the nature of international law and its sources,<sup>160</sup> as well as the fact that the Yokohama Strategy, Millennium Declaration and HFA were adopted by an international organisation (the UN) at diplomatic conferences, it is suggested that these UN instruments may be regarded as soft law instruments. While they are not binding per se, it may be argued that South Africa should adhere to and respect the provisions contained therein.

### 2.3.1.2 Regional Context

As in the international context, the government of South Africa regards cooperation with regional disaster management instruments as essential.<sup>161</sup> The NDMC and

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155 These duties are required for the implementation of HFA-1. See Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* 9.

156 These duties are required for the implementation of HFA-2. See Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* 29.

157 These duties are required for the implementation of HFA-3. See Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* 42.

158 These duties are required for the implementation of HFA-4. See Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* 54.

159 These duties are required for the implementation of HFA-5. See Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* 76.

160 In South Africa an international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces and becomes law when it is enacted into law by national legislation. See S 231 of the Constitution. The sources of international law are categorised as traditional/hard law (treaties which can be enacted into a state's national legislation and become binding) and non-traditional/soft law (principles or codes of practice adopted at conferences which may serve as general guidelines to a specific practice – and are not binding per se). See Abbott and Snidal 2000 *International Organisation* 421 – 422 and Skjaereth, Stokke and Wettestad 2006 *Global Environmental Politics* 104 – 120.

161 S 7(2)(c)(ii) of the DMA.

the South African Local Government Association<sup>162</sup> have listed important regional instruments (created by the African Union<sup>163</sup> and the South Africa Development Community<sup>164</sup> respectively) which are applicable to disaster management in the Republic.<sup>165</sup> Important regional instruments created by the AU which regulate disaster management and disaster risk reduction include the *African Regional Strategy for Disaster Risk Reduction*;<sup>166</sup> and the *Programme of Action for the Implementation of the African Regional Strategy for Disaster Risk Reduction*.<sup>167</sup> In addition, the regional instruments created by the SADC which regulate disaster management and disaster risk reduction includes the *SADC Draft Regional Multi-Sectoral Disaster Management Strategy*;<sup>168</sup> the *SADC Disaster Risk Reduction Strategic Plan*;<sup>169</sup> and the *SADC Draft Policy and Strategic Framework for Disaster Risk Reduction Policy*.<sup>170</sup>

### 2.3.1.3 Regional instruments created by the AU<sup>171</sup>

The AU acknowledges the need for a strategic approach to improving the effectiveness and efficiency of disaster management and disaster risk reduction in Africa.<sup>172</sup> This acknowledgement has led to the development of the ARSDRR, which was adopted by the African Ministers at the 10<sup>th</sup> Meeting of the African Ministerial Conference on the Environment, 23 to 30 June 2004.<sup>173</sup> The objectives of this strategy are *inter alia* to increase public awareness of disaster risk reduction; to improve the governance of disaster management and disaster risk reduction; and to integrate disaster risk reduction into disaster management.<sup>174</sup> In order to achieve

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162 Hereafter SALGA.

163 Hereafter the AU.

164 Hereafter SADC.

165 NDMC Date Unknown <http://bit.ly/1kQu64T>. Also see SALGA 2011 <http://bit.ly/1bhyoPA>.

166 Of 2004. Hereafter ARSDRR.

167 2006 – 2015. Hereafter Programme of Action.

168 Of 2001. Hereafter the Disaster Management Strategy.

169 2006 – 2010. Hereafter the Strategic Plan.

170 2010 – 2015. Hereafter the Strategic Framework.

171 The AU was established in 2000 when it formally replaced the Organisation of African Unity (OAU). The AU's objectives are to enhance political cooperation and economic integration amongst African states and includes the promotion of sustainable development, democratic principles and good governance, social justice, gender equality and health. South Africa became a member in June 1994. See Du Plessis "The African Union" 542 – 545.

172 Paragraph 1 of the ARSDRR.

173 Paragraph 1 of the ARSDRR.

174 Paragraph 3 of the ARSDRR.

these objectives the Heads of State at the third Ordinary Session of the AU Assembly in July 2004 called for the development of the Programme of Action.<sup>175</sup> This Programme provides for the responsibilities attached to the achievement of the objectives listed in the ARSDRR, and it is suggested that these documents be read together.<sup>176</sup> With regard to the objective aimed at increasing public awareness of disaster risk reduction, the ARSDRR provides that government must promote wider and increased understanding of disaster risk reduction practices and provide information to monitor the progress in disaster risk reduction in all levels.<sup>177</sup> In order to achieve this objective the Programme of Action provides that government must improve the dissemination and communication of information, expand the role of the media, and strengthen the role of women, the youth and other vulnerable groups in decision making related to disaster risk reduction issues.<sup>178</sup> While the ARSDRR does not refer to local government, the Programme of Action explicitly lists local government as an institution involved in implementing this objective.<sup>179</sup>

In order to improve the governance of disaster management and disaster risk reduction, the ARSDRR requires government to develop the requisite capacity, assess the adequacy and security of its resource, use inclusive and participatory processes, and coordinate and harmonise its activities with those of other stakeholders.<sup>180</sup> To achieve this objective the Programme of Action requires government *inter alia* to assess include disaster risk reduction concerns in public regulation on land use, physical development and infrastructure development.<sup>181</sup> Once again, the ARSDRR is silent on whether local government may be regarded as an institution involved in the achievement of this objective. However, the Programme of Action explicitly lists local government in this regard.

With respect to the objective of integrating disaster risk reduction into disaster management, the ARSDRR provides that disaster risk reduction measures should

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175 Paragraph 1 of the ARSDRR.

176 Paragraph 1 of the Programme of Action.

177 Paragraph 3.3.1 of the ARSDRR.

178 Paragraph 7 table 3 of the Programme of Action.

179 Paragraph 7 table 3 of the Programme of Action.

180 Paragraph 3.3.4 of the ARSDRR.

181 Paragraph 7 table 4 of the Programme of Action.

be incorporated into the management of post-disaster situations.<sup>182</sup> Thus, when a disaster-stricken area must be rebuilt or developed, such development should be carried out in a manner which aims to ensure that prospective disaster risks are reduced.<sup>183</sup> While neither the ARSDRR nor the Programme of Action overtly regards local government as a role-player in achieving this objective, the Programme of Action does provide that the inclusion of disaster risk reduction into disaster management activities must be advocated at national and local levels.<sup>184</sup>

Against the background of the discussion thus far it may be concluded that in the regional context, AU instruments impose responsibilities related to disaster management on both the national and the local spheres of government in South Africa. While the ARSDRR generally does not explicitly indicate whether or not local government may be regarded as an institution involved in fulfilling its disaster management objectives, the Programme of Action in some instances lists local government as such an institution. Based on the above discussion it is suggested that local government's responsibilities related to disaster management are similar to those of national government. Further, some instruments also exist at the applicable sub-regional level, namely the SADC instruments, and to that, the section next turns.

#### 2.3.1.3.1 Regional instruments created by SADC<sup>185</sup>

The SADC is committed to developing and adopting a strategic approach to improving the effectiveness and efficiency of disaster management in the Southern African region and has developed strategies and plans pertaining to the management and reduction of the occurrence of disaster.<sup>186</sup> The first strategy is the Disaster Management Strategy.<sup>187</sup> This Strategy was developed as a result of the

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182 Paragraph 3.3.6 of the ARSDRR.

183 Paragraph 3.3.6 of the ARSDRR.

184 Paragraph 7 table 5 of the Programme of Action.

185 The SADC was established in 1992 when it replaced the South African Development Coordination Conference (SADCC). The aims of the SADC are to facilitate cooperation across a wide range of political, economic and social matters including cooperation in areas necessary to foster regional development and integration. South Africa became a member in August 1994. See Dugard *International Law: A South African Perspective* 439 – 440.

186 NEPAD, AU and AFDB 2004 <http://bit.ly/1dJOxyZ>.

187 Paragraph 1.1 of the Disaster Management Strategy.

occurrence of a number of disastrous events in the SADC region between 1997 and early 2001.<sup>188</sup> The Disaster Management Strategy provides a list of priority areas which require improvement for the effective management of disasters in the SADC region as well as information regarding the roles, activities, and responsibilities of member states in achieving the improvement of each priority area within the SADC region.<sup>189</sup>

The priority areas include human resource development and training;<sup>190</sup> preparedness and contingency planning,<sup>191</sup> and public education and awareness, among others.<sup>192</sup> In order to improve performance in these areas the Disaster Management Strategy requires representatives in the national sphere of government in each member state *inter alia* to attend workshops and training,<sup>193</sup> to share, coordinate and facilitate information exchange and discussions relating to all aspects of disaster management,<sup>194</sup> and to promote disaster mitigation initiatives and policies in the region.<sup>195</sup> The Disaster Management Strategy speaks to the national level of government of each member state and makes no reference to the local level of government of its member states.<sup>196</sup> In this regard it is suggested that the Disaster Management Strategy leaves it to the discretion of the national level of each member state to decide within its sovereign areas the manner in which 'government' as a whole must fulfil the disaster management responsibilities as provided for in the strategy.

In 2005 the SADC Disaster Management Technical Committee decided to review its Disaster Management Strategy, which review resulted in the development of the Strategic Plan.<sup>197</sup> The aim of the Strategic Plan is to minimise vulnerabilities and

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188 Paragraph 2.1 of the Disaster Management Strategy.

189 Paragraph 4.1 and 5.4 of the Disaster Management Strategy.

190 Paragraph 4.1 of the Disaster Management Strategy.

191 Paragraph 4.1.2 of the Disaster Management Strategy.

192 Paragraph 4.1.9 of the Disaster Management Strategy.

193 Paragraph 4.1.1 of the Disaster Management Strategy.

194 Paragraph 4.1.2 of the Disaster Management Strategy.

195 Paragraph 5.4 of the Disaster Management Strategy. For an in-depth discussion of all of the duties of member states in achieving the improvement of the priority areas, see paragraphs 4 and 5 of the Disaster Management Strategy.

196 Paragraph 3.4 of the Disaster Management Strategy.

197 Paragraph 1 of the Strategic Plan.

disaster risk<sup>198</sup> in pursuance of the SADCs long-term goal of building the resilience of the SADC nations and their communities to the impact of disasters.<sup>199</sup> In order to achieve this aim the Strategic Plan provides for specific activities which must be assumed by member states.<sup>200</sup> These activities include, for example, strengthening the governance, legal and institutional framework at all levels of disaster risk reduction,<sup>201</sup> and the facilitation of the identification, assessment and monitoring of disaster risks.<sup>202</sup>

With regard to strengthening the governance, legal and institutional framework at all levels of disaster risk reduction, the Strategic Plan requires member states to integrate risk reduction into development policies and planning measures at all levels, among other things.<sup>203</sup> In examining the possible implication hereof for local government in South Africa, it is suggested that the reference to 'all levels' means that disaster risk reduction is to take place not only in the national sphere of South African government but also in the local sphere. Municipalities are thus required to integrate risk reduction into their development policies and planning measures. Moreover, in order to facilitate the identification, assessment and monitoring of disaster risks, the Strategic Plan requires all member states to conduct both national and local risk assessments.<sup>204</sup> It is suggested that the reference to 'local' risk assessment explicitly includes 'local government'.

After implementing the Strategic Plan between 2006 and 2010, the SADC at its annual meeting held in March 2010 decided that it was necessary to review and update the Strategic Plan.<sup>205</sup> This decision led to the development of the Strategic Framework, which indicates that precisely the same activities are to be undertaken by member states as in the Strategic Plan but incorporates issues of global warming and climate change into the activities.<sup>206</sup> With regard to strengthening the

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198 Paragraph 3.2 of the Strategic Plan.

199 Paragraph 4 of the Strategic Plan.

200 Paragraph 6.4 of the Strategic Plan.

201 Paragraph 6.4.1 of the Strategic Plan.

202 Paragraph 6.4.2 of the Strategic Plan.

203 Paragraph 6.4.1 of the Strategic Plan.

204 Paragraph 6.4.2 of the Strategic Plan.

205 Paragraph 1.1 of the Strategic Framework.

206 Paragraph 1.1 of the Strategic Framework.

governance, legal and institutional framework<sup>207</sup> (an activity also provided for in the Strategic Plan) the Strategic Framework adds that disaster risk reduction must be integrated into climate change adaptation and sustainable development planning and programmes.<sup>208</sup> For this and the rest of the activities,<sup>209</sup> the Strategic Framework explicitly provides that the activities must be conducted by the national government of each member state. It must, however, be noted that nothing in the Strategic Framework prohibits national governments from assigning any activity to other levels of government, such as local government. In the light of the above discussion it may be concluded that like the AU instruments which regulate disaster management,<sup>210</sup> the SADC instruments indirectly impose disaster management responsibilities on local government in South Africa. While they primarily impose disaster management responsibilities on the national sphere of government, there are instances where they impose responsibilities on local government, such as in the matter of the conducting of local risk assessments, for example.

### *2.3.2 The LDM mandate of municipalities as provided for in the South African legal context*

South Africa has a well-developed suite of disaster management legislation, including laws on other matters that are related to disaster risk reduction.<sup>211</sup> This suite of legislation includes generic disaster management legislation,<sup>212</sup> legislation dealing with specific types of disaster,<sup>213</sup> and other laws which regulate the broader aspects of disaster management and disaster risk reduction in specific sectors.<sup>214</sup>

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207 Paragraph 4.1 of the Strategic Framework.

208 Paragraph 4.1 of the Strategic Framework.

209 The rest of the activities include the identification, assessment and monitoring of disaster risks. See Paragraph 4.2.2 of the Strategic Framework.

210 See section 2, par 2.3.1.2 above.

211 Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 25.

212 Such as the DMA.

213 Such as the *Fire Brigade Services Act* 99 of 1987 (hereafter the FBSA); the *National Veld and Forest Fire Act* 101 of 1998 (hereafter the NVFFA); and the *Safety at Sports and Recreational Events Act* 2 of 2010 (hereafter the SSREA).

214 These sectors include, *inter alia*, the environmental management sector which is regulated by the *National Environmental Management Act* 107 of 1998; the agricultural resource sector, which is regulated by the *Conservation of Agricultural Resources Act* 43 of 1983; the mining sector which is regulated by the *Mineral and Petroleum Resources Development Act* 28 of 2002; and the building construction sector which is regulated by the *National Building Regulations and Building Standards Act* 103 of 1977. See Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 35 – 42.

The generic disaster management legislation as well as the legislation dealing with specific types of disaster are discussed in this section, with specific emphasis on the areas and sections relevant to local government.

### 2.3.2.1 Generic disaster management legislation

#### 2.3.2.1.1 The DMA

The framework legislation regulating all aspects of disaster management in South Africa is the DMA.<sup>215</sup> The provisions contained therein apply to any disaster situation in South Africa.<sup>216</sup> The DMA was adopted in 2003 and placed South Africa at the forefront of a global paradigm shift from a purely response-orientated approach to disaster management to a more proactive approach.<sup>217</sup> The DMA aims to provide for integrated and co-ordinated disaster risk management that focuses on preventing or reducing the risk of disaster, mitigating the severity of disaster, preparedness, rapid and effective response to disaster, and post disaster recovery.<sup>218</sup> The DMA provides an array of responsibilities related to disaster management for national,<sup>219</sup> provincial<sup>220</sup> and local government<sup>221</sup> respectively. The focus of this section is the DMA provisions applicable to local government specifically.

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215 Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 27.

216 Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 29.

217 SALGA 2011 <http://bit.ly/1bhyoPA>. Later on, the *National Disaster Management Framework* of 2005 (hereafter NDMF) was adopted in order to provide guidance on the interpretation of the DMA. See SALGA 2011 <http://bit.ly/1bhyoPA>.

218 Preamble to the DMA.

219 With regard to national government the DMA provides in short that, amongst other duties, the Minister must establish a national disaster management framework (s 6(1) of the DMA) and that national government must establish a national disaster management centre (s 8(1) of the DMA). In addition, each national organ of state must prepare a disaster management plan (s 25(1)(a) of the DMA) which sets out its role and responsibilities regarding emergency response and post-disaster recovery and rehabilitation (s 25(1)(a)(iii) of the DMA) and provides for the responsibilities of national government in the event of a national disaster (s 26 of the DMA), for example.

220 With regard to provincial government the DMA provides, in short, that each province must establish and implement a framework for disaster management in the province, which must be consistent with the national disaster management framework (s 28(2) of the DMA). Further, each province must establish a disaster management centre (s 29(1) of the DMA) and that the provincial disaster management centre must assist the national disaster management centre at the national centre's request (s 32(1) of the DMA). Further, each provincial organ of state must prepare a disaster management plan which, amongst other things, provides for responsibilities for provincial government in the event of a provincial disaster (s 40 of the DMA).

221 See ss 42 – 55 of the DMA.

The first of many duties or responsibilities of municipalities provided for by the DMA is the requirement that each metropolitan and district municipality must establish a municipal disaster management framework which provides the policy direction for the disaster management function.<sup>222</sup> This municipal disaster management framework must be consistent with the disaster management frameworks developed by national government and the province concerned and must establish institutional arrangements for disaster management.<sup>223</sup>

The DMA also provides that each metropolitan and district municipality must establish a disaster management centre for its municipal area,<sup>224</sup> which must specialise in issues concerning disasters and disaster management in the municipal area.<sup>225</sup> Municipal disaster management centres may also act as advisory and consultative bodies on issues concerning disasters and disaster management in the municipal area for other organs of state and statutory functionaries.<sup>226</sup> Such municipal disaster management centres must function in line with the national disaster management framework as well as with any provincial disaster management framework.<sup>227</sup> Municipal disaster management centres also have advocacy and awareness responsibilities in that such centres must promote disaster management capacity building, training and education in their communities.<sup>228</sup> These centres must also ensure a multi-actor approach to disaster management by integrating their disaster management responsibilities or functions with those of all other municipal entities within the area, including other potential role-players in the municipal area.<sup>229</sup> Further, when a disastrous event occurs or is threatening to occur in the area of a municipality, the disaster management centre of the municipality concerned must determine whether the event should be regarded as a disaster in terms of the DMA<sup>230</sup> and if so, must, amongst others, immediately initiate efforts to assess the magnitude and severity or potential

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222 S 42(1) of the DMA.

223 S 42(3) of the DMA. Also see paragraph 3.1.1.1 of the NDMF.

224 S 42(1)(a) of the DMA.

225 S 44 (1)(a) of the DMA.

226 S 44(1)(d)(i) of the DMA.

227 Paragraph 1.2.5.1 of the NDMF

228 S 44(1)(h) of the DMA.

229 S 44(1)(b)(ii) – (iii) of the DMA.

230 S 49(1) of the DMA.

magnitude and severity of the disaster,<sup>231</sup> inform the national centre and relevant provincial disaster management centre of the disaster,<sup>232</sup> and initiate the implementation of any contingency plans and emergency procedures that may be applicable in the circumstances.<sup>233</sup>

The council of a municipality<sup>234</sup> is primarily responsible for the coordination and management of local disasters that occur in its area.<sup>235</sup> In this regard the DMA provides that a municipal council of a municipality must coordinate and manage the disaster in terms of existing legislation, contingency plans and by-laws,<sup>236</sup> and provides further that if the existing legislation, contingency plans or by-laws do not adequately provide for measures allowing the municipality to deal effectively with the disaster, the municipality may declare a disastrous event as a local state of disaster.<sup>237</sup> The declaration of a local state of disaster allows the municipal council to prescribe extraordinary measures for emergency responses and relief, such as the release of available resources (i.e. stores, equipment, vehicles and facilities);<sup>238</sup> the release of personnel of the municipality for rendering emergency services;<sup>239</sup> the evacuation to temporary shelters of all or part of a population from the disaster stricken or threatened area;<sup>240</sup> the regulation of traffic to, from or within the disaster stricken or threatened area;<sup>241</sup> and emergency procurement procedures,<sup>242</sup> for example. The DMA further requires that each municipality must prepare a disaster management plan which includes a disaster *risk* management plan<sup>243</sup> for its area,

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231 S 49(1)(a) of the DMA.

232 S 49(1)(b) of the DMA.

233 S 49(1)(d) of the DMA.

234 The council of a metropolitan municipality is primarily responsible for the coordination and management of local disasters that occur in its area (s 54(1)(a) of the DMA) and the council of a district municipality, after consulting with the relevant local municipality, is primarily responsible for the coordination and management of local disasters that occur in its area (s 54(1)(b) of the DMA). It is possible for the council of a local municipality to be primarily responsible for the coordination and management of a disaster in its area if the district municipality has consented thereto (s 54(2) of the DMA).

235 S 55(1) of the DMA.

236 S 54(3)(a) of the DMA.

237 S 54(3)(b) of the DMA.

238 S 55(2)(a) of the DMA.

239 S 55(2)(b) of the DMA.

240 S 55(2)(d) of the DMA.

241 S 55(2)(e) of the DMA.

242 S 55(2)(l) of the DMA.

243 Paragraph 3.1.1.2 of the NDMF.

as well as regularly reviewing and updating its plan.<sup>244</sup> This disaster management plan must, for instance, anticipate the types of disasters that are likely to occur in the municipal area and their effects;<sup>245</sup> identify the areas, communities or households at risk;<sup>246</sup> promote disaster management research;<sup>247</sup> and facilitate maximum emergency preparedness.<sup>248</sup> In addition to the above, metropolitan and district municipalities are entitled to establish municipal disaster management advisory forums.<sup>249</sup> Such a forum is essentially a body in which a municipality and relevant disaster management role players in the municipality consult one another and coordinate their actions on matters relating to disaster management in the municipality.<sup>250</sup> While the establishment of such a forum is not compulsory, the NDMF has indicated that it is difficult to envisage how, without such a forum, disaster management could effectively be implemented in the local government sphere.<sup>251</sup>

In the light of the above discussion it may be argued that the DMA establishes an array of disaster management responsibilities for municipalities.<sup>252</sup> The DMA mandates metropolitan and district municipalities to engage in disaster management activities such as, *inter alia*, the establishment of frameworks, plans, forums and strategies to effectively prevent and manage the occurrence of disaster.<sup>253</sup> While some of these activities are regarded as ‘operational’<sup>254</sup> or even ‘administrative’<sup>255</sup> in nature, it may be possible to argue that these activities include

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244 S 53(1)(a) and (c) of the DMA. S 53(2)(a) of the DMA furthermore provides that a disaster management plan must form part of a municipality’s integrated development plan (hereafter IDP) and it is important to note that this specific disaster management-related duty is also recognised in the Systems Act in that s 26(g) of the Systems Act provides that a disaster management plan must be included into the IDP of every municipality.

245 S 53(2)(b) of the DMA.

246 S 53(2)(e) of the DMA.

247 S 53(2)(g) of the DMA.

248 S 53(2)(b) of the DMA.

249 S 51(1) of the DMA.

250 S 51(2) of the DMA.

251 Paragraph 1.3.1.3 of the NDMF.

252 Van Niekerk “Local Government Disaster Risk Management” 240.

253 Van Niekerk “Local Government Disaster Risk Management” 240.

254 Such as the conducting of risk assessments of vulnerable areas, for example. In this regard see NDMC Date Unknown <http://bit.ly/1kQu64T>.

255 Such as a senior administrative, elected municipal official or head of a municipal disaster management centre assigning specific roles and responsibilities pertaining to disaster management to various role players within municipalities, for example. In this regard see Burnham “Disaster Definitions” 36 – 37.

'planning'<sup>256</sup> activities. Municipal planning activities concern the control and regulation of land use at municipal level<sup>257</sup> and it is in conducting planning activities that municipalities draft IDPs (which must include disaster management plans and contingency plans) in order to ensure that all resources are used appropriately and that issues of disaster management and disaster risk reduction, for example, are enshrined in all development projects.<sup>258</sup> What follows is a brief discussion of the provisions contained in legislation dealing with specific types of disaster which create additional disaster management responsibilities for municipalities.

### 2.3.2.2 Legislation dealing with specific types of disaster

South Africa is frequently struck by damaging disasters such as runaway veld- or wildfires,<sup>259</sup> and has been struck by disasters occurring at sporting or recreational events, for example.<sup>260</sup> These specific occurrences of disaster are regulated by specific Acts. The management and prevention of veld- and wildfires is regulated by the FBSA and the NVFFA, and the management and prevention of disasters occurring at sporting or recreational events is regulated by the SSREA. In what follows, the provisions contained in each of these Acts as they pertain to municipalities is briefly discussed.

#### 2.3.2.2.1 The FBSA

The purpose of the FBSA is to provide for the establishment, maintenance, coordination and standardisation of fire brigade services.<sup>261</sup> The FBSA does not explicitly provide duties for national and provincial government for the management or prevention of fires but does provide such duties for local government. The

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256 Planning comprises the control and regulation of land use. See Van Wyk *Planning Law* 1.

257 See Van Wyk *Planning Law* 109 – 111. For a detailed description of what municipal planning encompasses see *The City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 6 SA 182 (CC) and *RA le Sueur v Ethekewini Municipality* 2013 JDR 0178 (KZP).

258 Sutanta, Rajabifard and Bishop 2013 *Journal of Environmental Planning and Management* 761. Also see ACDS 2008 <http://bit.ly/1dXyXd4>.

259 See discussion under section 1 above.

260 An example of a disaster which occurred at a sporting/recreational event is the Ellis Park Tragedy. In 11 April 2001 43 people lost their lives while watching a soccer match at the Ellis Park Stadium as a result of a stampede. See Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 35.

261 Preamble to the FBSA.

administrator may direct a local authority (a municipality) to establish and maintain a service, for example.<sup>262</sup> The services that municipalities can be directed to provide include preventing the outbreak or spread of fires, fighting or extinguishing fires, protecting life or property against fire or other threatening danger, and the rescue of life or property from a fire or other danger.<sup>263</sup>

Furthermore, the FBSA places a duty on municipalities to appoint as a chief fire officer any person who possesses the prescribed qualifications and experience<sup>264</sup> and may further appoint any person who possesses the prescribed qualifications and experience as a member of its service to perform the functions assigned to that municipality.<sup>265</sup> In addition, rendering fire brigade services entitles a municipality's chief fire officer to close any road or street, enter or break and enter any premises, damage, destroy or pull down a property, and forcibly remove or cause to be removed any person who is in danger.<sup>266</sup> Municipalities may also draft by-laws for their area of jurisdiction regarding any matter which they deem necessary in order to provide their fire brigade services effectively.<sup>267</sup>

#### 2.3.2.2.2 The NVFFA

The purpose of the NVFFA is to prevent and combat veld, forest and mountain fires in South Africa.<sup>268</sup> Key to the functioning of this piece of legislation is the establishment and registration of fire protection associations, which are associations of landowners empowered to deal with all aspects of fire prevention and firefighting.<sup>269</sup> When a fire protection association is registered in an area which is controlled by a municipality that has a firefighting service, the municipality must also belong to the fire protection association.<sup>270</sup> Fire protection associations must develop and apply a veldfire management strategy for their respective areas,

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262 S 3(2)(b) of the FBSA.

263 S 1 of the FBSA.

264 S 5(1)(a) of the FBSA.

265 S 6(1) of the FBSA.

266 S 8(1) of the FBSA.

267 S 16(1) of the FBSA.

268 Preamble to the NVFFA.

269 S 3 of the NVFFA.

270 S 4(7)(b) of the NVFFA.

identify ecological conditions that affect fire danger, and provide management services, training and support for communities in their efforts to manage and control veldfires.

The NVFFA furthermore requires the designation of fire protection officers who must take control of any firefighting in the area of the fire protection association.<sup>271</sup> In this regard it is important to note that if a municipality already has a chief fire officer in terms of the FBSA and that municipality is a member of the fire protection association, then that chief fire officer is regarded to be the fire protection officer too.<sup>272</sup>

#### 2.3.2.2.3 The SSREA

The aim of the SSREA is to provide measures which ensure the safety of people attending large-scale sporting or recreational events.<sup>273</sup> While the SSREA primarily provides duties for the South African Police Service, organisers of events and venue owners, it does contain a few duties related to disaster risk reduction for municipalities. Disaster risk reduction in this context is achieved through the issuing of safety certificates by the local municipality in respect of existing or new stadia or venues.<sup>274</sup>

In deciding to issue a safety certificate a municipality must take certain factors into account such as the certified safe capacity of a stadium or venue,<sup>275</sup> the emergency exits, access routes or gates inside a stadium or venue,<sup>276</sup> and the traffic management design and impact plan of the applicant,<sup>277</sup> to name but a few. In addition, the SSREA requires that an event safety and security planning committee be established for each event that can be categorised as a medium or high risk event.<sup>278</sup> When such a committee is established the local municipality must be a

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271 S 6(1)(c) of the NVFFA.

272 S 6(2)(a) of the NVFFA.

273 Preamble to the SSREA.

274 S 7(1)(a) of the SSREA.

275 S 8(2)(a) of the SSREA

276 S 8(2)(d) of the SSREA.

277 S 8(2)(f) of the SSREA.

278 S 15(2) of the SSREA. See s 6 of the SSREA for information on the categories of events.

member.<sup>279</sup> The SSREA also provides for various responsibilities of the event safety and security planning committee, which includes, amongst others, the preparation of event-specific written safety and security plans, and the assignment of specific tasks relating to event safety and security measures to specific persons.<sup>280</sup>

## **2.4 Concluding assessment**

Local government plays an imperative role both in managing disasters as well as in preventing disasters. The role of local government generally in disaster management is widely recognised, not only in the South African context but also in the regional and international context. In discussing the mandate of local government to manage disasters through the lens of the law it is evident that the disaster management instruments found in international, regional and South African law directly and indirectly establish a plethora of legal responsibilities for South African municipalities in this context.

In order to successfully fulfil their disaster management mandate, municipalities require extensive resources. These resources include, *inter alia*, institutional, human, material and financial resources.<sup>281</sup> Institutional resources include facilities established for the purpose of coordinating and facilitating disaster management in municipal areas, such as municipal disaster management centres, municipal disaster management advisory forums and fire protection associations.<sup>282</sup> Furthermore, dedicated, knowledgeable and competent individuals (human resources) are required to staff these above mentioned institutional resources,<sup>283</sup> develop and facilitate education programmes and public awareness campaigns,<sup>284</sup>

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279 S 15(3) of the SSREA.

280 S 16 of the SSREA.

281 Paragraph 8 of the Strategic Plan.

282 SALGA 2011 <http://bit.ly/1bhyoPA>. Also see the brief discussion of disaster management centres, disaster management advisory forums and fire protection associations under section 2 par 2.3.2.1 and 2.3.2.2 above.

283 SALGA 2011 <http://bit.ly/1bhyoPA>.

284 Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 49.

draft disaster management plans,<sup>285</sup> conduct risk assessments,<sup>286</sup> and provide search and rescue services.<sup>287</sup>

Municipalities also require a considerable quantity of material resources to assist them in fulfilling their disaster management mandate. Such material resources include equipment such as firefighting trucks, hazardous material units, off-road vehicles, backup generators, tents, first-aid equipment, tents and water trucks, for example.<sup>288</sup> The relevant material resources also include technological instruments and systems such as two-way radios, call centre equipment, computers, information and communication systems and early warning systems, for example.<sup>289</sup> Furthermore, a large amount of funding (financial resources) is essential to obtaining and funding the institutional, human and material resources such as the skilled and trained staff and, adequate emergency relief supplies, or to mound the post-disaster recovery or rehabilitation activities necessary to ensure effective disaster management.<sup>290</sup>

Many municipalities in South Africa are inadequately resourced to successfully fulfil their legally entrenched disaster management responsibilities.<sup>291</sup> After conducting a disaster management status assessment of municipalities in South Africa, SALGA found that national government is slow in providing and releasing funds for disaster management in the local government sphere,<sup>292</sup> a situation which impairs municipal efforts to provide timely and adequate support to disaster victims.<sup>293</sup> It was also found that municipalities often contravene the provisions in the DMA<sup>294</sup> requiring

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285 NDMC Date Unknown <http://bit.ly/1kQu64T>.

286 Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 49.

287 NDMC Date Unknown <http://bit.ly/1kQu64T>.

288 SALGA 2011 <http://bit.ly/1bhyoPA>. Also see Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level" 299 and SALGA 2013 <http://bit.ly/1hNj0gO>.

289 SALGA 2011 <http://bit.ly/1bhyoPA>. Also see Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level" 303 and NDMC Date Unknown <http://bit.ly/1kQu64T>.

290 SALGA 2011 <http://bit.ly/1bhyoPA>. Also see Visser and Van Niekerk 2009 <http://bit.ly/1f8DX3V> and SALGA 2013 <http://bit.ly/1hNj0gO>.

291 `SALGA 2011 <http://bit.ly/1bhyoPA>. Also see SALGA 2013 <http://bit.ly/1hNj0gO>.

292 According to SALGAs data, 60% of municipalities in South Africa have never received governmental grants for the establishment of disaster management centres, whereas 33% of the provinces have indicated that funding has been available for this purpose. See SALGA 2011 <http://bit.ly/1bhyoPA>.

293 SALGA 2011 <http://bit.ly/1bhyoPA>.

294 This is a crucial problem in South Africa. Despite South Africa's comprehensive disaster management legislation disaster management as a function of government is not carried out

the integration of disaster management plans into IDPs<sup>295</sup> or the establishment of disaster management centres,<sup>296</sup> which in turn contributes to the slow allocation of disaster funding from national government.<sup>297</sup> In addition to funding problems and non-compliance with the DMA, SALGA has indicated that municipalities lack appropriate and adequate equipment (material resources),<sup>298</sup> adequately trained personnel such as disaster risk management officials (human resources),<sup>299</sup> and the commitment of local government officials and politicians to disaster management.<sup>300</sup>

Successful disaster management goes beyond pure line-function responsibility.<sup>301</sup> In addition, considering the responsibilities established by South African, international and regional legal instruments, it may be argued that managing disaster requires a variety of types of expertise from very different professions,<sup>302</sup> such as governance expertise, to ensure that municipal disaster management plans and frameworks are aligned and coordinated with national and provincial disaster management plans and frameworks,<sup>303</sup> construction expertise in rebuilding damaged or fallen structures,<sup>304</sup> medical expertise in dealing with death, disease or injury,<sup>305</sup> emergency response expertise such as ambulance or fire response teams,<sup>306</sup> and staffing expertise such as appointing the correct persons needed to carry out all of the different disaster management duties,<sup>307</sup> for example. Disaster

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effectively due to a lack of will or capacity to implement and enforce such legislation. In this regard see SALGA 2011 <http://bit.ly/1bhyoPA>, SALGA 2013 <http://bit.ly/1hNj0gO> and Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* 74 – 79.

295 Only 36% of district municipalities, 60% of metropolitan municipalities and 17% of local municipalities actually integrate their disaster management plans into their IDPs. See SALGA 2011 <http://bit.ly/1bhyoPA>.

296 According to SALGA, 40% of municipalities in South Africa do not have disaster management centres and merely 25% of existing municipal disaster management centres function very well. See SALGA 2011 <http://bit.ly/1bhyoPA>.

297 SALGA 2011 <http://bit.ly/1bhyoPA>.

298 SALGA 2011 <http://bit.ly/1bhyoPA>.

299 Aside from lacking adequately trained staff, most municipal disaster management centres function with very low numbers of staff (between 1 and 10 employees) a fact which impedes their ability to carry out their duties. See SALGA 2011 <http://bit.ly/1bhyoPA> and SALGA 2013 <http://bit.ly/1hNj0gO>.

300 SALGA 2011 <http://bit.ly/1bhyoPA>.

301 SALGA 2011 <http://bit.ly/1bhyoPA>. Also see SALGA 2013 <http://bit.ly/1hNj0gO>.

302 Uys 2005 *JPA* 409.

303 NDMC Date Unknown <http://bit.ly/1kQu64T>.

304 Schwab and Brower "Increasing Resilience to Natural Hazards" 268.

305 Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level" 299.

306 Burnham "Disaster Definitions" 28. Also see SALGA 2013 <http://bit.ly/1hNj0gO>.

307 Van Riet 2012 *Jamba: Journal of Disaster Risk Studies* 22.

management may therefore be regarded as a dynamic process which involves many disciplines such as science, engineering, health, welfare, architecture, social sciences, management and law, as well as traditional emergency groups.<sup>308</sup> In this regard it is suggested that municipalities cannot manage disasters in isolation and as single role players. LDM is a multi-faceted and multi-sectoral process which requires significant effort and dedication from municipalities as well as other role players.<sup>309</sup> One such role player is deemed to be the private sector.<sup>310</sup> The remainder of this study focusses on the role of the private sector in assisting with LDM. The next section focuses on PPPs as a possible tool available to local government specifically in fulfilling the legally entrenched disaster management duties of municipalities.

### **3 PPPs as local governance tools**

#### **3.1 Introduction**

As alluded to in the previous section,<sup>311</sup> municipalities in South Africa face a number of impediments to successfully fulfilling their disaster management mandate. Some municipal areas face the visible effects of climate change and the growing demand for improved service delivery generally.<sup>312</sup> The *White Paper on Local Government* recommends that municipalities look for innovative ways of addressing such challenges and while there are several policy and legal tools available to do so,<sup>313</sup> PPPs<sup>314</sup> do however seem to be an instrument of choice.

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308 Uys 2005 *JPA* 409.

309 NDMC Date Unknown <http://bit.ly/1kQu64T>. Also see SALGA 2013 <http://bit.ly/1hNj0gO>.

310 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 1 – 288.

311 See section 2, par 2.4 above.

312 O'Brien *et al* "Local Government and Disaster" 639.

313 Examples of these include training and capacity building initiatives, traditional procurement, property taxation, contracting out, leases and concessions, corporation and user charges, PPPs and municipal loans and investments. In this regard see Bekink *Principles of South African Local Government Law* 78; Hoppe, Kusterer and Schmitz 2013 *Journal of Economic Behaviour and Organisation* 145; and Sections F and G of the *White Paper on Local Government* of 1998.

314 A PPP agreement is generally regarded as a relationship established (by virtue of a contractual agreement) between the public sector and the private sector wherein the private sector (using their knowledge and expertise) delivers public services. See the discussion of PPP definitions in section 3, par 3.2 below. Also see section 3, par 3.4.1 below.

Over the past years, a growing number of municipalities have entered into PPP agreements with the private sector.<sup>315</sup> This shift to private sector involvement has generally been prompted by the need to address infrastructure and service delivery needs.<sup>316</sup> PPPs initiated for the purpose of addressing infrastructure and service delivery needs are usually bilateral in nature, comprising of a municipality and a large-scale private operator who is able to bring specialised skills and investment to the service in question.<sup>317</sup> Recent examples of municipal PPPs include PPPs entered into for the provision of waste water treatment,<sup>318</sup> solid waste management,<sup>319</sup> housing,<sup>320</sup> and energy.<sup>321</sup>

The PPP movement has enjoyed sustained support over the years as a viable and desirable service delivery option and is regarded as a valuable implementation tool by many institutions and agencies.<sup>322</sup> The benefits of utilising PPPs as alternative service delivery mechanisms are substantial. Not only do PPPs provide municipal councils with greater flexibility in addressing service delivery needs,<sup>323</sup> but they also assist with the completion of projects that (if undertaken exclusively by the municipality) may not have reached completion.<sup>324</sup> Moreover, PPPs promote important constitutional values such as social equality, economic empowerment and the efficient utilisation of scarce resources,<sup>325</sup> and, as alluded to above, they benefit municipal infrastructure by providing access to expertise and technology from the private sector.<sup>326</sup>

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315 Matibane *Improving Service Delivery through Partnerships between Local Government, Civil Society and the Private Sector: A case Study of Imizamo Yethu* 1.

316 Plummer *Focussing Partnerships: A Sourcebook for Municipal Capacity Building in Public Private Partnerships* 1.

317 Plummer *Focussing Partnerships: A Sourcebook for Municipal Capacity Building in Public Private Partnerships* 11.

318 See the waste water treatment project of the Sedibeng District municipality at Sebideng District Municipality 2012 <http://bit.ly/1gdHPND>.

319 See the solid waste management project of the Greater Tubatse Municipality at Greater Tubatse Municipality 2009 <http://bit.ly/N5vbHT>.

320 See the housing project of the City of Cape Town at City of Cape Town 2009 <http://bit.ly/1e3l0sf> and SAHF 2013 <http://bit.ly/1jNqlwS>.

321 See the energy project of the City of Johannesburg at City of Johannesburg 2010 <http://bit.ly/1f939aA>.

322 Minnie *Critical Success Factors for Public Private Partnerships in South Africa* 12.

323 Section A paragraph 2 of the *White Paper on Municipal Service Partnerships* of 2004.

324 Hus 2007 *Municipal Law* 2.

325 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

326 Matibane *Improving Service Delivery through Partnerships between Local Government, Civil Society and the Private Sector: A case Study of Imizamo Yethu* 33. Also see Minnie *Critical*

The largest PPP launched in South Africa to date is the Gautrain project.<sup>327</sup> This project was undertaken by the Gauteng Provincial Government in cooperation with the Ekurhuleni Metropolitan Municipality, the City of Johannesburg and the Tshwane Metropolitan Municipality.<sup>328</sup> The Gautrain project is aimed at providing an alternative public transport mode to road users between Johannesburg and Pretoria<sup>329</sup> and has successfully increased economic mobility within the Johannesburg, Tshwane and Ekurhuleni Metro's.<sup>330</sup> Because of the cooperation of the Ekurhuleni, Tshwane and Johannesburg municipalities, the Gautrain has furthermore ensured that municipal services and operations have become more integrated, which integration has proven to be beneficial for each municipality's land development plans.<sup>331</sup>

Despite the increasing number of municipal PPPs established for service delivery, as far as could be established through the use of the desktop-research method it appears that no PPP has been undertaken or planned for in South Africa for disaster management initiatives.<sup>332</sup> Given the successes of PPP agreements in other areas

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*Success Factors for Public Private Partnerships in South Africa* 78. Also see the discussion in section 3, par 3.4.1 below. This particular benefit will be discussed in section 3, par 3.4.1 below.  
327 Gautrain Date Unknown <http://bit.ly/1cljkyM>. Also see National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

328 Van der Merwe, Negota and Van Zyl 2011 <http://bit.ly/1k6WBvg>.

329 Gautrain Date Unknown <http://bit.ly/1eMgkrF>.

330 Gautrain Date Unknown <http://bit.ly/1kRv6Wu>.

331 Gautrain Date Unknown <http://bit.ly/1kRv6Wu>.

332 In January 2000 the *Ukuvuka: Operation Firestop Campaign* initiative was launched by the National Government, South African National Parks, the South Peninsula Municipality and the Cape Metropolitan Council, among other institutions. This PPP was established to reduce the risk of damage and danger from wildfires in the Cape Peninsula and to contribute to poverty alleviation. See Kruger 2001 <http://bit.ly/1Kblcr>. While it may be argued that this PPP was established for one of local government's disaster management duties (mitigating a potential state of disaster caused by fires, for example) it does not appear that this initiative was continued past 2004 or that it was further researched to determine the extent of the benefits of this PPP specifically for LDM (own emphasis). As of March 2013 there are no PPPs officially in progress or registered for fire prevention or for the fulfilment of any other LDM responsibility. This is confirmed on the National Treasury's PPP webpage. The National Treasury's specialised task team, the National Treasury PPP Unit, (which was established to monitor existing PPPs) provides an updated list of signed, active and planned for PPP projects in the country. All PPPs must be registered with the National Treasury PPP unit. The list is available on the National Treasury PPP webpage and shows no record of any national, provincial or municipal PPP signed, active or planned-for with specific regard to disaster management. For a list of national PPPs see National Treasury PPP Unit Date Unknown <http://bit.ly/PRI9fc>. For a list of provincial PPPs see National Treasury PPP Unit Date Unknown <http://bit.ly/1g7GnyY>. For a list of municipal PPPs see National Treasury PPP Unit Date Unknown <http://bit.ly/1c0DlaJ>.

of concern,<sup>333</sup> the wide array of the disaster management responsibilities of local government,<sup>334</sup> and the under-resourced state of municipalities,<sup>335</sup> it is submitted that the current absence of PPPs for disaster management purposes remains a *lacuna* in the disaster management arena. Put differently, it does not appear as if the use and potential of PPPs in the arena of LDM have yet been explored to their fullest extent. Considering the *status quo* and the likely potential impact of PPPs, these instruments have specifically been selected as a point of focus for this study. The focus falls specifically on the function of PPPs between local government (municipalities) and the private sector (industries etc.) specifically in fulfilling the legally entrenched disaster management duties of municipalities. What follows is a discussion of the nature of PPP agreements, the legal framework for PPPs in South Africa and the strengths and weaknesses with regard to municipal PPPs in general.<sup>336</sup>

### **3.2 The nature of PPPs**

As indicated earlier, PPPs are policy tools utilised by governments in the execution of their roles, duties, and functions.<sup>337</sup> PPPs are also provided for in legislation. South Africa's Systems Act, for example, allows municipalities to exercise their executive and legislative authority (their governing function) by appointing external service providers or mechanisms to provide municipal services.<sup>338</sup> In this context the relationship between a municipality and external service providers is regulated by municipal service partnerships, or PPPs.<sup>339</sup>

No officially accepted definition of PPPs exists.<sup>340</sup> Some authors view the term rather broadly and define PPPs as the relationships formed between the private

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333 For a brief overview of PPP agreements which have achieved successful results see National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

334 See the discussion under section 2, par 2.3 above.

335 See the discussion under section 2, par 2.4 above.

336 The following section of this study (section 4) will specifically consider the relevance of PPPs for LDM.

337 Hodge, Greve and Boardman "Introduction: The PPP Phenomenon and its Evaluation" 4.

338 S 11(3)(f) of the Systems Act.

339 In general, see the *White Paper on Municipal Service Partnerships* of 2004. Also see s 76 of the Systems Act and Kroukamp 2005 *Journal of Public Administration* 76.

340 Pattberg *et al Public Private Partnerships for Sustainable Development* 3. Also see Hodge, Greve and Boardman "Introduction: The PPP Phenomenon and its Evaluation" 3.

sector and public bodies aimed at introducing private sector resources and expertise into governance, to provide and deliver public sector assets and services.<sup>341</sup> Other authors add to this definition a time element and define PPPs as formal, long-term working relationships established between a government institution and one or several private actors to jointly deliver one or more basic services to the general public.<sup>342</sup>

The National Treasury Regulations to the *Public Finance Management Act*<sup>343</sup> provide a formal, legally accepted definition of PPPs in South Africa. These regulations define a PPP as a commercial transaction between an institution and a private party in terms of which the private party: (a) performs an institutional function on behalf of the institution and/or: (b) acquires the use of state property for its own commercial purposes; and (c) assumes substantial financial, technical and operational risks in connection with the performance of the institutional function and/or use of state property.<sup>344</sup> The private party furthermore receives a benefit for performing the institutional function or from utilising the state property, either by way of: (i) consideration to be paid by the institution which derives from a revenue fund, or, where the institution is a national or provincial government enterprise, from the revenues of such an institution, or (ii) by charges or fees to be collected by the private party from users or customers of a service provided to them; or (iii) by a combination of the above mentioned methods.<sup>345</sup>

This rather comprehensive definition was later adapted specifically for municipal PPPs by the Municipal Public Private Partnership Regulations to the Local Government: Municipal Finance Management Act.<sup>346</sup> These regulations describe a PPP as a commercial transaction between a municipality and a private party<sup>347</sup> in

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341 Davies and Eustice 2005 <http://pwc.to/1gzloUk>. Also see Geddes *Making Public Private Partnerships Work: Building Relationships and Understanding Cultures* 1.

342 Zitron 2006 *Journal of Purchasing and Supply Management* 53. Also see UN *Guidebook on Promoting Good Governance in Public Private Partnerships* 1 and UNISDR *The Development of a Public Partnership Framework and Action Plan for Disaster Risk Reduction in Asia* 5.

343 1 of 1999. Hereafter the PFMA.

344 GNR 1535 in GG 25605 of 24 October 2003.

345 GNR 1535 in GG 25605 of 24 October 2003.

346 56 of 2003. Hereafter the MFMA.

347 A private party excludes a municipality; a municipal entity and an organ of state. See GNR 309 in GG 27431 of 1 April 2005. The term 'private party' is specifically defined to exclude public

terms of which the private party: (a) performs a municipal function<sup>348</sup> for or on behalf of the municipality or: (b) acquires the management or use of a municipal property for its own commercial purposes and: (c) assumes substantial financial, technical and operational risks in connection with the performance of the municipal function, the management or use of the municipal property, or both.<sup>349</sup> Similar to the above, the private party also receives a benefit from performing the municipal function or from utilising the municipal property or from both, by way of: (i) consideration to be paid or given by the municipality or a municipal entity under the sole or shared control of the municipality; (ii) charges or fees to be collected by the private party from users or customers of a service provided to them; (iii) or a combination of these benefits.<sup>350</sup>

It is possible to identify some key generic components of PPPs in these definitions. Firstly, an agreement (presumably a written contract) must be in place.<sup>351</sup> Such a contractual agreement defines the project and includes the agreed objectives of the public (procuring) institution (i.e. the municipality) and the private party involved.<sup>352</sup> Secondly, at least two entities are involved, one being the public institution (the municipality) and the other being the private entity (e.g. a company).<sup>353</sup> Each party plays a key role in each stage of the project, such as the funding, development, design, completion and implementation phases.<sup>354</sup> Depending on the project, the roles and responsibilities of each party may vary. In some projects the private party will be very involved in all aspects of the delivery of the service, for example and, in other projects it could have only a minor role to play.<sup>355</sup> Thirdly, either the private party must perform a public institutional function for or on behalf of the public institution; or the private party acquires public/state land for its own commercial

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institutions and therefore public-public partnerships. In this regard see National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

348 Municipal function means a municipal service or any other activity within the legal competence of a municipality. See GNR 309 in GG 27431 of 1 April 2005.

349 GNR 309 in GG 27431 of 1 April 2005.

350 GNR 309 in GG 27431 of 1 April 2005.

351 Minnie *Critical Success Factors for Public Private Partnerships in South Africa* 16.

352 The contractual agreement spans over a prescribed time, which may range from 5 to 30 years. See National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

353 Minnie *Critical Success Factors for Public Private Partnerships in South Africa* 58.

354 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

355 Seemela 2008 *Journal of Public Administration* 484.

purposes.<sup>356</sup> Either way, there must be the pursuit of a common goal and individual benefit to each contracting partner.<sup>357</sup> Fourthly, there is a substantial transfer of risk (financial,<sup>358</sup> technical and/or operational)<sup>359</sup> to the private party.<sup>360</sup> In this regard it is noteworthy that not all risk is transferred to the private party; only the risks that the private party is best able to manage.<sup>361</sup> Finally, a return of benefit (in the form of financial remuneration) is essential.<sup>362</sup> The payment arrangements or benefits are based on outputs, related to the provision of services and/or infrastructure and services provided by the private party.<sup>363</sup>

Two types of PPPs seem to exist in terms of the above text. In the first type the private party performs an institutional function and in the second the private party acquires the use of state property.<sup>364</sup> A PPP may also be a combination of these types, where the private party performs an institutional function and uses state property.<sup>365</sup> A PPP agreement which enables a private party to perform an institutional function usually entails the private party's performing a part of the public institution's service delivery or administrative functions whilst assuming the associated risks.<sup>366</sup> The requirements for such PPP agreements are very specific and the output specifications against which the private party's services will be measured are agreed upon prior to finalising the agreement.<sup>367</sup>

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356 Minnie *Critical Success Factors for Public Private Partnerships in South Africa* 16.

357 Minnie *Critical Success Factors for Public Private Partnerships in South Africa* 58. Also see National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

358 Financial risks arise if and when the private party is unable to obtain the funding needed for the project or when increased interest rates impact adversely on the financial viability of the project. The likeliness of a financial risk therefore depends on the financial capability of the private party, which can for example be influenced by the party's credit status or debt limitations. See ASB 2008 <http://bit.ly/1e3PY4B>.

359 Technical and operational risks include a broad range of risks involved in providing the service, i.e. price increases or shortages of input materials, increases in labour costs, and costs resulting from maintenance, for example. See ASB 2008 <http://bit.ly/1e3PY4B>.

360 Minnie *Critical Success Factors for Public Private Partnerships in South Africa* 16.

361 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>. Also see OECD *Dedicated Public Private Partnership Units* 19.

362 Minnie *Critical Success Factors for Public Private Partnerships in South Africa* 58.

363 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

364 GNR 1535 in GG 25605 of 24 October 2003. Also see GNR 309 in GG 27431 of 1 April 2005 and National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

365 National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

366 ASB 2008 <http://bit.ly/1e3PY4B>. Also see Tang, Shen and Cheng 2010 *International Journal of Project Management* 683.

367 Section A paragraph 6.1 of the *White Paper on Municipal Service Partnerships* of 2004.

In contrast to the latter, a PPP agreement which involves the use of state property entails the public institution transferring the right to use a specified asset to the private party for a specific period and against the payment of rent.<sup>368</sup> Throughout the duration of such a PPP agreement the private party uses the state property for its own commercial purposes and in some instances the public institution may share a percentage of the income generated by the private party.<sup>369</sup> Finally, in the instance of a PPP agreement where the private party performs both an institutional function and uses state property, the private party delivers specific services (i.e. performs an institutional function) for the public institution and may, whilst delivering such services, make use of the facilities used for providing the services for its own commercial use.<sup>370</sup>

PPPs further follow a typical structure. While PPPs in various sectors (such as health, agriculture and transport) may vary, a typical PPP structure can involve contractual agreements between a number of parties, including the state, a project sponsor, a project operator, financiers, suppliers, contractors, engineers, third parties and customers.<sup>371</sup> In addition, PPPs involve the private party's raising both debt and equity to finance the project.<sup>372</sup> Financing can be raised in various ways, such as capital contributions from the public institution or third-party finance.<sup>373</sup> In most cases the private party establishes a dedicated business entity known as the special purpose vehicle<sup>374</sup> which delivers the project and provides an instrument through which the funding is channelled.<sup>375</sup> Substantial funding is usually provided by lenders, who agree to the debt's being reimbursed by the cash flow generated from the project.<sup>376</sup> It is noteworthy, however, that not all PPP projects involve debt finance. Some PPP projects are financed either wholly through corporate finance

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368 Farlam *Assessing Public Private Partnerships in Africa* 4. Also see ASB 2008 <http://bit.ly/1e3PY4B>.

369 ASB 2008 <http://bit.ly/1e3PY4B>.

370 ASB 2008 <http://bit.ly/1e3PY4B>. Also see section A paragraph 6.3 of the *White Paper on Municipal Service Partnerships* of 2004.

371 UN *A Guidebook on Public Private Partnership in Infrastructure* 10. Also see Urio *Public Private Partnerships: Success and Failure Factors for In-Transition Countries* 6.

372 National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

373 ASB 2008 <http://bit.ly/1e3PY4B>.

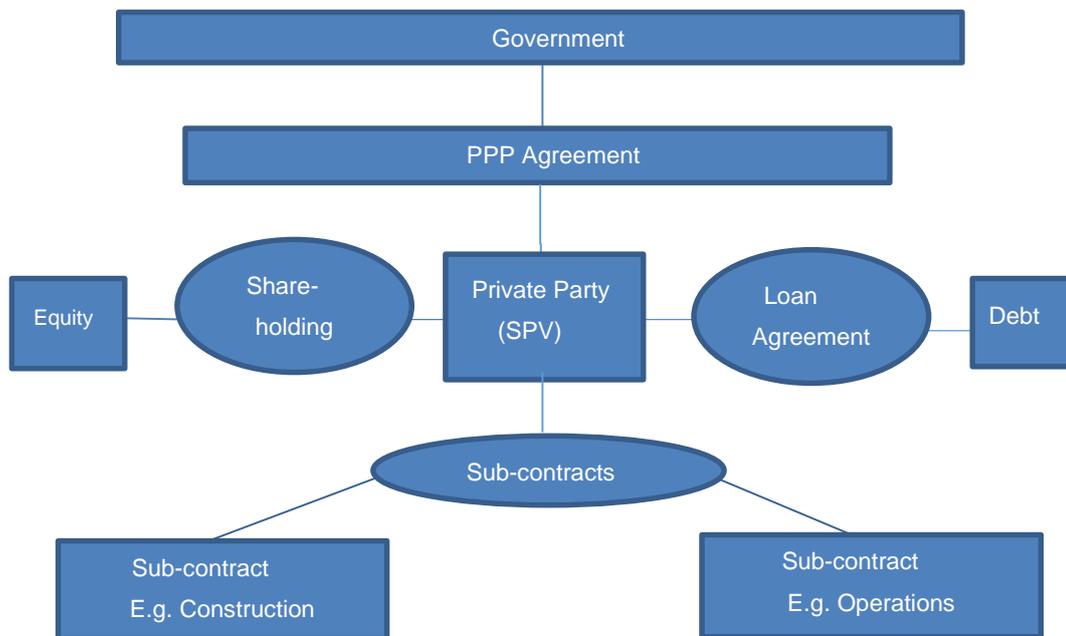
374 Hereafter SPV. An SPV is a company incorporated under the *Companies Act* 61 of 1973 of South Africa to provide services to a municipality in a PPP. See National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

375 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

376 ASB 2008 <http://bit.ly/1e3PY4B>. Also see Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

or by a combination of government funds and private equity.<sup>377</sup> The private party is responsible for exercising the rights and performing the obligations under the PPP agreement through the SPV.<sup>378</sup> Once the SPV is established, shareholders invest therein, either in the form of shares or shareholder loans.<sup>379</sup> An SPV enters into agreements with sub-contractors either for construction or operation or both.<sup>380</sup> These subcontractors are the service providers responsible for the construction of any assets and/or the operation of the asset or services under the PPP agreement.<sup>381</sup> Figure 1 offers a diagrammatic outline of the generic structure for PPPs and illustrates the structure of PPPs as described above.

Figure 1: Generic PPP structure<sup>382</sup>



PPPs cannot be used by government to avoid payment for capital projects. They only enable a public institution to spread payments for large projects over the

377 National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

378 Hemming *Public Private Partnerships, Government Guarantees and Fiscal Risks* 7 – 8.

379 ASB 2008 <http://bit.ly/1e3PY4B>.

380 ASB 2008 <http://bit.ly/1e3PY4B>. Also see Hellowell “The UK’s Private Finance Initiative: History, Evaluation, Prospects” 318 – 319.

381 ASB 2008 <http://bit.ly/1e3PY4B>. Also see Boussabaine *Risk Pricing Strategies for Public Private Partnership Projects* 23 – 24.

382 Taken from National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

project's lifetime.<sup>383</sup> PPPs should for example not be regarded as donations by a private party for the public good, or as the privatisation of state assets or liabilities.<sup>384</sup> As previously stated, public institutions may initially contribute to the preliminary costs of establishing the project but the main responsibility lies with the private party to raise funding (both in debt and equity) to finance the project.<sup>385</sup> PPPs are also not a substitute for a government implementation and enforcement system.<sup>386</sup> It always remains the responsibility of government to see to the execution of its duties, i.e. to ensure that services are provided and that projects are delivered to the benefit of the public.<sup>387</sup> Subsequently, government cannot legitimately use PPPs to transfer public liability or responsibility to the private sector.

Before any organ of state decides to enter into a PPP agreement it must consider three key issues, namely: the transferral of risk, affordability, and value for money.<sup>388</sup> The consideration of these three issues is also known in practice as collectively being the official 'test' to which all PPPs are subject.<sup>389</sup> In considering the transferral of risk, the public institution must reflect on whether a substantial risk can be transferred to the private party.<sup>390</sup> In this regard the public institution must carefully consider the nature of the PPP to be concluded and its associated risks. For example, if a proposed PPP entails the provision of services, the public institution must consider all of the possible risks related to the service provided, such as the inability of the private party to meet service delivery schedules; squandered costs, and an array of technical and operational risks.<sup>391</sup>

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383 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

384 GNR 1535 in GG 25605 of 24 October 2003. Also see National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

385 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>. Also see National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

386 Seemela 2008 *Journal of Public Administration* 484.

387 Seemela 2008 *Journal of Public Administration* 484.

388 National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>. Value for money means that the provision of the institutional function or the use of state property by a private party in terms of the PPP agreement results in a net benefit to the institution defined in terms of price, cost, quality, quantity, risk, transfer or a combination thereof. See GNR 1535 in GG 25605 of 24 October 2003.

389 This test was developed by the National Treasury in order to determine if a proposed PPP agreement could be a viable and sustainable mechanism to address service delivery and infrastructure obstacles. See National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

390 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

391 Seemela 2008 *Journal of Public Administration* 484.

In examining the issue of affordability, organs of state must reflect on whether they have sufficient funds to enter into and manage a PPP agreement.<sup>392</sup> It is imperative that procuring institutions adequately plan their finances to accommodate infrastructure and service delivery needs.<sup>393</sup> In some instances it may be necessary to review budgets in order to allocate adequate funding for PPP projects.<sup>394</sup> In considering whether a PPP project is going to be value for money or not, the organ of state must, for instance in the case of service delivery, assess the costs related to providing infrastructure and services itself, against the costs of providing the same infrastructure and services through a PPP agreement.<sup>395</sup> If the comparison shows that a PPP is more cost effective, the difference in cost between the two scenarios is regarded as 'value for money'.<sup>396</sup>

In addition to the above test, the South African government has developed a legal framework in terms of which PPPs are regulated. This framework consists of legislation and regulations which support and reflect governmental policy objectives regarding PPPs. The discussion to follow introduces the scope and content of the said legal framework.

### **3.3 The legal framework for PPPs in South Africa**

South Africa has a well-developed legal framework in terms of which all three spheres of government may enter into PPP agreements.<sup>397</sup> The principal legislation regulating PPPs at national and provincial level is the PFMA and its applicable regulation.<sup>398</sup> Conversely, municipal PPPs are regulated by the Systems Act, the MFMA and the *MFMA Municipal PPP Regulations*.<sup>399</sup>

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392 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

393 Plummer *Focussing Partnerships: A Sourcebook for Municipal Capacity Building in Public Private Partnerships* 71.

394 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

395 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

396 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

397 Levinsohn and Reardon 2007 *The PPP Quarterly* 1.

398 GNR 1535 in GG 25605 of 24 October 2003.

399 The National Treasury has explicitly indicated that municipal PPPs are regulated by the Systems Act and the MFMA and not by the PFMA and its regulations. See National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

In addition to these laws and regulations, the National Treasury has developed standardised PPP provisions<sup>400</sup> as well as a PPP manual/practice note<sup>401</sup> which regulates national and provincial PPPs. Similar guidelines have been established for municipal PPPs.<sup>402</sup> In addition to those instruments already discussed,<sup>403</sup> the Systems Act and MFMA are introduced below with special reference to the provisions which regulate PPPs in the local government sphere.

### 3.3.1 *The Systems Act*

The Systems Act regulates the internal systems and administration of municipalities in South Africa and aims to facilitate public accountability, public involvement and the development of policies and decision-making structures.<sup>404</sup> The Act also regulates certain aspects of municipal service delivery mechanisms and the processes and responsibilities related thereto.<sup>405</sup> While the Systems Act makes no explicit reference to PPP agreements it is generally accepted that PPPs are, *inter alia*, regarded as one of the external service delivery mechanisms provided for in the Act.<sup>406</sup> In terms of the Systems Act a municipality may provide a municipal service in its area through an internal mechanism or an external mechanism.<sup>407</sup> An external mechanism includes, amongst other possible partners, a community based organisation or other non-government organisation legally competent to enter into a contractual agreement, or any other institution, entity or person legally competent to operate a business activity.<sup>408</sup> The reference to 'any other institution, entity or person competent to operate a business activity' is understood to include members

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400 See National Treasury PPP Unit 2004 <http://bit.ly/1e3RBz4>.

401 See National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

402 See National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

403 Throughout the discussion in section 3, par 3.2, reference has been made to the standardised PPP provisions (National Treasury PPP Unit 2004 <http://bit.ly/1e3RBz4>); the PPP manual/practice note, (National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>); and the guidelines for municipal PPPs, (National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>).

404 Standard Bank, Rand Water and NBI 2006 <http://bit.ly/1nJZwad>. Also see the Preamble to the Systems Act.

405 Standard Bank, Rand Water and NBI 2006 <http://bit.ly/1nJZwad>.

406 Johnson *Outsourcing Basic Municipal Services: Policy, Legislation and Contracts* 10. Also see National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy> and National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

407 S 76(a) and (b) of the Systems Act.

408 S 76(iv) and (v) of the Systems Act.

of the local community, existing providers of urban services and donors or external consultants, as the other typical partners in a PPP.<sup>409</sup>

One of the matters regulated by the Systems Act is the circumstances under which municipalities must investigate appropriate mechanisms to provide municipal services.<sup>410</sup> These circumstances<sup>411</sup> are provided in order to enable the municipality to determine whether it should provide the services itself or through an external mechanism.<sup>412</sup> Should a municipality decide to explore service provision by an external mechanism, it must also conduct a feasibility study.<sup>413</sup> The feasibility study is essential in determining if a proposed external mechanism, such as a PPP, would be in the best interest of the municipality.<sup>414</sup> Should a municipality decide to provide services through a PPP, it remains responsible for ensuring that the service is provided to the local community.<sup>415</sup> Accordingly, the municipality must regulate the provision of the service, monitor and assess the implementation of the PPP agreement,<sup>416</sup> control the setting and adjustment of tariffs by the service provider, and generally exercise its service authority so as to ensure uninterrupted service delivery in the best interest of the local community.<sup>417</sup>

### 3.3.2 *The MFMA*

The principal objective of the MFMA is to ensure sound and sustainable management of the financial affairs of municipalities and other institutions in the

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409 National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>. Also see Plummer *Focussing Partnerships: A Sourcebook for Municipal Capacity Building in Public Private Partnerships* 12.

410 S 77 of the Systems Act.

411 The circumstances include, amongst others, where an existing municipal service or part of that municipal service is to be significantly upgraded, extended or improved; when a new municipal service is to be provided; or when it is requested by the local community. In this regard see s 77(a) – (f) of the Systems Act. It is the submission of the author that a municipality could investigate an appropriate mechanism (such as an external mechanism, i.e. a PPP) to provide a municipal service, should it be in the best interest of the community. Such circumstances could occur where the municipality is unable to adequately provide the municipal service due to a lack of funding or resources, for example.

412 S 78 of the Systems Act.

413 S 78(c) of the Systems Act. Also see s 80(3) of the Systems Act.

414 GNR 1535 in GG 25605 of 24 October 2003. The 'feasibility study' is also discussed in section 3, paragraph 3.3.2.1 below.

415 S 81(1) of the Systems Act.

416 S 81(1)(a) – (b) of the Systems Act.

417 S 81(1)(d) – (e) of the Systems Act.

local government sphere.<sup>418</sup> It further aims to maximise the ability of municipalities, to deliver services to all community members, customers, users and investors.<sup>419</sup> The MFMA regulates specific aspects of service delivery mechanisms including the required processes of implementing such mechanisms.<sup>420</sup> In addition, the MFMA provides specific responsibilities to municipal officials regarding financial management.<sup>421</sup> These responsibilities are specifically relevant to PPPs. The accounting officer<sup>422</sup> is tasked with the responsibility of managing the financial administration of the municipality<sup>423</sup> and must for this purpose take all reasonable steps to ensure that the resources of the municipality are used effectively and economically.<sup>424</sup> This may include the consideration of PPPs as 'value for money'<sup>425</sup> service delivery mechanisms.<sup>426</sup>

In correspondence with the 'test' for PPPs the MFMA provides that a municipality may enter into a PPP agreement on condition that the agreement will offer value for money for the municipality; be affordable for the municipality; and transfer appropriate technical, operational and financial risk to the municipality.<sup>427</sup> The Act further provides that before entering a PPP agreement the municipality must conduct a feasibility study which explains the strategic and operational benefits of the PPP for the municipality in terms of its objectives.<sup>428</sup> The feasibility study must

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418 Preamble to the MFMA.

419 National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

420 See chapter 11 of the MFMA. Also see Standard Bank, Rand Water and NBI 2006 <http://bit.ly/1nJZwad>.

421 Chapter 8 of the MFMA.

422 The municipal manager of a municipality is regarded as the accounting officer. See s 60(1) of the MFMA.

423 S 62(1) of the MFMA.

424 S 62(1)(a) of the MFMA.

425 'Value for money' in relation to municipal PPPs means that the performance of a private party in terms of the PPP agreement will result in a net benefit to the municipality in terms of price, cost, quality, quantity, risk transfer or any combination of those factors. See GNR 309 in GG 27431 of 1 April 2005.

426 National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

427 S 120(1)(a) – (c) of the MFMA. The prerequisites for entering into a PPP agreement were specifically referred to and discussed by the court in *Port Alfred Riverhouse Property (Pty) Ltd v Ndlambe Municipality* 2008 JDR 0970 (E) (hereafter the *Riverhouse-* case). The court specifically examined these pre-requisites in determining whether the applicable municipality in the case could have entered into the PPP agreement in question. See the *Riverhouse-* case par 30. It is suggested that the court's consideration of these pre-requisites in deciding if the applicable municipality could have entered into the PPP agreement emphasises the significance of these pre-requisites to municipalities who are considering entering into a proposed PPP project.

428 S 120(4)(a) of the MFMA.

further describe the nature of each party's role in the PPP including the extent to which technical, operational and financial risks will be transferred to the private party.<sup>429</sup> This study must also determine whether the capacity of the municipality can effectively monitor, manage and enforce the agreement.<sup>430</sup> Once the feasibility study has been concluded and a decision has been made to enter into the PPP agreement, the performance of the service under the PPP agreement must be monitored on a monthly basis and the capacity within the municipal administration must be managed accordingly.<sup>431</sup>

### 3.3.2.1 Regulation to the MFMA

The Municipal PPP Regulations<sup>432</sup> provide clear definitions for municipal PPPs as well as stipulate detailed instructions for PPPs and specify the phases and approvals required of each municipal PPP.<sup>433</sup> The PPP phases and their subsequent approvals are divided into four categories, namely project inception,<sup>434</sup> the feasibility study,<sup>435</sup> procurement,<sup>436</sup> and PPP contract management.<sup>437</sup> Each of these phases requires the municipality to consider the affordability, value for money and risk transfer of a proposed PPP agreement before continuing to the next phase.<sup>438</sup> Moreover, the regulations allow for the amendment of a PPP

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429 S 120(4)(b) of the MFMA.

430 S 120(4)(d) of the MFMA.

431 S 116(2)(a) – (c) of the MFMA. These matters must also be reported on regularly to the municipal council or the board of directors. See s 116(2)(d) of the MFMA.

432 GNR 309 in GG 27431 of 1 April 2005.

433 National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

434 Under project inception the municipality must identify and define the activity which the municipality proposes to outsource to a private party. See Regulation 3(1)(a) of GNR 309 in GG 27431 of 1 April 2005.

435 The aim of the feasibility study is to assess the needs of the municipality, to notify and consult all potential stakeholders for the purpose of assessing the various options available to the municipality to satisfy its needs, and to determine the advantages and disadvantages of each option. See Regulation 3(1)(b) of GNR 309 in GG 27431 of 1 April 2005. Also see National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

436 During procurement, bids must be received and value assessments of each received bid must be conducted. See Regulation 4(1) of GNR 309 in GG 27431 of 1 April 2005. Also see chapter 111 of the MFMA which contains provisions which regulate goods and services including supply chain management and provide specific requirements for the approval of tenders and contracts and contract management.

437 National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>. Also see National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>. Contract management is a continuous process in which the accounting officer of a municipality must take all reasonable steps to ensure that the outsourced activity is effectively and efficiently carried out in accordance with the PPP agreement.

438 National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>.

agreement<sup>439</sup> and prohibit municipal entities from initiating, procuring, or entering into PPP agreements on their own or on behalf of a parent municipality.<sup>440</sup> It is noteworthy, however, that a municipality may be party to a PPP agreement initiated, procured and entered into by its parent municipality.<sup>441</sup>

### **3.4 Strengths and weaknesses of PPP agreements**

An increasing number of government entities in developing countries are entering into PPP agreements to make use of the private sector's capacity and skills to address their service delivery needs.<sup>442</sup> While PPPs may be regarded as both an effective tool in assisting in the delivery of new and existing governmental services and an innovative mechanism for serving and engaging the public,<sup>443</sup> it must be noted that the successful use of PPPs is accompanied by several challenges and/or risks.<sup>444</sup> It is therefore imperative that the strengths and weaknesses of a particular PPP agreement be critically assessed before any government institution enters one.

This section in brief reflects on the strengths and weaknesses pertaining to municipal PPPs in order for any conclusions on the role and function of PPPs in LDM to be true, realistic and free of utopian-type expectations.

#### **3.4.1 Strengths of municipal PPP agreements**

One of the most significant benefits for local government and other organs of state entering into a PPP agreement with the private sector is that PPPs have the

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439 Regulation 9(1) of GNR 309 in GG 27431 of 1 April 2005. Also see s 116(3) of the MFMA and National Treasury PPP Unit Date 2007 <http://bit.ly/O3yosy>. At least 60 days prior to the amendment of the PPP agreement, the accounting officer must solicit the views and recommendations of the National Treasury and the relevant provincial treasury on the reasons for the amendment. See Regulation 9(2) of GNR 309 in GG 27431 of 1 April 2005.

440 Regulation 10 of GNR 309 in GG 27431 of 1 April 2005. See s 1 of the Systems Act which provides that: "a parent municipality in relation to a municipal entity which is a private company in respect of which effective control vests in a single municipality, means that municipality."

441 Regulation 10 of GNR 309 in GG 27431 of 1 April 2005.

442 ASB 2008 <http://bit.ly/1e3PY4B>. Also see Hoppe and Schmitz 2013 *Rand Journal of Economics* 56 and World Bank Institute *Public Private Partnerships Reference Guide* 11.

443 Burstein and Shikada 20113 *Public Management* 13.

444 Seemela 2008 *Journal of Public Administration* 485.

potential to deliver better value for money than traditional procurement practices.<sup>445</sup> During the past decade the advantages of PPPs as service delivery mechanisms have been widely researched and several authors including South Africa's National Treasury PPP Unit have listed a number of strengths.<sup>446</sup> These strengths include, among others, service delivery capacity and infrastructure expansion; risk sharing; budget certainty; improved levels of service delivery; and economic benefits.<sup>447</sup>

Entering into a PPP agreement increases a municipality's service delivery capacity by utilising private sector capital and skills.<sup>448</sup> For example, if a municipality partners with a private party who specialises in the delivery of water and sanitation services the municipality gains access to expert knowledge and resources otherwise not available to the municipality.<sup>449</sup> In this regard it is suggested that such a PPP agreement affords the municipality the opportunity to learn from the private party and to train its municipal staff accordingly. In addition, such a PPP may enable the municipality to provide the said services in a similar manner once the PPP agreement has ended.<sup>450</sup> Because municipalities in South Africa lack adequate funding to train their personnel, this is a particularly advantageous aspect of entering into PPP agreements.<sup>451</sup> It is also noteworthy that experienced private companies are ideally placed to identify infrastructure needs, and often have the ability to come up with innovative ideas to meet those needs.<sup>452</sup> Further, private companies who specialise in delivering specific services often possess the newest equipment and organisational structure for that purpose, which may be utilised by the municipality for the duration of the PPP agreement.<sup>453</sup> PPPs also generate additional revenue in the instance where the private party collects fees or charges from users of the service and the municipality shares in a percentage thereof.<sup>454</sup>

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445 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

446 See for example National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>; Farlam *Assessing Public Private Partnerships in Africa* 1 – 51; Nzimakwe 2006 *Africanus* 48 – 57; Seemela 2008 *Journal of Public Administration* 485 – 487; and Labuschagne "The Future of PPPs in South Africa" 14 – 16.

447 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

448 Nzimakwe 2006 *Africanus* 55.

449 Plummer *Focussing Partnerships: A Sourcebook for Municipal Capacity Building in Public Private Partnerships* 24.

450 Standard Bank, Rand Water and NBI 2006 <http://bit.ly/1nJZwad>.

451 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

452 World Bank Institute *Public Private Partnerships Reference Guide* 26.

453 Abou-bakr *Managing Disasters through Public Private Partnerships* 18 – 19.

454 World Bank Institute *Public Private Partnerships Reference Guide* 19.

PPPs are further designed so that the risks are shared and allocated to the party best able to manage them.<sup>455</sup> This division of risk is based on the strengths of each party (be it in the form of expertise, capacity or costs) and ensures the most effective method for delivering the project.<sup>456</sup> Allocating some of the risk to the party who can better manage it, may reduce the project's overall cost to government which in turn may foster budget certainty.<sup>457</sup> Because municipalities are generally subject to short-term financial pressures (which consequently leads to their engaging in short-term planning,) allowing the private party to plan in the long term without such pressures provides for a more sustainable use of valuable assets, the cost of which therefore decreases over their life span.<sup>458</sup> It is also noteworthy that as soon as a PPP agreement is signed the future costs of the PPP project are fixed and the municipality must in terms of the agreement receive specific outputs at specific costs and must budget accordingly.<sup>459</sup> This is in contrast to more conventional procurement, where the costs of the completed project and of the future maintenance of the assets often remain uncertain.<sup>460</sup>

PPPs can furthermore improve the level and quality of service delivery or maintain the existing levels of service delivery by introducing innovative ways to organise and carry out services.<sup>461</sup> The use of private sector expertise may also introduce new technologies and economies of scale that often reduce costs or improve the quality of services.<sup>462</sup> In addition, by virtue of the contractual agreement the private party is obliged to maintain a prescribed standard of service delivery for the duration of the contract.<sup>463</sup> This is beneficial to the public institution and the quality of service delivery, in that it allows the public institution to govern and provide political support to the PPP project while the private party addresses the more technical aspects of the project.<sup>464</sup>

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455 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>. Also see Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

456 Labuschagne "The Future of PPPs in South Africa" 16.

457 World Bank Institute *Public Private Partnerships Reference Guide* 17.

458 Labuschagne "The Future of PPPs in South Africa" 16.

459 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

460 Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

461 Seemela 2008 *Journal of Public Administration* 486.

462 Seemela 2008 *Journal of Public Administration* 486.

463 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>. Also see Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

464 Labuschagne "The Future of PPPs in South Africa" 16.

Finally, the increased involvement of public institutions such as municipalities in PPP agreements not only assists in stimulating the private sector, but can contribute to job creation and economic growth.<sup>465</sup> In addition to the obvious advantages to the general public (i.e. job creation) municipalities also benefit (albeit indirectly) from entering into PPP agreements in that the possibility of job creation through PPPs may assist municipalities in alleviating poverty in their communities.<sup>466</sup> Further, private sector development is stimulated, as PPPs may provide new sources of capital for private companies which face severe fiscal pressure, for example.<sup>467</sup>

### 3.4.2 Weaknesses of PPP agreements

PPPs also pose a number of challenges and weaknesses.<sup>468</sup> While it may be argued that the challenges PPPs face may differ from project to project, there is agreement on the prevalence of some general challenges and weaknesses.<sup>469</sup> The challenges include but are not limited to a lack of higher level policy direction or political resolve; mistrust of private sector involvement; issues related to the transfer of risk (i.e. the inability to transfer all risks); and a lack of management capacity in the delivery of PPP projects.<sup>470</sup> Each of these challenges will be discussed below.

The successful implementation of PPPs between the private sector and municipalities depends largely on the level of acceptance and support thereof by political leaders, legislation and policy.<sup>471</sup> In developing countries there seems to be a lack of higher level policy direction or consistent political resolve, generally.<sup>472</sup> This is true also in South Africa, and it has been found that the policy direction and

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465 Seemela 2008 *Journal of Public Administration* 486.

466 Bongwa "The Role of Public Private Partnerships in Poverty Alleviation in South Africa" 15 – 19.

467 Nzimakwe 2006 *Africanus* 55.

468 Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

469 See for example the work of the World Bank Institute *Public Private Partnerships Reference Guide* 15 – 33, Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>, Labuschagne "The Future of PPPs in South Africa" 11 – 13 and Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

470 Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>. Also see Labuschagne "The Future of PPPs in South Africa" 13 and Levinsohn and Reardon 2007 *The PPP Quarterly* 2 and Tang, Shen and Cheng 2010 *International Journal of Project Management* 685.

471 Yong *Public Private Partnerships Policy and Practice: A Reference Guide* 57. Also see Tang, Shen and Cheng 2010 *International Journal of Project Management* 685.

472 Pessoa "Reviewing Public Private Partnership Performance in Developing Economies" 568 – 571. Also see Noumba-Um "Empirical Evidence of Infrastructure Public Private Partnerships: Lessons from the World Bank Experience" 456 – 472.

political support for PPPs differs from one line department to the next.<sup>473</sup> Some national line departments, such as transport, clearly support PPPs while many other departments do not.<sup>474</sup> In addition, it was found that there is a lack of higher level leadership to provide guidance on why and in which circumstances PPPs should be used to achieve policy goals.<sup>475</sup> Furthermore, policy direction in some instances is not strong enough at the highest level to filter down to the accounting officer of a municipality in charge of managing PPP transactions.<sup>476</sup>

In addition to the above policy constraints, it is noteworthy that both the Systems Act and the MFMA require feasibility studies to be undertaken before a municipality may enter into a PPP agreement.<sup>477</sup> Although the provisions in each Act pertaining to feasibility studies are similar, there are discrepancies that may cause confusion.<sup>478</sup> Since there is little to no guidance in this regard, municipalities must exercise a great deal of care and judgement to ensure that the requirements of each Act are satisfied.<sup>479</sup> Having to satisfy the requirements of two Acts is not only a difficult task, but it also delays the procurement process as it takes longer to complete the feasibility phase of the PPP agreement.<sup>480</sup> These issues, the consequent lack of clarity on the rationale for PPPs, and the overlapping in PPP legislation creates confusion among municipal councillors, which may discourage them from using PPPs and may generally trigger negative implications for the successful implementation of PPP agreements.<sup>481</sup>

PPP agreements and projects further involve a loss of management control over infrastructure provision by the state.<sup>482</sup> This may foster a sense of

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473 Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

474 Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

475 This was found in a study conducted by Castalia Strategic Advisors for the South African Support Programme for Accelerated Infrastructure Development. Castalia specialises in improving the organisation of business affairs and the delivery of public services and for this purpose conducts extensive research on PPPs. See Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

476 See Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

477 See discussion in section 3, par 3.3.1 and 3.3.2 above.

478 Levinsohn and Reardon 2007 *The PPP Quarterly* 2.

479 Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

480 Levinsohn and Reardon 2007 *The PPP Quarterly* 2.

481 Labuschagne "The Future of PPPs in South Africa" 11.

482 World Bank Institute *Public Private Partnerships Reference Guide* 29.

apprehensiveness (on the part of national or provincial government)<sup>483</sup> due to the fact that these spheres sometimes question whether the private sector is sufficiently experienced to provide large scale infrastructure services.<sup>484</sup> Leadership in national line departments is further said to mistrust the intentions of private parties out of concern that the private party may misuse the authority bestowed upon it by virtue of a PPP agreement, and purloin more profit than agreed upon, for example.<sup>485</sup> This mistrust consequently results in mistrust and exaggerated scrutiny of PPP agreements, which delays PPP procurement and extends negotiation periods.<sup>486</sup>

PPPs furthermore do not always achieve or ensure absolute risk transfer.<sup>487</sup> Questions have arisen as to whether the risks are actually transferred to the private party, as the risk transfer process is often subjective for the reason that it is difficult to accurately identify, allocate and value possible risks.<sup>488</sup> Moreover, because PPPs are often constructed using SPVs, which typically hold high levels of debt and relatively low levels of equity, the private party is unable to accept unlimited risk.<sup>489</sup> It has also been found that budgets for major procurement projects have been prone to a bias towards optimism, which means that there has been a tendency to budget for the best possible outcome – a habit which results in poor risk allocation.<sup>490</sup>

Another weakness in implementing PPP agreements is the general lack of capacity of both public institutions and private parties in the delivery of PPP projects in South Africa.<sup>491</sup> Public institutions face challenges in increasing or maintaining their capacity to manage PPPs and the private sector faces challenges in offering better value-for-money services.<sup>492</sup> It is further noteworthy that managers within line departments, provinces and municipalities often lack (a) sufficient time and resources to dedicate to PPPs, (b) the knowledge or ability to initiate a PPP or

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483 Castalia Strategic Advisors and Ukhamba Advisory Services 2007 <http://bit.ly/1kRDBRv>.

484 Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

485 Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

486 Labuschagne "The Future of PPPs in South Africa" 13.

487 Davies and Eustice 2005 <http://pwc.to/1gzloUk>. Also see Shen, Platten and Deng 2006 *International Journal of Project Management* 592.

488 Fombad 2013 *African Journal of Business Ethics* 11.

489 Davies and Eustice 2005 <http://pwc.to/1gzloUk>.

490 Fombad 2013 *African Journal of Business Ethics* 19. Also see National Treasury PPP Unit 2004 <http://bit.ly/1nJXOps>.

491 Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

492 National Treasury PPP Unit 2007 <http://bit.ly/1kRrm7o>.

manage a PPP transaction, and (c) the confidence or authority to make crucial decisions in managing PPP agreements.<sup>493</sup> Without the relevant expertise and capacity it is not possible to administer or implement a PPP agreement effectively.<sup>494</sup>

### **3.5 Concluding remarks**

Based on the above, it would seem that PPP agreements are aimed at expanding public infrastructure by utilising the expertise and resources available in the private sector in such a way as to accelerate and improve service delivery and to allow government to focus on its remaining mandates and responsibilities.<sup>495</sup> PPPs are binding contracts between a public institution and a private entity undertaken specifically in pursuance of expanding public infrastructure and improving service delivery. Not only are these agreements beneficial to the general public in that the public receives accessible, cost-effective services, but the private sector is exposed to new business and investment opportunities, which exposure is beneficial to South Africa's economy.<sup>496</sup> South Africa furthermore boasts of a well-developed legal framework which regulates all aspects of PPPs and provides specific requirements *inter alia* for the identification of a PPP project, conducting feasibility studies, PPP procurement and contract management.

Despite the above-mentioned benefits and the existence of the extensive legal framework, there are a number of weaknesses or constraints pertaining to the implementation and management of PPP agreements. These weaknesses exist in both the public and private sector contexts, and require careful consideration before a PPP agreement is pursued. It is suggested that before entering into a PPP agreement a municipality should assess the proposed PPP project against the basic test of PPPs<sup>497</sup> in order to ensure that the project is in fact a viable value-for-money option.

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493 Castalia Strategic Advisors 2007 <http://bit.ly/MvuffZ>.

494 Labuschagne "The Future of PPPs in South Africa" 13.

495 Levinsohn and Reardon 2007 *The PPP Quarterly* 4.

496 Levinsohn and Reardon 2007 *The PPP Quarterly* 4.

497 As discussed in section 3, par 3.2 of this mini-dissertation.

Against the backdrop of the introductory discussion of the nature and legal framework of PPPs, the following section moves into a discussion of the relevance of PPPs for LDM, which is ultimately at the heart of the research question underpinning this study.

## **4 The relevance of PPPs for LDM**

### **4.1 Introduction**

Traditionally, disaster management has been understood to be the exclusive responsibility of government.<sup>498</sup> However, considering the increase in the occurrence of disasters,<sup>499</sup> including the array of activities necessary to manage them,<sup>500</sup> it may be argued that governments alone do not have all of the required resources to ensure that communities are adequately protected against the effects of disastrous events. The public sector or government is typically not the only sector affected by disaster. Studies have shown that on average, disasters can cause annual losses to the private sector of up to one hundred billion US dollars worldwide.<sup>501</sup> Comprising this revealing number are losses related to natural disasters, which amount to an average loss of seventy billion US dollars, with anthropogenic disasters constituting the rest.<sup>502</sup>

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498 Sarmiento *et al* *Private Sector and Disaster Risk Reduction: The Cases of Bogota, Miami, Kingston, San José, Santiago and Vancouver* 3. Also see Abou-bakr *Managing Disasters through Public Private Partnerships* 1.

499 Between 1980 and 2011 the occurrence of natural disasters increased significantly. The year 1980 saw the occurrence of 39 floods, 43 storms and 14 droughts while these numbers increased in 2011 with the occurrence of 154 floods, 84 storms and 16 droughts. In this regard see UNISDR 2012 <http://bit.ly/1fPVmt4>. It is further noteworthy that the incidence of anthropogenic disasters have also increased from just over 50 such disasters in 1970 to approximately 150 occurrences in 2012. See Bevere *et al* *Natural Catastrophes and Man-made Disasters in 2012* 2. These figures are expected to increase drastically within the following decade. See Djalante 2012 *Natural Hazards and Earth System Sciences* 2923 and UNISDR *Making Cities Resilient: Summary for Policy Makers* 4 – 5.

500 See the discussion under section 2, par 2.2.3 and 2.4 above.

501 UNISDR *From Shared Risk to Shared Value –The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 1.

502 Bevere *et al* *Natural Catastrophes and Man-made Disasters in 2012* 1. Also see UNISDR *From Shared Risk to Shared Value –The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 55 – 58.

In response to the above, the private sector has become increasingly willing to become involved in disaster management.<sup>503</sup> At the same time, government agencies all over the globe are shifting towards sharing some of the financial and managerial responsibilities related to dealing with disasters with the private sector – including by means of PPP agreements.<sup>504</sup> This movement is based on the premise that both the public and private sector stand to benefit by combining their financial resources, knowledge, and expertise to enhance the delivery of disaster management services before, during and after the occurrence of a disaster.<sup>505</sup>

The above type of private sector involvement also fits the bigger pursuit of Corporate Social Responsibility<sup>506</sup> which derives from the notion that corporations have an obligation to constituent groups in society other than shareholders and beyond that prescribed in law or union contract.<sup>507</sup> Companies which act in accordance with the principle of CSR are inclined to act responsibly in regard to environmental and human rights issues and may as a result thereof experience indirect economic benefits such as improved productivity and reputation.<sup>508</sup> Such advantages prove to be useful incentives for businesses partaking in CSR undertakings. Typical CSR activities for disaster management include, businesses partaking in voluntary advocacy in raising awareness for disaster risk reduction as

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503 Brahin *Country Risk Management: Making Societies More Resilient* 1 – 2. Also see UNISDR *Making Cities Resilient: Summary for Policy Makers* 10 – 12.

504 See the work of the UNISDR regarding the involvement of the private sector in assisting governments with their disaster management responsibilities. For a list of publications in this regard see UNISDR Date Unknown <http://bit.ly/1c3x83q>.

505 Buttarazzi Date Unknown <http://bit.ly/1cj5cTv>.

506 Hereafter CSR.

507 See Johnson, Connolly and Carter 2011 *Corporate Social Responsibility and Environmental Management* 353. CSR is defined by the European Commission as: ‘the social responsibility of enterprises to have processes in place which integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders’. See European Commission 2011 <http://bit.ly/1hnUmzX>. In the South African context, CSR is defined as the responsibility of a company for the impacts of its decisions and activities on society and the environment, through transparent and ethical behaviour that: contributes to sustainable development, including health and the welfare of society; takes into account the legitimate interests and expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behaviour; and is integrated throughout the company and practiced in its relationships. See IoDSA *King Report on Corporate Governance for South Africa* 51 and IoDSA *The King Code on Corporate Governance for South Africa* 51.

508 See the case of *Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Ltd and Others* 2006 JOL 17516 (W) par 16.9 (hereafter the *Stilfontein-* case). In this case the court also noted that a well-managed company will be aware of, and respond to social issues, and will place a high priority on ethical standard. See *Stilfontein-* case par 16.9.

well as fundraising initiatives.<sup>509</sup> Over time, such voluntary activities have evolved beyond corporate philanthropy to direct involvement in disaster management projects such as relief, mitigation and preparedness initiatives.<sup>510</sup>

One of the priorities identified in the HFA entails government partaking in activities which reduce underlying risk factors.<sup>511</sup> This specific priority recommends that the state establish PPPs aimed at engaging the private sector in disaster risk reduction activities and that the state encourages the private sector to foster a culture of disaster prevention.<sup>512</sup> It may therefore be argued that the HFA recognises the use and need for private sector involvement in the government's disaster management initiatives. Considering the purpose of this study,<sup>513</sup> including the fact that there are no registered PPPs specifically for disaster management in South Africa, the aim of this section is to determine the role and function of PPPs with regard to LDM. Firstly, the relevance of involving the private sector in disaster management initiatives will be discussed. This discussion is followed by a critical examination of existing PPPs for disaster management in foreign jurisdictions and their possible application and use for municipalities in South Africa. In addition, this section includes a discussion of the lessons learned from the use of existing PPPs in LDM. These lessons serve as the basis for some of the recommendations made in section 5 below.

#### **4.2 PPPs in disaster management: relevance and function**

Currently the world is facing severe economic and political unrest, rapid technological changes and increased interconnectedness of global trade, financial markets and supply chains.<sup>514</sup> For the private sector, this situation may result in a

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509 Mitchell *et al* "National Systems for Managing the Risks from Climate Extremes and Disasters" 347.

510 Fernandez, Uy and Shaw "Community Based Disaster Risk Management Experience in the Philippines" 223. For an overview of the recent involvement of the private sector in disaster management activities, see UNISDR *Business and Disaster Risk Reduction: Good Practices and Case Studies* 1 – 27.

511 Paragraph 14 of the HFA. See the discussion of the HFA and priority HFA-4 under section 2, par 2.3.1.1.1 above.

512 Paragraph 19(ii)(l) of the HFA.

513 See the discussion in section 1 above.

514 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 16. Also see Roeth 2009 <http://bit.ly/1fQpGnt> and See Becker-Birck *et al Resilience in Action: Lessons from Public Private Collaborations around the World* 6 – 9.

wide range of complex, unpredictable events in which risks can manifest suddenly, with extensive ramifications.<sup>515</sup> The private sector therefore increasingly views its involvement and investment in disaster management and disaster risk reduction activities, amongst others, as necessary in order to ensure the sustainability, resilience and competitiveness of their businesses.<sup>516</sup> According to the UN, many businesses invest in disaster management initiatives to strengthen their capacities and strategies for disaster risk.<sup>517</sup>

Private sector investment and disaster can be viewed as two sides of the same coin. On the one side, the private sector can be directly affected by disaster, while on the other, the private sector itself can cause or increase disaster risk.<sup>518</sup> The extent to which companies can be affected by disaster is vast.<sup>519</sup> Most businesses depend on infrastructure run by the public sector, so that when transport, communication or energy networks, for example, are damaged by disaster the private sector is directly affected.<sup>520</sup> Moreover, the occurrence of disaster often negatively impacts on industrial facilities and services, equipment and finished products, which may cause changes in markets or loss of trading capacity.<sup>521</sup> In such circumstances the effects of disaster may also extend beyond the boundaries of a company's operations and may extend along the entire value chain, potentially resulting in workforce dislocation or the interruption or collapse of distribution systems.<sup>522</sup> It is also possible for the private sector to create and realise disaster risk, by constructing unsafe facilities, distributing and storing hazardous materials

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515 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 16. Also see Brahin *Country Risk Management: Making Societies More Resilient 2* and Roeth 2009 <http://bit.ly/1fQpGnt>.

516 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 16. Also see Mitchel and Schnarwiler *Disaster Risk Financing: Reducing the Burden on Public Budgets* 3.

517 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 16. Also see Lavell and Maskrey 2013 <http://bit.ly/1bNYES3>.

518 Sarmiento *et al Private Sector and Disaster Risk Reduction: The Cases of Bogota, Miami, Kingston, San José, Santiago and Vancouver* 6.

519 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 23 – 37. Also see Brahin *Country Risk Management: Making Societies More Resilient 1 – 2/*

520 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 15.

521 Sarmiento *et al Private Sector and Disaster Risk Reduction: The Cases of Bogota, Miami, Kingston, San José, Santiago and Vancouver* 7.

522 UNISDR and PwC 2013 <http://pwc.to/1hXRTel>.

or conducting unsafe production activities, for example.<sup>523</sup> Despite the extent of this relationship, the private sector is often better equipped with financial and infrastructural resources to assist communities in need when disaster strikes.<sup>524</sup> Many developing countries receive more financial support from private sector investment than they do from foreign aid<sup>525</sup> and some authors argue that because of the private sector's financial resources and specialised knowledge it can aid government's disaster management initiatives.<sup>526</sup>

It is not any one, particularly appropriate sector that is in a position to assist government in its disaster management initiatives. Several industries are well - positioned to leverage their relevant expertise, and many industries, such as engineering and construction-, information communication technology and telecommunication-,<sup>527</sup> agriculture-, travel and tourism-, the media and entertainment,- and the transport industry may be regarded as key role-players in assisting government in disaster management activities.<sup>528</sup> For example, it is widely known that many fatalities during disasters are caused by the collapse of buildings, so, engineering and construction companies are essential to developing resilience to disaster, since they partake in a standard setting role in land-use planning and building design.<sup>529</sup> Moreover, these companies also play an important role in directing newly proposed developments away from known hazard locations, through choosing to develop in safer areas, for instance.<sup>530</sup> Disaster management

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523 Sarmiento *et al Private Sector and Disaster Risk Reduction: The Cases of Bogota, Miami, Kingston, San José, Santiago and Vancouver* 7. Also see Smith *Environmental Hazards: Assessing Risk and Reducing Disaster* 5 – 6.

524 Johnson, Connolly and Carter 2011 *Corporate Social Responsibility and Environmental Management* 352 – 369. Of the top 175 economic entities in the world, 111 entities are corporations and only 64 entities are countries. See White 2012 <http://bit.ly/1cTBFDk>. This information was gathered using data from the Fortune 500 list of corporations in 2011 and the World Bank's data on each country's GDP. In this regard see CNN Fortune and Money 2012 <http://cnnmon.ie/1eyPcNa> and World Bank 2012 <http://bit.ly/1kbr2k3>.

525 Sarmiento *et al Private Sector and Disaster Risk Reduction: The Cases of Bogota, Miami, Kingston, San José, Santiago and Vancouver* 6. Also see World Bank *World Development Indicators* 2013 16-33.

526 See for example, Roeth 2009 <http://bit.ly/1fQpGnt>; Wahlstrom 2011 *Greenleaf Publishing* 23 – 25 and Busch and Givens 2013 *Journal of Strategic Security* 1 – 19.

527 Hereafter ICT and Telecommunication.

528 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 7. Also see Mitchell *et al* "National Systems for Managing the Risks from Climate Extremes and Disasters" 347.

529 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 7 – 11. Also see Boshier and Dainty 2010 *Disasters* 1 – 18.

530 Boshier *et al* 2007 *Building Research and Information* 165.

initiatives can also benefit from ICT and telecommunication companies in that these companies can apply the newest communication technologies in the development of useful monitoring and communication systems, such as early warning systems, for example.<sup>531</sup> Early warning systems may prove to be useful specifically in mitigation and vulnerability reduction activities considering that such systems disseminate crucial information to the public to warn them before a hazard or risk eventually becomes a disaster.<sup>532</sup>

Because of their reliance on and use of natural resources, agriculture companies have considerable opportunities to invest in natural buffer zones, including flood management technologies.<sup>533</sup> In addition, travel and tourism companies possess a substantial outreach capacity given the number of communities in which the industry operates and, the scope of its supply chain.<sup>534</sup> The tourism industry has a definite role to play in disaster management considering its vested interest in maintaining the overall health of economies as well as in maintaining a stable environment for travel.<sup>535</sup> Media and entertainment companies also have an important role to play in disaster management. These companies can typically raise awareness of disasters and disaster risk management through news and social media.<sup>536</sup> The media can also encourage more people to join disaster relief activities and improve the efficiency of knowledge sharing.<sup>537</sup> Finally, the transportation industry can also partake in disaster management initiatives. For

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531 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 7 – 13. Also see Setola and Geretshuber 2009 *Springer* 258 – 270. Some of these companies also develop mobile close circuit television systems which may also prove to be useful for disaster management activities given that such systems can monitor key vulnerable areas. For a discussion of how valuable such systems are to disaster management see DMISA 2013 *Disaster Management* 19 – 21.

532 Marchetti *Telecommunications in Disaster Areas* 3.

533 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 8. Also see a study conducted on disaster and disaster risk management for the South African agriculture sector: Van Zyl 2006 <http://bit.ly/1bOpd9u>.

534 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 8. Also see Evans and Elphick 2005 *International Journal of Tourism Research* 135 – 136.

535 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 8.

536 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 9. Also see Seid-Aliyeva 2006 *American Institute of Physics* 81.

537 Wei *et al* 2012 *AISS* 285.

instance, transportation companies, such as private bus companies, can assist in transporting communities from hazardous or disaster stricken areas.<sup>538</sup>

Involving the private sector in disaster management may be crucial to achieving resilient communities.<sup>539</sup> PPPs are governance instrumentation that allow the public and private sector to collectively utilise each of their resources and capabilities to identify interdependencies, needs, and resources before disasters occur in an effort to be better prepared for the effects of the disaster.<sup>540</sup> Moreover, when disasters occur, PPPs enable the public and private sector to coordinate resources in order to efficiently respond to and recover all affected areas as opposed to focusing on one specific area at a time.<sup>541</sup> In the local government context, PPPs between municipalities and businesses in the private sector can alter the strategic focus of municipalities.<sup>542</sup> When a municipality views the involvement of a private company firstly as a true partner in its efforts to mitigate, respond to and recover from local disasters and second as a source of strategies, resources and predetermined 'plans of action' that are ready for implementation in times of disaster, it can rather focus on implementing the said strategies and 'plans of action' instead of attempting to develop them in the midst of a crisis.<sup>543</sup> As suggested earlier, the private sector can also carry out many of the functions in LDM such as issuing warnings, facilitating evacuation or providing temporary food and shelter.<sup>544</sup> The municipality can be assured of the fact that the private company (by virtue of the PPP agreement) has accepted a level of accountability and responsibility (towards the municipality) to

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538 World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* 16.

539 Bajracharya *et al* 2012 *Australian Journal of Emergency Management* 27. Resilience in a community is defined by the UNISDR as the ability of a community or society exposed to hazards or disaster to resist, absorb, accommodate to and recover from the effects of a hazard or disaster in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions. See UNISDR *Terminology on Disaster Risk Reduction* 24.

540 National Research Council of the National Academies *Building Community Disaster Resilience through Private Public Collaboration* 5.

541 Chen *et al* 2013 *Journal of Contingencies and Crisis Management* 133. It is the submission of the author that these advantages are also applicable to PPPs in the local government context.

542 Busch and Givens 2013 *Journal of Strategic Security* 5. Also see Quium *A Guidebook on Public Private Partnership in Infrastructure* 1 – 4.

543 Busch and Givens 2013 *Journal of Strategic Security* 5.

544 See the discussion of how a large corporate entity, Walmart, assisted government authorities in responding to the needs of several communities in the aftermath of Hurricane Katrina in 2005, for example, in Abou-bakr *Managing Disasters through Public Private Partnerships* 23 – 26.

deliver a certain service in times of disaster.<sup>545</sup> Moreover, PPPs allow municipalities to broaden their approach to disaster management by providing them with access to more options to prepare for and respond to disasters.<sup>546</sup> Examples of such options include hiring private consultants for project-orientated purposes, making use of a specific company's counsellor to assist victims with emotional recovery, or collaborating with chain-stores to set up collection sites in each store to solicit cash donations for disaster relief, for example.<sup>547</sup>

### **4.3 Operations of PPPs in LDM**

#### *4.3.1 Existing PPPs for disaster management*

As previously stated, the number of partnerships between the public and private sector in the disaster management arena has increased internationally. Most of these partnerships have proven to be highly beneficial as they contribute to the efficiency and effectiveness of disaster management through the division of labour and the development of multi-actor integrated approaches to disaster management, for example.<sup>548</sup> Three categories of PPPs in disaster management can be distinguished: awareness and advocacy partnerships, disaster preparedness partnerships, and social investment partnerships.<sup>549</sup> The functioning of these three categories can best be explained with reference to examples.

##### **4.3.1.1 PPPs for awareness and advocacy**

Awareness and advocacy partnerships provide a platform to use and share available knowledge that can assist in identifying risks in order to reduce the

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545 Busch and Givens 2013 *Journal of Strategic Security* 5. Also see Chen *et al* 2013 *Journal of Contingencies and Crisis Management* 131 – 132.

546 Chen *et al* 2013 *Journal of Contingencies and Crisis Management* 131 – 133.

547 For these and more examples see Busch and Givens 2013 *Journal of Strategic Security* 6; Smith and Sutter 2013 *The Independent Review* 170 and Johnson, Connolly and Carter 2011 *Corporate Social Responsibility and Environmental Management* 359 – 362.

548 Chowdhury "Bridging Public Private Partnership in Disaster Management in Bangladesh" 428.

549 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 5. In this section the PPPs most likely for replication in the local government sphere in South Africa will be critically discussed.

impacts of future disasters and to foster resilience in communities.<sup>550</sup> Such partnerships entail the private sector's partnering with the public sector and other relevant stakeholders, such as NGOs, for instance, to take a leadership role in advocating for and contributing to resolving different issues inherent in disaster management practice.<sup>551</sup> For example, in Japan a leading energy company (The Tokyo Gas Group)<sup>552</sup> partnered with various municipalities and other relevant stakeholders to improve the disaster management capabilities of the local authorities and surrounding communities.<sup>553</sup> The partnership was prompted by the company's growing concern surrounding the safe use of gas and the knowledge of the growing capacity constraints of the local authorities to adequately manage disaster.<sup>554</sup>

In terms of the partnership, Tokyo Gas raises awareness of disaster risks related to the use of gas, including awareness related to frequently occurring disasters in Japan.<sup>555</sup> The company also holds annual disaster drills for its employees and for the employees of various local authorities.<sup>556</sup> In addition the company arranges disaster management 'camps' which provides elementary school students from the third to sixth grade with an opportunity to experience a survival camp and to be exposed to the newest research findings in the field of disaster management.<sup>557</sup> In each of these initiatives Tokyo Gas involves fire departments, disaster management volunteer groups and individuals from the local community to educate participating citizens in household preparedness, disaster risks and the measures necessary to reduce such risk.<sup>558</sup> This partnership has proven to be beneficial for the entire community including the local authorities and has resulted in strengthened

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550 IFRC *A Guide for Public Awareness and Public Education for Disaster Risk Reduction* 12.

551 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 1.

552 Hereafter Tokyo Gas.

553 Asian Disaster Risk Reduction Centre *Total Disaster Risk Management: Good Practices* 7.

554 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 1.

555 Asian Disaster Risk Reduction Centre *Total Disaster Risk Management: Good Practices* 7.

556 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 26. Also see Aoki 2012 <http://bit.ly/1dXyXd4>.

557 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 26. Also see Asian Disaster Risk Reduction Centre *Total Disaster Risk Management: Good Practices* 8.

558 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 26. Also see Tokyo Gas Group Date Unknown <http://bit.ly/1lwtJNe>.

collaboration for disaster management amongst local authorities, members of communities and various companies.<sup>559</sup>

Another partnership in Japan aimed at advocacy and awareness of the need for disaster management is the partnership entered into between the Japanese Consumers' Co-operative Union<sup>560</sup> and several local authorities.<sup>561</sup> This partnership was based on the need for the members of local communities to recognise the necessity of taking specific preparatory measures to protect themselves in times of disaster, including the requests made by local authorities for support in their community disaster management efforts.<sup>562</sup> In terms of this partnership JCCU established an annual workshop aimed at raising awareness of disaster risk reduction practises.<sup>563</sup> In partnership with various local authorities JCCU provides the workshop participants with both disaster management and disaster risk reduction information incorporated into a map of the participants' neighbourhoods.<sup>564</sup> Mock disaster exercises are conducted with the participants, using their maps and hypothetical disaster scenarios.<sup>565</sup>

During the disaster simulations participants work with one another to identify the locations of evacuation shelters, fire stations, hospitals and other key facilities that may be important in times of disaster.<sup>566</sup> Households which are particularly vulnerable to disasters, such as the homes of senior citizens living alone or handicapped individuals, are also identified on the maps, and evacuation routes are designed and mapped to help the vulnerable residents in evacuation processes.<sup>567</sup> The workshop teaches participants valuable disaster management information relevant to their community, and emphasis is placed on individual household

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559 Tokyo Gas Group 2007 <http://bit.ly/1hJgFQM>.

560 Hereafter JCCU.

561 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 28.

562 JCCU 2010 <http://bit.ly/1opWGrm>. Also see UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 29.

563 JCCU 2010 <http://bit.ly/1opWGrm>. Also see Global Hand Date Unknown <http://bit.ly/1dqahwY>.

564 JCCU 2010 <http://bit.ly/1opWGrm>. Also see Global Hand Date Unknown <http://bit.ly/1dqahwY>.

565 Asian Disaster Risk Reduction Centre *Total Disaster Risk Management: Good Practices* 15.

566 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 29. Also see JCCU 2010 <http://bit.ly/1opWGrm>.

567 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 29. Also see JCCU 2010 <http://bit.ly/1opWGrm> and Asian Disaster Risk Reduction Centre *Total Disaster Risk Management: Good Practices* 16.

preparedness.<sup>568</sup> Questionnaires at the end of each workshop have indicated that after completion of the workshop participants often come to realise the need to discuss disaster prevention with family members, to take measures to strengthen their homes, and to prepare a well-stocked emergency kit.<sup>569</sup> PPPs for advocacy and awareness seem to equip communities with essential knowledge of the occurrence of disasters, disaster management practices and measures that reduce disaster risk.<sup>570</sup>

#### 4.3.1.2 PPPs for disaster preparedness

PPPs established for the purposes of developing disaster preparedness aim to improve the 'readiness' *inter alia* of local authorities for the occurrence of disaster.<sup>571</sup> Standard preparedness activities usually include the stockpiling of equipment and supplies, coordination and standby arrangements, information management, personnel training, and the development of contingency or disaster management plans.<sup>572</sup>

A partnership specifically established to assist local authorities to be prepared for disaster is the partnership between Deutsche Post DHL,<sup>573</sup> the UNDP and various local governments.<sup>574</sup> The PPP was established after an earthquake in Iran in December 2003 severely disrupted local authority disaster response efforts and shut down airport operations.<sup>575</sup> DHL subsequently decided to establish a PPP agreement in order to leverage its logistical expertise to assist local authorities in

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568 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 28. Also see JCCU 2010 <http://bit.ly/1opWGm>.

569 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 29. Also see JCCU 2010 <http://bit.ly/1opWGm>.

570 IFRC *A Guide for Public Awareness and Public Education for Disaster Risk Reduction* 12 – 13.

571 CSR Asia *Business and Disaster Preparedness: Helping Communities Prepare for Effective Response* 6.

572 CSR Asia *Business and Disaster Preparedness: Helping Communities Prepare for Effective Response* 6. Also see Lavell *et al* "Climate Change: New Dimensions in Disaster Risk, Exposure, Vulnerability, and Resilience" 35.

573 Hereafter DHL.

574 Deutsche Post DHL 2010 <http://bit.ly/1kASPup>.

575 APEC *Public Private Partnerships and Disaster Resilience* 19. Also see Deutsche Post DHL 2010 <http://bit.ly/1kASPup>.

this regard.<sup>576</sup> The PPP entails DHL's consulting with and training local authorities on preparing for the occurrence of disaster, and the UNDP coordinating with government authorities to organise the trainings.<sup>577</sup> During these training sessions DHL supplies the necessary training materials and assistance in the development of disaster management plans.<sup>578</sup> In addition, in the event of a disaster, DHL provides local authorities with specially trained DHL employees to help manage crucial logistics operations in airports close to disaster stricken areas.<sup>579</sup> The training and assistance provided by DHL has enabled the participating local authorities to draft effective disaster management plans and the assistance provided by DHL's employees has aided the authorities to improve the assistance they may offer to local airports in times of disaster.<sup>580</sup>

Like the above PPP agreement, the PPP in the Philippines between the Corporate Network for Disaster Response<sup>581</sup> and local authorities is specifically aimed at enabling local authorities to better prepare for disasters.<sup>582</sup> CNDR comprises of an array of corporations and corporate foundations with resources such as helicopters, drills, mobile phones and specialised emergency management skills that do not typically form part of a local authority's disaster management equipment.<sup>583</sup>

The CNDR realised the need for private sector assistance in local government disaster initiatives after an earthquake measuring 7.8 occurred in July 1990 in Luzon, which devastated communities, claimed several lives and emphasised the need for adequate response preparedness on the part of local authorities.<sup>584</sup> The

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576 CSR Asia *Business and Disaster Preparedness: Helping Communities Prepare for Effective Response* 15.

577 This PPP agreement is established between DHL, the UNDP and various local authorities in Nepal, Bangladesh, Indonesia, Lebanon, Turkey and El Salvador. See Becker-Birck *et al Resilience in Action: Lessons from Public Private Collaborations around the World* 21.

578 Becker-Birck *et al Resilience in Action: Lessons from Public Private Collaborations around the World* 21. Also see Deutsche Post DHL 2010 <http://bit.ly/1kASPup>.

579 APEC *Public Private Partnerships and Disaster Resilience* 19.

580 Becker-Birck *et al Resilience in Action: Lessons from Public Private Collaborations around the World* 22. Also see Deutsche Post DHL 2010 <http://bit.ly/1kASPup>.

581 Hereafter CNDR.

582 This partnership was established in the Philippines. UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 33.

583 CNDR Date Unknown <http://bit.ly/1g3taa4>. Also see Fernandez, Uy and Shaw "Community Based Disaster Risk Management Experience in the Philippines" 207.

584 CNDR Date Unknown <http://bit.ly/1g3taa4>. Also see APEC *Public Private Partnerships and Disaster Resilience* 21.

partnership involves CNDR mobilising its member corporations in times of disaster to assist local government in their response efforts.<sup>585</sup> Through its members the CNDR develops disaster management and contingency plans, identifies hazard prone and safe areas, and conducts risk assessments to identify possible disasters.<sup>586</sup> The information provided by the risk assessments serves as a basis for the formation of disaster management plans.<sup>587</sup> This partnership therefore empowers local authorities to deal more effectively with disasters, as the information about hazardous areas and the risk assessments enables the authorities to identify and put in place appropriate measures to deal with disaster.<sup>588</sup>

#### 4.3.1.3 PPPs for social investment

While local authorities are specifically included as partners in PPPs for advocacy and awareness and in PPPs for preparedness, partnerships for social investment purposes do not necessarily include them.<sup>589</sup> In terms of PPPs established for social investment purposes the private sector provides communities with financial support, volunteers or expertise and product donations in order *inter alia* to improve the living conditions of those in disaster stricken areas or to repair critical infrastructure damage caused by disaster.<sup>590</sup> Such PPPs are often established by multi-national corporations as philanthropy or CSR projects.<sup>591</sup>

As part of their CSR responsibilities, Siemens partnered with the SkyJuice foundation to leverage their expertise and technical knowledge to assist local

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585 CNDR Date Unknown <http://bit.ly/1g3taa4>.

586 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 34.

587 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 35. Also see APEC *Public Private Partnerships and Disaster Resilience* 21.

588 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 35.

589 These PPPs are usually established between national government and the private sector. In this regard see Bailey *Humanitarian Crises, Emergency Preparedness and Response: The Role of Business and the Private Sector: a Strategy and Options Analysis of Haiti* 14 – 16.

590 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 39. Also see the partnerships discussed in APEC *Public Private Partnerships and Disaster Resilience* 47 – 48.

591 Bailey *Humanitarian Crises, Emergency Preparedness and Response: The Role of Business and the Private Sector: a Strategy and Options Analysis of Haiti* 14 – 16.

communities in the restoration of infrastructure damage to water systems.<sup>592</sup> Disasters often damage critical infrastructure such as water systems, which damage renders communities more vulnerable to diseases and intensifies the suffering and devastation disasters cause.<sup>593</sup> Prompted by the effects of disasters on water systems, Siemens and the SkyJuice foundation worked together to develop 'SkyHydrant', a potable water filtration system which makes use of membrane filtration systems which provide up to 10 000 litres of safe and pure drinking water (without the use of electricity) per day.<sup>594</sup> While this particular partnership was not undertaken directly with local authorities as partners, the system does serve as a form of support in a time where local authorities' main focus is to repair the damaged infrastructure.<sup>595</sup>

In addition to the above international examples of pre-established and long-term PPPs for disaster management, it is likely that disaster situations will require the public and private sector to collaborate *immediately* in some situations.<sup>596</sup> Immediate collaborations often follow local authorities' responses to a specific disaster, but may later lead to the formation of one or more formal PPPs.<sup>597</sup> The assistance provided by Walmart, a large retail company in the United States of America, in the aftermath of Hurricane Katrina in August 2005, is an example of such a spontaneous 'partnership'.<sup>598</sup> Walmart provided disaster victims with staples such as food, water, toilet paper and fuel during a time where the government authorities were completely overwhelmed by the destruction caused by the hurricane.<sup>599</sup>

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592 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 42. Also see Pillay 2012 <http://bit.ly/1gdrCXw>.

593 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 42. Also see Chang 2003 *Natural Hazards Review* 186 – 187.

594 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 43. Also see SkyJuice Foundation 2010 <http://bit.ly/1cGrSHe>.

595 See the discussion of this PPP in UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 43, Pillay 2012 <http://bit.ly/1gdrCXw> and SkyJuice Foundation 2010 <http://bit.ly/1cGrSHe>.

596 Busch and Givens 2013 *Journal of Strategic Security* 10. Also see Abou-bakr *Managing Disasters through Public Private Partnerships* 7 – 8.

597 Busch and Givens 2013 *Journal of Strategic Security* 10. Also see Stewart, Kolluru and Smith 2009 *IJPDLM* 345 – 346.

598 Horwitz 2009 *The Independent Review* 1 – 32. Also see Sobel and Leeson 2007 *The Independent Review* 519 – 532.

599 Abou-bakr *Managing Disasters through Public Private Partnerships* 22 – 23.

Bearing in mind the outcomes of each of these partnerships in different parts of the world in a variety of different contexts and where the specifics varied hugely, it is submitted that the private sector could be an invaluable partner for disaster management in the South African context as well. The following section briefly reflects on lessons to be learned for the South African context.

#### **4.4 Existing PPPs for disaster management: lessons learned**

Considering the design, function and outcomes of the international examples of PPPs for disaster management, it appears useful for South Africa to consider the following in relation to its own PPPs for LDM:

- PPPs for LDM can directly assist municipalities in fulfilling their LDM duties to the extent that the PPPs educate communities about disasters and disaster risks, raise awareness on key disaster management issues, and put adequate measures in place in order that the municipality should be better prepared for disasters.<sup>600</sup>
- PPPs for LDM can also indirectly assist municipalities in fulfilling their LDM duties to the extent that the PPPs allow municipalities to restore critical infrastructure damages while the private sector deals with subsidiary issues that may arise from a disaster such a shortage of safe drinking water.<sup>601</sup>
- PPPs for LDM can provide a broadened network for disaster management. The Tokyo Gas, DHL and CNDR partnerships<sup>602</sup> specifically included their own specially trained staff, volunteer groups, members of the community and various large corporations in their disaster management initiatives. The additional stakeholders were either connected to Tokyo Gas and CNDR or approached by these companies.<sup>603</sup> Including these stakeholders provided a wide network within which disaster management activities could take place,

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600 See the discussion of the Tokyo Gas, JCCU, DHL and CNDR partnerships in 4.3.1 above.

601 See the discussion of the Siemens and SkyJuice partnership in 4.3.1 above.

602 See the discussion in section 4, par 4.3.1.1 and 4.3.1.2 above.

603 See the discussion in section 4, par 4.3.1.1 and 4.3.1.2 above. Also see UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 26 and Tokyo Gas Group Date Unknown <http://bit.ly/1lwtJNe>.

instead of such activities being the effort of the local authorities and their PPP partners alone.

- PPPs that contribute to the provision of new or innovative approaches to disaster management (such as the arrangement of disaster management camps or mock disaster drills)<sup>604</sup> provide creative measures to fulfil disaster management duties. Such PPPs could prevent plans for disaster management from becoming stagnant or out-dated and ensure that new approaches to disaster management are continuously investigated.
- PPPs which include concerned and interested partners may last longer than partnerships where the private companies must be persuaded to enter into PPPs for LDM.<sup>605</sup>
- Where private sector companies show interest in establishing PPPs for LDM the process for identifying possible partners may move more swiftly, given that the relevant local authority does not necessarily have to search for potential parties to form part of the PPP agreement.<sup>606</sup>
- The context of PPPs for disaster awareness and advocacy will depend on what municipalities identify as the areas in disaster management of which the members of the local communities have limited knowledge. After determining the areas where disaster awareness must be promoted, the nature and method of the information to be communicated to the community can be made clear to the private company.<sup>607</sup>
- The establishment of PPPs for disaster preparedness depends on whether or not there are existing companies within a municipality's community with the

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604 See the discussion of the Tokyo Gas and JCCU PPP in section 4, par 4.3.1.1 above.

605 Each of the Tokyo Gas; DHL; and CNDR partnerships was initiated by the private sector. The companies in these partnerships appeared to be genuinely concerned for the ability of the local authorities and communities to cope with the aftermath of disaster. The companies were thus willing to partner specifically for disaster management and many of these partnerships are still ongoing. In this regard see Tokyo Gas Group Date Unknown <http://bit.ly/1lwtJNe>; Deutsche Post DHL 2010 <http://bit.ly/1kASPup> and CNDR Date Unknown <http://bit.ly/1g3taa4>.

606 This lesson is important, considering that in general it is difficult to identify a list of potential partners in the private sector to collaborate with local government for disaster management. See Buttarazzi Date Unknown <http://bit.ly/1cj5cTv>.

607 UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* 24. Also see IFRC *A Guide for Public Awareness and Public Education for Disaster Risk Reduction* 10 – 11.

necessary skills, connections, resources and willingness required to assist local government in being prepared for disasters.<sup>608</sup>

- Companies who are aware of partnership opportunities are often reluctant to partake in disaster management initiatives due to the conception that such activities are too costly and time consuming.<sup>609</sup>
- Not all companies are convinced of the ‘business case’ for disaster management, i.e. the bottom line benefits for their profits in becoming involved in disaster management activities.<sup>610</sup> These misconceptions often also prevent the private sector from becoming involved in the disaster management initiatives of their municipalities.<sup>611</sup>
- Even if there are private companies who are interested in and willing to partner for LDM, the Systems Act and the MFMA do not allow municipalities to establish PPPs without first following the prescribed procurement process.<sup>612</sup> Therefore, while identifying potential partners in this instance may be easier than usual it is unlikely that a partnership may form as quickly as in the case where the partnership was initiated by Tokyo Gas given that following the prescribed procurement process is mandatory.
- Partners in existing PPPs for disaster management often face frustrations regarding their exact roles or responsibilities in terms of the PPP agreement.<sup>613</sup> Such frustrations have proven to be the result of imprecise contracts which lack explicit instructions for each of the parties.<sup>614</sup>
- Throughout the duration of a PPP it is possible for unanticipated circumstances to occur which require a municipality to request services which extend beyond those defined in the contract or which influence the private party to take

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608 Surjan and Shaw 2009 *Disaster Prevention and Management* 430.

609 Givens and Busch 2013 *International Journal of Critical Infrastructure Protection* 43.

610 Drummond and Crawford *Humanitarian Crises, Emergency Preparedness and Response: the Role of Business and the Private Sector: Kenya Case Study* 1. Also see Roeth 2009 <http://bit.ly/1fQpGnt>.

611 UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* 6 – 9.

612 See the discussion in section 3, par 3.3.1 and 3.3.2 above.

613 UNISDR and PwC 2013 <http://pwc.to/1hXRTel>.

614 Givens and Busch 2013 *International Journal of Critical Infrastructure Protection* 41.

measures to manage a specific disaster situation which is not stipulated in the contract, for example.<sup>615</sup>

- The capacity of municipalities and the private sector in South Africa to collaborate for disaster management purposes may differ from the capacity of local authorities and private sector companies to do so in other countries.
- The successful PPPs described above are context sensitive. It is likely that the nature of equivalent PPPs in South Africa may be different, given our unique disaster risk profile.<sup>616</sup> In addition, private companies in South Africa are in general reluctant to partner with government due to the popularity of the notion that PPP contracts are prone to fraud.<sup>617</sup>
- The existing PPPs for disaster management remain silent on an array of issues such as the procedures followed for the establishment of each PPP, the contents of such PPP agreements in general, and guidelines or tips for other municipalities or institutions locally and or internationally on how to establish similar PPPs.
- The PPP exemplars also neglect to provide information regarding the costs for municipalities in establishing and managing PPPs for disaster management or the implications in circumstances where either party in the PPP makes a unilateral decision.
- The examples do not elucidate issues of liability on the part of the municipality or any other party, nor do they provide guidance on the enforceability of the PPP agreements generally.
- Meaningful partnerships between government and the private sector can take years to develop.<sup>618</sup> Such partnerships require a strategic approach and commitment from each party involved.<sup>619</sup> Building trust and developing a

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615 Givens and Busch 2013 *International Journal of Critical Infrastructure Protection* 41. Also see Becker-Birck et al *Resilience in Action: Lessons from Public Private Collaborations around the World* 14.

616 For an overview of the disasters that occur in South Africa see the discussion under section 1 and section 2, par 2.1 above. Also see Botha and Van Niekerk 2013 *Jamba: Journal of Disaster Risk Studies* 2 – 3.

617 This reluctance is based on the conception that PPP contracts with the government are complex, demanding and prone to fraud. See Farlam *Assessing Public Private Partnerships in Africa* 1 – 2.

618 Bailey *Humanitarian Crises, Emergency Preparedness and Response: The Role of Business and the Private Sector: a Strategy and Options Analysis of Haiti* 13.

619 Medury “Building Disaster Resilient Communities: The Public Private Partnership Approach” 440.

strengthened relationship between the partners is critical to ensuring continued collaboration.<sup>620</sup>

As alluded to earlier, whilst PPPs for disaster management may prove to be rather beneficial *inter alia* to local authorities, these partnerships should not be entered into without consideration of the lessons learned and a clear understanding of the resources, skills, and capacities that are required to fulfil a PPP's objectives.<sup>621</sup>

#### **4.5 Concluding remarks**

Against the backdrop of the above it is argued that joining forces with the private sector by means of PPPs provides municipalities with access to specialised knowledge and expertise and in so doing increases a municipality's resources and capacity for LDM generally.<sup>622</sup> To the extent that PPPs are contractual in nature, each party is legally obliged to provide the service stipulated in the agreement. This may foster a sense of assurance among communities that their needs will be adequately attended to in times of disaster.<sup>623</sup> The responsibility lies with each party to monitor and ensure effective implementation of the PPP project if they are to reap optimum results of the undertaken efforts.<sup>624</sup> However, an examination of the nature of existing PPPs gives rise to more questions than answers, as the examples fail to provide crucial information relevant to establishing and managing PPP agreements, for example. This lack of information creates uncertainty regarding the sustainability of PPPs for disaster management. Furthermore, some of the lessons learned are illustrative of challenges in the use of PPPs for LDM.

The following section highlights the findings derived from this study as a whole, discusses the function of PPPs between local government (municipalities) and the private sector (industries etc.) specifically in fulfilling the legally entrenched disaster

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620 Becker-Birck *et al Resilience in Action: Lessons from Public Private Collaborations around the World* 17.

621 Medury "Building Disaster Resilient Communities: The Public Private Partnership Approach" 441.

622 Bailey *Humanitarian Crises, Emergency Preparedness and Response: The Role of Business and the Private Sector: a Strategy and Options Analysis of Haiti* 21.

623 Stewart, Kolluru and Smith 2009 *IJDLM* 347.

624 Chowdhury "Bridging Public Private Partnership in Disaster Management in Bangladesh" 405.

management duties of municipalities, and provides recommendations (based on identified strengths and weaknesses in the national regulatory framework)<sup>625</sup> in order to assist municipalities to overcome the weaknesses and to strengthen the function of PPPs for LDM.

## **5 Conclusion and recommendations**

The study set out to explore and evaluate the function of PPPs between local government (municipalities) and the private sector (industries etc.) specifically in fulfilling the legally entrenched disaster management duties of municipalities.<sup>626</sup> In so doing, the study systematically considered the following: the meaning and growing relevance of LDM, PPPs as local governance tools, and the relevance of PPPs for LDM.<sup>627</sup>

In examining the meaning and growing relevance of LDM the study considered the occurrence of local disasters over the past years,<sup>628</sup> provided and discussed a definition for the term LDM,<sup>629</sup> and critically discussed the disaster management responsibilities of municipalities in terms of international, regional and South African law.<sup>630</sup> In considering these matters the study found that municipalities increasingly play an important role in preventing and managing disasters,<sup>631</sup> LDM requires the fulfilment of specific duties in terms of prevention and mitigation, preparedness, response and recovery, and rehabilitation;<sup>632</sup> and international, regional and South African law places a plethora of disaster management duties (directly and indirectly) on municipalities in South Africa.<sup>633</sup> In addition, it was also discovered that municipalities require human, material and financial resources to adequately fulfil their disaster management responsibilities, and that most municipalities in South Africa do not possess enough of any of these resources.<sup>634</sup> It was also

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625 See section 5, par 5.1 and 5.2 below.

626 See section 1 above.

627 See section 1 above.

628 See section 2, par 2.1 above.

629 See section 2, par 2.2 above.

630 See section 2, par 2.3 above.

631 See section 2, par 2.1 above.

632 See section 2, par 2.2.3 above.

633 See section 2, par 2.3 above.

634 See section 2, par 2.4 above.

acknowledged that municipalities cannot manage disasters in isolation.<sup>635</sup> Based on the nature of these findings it is submitted that it is necessary and unavoidable for local government to explore the best options available to assist them in adequately fulfilling their LDM mandate.

In appraising PPPs as local governance tools the study provided an introductory discussion of current municipal PPPs,<sup>636</sup> critically examined the nature of PPPs,<sup>637</sup> reflected on the legal framework for PPPs in South Africa<sup>638</sup> and discussed the strengths and weaknesses of PPP agreements.<sup>639</sup> The study found that municipalities generally establish PPPs to address infrastructure and service delivery needs,<sup>640</sup> and that PPPs are written contractual agreements involving at least two entities (a public institution i.e. a municipality) and a private party, who are in pursuance of a common goal whereby risk is transferred and financial remuneration ensues.<sup>641</sup> Two types of PPPs were identified: those permitting a private party to perform an institutional function such as the delivery of a specific service, and those permitting the private party to use state property.<sup>642</sup> It was also noted that a PPP can be a combination of these types where the private party performs an institutional function and uses state property,<sup>643</sup> and that PPPs have a general structure which may involve contractual agreements among a number of stakeholders.<sup>644</sup> Other key findings include the observation that the Systems Act, the MFMA and its applicable regulation provide a well-developed legal framework which includes specific requirements for the identification of a PPP project, conducting feasibility studies, PPP procurement and project management.<sup>645</sup> Moreover, it was indicated that PPPs are accompanied by several challenges such as not always achieving or ensuring absolute risk transfer.<sup>646</sup> It was also discovered

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635 See section 2, par 2.4 above.

636 See section 3, par 3.1 above.

637 See section 3, par 3.2 above.

638 See section 3, par 3.3 above.

639 See section 3, par 3.4 above.

640 See section 3, par 3.1 above.

641 See section 3, par 3.2 above.

642 See section 3, par 3.2 above.

643 See section 3, par 3.2 above.

644 See section 3, par 3.2 above.

645 See section 3, par 3.3 above.

646 See section 3, par 3.4.2 above.

that PPPs for LDM are a largely untapped opportunity as there is to date no record of any PPP undertaken or planned for in the area of disaster management.<sup>647</sup>

Finally, in determining the relevance of PPPs for LDM, the study provided a brief background on private sector involvement in disaster management;<sup>648</sup> illustratively discussed the relevance and function of PPPs in disaster management;<sup>649</sup> examined the operation of PPPs in LDM;<sup>650</sup> and identified lessons learned from examples of existing PPPs for disaster management.<sup>651</sup> It was acknowledged that the private sector has been increasingly willing to engage in disaster management activities,<sup>652</sup> which has resulted in government agencies all over the globe shifting towards sharing some of their disaster management responsibilities with the private sector – including by means of PPP agreements.<sup>653</sup> It was also discovered that the private sector can be either directly affected by disaster or can directly cause disaster,<sup>654</sup> and that almost any industry can utilise its expertise to assist government in its disaster management initiatives.<sup>655</sup> The study also found that three categories of PPPs for LDM can be distinguished, namely PPPs for awareness and advocacy, PPPs for disaster preparedness, and PPPs for social investment.<sup>656</sup> The discussion of examples of PPPs in each of these genres demonstrated that PPPs for LDM are particularly beneficial to local authorities and members of the community. However, there are lessons to be learned and taken into account by municipalities in South Africa when they consider entering into their own PPPs for LDM. Despite these cautions, the main findings of the study are that:

- PPPs are important tools for the promotion of integrated disaster management as they facilitate community involvement and provide multi-stakeholder participation.<sup>657</sup>

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647 See section 3, par 3.1 above.

648 See section 4, par 4.1 above.

649 See section 4, par 4.2 above.

650 See section 4, par 4.3 above.

651 See section 4, par 4.4 above.

652 See section 4, par 4.1 above.

653 See section 4, par 4.1 above.

654 See section 4, par 4.2 above.

655 See section 4, par 4.1 above.

656 See section 4, par 4.3 above.

657 Medury “Building Disaster Resilient Communities: The Public Private Partnership Approach” 430.

- PPPs foster accountability,<sup>658</sup> develop good leadership at all levels of the partnership, and instil innovative thinking amongst partners as they continue to develop their partnership.<sup>659</sup>
- PPPs for disaster management may also assist local government in increasing community resilience to disaster, as such partnerships allow municipalities *inter alia* to prepare for potential disasters by improving their disaster management plans, provide their staff and members of the community with disaster education and workshops, and to arrange standby personnel who are adequately trained to assist the municipality in responding to disasters.<sup>660</sup>
- PPPs for LDM positively influence a municipality's ability to prepare for and respond to the occurrence of disaster<sup>661</sup> and may consequently be regarded as supplementary, legally binding tools used to assist local government in adequately fulfilling their disaster management mandate.

It can be said that it has been established in this study that PPPs play a significant role in LDM. The parameters and extent of this role, however, depends on many factors, one of which is the leeway and possibilities created by the regulatory framework applicable to local government, disaster management and the establishment of PPPs in South Africa. This study has been undertaken in a legal context, it merits to conclude with a brief evaluation of the strengths and weaknesses of the existing (national) regulatory framework.

### **5.1 Strengths**

- The DMA specifically requires a multi-actor approach to disaster management.<sup>662</sup> It may therefore be argued that the DMA, albeit indirectly, promotes the establishment of PPPs for disaster management.

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658 Given that the partners concerned feel responsible for their actions and performance.

659 Medury "Building Disaster Resilient Communities: The Public Private Partnership Approach" 429.

660 See the discussion of existing PPPs in section 4, par 4.3.1 above. Also see Davies and Murshed *Critical Guidelines for Community Based Disaster Risk Management* 23.

661 Stewart, Kolluru and Smith 2009 *IJDLM* 352 – 353.

662 See section 2, par 2.3.2.1.1 above.

- The Systems Act and the MFMA bestows upon municipalities the executive authority to choose to address service delivery challenges and related issues by establishing PPPs.<sup>663</sup> These laws thereby provide municipalities with the authority to choose PPPs as a tool to address their LDM challenges.
- The Systems Act and the MFMA have established protective measures (such as the requirement of a feasibility study and the application of the ‘test’ for PPPs) to ensure that a potential PPP project (such as a PPP for LDM) will be in the best interest of both the municipality and community.<sup>664</sup> Applied correctly, this test can ensure that municipalities enter into PPPs for LDM only when they will truly add to their LDM capacity.
- By establishing the National Treasury PPP Unit, the legal framework ensures amongst others, that municipal PPPs are monitored and transparent.<sup>665</sup> This is beneficial to PPPs for LDM, as private companies are often worried about the possibility of being thought to be engaged in corrupt dealings.
- The provisions in the MFMA which require the assessment of the performance of the service provided under the PPP<sup>666</sup> may be useful in ensuring that the LDM services provided remain at an acceptable level of quality throughout the duration of the PPP.
- The published guidelines for municipal PPPs provide a useful ‘quick-reference’ for municipalities which require support in understanding the legal foundation for PPPs, including detailed information about the stages of developing a municipal PPP.<sup>667</sup> These guidelines may prove to be useful for municipalities which require such assistance.

It follows that overall the strength of the existing legal framework lies therein that protective measures are in place to ensure that any proposed or existing municipal PPP (including PPPs for LDM) is subject to monitoring and performance evaluation.

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663 See section 3, par 3.3.1 above.

664 See section 3, par 3.3.1 and 3.3.2 above.

665 See section 3, par 3.1 above.

666 See section 3, par 3.3.1, par 3.3.2 and par 3.3.2.1 above.

667 See section 3, par 3.3 above.

## **5.2 Weaknesses**

- While the DMA requires a multi-actor approach to disaster management, it does not specifically refer to the use of PPPs for such an approach. This may result in confusion as to whether or not the DMA recognises the use of PPPs as a tool for the fulfilment of LDM duties.
- Given that feasibility studies must be conducted in terms of both the Systems Act and the MFMA,<sup>668</sup> the process of establishing PPPs may be rather lengthy. During this interim period, it is possible that community needs will not be adequately met or that current circumstances could deteriorate. For instance, a municipality which does not have the adequate resources and staff to manage disaster and is in the process of conducting feasibility studies specifically for PPPs proposed for LDM, may during that period be unable to adequately manage or respond to a disaster.
- PPPs for disaster management are context sensitive and may differ from general PPPs for the delivery of basic services such as waste and water services. It may therefore be argued that the existing guidelines for municipal PPPs may not adequately address issues or questions related to PPPs established specifically for LDM.

Overall, it follows that the weaknesses of the existing legal framework lies in the silence of the framework on the use of PPPs to address service delivery challenges such as the adequate fulfilment of LDM. There is also a lack of adequate policy and guidelines established specifically for the fulfilment of context-specific duties and services such as LDM.

## **5.3 Recommendations to address gaps and weaknesses**

The following recommendations are made in order to assist municipalities to overcome the above weaknesses and to strengthen the function of PPPs for LDM.

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<sup>668</sup> See section 3, par 3.3.1 and 3.3.2 above.

### 5.3.1 Short term recommendations:

- Local government is well positioned to bring the weaknesses in the legal framework for PPPs to the attention of national and provincial government, and should require that positive steps be taken to address the weaknesses. A possible suggestion to national and provincial government is that sector-specific guidelines for PPPs be established, such as specific guidelines on PPPs for LDM.
- Whilst steps are being taken to address the weaknesses, municipalities should familiarise themselves with case studies of existing PPPs for disaster management elsewhere in the world and draw from the lessons learned in each instance.
- Local government, should rethink its existing disaster management projects. Innovative disaster management projects are more likely to be valued by private sector companies who are considering broadening their CSR ventures.<sup>669</sup>
- Municipalities should ensure that their PPPs are based on clearly assigned roles and responsibilities for all of the partners involved.<sup>670</sup> Before partnerships are established, the potential parties should explicate the desired outcomes of the partnership and make clear each party's specific role and obligation in general and in unforeseen circumstances.<sup>671</sup> While it may be true that a specific partner's role may vary according to circumstance, obligations in such situations can be put in broad terms, such as the requirement that the private party take all reasonable measures in assisting the victims of disaster, for example.<sup>672</sup>
- In considering specific PPP projects for LDM, municipalities should take into account the history of disasters in their specific community. This may be useful in determining a long-term vision for disaster management and should ensure that existing PPPs evolve along with the needs of the community.<sup>673</sup>

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669 CSR Asia *Business and Disaster Preparedness: Helping Communities Prepare for Effective Response* 12.

670 APEC *Public Private Partnerships and Disaster Resilience* 7.

671 Busch and Givens 2013 *Journal of Strategic Security* 4.

672 It may be useful to specifically determine what is meant by 'reasonable measures'.

673 Becker-Birck *et al Resilience in Action: Lessons from Public Private Collaborations around the World* 18.

### 5.3.2 Long-term recommendations:

- Local government should foster political commitment to PPPs for LDM. The private sector often needs a guarantee of commitment from political bodies that their investment in LDM may be fruitful and is supported.<sup>674</sup>
- Local government should ensure that their PPPs for LDM are supplemented by an appropriate governance structure that takes into consideration any prospective discord between the partners.<sup>675</sup> This could be achieved by developing regulatory mechanisms (such as checks and balances) and frameworks or ‘codes of practice’ for establishing and managing PPPs for LDM, for example.
- Municipalities should also consider developing their own by-laws and guidelines on PPPs for LDM.
- Municipalities should develop their LDM capacity by measuring the results of their PPPs and sharing their expertise and experience with other municipalities or local authorities on the use and successes or failures of PPPs.

As the incidence of the occurrence of disasters in South Africa and their intensity are expected to continue to increase, it is submitted that local government as the first in line of response will continue to play a critical role in community preparedness and planning. Yet, while this study recognises the benefits of PPPs for LDM and argues that PPPs are useful legal tools which play a supplementary role in assisting local government to fulfil its disaster management mandate, PPPs should not be regarded as the panacea to all LDM ills. Municipalities must use PPPs to support and supplement their overall disaster management initiatives. The importance of sound municipal planning, budgeting and good local governance in disaster management should never be downplayed while significant experimentation and research remain to be performed in this field. For the moment all municipalities, entities in the private sector, and local communities are encouraged to unlock the instruments provided for in law, such as PPPs, to facilitate

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<sup>674</sup> Farlam *Assessing Public Private Partnerships in Africa* 35.

<sup>675</sup> Medury “Building Disaster Resilient Communities: The Public Private Partnership Approach” 440.

disaster management, resilience against disasters, and minimise risk to property, the environment, the infrastructure, health, and human life.

## **Bibliography**

### **Literature**

Abbott and Snidal 2000 *International Organisation*

Abbott KW and Sidal D "Hard and Soft Law in International Governance"  
2000 *International Organisation* 421 – 456

Abou-bakr *Managing Disasters through Public Private Partnerships*

Abou-bakr AI *Managing Disasters through Public Private Partnerships*  
(Georgetown University Press Washington DC 2013)

APEC *Public Private Partnerships and Disaster Resilience*

APEC *Public Private Partnerships and Disaster Resilience* (APEC Singapore  
2011)

Asian Disaster Risk Reduction Centre *Total Disaster Risk Management: Good  
Practices*

Asian Disaster Risk Reduction Centre *Total Disaster Risk Management:  
Good Practices* (Asian Disaster Risk Reduction Centre Hyogo 2009)

Bailey *Humanitarian Crises, Emergency Preparedness and Response: The Role of  
Business and the Private Sector: a Strategy and Options Analysis of Haiti*

Bailey S *Humanitarian Crises, Emergency Preparedness and Response:  
The Role of Business and the Private Sector: a Strategy and Options  
Analysis of Haiti* (Overseas Development Institute London 2014)

Bajracharya *et al* 2012 *Australian Journal of Emergency Management*

Bajracharya B *et al* "Public Private Partnership in Disaster Management: A  
Case Study of the Gold Coast" 2012 *Australian Journal of Emergency  
Management* 27 – 33

Bang 2013 *Jamba: Journal of Disaster Risk Studies*

Bang HN "Governance of Disaster Risk Reduction in Cameroon: the Need  
to Empower Local Government" 2013 *Jamba: Journal of Disaster Risk  
Studies* 1 – 10

Becker-Birck *et al* *Resilience in Action: Lessons from Public Private Collaborations  
around the World*

Becker-Birck C *et al* *Resilience in Action: Lessons from Public Private  
Collaborations around the World* (Meister Consultants Group, Inc. Boston  
2013)

Bekink *Principles of South African Local Government Law*

Bekink B *Principles of South African Local Government Law* (LexisNexis Durban 2006)

Bevere *et al Natural Catastrophes and Man-made Disasters in 2012*

Bevere L *et al Natural Catastrophes and Man-made Disasters in 2012* (Swiss Re Ltd Zurich 2013)

Bongwa “The Role of Public Private Partnerships in Poverty Alleviation in South Africa”

Bongwa M “The Role of Public Private Partnerships in Poverty Alleviation in South Africa” (Unpublished speech delivered at the Department of Rural Development and Land Reform conference on Rural Development in Pretoria 25-26 May 2011 Pretoria)

Bosher and Dainty 2010 *Disasters*

Bosher L and Dainty A “Disaster Risk Reduction and ‘Built-in’ Resilience: Towards Overarching Principles for Construction Practice” 2010 *Disasters* 1 – 18

Bosher *et al* 2007 *Building Research and Information*

Bosher L *et al* “Integrating Disaster Risk Management into Construction: A UK Perspective” 2007 *Building Research and Information* 163 - 177

Botha and Van Niekerk 2013 *Jamba: Journal of Disaster Risk Studies*

Botha D and Van Niekerk D “Views from the Frontline: A Critical Assessment of Local Risk Governance in South Africa” 2013 *Jamba: Journal of Disaster Risk Studies* 1 – 10

Boussabaine *Risk Pricing Strategies for Public Private Partnership Projects*

Boussabaine A *Risk Pricing Strategies for Public Private Partnership Projects* (Wiley and Sons West Sussex 2014)

Brahin *Country Risk Management: Making Societies More Resilient*

Brahin P *Country Risk Management: Making Societies More Resilient* (Swiss Re Zurich 2010)

Burnham “Disaster Definitions”

Burnham G “Disaster Definitions” in *Public Health Guide in Emergencies* 2<sup>nd</sup> ed (The John Hopkins Bloomberg School for Public Health and IFRC Geneva 2008)

Burstein and Shikada 2013 *Public Management*

Burstein R and Shikada E “Wows and Woes of Public Private Partnerships: Factors to Keep in Mind when Pursuing these Relationships” 2013 *Public Management* 12 – 15

Busch and Givens 2013 *Journal of Strategic Security*

Busch NE and Givens AD “Achieving Resilience in Disaster Management: The Role of Public Private Partnerships” 2013 *Journal of Strategic Security* 1 – 19

Chang 2003 *Natural Hazards Review*

Chang SE “Evaluating Disaster Mitigations: Methodology for Urban Infrastructure Systems” 2003 *Natural Hazards Review* 186 – 196

Chen *et al* 2013 *Journal of Contingencies and Crisis Management*

Chen J *et al* “Public Private Partnerships for the Development of Disaster Resilient Communities” 2013 *Journal of Contingencies and Crisis Management* 130 – 143

Chowdhury “Bridging Public Private Partnership in Disaster Management in Bangladesh”

Chowdhury MR “Bridging Public Private Partnership in Disaster Management in Bangladesh” in Miller DS and Rivera JD (eds) *Community Disaster Recovery and Resiliency: Exploring Global Opportunities and Challenges* (CRC Press Boca Raton 2011)

Coburn, Spence and Pomonis *Vulnerability and Risk Assessment*

Coburn AW, Spence RJS and Pomonis A *Vulnerability and Risk Assessment* (UNDP Disaster Management Training Programme Geneva 1991)

Coetzee *The Development, Implementation and Transformation of the Disaster Management Cycle*

Coetzee C *the Development, Implementation and Transformation of the Disaster Management Cycle* (unpublished mini-dissertation for the degree M.A in Development and Management North-West University Potchefstroom Campus 2009)

Coppola *Introduction to International Disaster Management*

Coppola DP *Introduction to International Disaster Management* (Butterworth-Heinemann Boston 2007)

Coppola *Introduction to International Disaster Management*

Coppola DP *Introduction to International Disaster Management* 2<sup>nd</sup> ed (Butterworth-Heinemann Boston 2011)

CSR Asia *Business and Disaster Preparedness: Helping Communities Prepare for Effective Response*

CSR Asia *Business and Disaster Preparedness: Helping Communities Prepare for Effective Response* (CSR Asia Hong Kong 2013)

Currie and De Waal *The Bill of Rights Handbook*

Currie I and De Waal J *The Bill of Rights Handbook* 6<sup>th</sup> ed (Juta Cape Town 2013)

Cutter *et al* "Managing the Risks from Climate Extremes at the Local Level"

Cutter S *et al* "Managing the Risks from Climate Extremes at the Local Level" in Field CB *et al* (eds) *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* (Cambridge University Press Cambridge 2012)

Dash, Mishra and Mishra 2013 *International Journal of Supply Chain Management*

Dash SR, Mishra US and Mishra P "Emerging Issues and Opportunities in Disaster Response and Supply Chain Management" 2013 *International Journal of Supply Chain Management* 55 – 60

Davies and Murshed *Critical Guidelines for Community Based Disaster Risk Management*

Davies I and Murshed Z *Critical Guidelines for Community Based Disaster Risk Management* (Asian Disaster Preparedness Centre Thailand 2006)

De Visser 2010 *Stell LR*

De Visser J "Institutional Subsidiarity in the Constitution" 2010 *Stellenbosch Law Review* 90 – 115

Djalante 2012 *Natural Hazards and Earth System Sciences*

Djalante R "Adaptive Governance and Resilience: the Role of Multi-stakeholder Platforms in Disaster Risk Reduction" 2012 *Natural Hazards and Earth System Sciences* 2923 – 2942

DMISA 2013 *Disaster Management*

DMISA "Municipality Takes A Proactive Approach to Disaster Management"  
*2013 Disaster Management* 19 – 21

Donohue, Masilela and Gear 2000 *SAHR*

Donohue S, Masilela T and Gear J "Disaster Management" 2000 *South African Health Review* 455 – 456

Drummond and Crawford *Humanitarian Crises, Emergency Preparedness and Response: the Role of Business and the Private Sector: Kenya Case Study*

Drummond J and Crawford N *Humanitarian Crises, Emergency Preparedness and Response: the Role of Business and the Private Sector: Kenya Case Study* (Overseas Development Institute London 2014)

Dugard *International Law: A South African Perspective*

Dugard J *International Law: A South African Perspective* 4<sup>th</sup> ed ((Juta Cape Town 2011)

Du Plessis "Climate Governance in South African Municipalities: Opportunities and Obstacles for Local Government"

Du Plessis AA "Climate Governance in South African Municipalities: Opportunities and Obstacles for Local Government" in Richardson B (ed) *Local Climate Change Law* (Edward Elgar Cheltenham 2012)

Du Plessis *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere*

Du Plessis AA *Fulfilment of South Africa's Constitutional Environmental Right in the Local Government Sphere* (LLD Dissertation North- West University Potchefstroom Campus 2008)

Du Plessis "The African Union"

Du Plessis M "The African Union" in Dugard J (ed) *International Law: A South African Perspective* 4<sup>th</sup> ed (Juta Cape Town 2011)

Du Plessis 2011 *SAJHR*

Du Plessis AA "South Africa's Constitutional Environmental Right Generously Interpreted: What is in it for Poverty?" 2011 *South African Journal of Human Rights* 279 – 307

Du Plessis 2010 *Stell LR*

- Du Plessis AA "Local Environmental Governance and the Role of Local Government in Realising Section 24 of the South African Constitution" 2010 *Stellenbosch Law Review* 265 – 297
- Evans and Elphick 2005 *International Journal of Tourism Research*
- Evans N and Elphick S "Models of Crisis Management: an Evaluation for their Value for Strategic Planning in the International Tourism Industry" 2005 *International Journal of Tourism Research* 135 – 150
- Farlam *Assessing Public Private Partnerships in Africa*
- Farlam P *Assessing Public Private Partnerships in Africa* (The South African Institute of Internal Affairs Pretoria 2005)
- Feris "Environmental Rights and Locus Standi"
- Feris "Environmental Rights and Locus Standi" in Paterson A and Kotzé LJ *Environmental Compliance and Enforcement in South Africa: Legal Perspectives* (Juta Claremont 2009)
- Fernandez, Uy and Shaw "Community Based Disaster Risk Management Experience in the Philippines"
- Fernandez G, Uy N and Shaw R "Community Based Disaster Risk Management Experience in the Philippines" in Shaw R (ed) *Community Based Disaster Risk Reduction* (Emerald Group Publishing Limited Bingley 2012)
- Fombad 2013 *African Journal of Business Ethics*
- Fombad MC "Accountability Challenges in Public Private Partnerships from a South African Perspective" 2013 *African Journal of Business Ethics* 11 - 25
- Geddes *Making Public Private Partnerships Work: Building Relationships and Understanding Cultures*
- Geddes M *Making Public Private Partnerships Work: Building Relationships and Understanding Cultures* (Gower Publishing England 2005)
- Givens and Busch 2013 *International Journal of Critical Infrastructure Protection*
- Givens AD and Busch NE "Realising the Promise of Public Private Partnerships in U.S Critical Infrastructure Protection" 2013 *International Journal of Critical Infrastructure Protection* 39 – 50
- Glazewski *Environmental Law in South Africa*
- Glazewski J *Environmental Law in South Africa* (LexisNexis Durban 2013)

Guha-Sapir *et al Annual Disaster Statistical Review 2010: The Numbers and Trends*

Guha-Sapir D *et al Annual Disaster Statistical Review 2010: The Numbers and Trends* (CRED Brussels 2010)

Hagelsteen and Becker 2012 *International Journal of Disaster Risk Reduction*

Hagelsteen M and Becker P “Challenging Disparities in Capacity Development for Disaster Risk Reduction” 2013 *International Journal of Disaster Risk Reduction* 4 – 13

Hellowell “The UK’s Private Finance Initiative: History, Evaluation, Prospects”

Hellowell M “The UK’s Private Finance Initiative: History, Evaluation, Prospects” in Hodge GA, Greve C and Boardman AE (eds) *International Handbook on Public Private Partnerships* (Edward Elgar Cheltenham 2010)

Hemming *Public Private Partnerships, Government Guarantees and Fiscal Risks*

Hemming R *Public Private Partnerships, Government Guarantees and Fiscal Risks* (International Monetary Fund Washington DC 2006)

Hodge, Greve and Boardman “Introduction: The PPP Phenomenon and its Evaluation”

Hodge GA, Greve C and Boardman AE “Introduction: The PPP Phenomenon and its Evaluation” in Hodge GA, Greve C and Boardman AE (eds) *International Handbook on Public Private Partnerships* (Edward Elgar Cheltenham 2010)

Holloway 2003 *ASR*

Holloway A “Disaster Risk Reduction in Southern Africa: Hot Rhetoric or cold reality” 2003 *African Security Review* 29 – 38

Holloway *et al Eden and Central Karoo Drought Disaster 2009 -2011 The Scramble For Water*

Holloway A *et al Eden and Central Karoo Drought Disaster 2009 -2011 The Scramble For Water* (Research report for the Provincial Disaster Management Centre, Western Cape by the Disaster Mitigation for Sustainable Livelihoods Programme, Department of Geography and Environmental Studies, Stellenbosch University 2012)

Hoppe and Schmitz 2013 *Rand Journal of Economics*

Hoppe EI and Schmitz PW “Public Private Partnerships versus Traditional Procurement: Innovation Incentives and Information Gathering” 2013 *Rand Journal of Economics* 56 – 74

Hoppe, Kusterer and Schmitz 2013 *Journal of Economic Behaviour and Organisation*

Hoppe EI, Kusterer DJ and Schmitz PW 2013 “Public Private Partnerships versus Traditional Procurement: An Experimental Investigation” *Journal of Economic Behaviour and Organisation* 145 -166

Horwitz 2009 *The Independent Review*

Horwitz S “Walmart to the Rescue: Private Enterprise’s Response to Hurricane Katrina” 2009 *The Independent Review* 1 – 32

Humby *Analysis of Legislation Related to Disaster Risk Reduction in South Africa*

Humby T *Analysis of Legislation Related to Disaster Risk Reduction in South Africa* (IFRC Geneva 2012)

Hus 2007 *Municipal Law*

Hus MP “Public Private Partnerships in the Municipal Sector” 2007 *Municipal Law* 1 – 3

IFRC *A Guide for Public Awareness and Public Education for Disaster Risk Reduction*

IFRC *A Guide for Public Awareness and Public Education for Disaster Risk Reduction* (IFRC Geneva 2011)

IoDSA *King Report on Corporate Governance for South Africa*

IoDSA *King Report on Corporate Governance for South Africa* (IoDSA Johannesburg 2009)

IoDSA *The King Code on Corporate Governance for South Africa*

IoDSA *The King Code on Corporate Governance for South Africa* (IoDSA Johannesburg 2009)

Johnson, Connolly and Carter 2011 *Corporate Social Responsibility and Environmental Management*

Johnson BR, Connolly E and Carter TS “Corporate Social Responsibility: The Role of Fortune 100 Companies in Domestic and International Disasters” 2011 *Corporate Social Responsibility and Environmental Management* 352 – 369

Johnson *Outsourcing Basic Municipal Services: Policy, Legislation and Contracts*

Johnson CV *Outsourcing Basic Municipal Services: Policy, Legislation and Contracts* (LLM-dissertation University of the Western Cape 2004)

Kidd *Environmental Law*

Kidd M *Environmental Law* 2<sup>nd</sup> ed (Juta Cape Town 2011)

Kotzé 2007 *Reciel*

Kotzé LJ “The Judiciary, the Environmental Right and the Quest for Sustainability in South Africa: A Critical Reflection” 2007 *Reciel* 298 – 311

Kroukamp 2005 *Journal of Public Administration*

Kroukamp H “Partnerships in Local Government to Improve Service Delivery in South Africa” 2005 *Journal of Public Administration* 71 – 82

Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders*

Kyoto University, UNISDR and RTF-URR *A Guide for Implementing the Hyogo Framework for Action by Local Stakeholders* (Kyoto University Japan 2010)

Labuschagne “The Future of PPPs in South Africa”

Labuschagne JP “The Future of PPPs in South Africa” in *SAFMA Facilities Management Conference in South Africa* 20 – 22 August 2012 Sandton 1 - 22

Lavell *et al* “Climate Change: New Dimensions in Disaster Risk, Exposure, Vulnerability, and Resilience”

Lavell A *et al* “Climate Change: New Dimensions in Disaster Risk, Exposure, Vulnerability, and Resilience” in IPCC *Managing the Risks of Extreme Events and Disasters to advance Climate Change Adaptation* (Cambridge University Press New York 2012)

Lavell *et al* “National Planning and Disaster”

Lavell A *et al* “National Planning and Disaster” in Wisner B, Gaillard JC and Kelman I (eds) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge New York 2012)

Levinsohn and Reardon 2007 *The PPP Quarterly*

Levinsohn D and Reardon D “Municipal PPP Projects in South Africa: Obstacles and Opportunities” 2007 *The PPP Quarterly* 1 – 6

Louw and Van Wyk 2011 *Civil Engineering*

Louw E and Van Wyk S “Disaster Risk Management” 2011 *Civil Engineering*  
16 – 18

Marchetti *Telecommunications in Disaster Areas*

Marchetti N *Telecommunications in Disaster Areas* (River Publishers  
Denmark 2010)

Matibane *Improving Service Delivery through Partnerships between Local  
Government, Civil Society and the Private Sector: A case Study of Imizamo Yethu*

Matibane L *Improving Service Delivery through Partnerships between Local  
Government, Civil Society and the Private Sector: A case Study of Imizamo  
Yethu* (MA Public and Development Management Thesis Stellenbosch  
University 2010)

McClellan *World Disasters Report 2010: Focus on Urban Risk*

McClellan D *World Disasters Report 2010: Focus on Urban Risk* (IFRC  
Geneva 2010)

Medury “Building Disaster Resilient Communities: The Public Private Partnership  
Approach”

Medury U “Building Disaster Resilient Communities: The Public Private  
Partnership Approach” in Miller DS and Rivera JD (eds) *Community Disaster  
Recovery and Resiliency: Exploring Global Opportunities and Challenges*  
(CRC Press Boca Raton 2011)

Metcalf 2013 *Civil Engineering*

Metcalf B “The Challenge for Government Parties in Assuring PPP  
Projects” 2013 *Civil Engineering* 30 – 34

Meyer 2011 *Official Journal of the Disaster Management Institute of South Africa*

Meyer D “Disaster Management Southern Africa” 2011 *Official Journal of  
The Disaster Management Institute of South Africa* 1 – 27

Minnie *Critical Success Factors for Public Private Partnerships in South Africa*

Minnie JA *Critical Success Factors for Public Private Partnerships in South  
Africa* (PHD Thesis Stellenbosch University 2010)

Mitchel and Schnarwiler *Disaster Risk Financing: Reducing the Burden on Public  
Budgets*

Mitchel M and Schnarwiler R *Disaster Risk Financing: Reducing the Burden  
on Public Budgets* (Swiss Re Zurich 2008)

Mitchell *et al* “National Systems for Managing the Risks from Climate Extremes and Disasters”

Mitchell T *et al* “National Systems for Managing the Risks from Climate Extremes and Disasters” in *IPC Managing the Risks of Extreme Events and Disasters to advance Climate Change Adaptation* (Cambridge University Press New York 2012)

National Research Council of the National Academies *Building Community Disaster Resilience through Private Public Collaboration*

National Research Council of the National Academies *Building Community Disaster Resilience through Private Public Collaboration* (The National Academic Press Washington DC 2012)

Noumba-Um “Empirical Evidence of Infrastructure Public Private Partnerships: Lessons from the World Bank Experience”

Noumba-Um P “Empirical Evidence of Infrastructure Public Private Partnerships: Lessons from the World Bank Experience” in Hodge GA, Greve C and Boardman AE (eds) *International Handbook on Public Private Partnerships* (Edward Elgar Cheltenham 2010)

Nzimakwe 2006 *Africanus*

Nzimakwe TI “Public Private Partnerships: Implications for Development” 2006 *Africanus* 48 – 57

O’Brien *et al* “Local Government and Disaster”

O’Brien G *et al* “Local Government and Disaster” in Wisner B, Gaillard JC and Kelman I (eds) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge New York 2012)

OECD *Dedicated Public Private Partnership Units*

OECD *Dedicated Public Private Partnership Units* (OECD Paris 2010)

Pattberg *et al* *Public Private Partnerships for Sustainable Development*

Pattberg P *et al* *Public Private Partnerships for Sustainable Development* (Edward Elgar Cheltenham 2012)

Pessoa “Reviewing Public Private Partnership Performance in Developing Economies”

Pessoa A “Reviewing Public Private Partnership Performance in Developing Economies” in Hodge GA, Greve C and Boardman AE (eds) *International Handbook on Public Private Partnerships* (Edward Elgar Cheltenham 2010)

Phago and Malan 2004 *JPA*

Phago KG and Malan LP “Public Private Partnerships and their Role in Extending Access to Local Governance” 2004 *Journal of Public Administration* 481 – 491

Plummer *Focussing Partnerships: A Sourcebook for Municipal Capacity Building in Public Private Partnerships*

Plummer J *Focussing Partnerships: A Sourcebook for Municipal Capacity Building in Public Private Partnerships* (Earthscan Publications London 2002)

Quium *A Guidebook on Public Private Partnership in Infrastructure*

Quium A *A Guidebook on Public Private Partnership in Infrastructure* (UN Bangkok 2011)

Rautenbach and Malherbe *Constitutional Law*

Rautenbach IM and Malherbe EFT *Constitutional Law* 6<sup>th</sup> ed (Lexis Nexis Durban 2012)

Reddy 2010 *Politeia*

Reddy P “Democratic decentralisation and local democracy in South Africa re-examined: quo vadis?” 2010 *Politeia* 66 - 87

Reddy *Local Government Democratisation and Decentralisation*

Reddy PS *Local Government Democratisation and Decentralisation* (Juta Kenwyn 1999)

Sarmiento *et al Private Sector and Disaster Risk Reduction: The Cases of Bogota, Miami, Kingston, San José, Santiago and Vancouver*

Sarmiento JP *et al Private Sector and Disaster Risk Reduction: The Cases of Bogota, Miami, Kingston, San José, Santiago and Vancouver* (UNISDR Geneva 2013)

Schwab and Brower “Increasing Resilience to Natural Hazards”

Schwab AK and Brower DJ “Increasing Resilience to Natural Hazards” in Nolon JR and Rodriguez DB (eds) *Losing Ground A Nation on Edge* (Environmental Law Institute Washington 2007)

Seemela 2008 *Journal of Public Administration*

Seemela VPP “Public Private Partnership as a Tool for Developmental State” 2008 *Journal of Public Administration* 483 – 491

Seid-Aliyeva 2006 *American Institute of Physics*

Seid-Aliyeva DE “Role of Mass Media in the Disaster Preparedness and Sustainable Development of Society” 2006 *American Institute of Physics* 79 – 83

Setola and Geretshuber 2009 *Springer*

Setola R and Geretshuber S “Emerging Information Infrastructures: Cooperation in Disasters” 2009 *Springer* 258 – 270

Shen, Platten and Deng 2006 *International Journal of Project Management*

Shen LY, Platten A and Deng XP “Role of Public Private Partnerships to Manage Risks in Public Sector Projects in Hong Kong” 2006 *International Journal of Project Management* 587 – 594

Situma 2000 *Transnational Law and Contemporary Problems*

Situma FDP “Africa’s Potential Contribution to the Implementation of International Environmental Law” 2000 *Transnational Law and Contemporary Problems* 385 – 421

Skjaerseth, Stokke and Wettestad 2006 *Global Environmental Politics*

Skjaerseth JB, Stokke OS and Wettestad J “Soft Law, Hard Law, and Effective Implementation of International Environmental Norms” 2006 *Global Environmental Politics* 104 – 120

Smith and Sutter 2013 *The Independent Review*

Smith DJ and Sutter D “Response and Recovery after the Joplin Tornado: Lessons Applied and Lessons Learned” 2013 *The Independent Review* 165 – 188

Smith *Environmental Hazards: Assessing Risk and Reducing Disaster*

Smith K *Environmental Hazards: Assessing Risk and Reducing Disaster* 6<sup>th</sup> ed (Routledge New York 2013)

Sobel and Leeson 2007 *The Independent Review*

Sobel RS and Leeson PT “The Use of Knowledge in Natural Disaster Relief Management” 2007 *The Independent Review* 519 – 532

Stewart, Kolluru and Smith 2009 *IJPDLM*

Stewart GT, Kolluru R and Smith M “Leveraging Public-Private Partnerships to Improve Community Resilience in Times of Disaster” 2009 *International Journal of Physical Distribution and Logistics Management* 343 – 364

Steytler and De Visser *Local Government Law of South Africa*

Steytler N and De Visser J *Local Government Law of South Africa*  
(LexisNexis Durban 2012)

Surjan and Shaw 2009 *Disaster Prevention and Management*

Surjan A and Shaw R “Enhancing Disaster Resilience through Local Environment Management” 2009 *Disaster Prevention and Management* 418 – 433

Sutanta, Rajabifard and Bishop 2013 *Journal of Environmental Planning and Management*

Sutanta H, Rajabifard A and Bishop ID “Disaster Risk Reduction Using Acceptable Risk Measures For Spatial Planning” 2013 *Journal of Environmental Planning and Management* 761 – 785

Tang, Shen and Cheng 2010 *International Journal of Project Management*

Tang L, Shen Q and Cheng EWL “A Review of Studies on Public Private Partnership Projects in the Construction Industry” 2010 *International Journal of Project Management* 683 – 694

UN A *Guidebook on Public Private Partnership in Infrastructure*

UN A *Guidebook on Public Private Partnership in Infrastructure* (UN Bangkok 2011)

UN *Basic Facts about the United Nations*

UN *Basic Facts about the United Nations* (UN New York 1998)

UN *Guidebook on Promoting Good Governance in Public Private Partnerships*

UN *Guidebook on Promoting Good Governance in Public Private Partnerships* (UN Geneva 2008)

UNDP *An Overview of Disaster Management*

UNDP *An Overview of Disaster Management* 2<sup>nd</sup> ed (UNDP Geneva 1992)

UNISDR *Business and Disaster Risk Reduction: Good Practices and Case Studies*

UNISDR *Business and Disaster Risk Reduction: Good Practices and Case Studies* (UNISDR Geneva 2013)

UNISDR *From Shared Risk to Shared Value – The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction*

UNISDR *From Shared Risk to Shared Value –The Business Case for Disaster Risk Reduction: Global Assessment Report on Disaster Risk Reduction* (UNISDR Geneva 2013)

UNISDR *How to Make Cities More Resilient: A Handbook for Local Government Leaders*

UNISDR *How to Make Cities More Resilient: A Handbook for Local Government Leaders* (UN Geneva 2012)

UNISDR *Making Cities Resilient: Summary for Policy Makers*

UNISDR *Making Cities Resilient: Summary for Policy Makers* (UNISDR Geneva 2013)

UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned*

UNISDR *Private Sector Activities in Disaster Risk Reduction: Good Practices and Lessons Learned* (UNISDR Geneva 2008)

UNISDR *Terminology on Disaster Risk Reduction*

UNISDR *Terminology on Disaster Risk Reduction* (UNISDR Geneva 2009)

UNISDR *The Development of a Public Partnership Framework and Action Plan for Disaster Risk Reduction in Asia*

UNISDR *The Development of a Public Partnership Framework and Action Plan for Disaster Risk Reduction in Asia* (UN Geneva 2009)

Urio *Public Private Partnerships: Success and Failure Factors for In-Transition Countries*

Urio P *Public Private Partnerships: Success and Failure Factors for In-Transition Countries* (University Press of America Maryland 2010)

Uys 2005 *JPA*

Uys F “Disaster Management: An Overview” 2005 *Journal of Public Administration* 404 – 417

Van der Berg and Du Plessis 2013 *SAPL*

Van der Berg A and Du Plessis AA “Some Perspectives on Constitutional Conflict in Local Disaster Management through the Lens of Pheko and Others v Ekurhuleni Metropolitan Municipality 2012 (2) SA 598 (CC)” 2013 *SAPL* 448 – 468

Van der Waldt “Metropolitan Management: An Orientation”

Van der Waldt G “Metropolitan Management: An Orientation” in Van der Waldt G (ed) *Municipal Management Serving the People* (Juta Cape Town 2007)

Van Niekerk 2006 *Politeia*

Van Niekerk D “Disaster Risk Management in South Africa: The Function and the Activity – Towards an Integrated Approach” 2006 *Politeia* 95 – 115

Van Niekerk “Disaster Risk Reduction and Climate Change Adaptation Towards Community Resilience” (on file with author)

Van Niekerk D “Disaster Risk Reduction and Climate Change Adaptation Towards Community Resilience” (on file with author)

Van Niekerk “Local Government Disaster Risk Management”

Van Niekerk D “Local Government Disaster Risk Management” in Van der Waldt G (ed) *Municipal Management Serving the People* (Juta Cape Town 2007)

Van Riet 2012 *Jamba: Journal of Disaster Risk Studies*

Van Riet G “Recurrent Draught in the Dr Ruth Segomotsi Mompati District Municipality of the North West Province in South Africa: An Environmental Justice Perspective” 2012 *Jamba: Journal of Disaster Risk Studies* 17 - 25

Van Riet and Van Niekerk 2012 *Environmental Hazards*

Van Riet G and Van Niekerk D “Capacity development for participatory disaster risk assessment” *Environmental Hazards* 213 - 225

Van Wyk *Planning Law*

Van Wyk J *Planning Law* 2<sup>nd</sup> ed (Juta Cape Town 2012)

Wahlstrom 2011 *Greenleaf Publishing*

Wahlstrom M “CSR and Disaster Risk Reduction” 2011 *Greenleaf Publishing* 23 - 25

Wei *et al* 2012 *AISS*

Wei *et al* “Role of Social Media in Knowledge Management During Natural Disaster Management” 2012 *Advances in Information Sciences and Service Sciences* 284 – 292

Wisner, Gaillard and Kelman “Challenging Risk”

Wisner B, Gaillard JC and Kelman I “Challenging Risk” in Wisner B, Gaillard JC and Kelman I (eds) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge New York 2012)

Wisner, Gaillard and Kelman “Framing Disaster”

Wisner B, Gaillard JC and Kelman I “Framing Disaster” in Wisner B, Gaillard JC and Kelman I (eds) *The Routledge Handbook of Hazards and Disaster Risk Reduction* (Routledge New York 2012)

World Bank Institute *Public Private Partnerships Reference Guide*

World Bank Institute *Public Private Partnerships Reference Guide* (The World Bank Washington DC 2012)

World Bank *World Development Indicators 2013*

World Bank *World Development Indicators 2013* (The World Bank Washington DC 2013)

World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement*

World Economic Forum *Building Resilience to Natural Disasters: A Framework for Private Sector Engagement* (World Economic Forum Geneva 2008)

Yong *Public Private Partnerships Policy and Practice: A Reference Guide*

Yong HK *Public Private Partnerships Policy and Practice: A Reference Guide* (Commonwealth Secretariat London 2010)

Zetter *World Disaster Report 2012: Focus on Forced Migration and Displacement*

Zetter R *World Disaster Report 2012: Focus on Forced Migration and Displacement* (IFRC Geneva 2012)

Zitron 2006 *Journal of Purchasing and Supply Management*

Zitron J “Public Private Partnership Projects: Towards a Model of Contractor Bidding 2006 Decision Making” *Journal of Purchasing and Supply Management* 53 - 62

## **Case Law**

*Fuel Retailers Association of Southern Africa v Director General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others* 2007 6 SA 4 (CC)

*Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelts Products and Others* 2004 2 SA 393 (E)

*Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others; Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v City of Cape Town and Others* (117/13) [2014] ZACC 9 (4 April 2014)

*Minister of Water Affairs and Forestry v Stilfontein Gold Mining Company Ltd and Others* 2006 JOL 17516 (W)

*Pheko and Other's v Ekurhuleni Metropolitan Municipality* 2012 2 SA 598 (CC)

*Port Alfred Riverhouse Property (Pty) Ltd v Ndlambe Municipality* 2008 JDR 0970 (E)

*RA le Sueur v Ethekwini Municipality* 2013 JDR 0178 (KZP)

*The City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* 2010 6 SA 182 (CC)

## **Legislation**

*Companies Act* 61 of 1973

*Constitution of the Republic of South Africa*, 1996

*Conservation of Agricultural Resources Act* 43 of 1983

*Disaster Management Act* 57 of 2002

*Fire Brigade Services Act* 99 of 1987

*Local Government: Municipal Finance Management Act* 56 of 2003

*Local Government: Municipal Systems Act* 32 of 2000

*Mineral and Petroleum Resources Development Act* 43 of 1983

*National Building Regulations Building Standards Act* 103 of 1977

*National Veld and Forest Fire Act* 101 of 1998

*Public Finance Management Act* 1 of 1999

*Safety at Sports and Recreational Events Act* 2 of 2010

## **Government Notices**

GN 637 in GG 36580 of 19 June 2013

GNR 1535 in GG 25605 of 24 October 2003

GNR 309 in GG 27431 of 1 April 2005

LAN 1110 in PG 228 of 14 August 2013

### **Government Policy**

*National Disaster Management Framework of 2005*

*White Paper on Disaster Management of 1999*

*White Paper on Local Government of 1998*

*White Paper on Municipal Service Partnerships of 2004*

### **International Instruments**

*Hyogo Framework for Action: Building Resilience of Nations and Communities to Disasters 2005 - 2015*

*United Nations Millennium Declaration, 2000*

*Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, 1994*

### **Regional Instruments**

*African Regional Study for Disaster Risk Reduction, 2004*

*Programme of Action for the Implementation of the African Regional Strategy for Disaster Risk Reduction 2006 - 2015*

*SADC Disaster Risk Reduction Strategic Plan 2006 – 2010*

*SADC Draft Policy and Strategic Framework for Disaster Risk Reduction Policy 2010 – 2015*

*SADC Draft Regional Multi-Sectoral Disaster Management Strategy, 2001*

### **Internet Sources**

ACDS 2008 *The Link between Development Planning and Disaster Risk Management in Selected Municipalities* <http://bit.ly/1dXyXd4> [date of use 29 December 2013]

Aoki M 2012 *Tokyo Foreigners get Disaster Drill* <http://bit.ly/1dXyXd4> [date of use 4 March 2014]

Anastasiou A 2014 *Coleraine Drive Collapses* <http://bit.ly/1nQWIKy> [date of use 13 March 2014]

ASB 2008 *Guideline on Accounting for Public Private Partnerships* <http://bit.ly/1e3PY4B> [date of use 21 January 2014]

Buttarazzi J Date Unknown *Using Public Private Partnerships to Enhance Emergency Management* <http://bit.ly/1cj5cTv> [date of use 25 February 2014]

Castalia Strategic Advisors 2007 *Key Challenges to Public Private Partnerships in South Africa: Summary of Interview Findings* <http://bit.ly/MvuffZ> [date of use 30 January 2014]

Castalia Strategic Advisors and Ukhamba Advisory Services 2007 *Key Challenges to Public Private Partnerships in South Africa: Finding a Way Forward* <http://bit.ly/1kRDBRv> [date of use 30 January 2014]

City of Cape Town 2009 *City partners Nedbank in Another Affordable Housing Project* <http://bit.ly/1e3l0sf> [date of use 13 January 2014]

City of Johannesburg 2010 *City Taps Private Sector* City of Johannesburg 2010 <http://bit.ly/1f939aA> [date of use 13 January 2014]

CNDR Date Unknown *Developmental Approach to Emergency Response* <http://bit.ly/1g3taa4> [date of use 7 March 2014]

CNN Fortune and Money 2012 *Annual Ranking of the World's Largest Corporations* <http://cnmon.ie/1eyPcNa> [date of use 27 February 2014]

COGTA 2009 *State of Local Government in South Africa* <http://bit.ly/Pd6evf> [date of use 1 April 2014]

Davies P and Eustice K 2005 *Delivering the PPP Promise: A Review of PPP Issues and Activity* <http://pwc.to/1gzloUk> [date of use 21 January 2014]

Department of Local Government and Housing 2007 *Report to Cabinet Request for Declaration of A Local Disaster Regarding the Compound Flood Which Occurred in the West Coast in June 2007* <http://bit.ly/O2YsEa> [date of use 2 October 2013]

Deutsche Post DHL 2010 *Disaster Relief Needs Efficiency* <http://bit.ly/1kASPup> [date of use 6 March 2014]

Discerning the Times Digest Date Unknown *UN Millennium Declaration: Mandate for Global Governance* <http://bit.ly/1e3ryYV> [date of use 12 November 2013]

European Commission 2011 *Corporate Social Responsibility (CSR)* <http://bit.ly/1hnUmzX> [date of use 26 February 2014]

FEMA 2011 *A Whole Community Approach to Emergency Management: Principles, Themes, and Pathways for Action* <http://1.usa.gov/1gcMTjc> [date of use 14 March 2014]

Gautrain Date Unknown *Gautrain: The Stimulus for Improved Land Development* <http://bit.ly/1kRv6Wu> [date of use 14 January 2014]

Gautrain Date Unknown *Introduction: About the Gautrain* <http://bit.ly/1cljkyM> [date of use 14 January 2013]

Gautrain Date Unknown *Why Rapid Rail* <http://bit.ly/1eMgkrF> [date of use 14 January 2014]

Global Hand Date Unknown *Japanese Consumers' Co-operative Union Encourages Communities to Talk About Disaster Reduction* <http://bit.ly/1dqahwY> [date of use 5 March 2014]

Greater Tubatse Municipality 2009 *Greater Tubatse Municipality Waste Management Project* <http://bit.ly/N5vbHT> [date of use 13 January 2013]

JCCU 2010 *JCCU Promotes Disaster Risk Reduction Activity* <http://bit.ly/1opWGm> [date of use 5 March 2014]

Kruger T 2001 *Santam Cape Argus Ukuvuka Operation Firestop* <http://bit.ly/1IKblcr> [date of use 9 April 2014]

Lavell A and Maskrey A 2013 *The Future of Disaster Risk Management: An Ongoing Discussion* <http://bit.ly/1bNYES3> [date of use 27 February 2013]

Llosa S and Zodrow I *Global Assessment Report on Disaster Risk Reduction: Disaster Risk Reduction Legislation a Basis for Effective Adaptation 2011* <http://bit.ly/1cjuV6B> [date of use 25 February 2014]

Mailovich C and Louw-Carstens M 2014 *5 000 Word uit Laerliggende Dele van Lephalale Ontruim* <http://bit.ly/1fUY85R> [date of use 13 March 2014]

Matyalana A 2013 *Estuaries Close As Knysna Undergoes Oil Spill Clean Up* <http://bit.ly/1kQO3bY>. [date of use 2 October 2013]

National Treasury PPP Unit 2007 *Introducing Public Private Partnerships in South Africa* <http://bit.ly/1kRrm7o> [date of use 13 January 2014]

National Treasury PPP Unit Date 2007 *Municipal Service Delivery and PPP Guidelines* <http://bit.ly/O3yosy> [date of use 15 January]

National Treasury PPP Unit 2004 *PPP Practice Note* <http://bit.ly/1nJXOps> [date of use 21 January 2014]

National Treasury PPP Unit 2004 *Standardised PPP Provisions* <http://bit.ly/1e3RBz4> [date of use 14 January 2014]

National Treasury Date Unknown *Public Private Partnership Project List: National* <http://bit.ly/PRI9fc> [date of use 14 January 2014]

National Treasury Date Unknown *Public Private Partnership Project List: Provincial* <http://bit.ly/1g7GnyY> [date of use 14 January 2014]

National Treasury PPP Unit Date Unknown *Public Private Partnership Project List: Municipal* National Treasury <http://bit.ly/1c0DlaJ> [date of use 13 January 2014]

NDMC Date Unknown *Disaster Management Guidelines for Municipalities* <http://bit.ly/O2W00s> [date of use 2 October 2013]

NDMC Date Unknown *Foreword for the National Education Training and Research Needs and Resources Analysis* <http://bit.ly/1kQu64T> [date of use 11 November 2013]

NEPAD, AU and AFDB 2004 *Towards Sustainable Development in Africa: Report on the Status of Disaster Risk Management and Disaster Risk Assessment in Africa* <http://bit.ly/1dJOxyZ> [date of use 1 April 2014]

Ngobeni L 2014 *Heaviest Rain in Gauteng for 14 Years* <http://bit.ly/OnUg1e> [date of use 13 March 2014]

Pillay K 2012 *Clean Drinking Water with SkyHydrant* <http://bit.ly/1gdrCXw> [date of use 7 March 2014]

Roeth H 2009 *Consultancy Project on the Development of a Public Private Partnership Framework and Action Plan for Disaster Risk Reduction in East Asia* <http://bit.ly/1fQpGnt> [date of use 25 February 2014]

SAHF 2013 *Cape Town Public Private Partnership Sees new Affordable Housing Development in Rugby* <http://bit.ly/1jNqlwS> [date of use 13 January 2014]

SALGA 2011 *Disaster Risk Management Status Assessment at Municipalities in South Africa* <http://bit.ly/1bhyoPA> [date of use 8 August 2013]

SALGA 2013 *Disaster Risk Reduction: A Multi-stakeholder Approach to Targeted Intervention in Selected Municipalities* <http://bit.ly/1hNj0gO> [date of use 25 February 2014]

Sebideng District Municipality 2012 *Annual Report* <http://bit.ly/1gdHPND> [date of use 13 January 2014]

Scholtz A and Engelbrecht M 2013 *Buffalo Bay Oil Spill Knysna - Update Status of Joc Goukamma Nature Reserve Monday 19 August 2013 Day 11* <http://bit.ly/1jAn8hc> [date of use 2 October 2013]

SkyJuice Foundation 2010 *Sustainable Water Solutions for Humanitarian and Disaster Relief* <http://bit.ly/1cGrsHe> [date of use 7 March 2014]

Standard Bank, Rand Water and NBI 2006 *Overview of Municipal Service Delivery Mechanisms* Standard Bank, Rand Water and NBI 2006 <http://bit.ly/1nJZwad> [date of use 21 January 2014]

Tokyo Gas Group 2007 *Fulfilling our Commitment to Corporate Social Responsibility* <http://bit.ly/1hJgFQM> [date of use 4 March 2014]

Tokyo Gas Group Date Unknown *Risks of Business* <http://bit.ly/1lwtJNe> [date of use 4 March 2014]

UN Date Unknown *About UN Membership* <http://bit.ly/1jAp7Sp> [date of use 11 November 2013]

UN Date Unknown *Member States of the United Nations* <http://bit.ly/1jAp7Sp> [date of use 11 November 2013]

UN 1994 *World Conference Adopts Yokohama Strategy for Natural Disaster* <http://bit.ly/1gdCVQK> [11 November 2013]

UN 2005 *World Conference on Disaster Reduction Review of the Yokohama Strategy and Plan of Action for a Safer World* <http://bit.ly/1iV0l0a> [date of use 1 April 2014]

UNISDR 2012 *Annual Report 2011* <http://bit.ly/1fPVmt4> [date of use 25 February 2014]

UNISDR 2013 *Towards a Post-2015 Framework for Disaster Risk Reduction Building the Resilience of Nations and Communities to Disasters* <http://bit.ly/1fRm3mH> [date of use 11 March 2014]

UNISDR and PwC 2013 *Working Together to Reduce Disaster Risk* <http://pwc.to/1hXRTel> [date of use 3 March 2014]

UNISDR Date Unknown *Partners: Countries and National Platforms* <http://bit.ly/1cz39L7> [date of use 4 March 2014]

UNISDR Date Unknown *UNISDR Publications Public Private Partnerships* <http://bit.ly/1c3x83q> [25 February 2014]

Van der Merwe E, Negota GM and Van Zyl OAW 2011 *Gauteng Rapid Rail Link: The Project Concept* <http://bit.ly/1k6WBvg> [date of use 14 January 2014]

Van Zyl 2006 *A Study on a Disaster Risk Management Plan for the South African Agricultural Sector* <http://bit.ly/1bOdp9u> [date of use 27 February 2014]

Visser R and Van Niekerk D 2009 *A Funding Model for the Disaster Risk Management Function of Municipalities* <http://bit.ly/1f8DX3V> [date of use 8 January 2014]

White 2012 The Top 175 *Global Economic Entities* <http://bit.ly/1cTBFdk> [date of use 27 February 2014]

World Bank 2012 *Current GDP* <http://bit.ly/1kbr2k3> [date of use 27 February 2014]

TO WHOM IT MAY CONCERN

15 April 2014

I hereby certify that I have edited the language of a Master's dissertation by Angela van der Berg entitled Legal Perspectives on the Function of Public-Private Partnerships in Local Disaster Management in South Africa.

I am Professor Alan Brimer, DLitt (UPE), Professor Emeritus of UKZN.

Yours faithfully,

Alan Brimer

A handwritten signature in black ink, appearing to read "A. Brimer", is enclosed in a light grey rectangular box.