

Article

Disaster Laws and Management Authorities in Taiwan (1945-2019)

Yung-Hua Kuo *

ABSTRACT

Disaster is a continuous process in that its mitigation, preparedness, response, and recovery all influence one another, and even the risk as well as the severity of the next disaster. To fully realize disaster management and its issues in Taiwan, this paper examines disaster laws and management authorities throughout the ROC rule beginning in 1945. According to this research, the history of disaster management in Taiwan can be divided into two periods. From 1945 to 1999, disaster effects were primarily handled by the executive power through local administrative regulations and presidential emergency decrees. These measures focused on response to an imminent disaster and recovery from damage already sustained, but they overlooked the important task of averting disasters. Since 2000 to the present, the legislature has actively passed and amended statutes to establish a national legal framework of disaster management and to address specific issues caused by major disasters. However, even after making legal reforms, fragmented authorities remain a problem for successful disaster management in Taiwan. This paper suggests that Taiwan needs an agency with sufficient power and resources to make long-term plans and coordinate intragovernmental efforts when facing disasters. In addition, it is important to increase the capacity of local governments to mitigate, prepare for, respond to, and recover from disasters. By incorporating local knowledge and

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* Postdoctoral researcher, Research Institute for the Humanities and Social Science, Ministry of Science and Technology. Ph. D in Law, University of Washington. Contact: yunghuakuo@gmail.com. The author is grateful to the anonymous reviewers for their constructive comments and suggestions. This article is based on the author's unpublished dissertation chapters, revised with additional materials and extended discussions. Publication of this article is supported by the Research Institute for the Humanities and Social Science, Ministry of Science and Technology.

diverse opinions of the affected people, Taiwan may better reduce disaster risks and adapt to impacts according to specific social, cultural, and environmental contexts.

Keywords: *Disaster Management Authority, Cycle of Disaster Law, Disaster Prevention and Protection Organization and Mission, Disaster Prevention and Protection Act, Bottom-up Approach*

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I. INTRODUCTION

Located on the Pacific Rim and at low and middle latitudes, Taiwan has frequently been struck by earthquakes, typhoons, and other natural disasters. Since 1898, when Taiwan first installed seismological equipment, more than one hundred earthquakes have caused death, injury, property loss, and other damages in Taiwan.¹ On average, twenty-four earthquakes with magnitudes greater than five occur in Taiwan each year, at least one of which results in a disaster that causes harm.² In addition, approximately three to four typhoons directly hit Taiwan every year. The strong winds and heavy rainfall cause floods, mudflows, and landslides in Taiwan, which result in a great loss of life and property.³

In recent decades, climate change has posed increased disaster risks and effects on Taiwan and countries around the world. Compared to typhoons from 1961 to 1989, the occurrence and severity of the typhoons that hit Taiwan after 1990 have increased.⁴ Extreme precipitation during typhoon events has also increased significantly since 2000.⁵ The Fourth Intergovernmental Panel on Climate Change Report warned that, because of climate change, weather patterns will become more extreme and unpredictable. Dry regions are likely to experience more droughts and wet regions to have more rainfall. Extreme precipitation events over mid-latitude locations and tropical regions are likely to become more intense and frequent.⁶

1. Zhongyang Qixiangju Dizhen Cebao Zhongxin (中央氣象局地震測報中心) [Central Weather Bureau Seismological Center], *1901–2000 de Zaihaixing Dizhen Liebiao (1901–2000的災害性地震列表)* [List of Disastrous Earthquakes from 1901 to 2000], ZHONGYANG QIXIANGJU WANGZHAN (中央氣象局網站) [THE WEBSITE OF CENTRAL WEATHER BUREAU], <https://scweb.cwb.gov.tw/zh-tw/page/disaster/5> (last visited July 9, 2019); Zhongyang Qixiangju Dizhen Cebao Zhongxin (中央氣象局地震測報中心) [Central Weather Bureau Seismological Center], *2001 Qijin de Zaihaixing Dizhen Liebiao (2001迄今的災害性地震列表)* [List of Disastrous Earthquakes since 2001], ZHONGYANG QIXIANGJU WANGZHAN (中央氣象局網站) [THE WEBSITE OF CENTRAL WEATHER BUREAU], <https://scweb.cwb.gov.tw/zh-tw/page/disaster/6> (last visited July 9, 2019).

2. ZHONGYANG QIXIANGJU (中央氣象局) [CENTRAL WEATHER BUREAU], TIANRAN ZAIHAI ZAIFANG WENDA Ji (天然災害災防問答集) [QUESTIONS AND ANSWERS ABOUT NATURAL DISASTERS] 1 (2015), https://www.cwb.gov.tw/V7/prevent/plan/prevent-faq/prevent_faq.pdf.

3. See GUOSHIGUAN TAIWAN WENXIANGUAN (國史館臺灣文獻館) [TAIWAN HISTORICA], ZOU GUO FENGYU: DAOYU RENMIN TAIFENG JIYI JIEAN BAOGAO (走過風雨—島嶼人民颱風記憶結案報告) [WALKING THROUGH WIND AND RAIN: FINAL REPORT OF ISLANDERS' MEMORY OF TYPHOON] 15-19 (2010).

4. HSU HUANG-HSIUNG (許晃雄), WU YI-ZHAO (吳宜昭), ZHOU JIA (周佳), CHEN ZHENG-DA (陳正達), CHEN YONG-MING (陳永明) & LU MENG-MING (盧孟明), TAIWAN QIHOU BIANQIAN KEXUE BAOGAO (台灣氣候變遷科學報告) [SCIENTIFIC REPORT OF TAIWAN CLIMATE CHANGE] 38 (2011).

5. *Id.* at 18-19.

6. *Id.* at 73-74, 78-79, 259-60.

Facing this hazardous situation, researchers worldwide have conducted studies to reduce disaster risks, mitigate disaster impacts, and adapt to environmental changes. Traditionally, natural disasters were distinguished from man-made disasters, but this distinction is regarded as not absolute in modern disaster studies. Usually, a “natural” disaster involves some human contribution. For example, the 2005 surge of Hurricane Katrina was within federally designated specifications for levee systems, but mistakes in actual levee design and construction under the control and supervision of the federal government led to serious flooding in New Orleans.⁷ As human activities have been causing global environmental changes that increase the occurrence and severity of extreme weather events, it has become more difficult in law, policy, and practice to clearly distinguish natural disasters from human-induced disasters.⁸

While the distinction of the causes of disasters is still commonly used and has its value in preparing for and responding to different types of disasters,⁹ the focus of studying disasters has moved from the natural event itself, such as its magnitude, to its impact on and interaction with people: how human life and property are altered by the destructive event.¹⁰ In the past, natural disasters were considered exterior phenomena caused by the destructive powers of God or nature, so studies concentrated on the hazard itself. Yet, in the past fifty years, researchers have approached disasters from a social perspective, paying more attention to social institutions unable to manage or withstand disturbances caused by a hazard. Disaster is not a pure result of natural forces but more the consequence of lack of human resilience--unaddressed social and structural vulnerability and mismanaged or misunderstood risks.¹¹ The way in which people manipulate the natural environment and manage the potential impact will have an influence on disaster risks and damages caused by the disaster.¹²

Along with these changes in understanding disasters, researchers have studied how to reduce and resist disaster impacts, not only through advancing natural science knowledge but also by improving social

7. DANIEL A. FARBER, JIM CHEN, ROBERT R. M. VERCHICK & LISA GROW SUN, *DISASTER LAW AND POLICY* 2-3 (3rd ed. 2015).

8. Susan C. Breau & Katja L. H. Samuel, *Introduction*, in *RESEARCH HANDBOOK ON DISASTERS AND INTERNATIONAL LAW* 1, 3 (Susan C. Breau & Katja L. H. Samuel eds., 2016); Tim Stephens, *Disasters, International Environmental Law and the Anthropocene*, in *RESEARCH HANDBOOK ON DISASTERS AND INTERNATIONAL LAW*, *id.* 153, 153.

9. Eduardo Valencia-Ospina, *Preliminary Report on the Protection of Persons in the Event of Disasters*, UN Doc. A/CN.4/598 (May 5, 2008), https://legal.un.org/ilc/documentation/english/a_cn4_598.pdf.

10. FARBER, CHEN, VERCHICK & SUN, *supra* note 7, at 4.

11. Kristian Cedervall Lauta, *Human Rights and Natural Disasters*, in *RESEARCH HANDBOOK ON DISASTERS AND INTERNATIONAL LAW*, *supra* note 8, at 91, 93.

12. Daniel A. Farber, *International Law and Disaster Cycle*, in *THE INTERNATIONAL LAW OF DISASTER RELIEF* 7, 10 (David D. Carony, Michael J. Kelly & Anastasia Telesetsky eds., 2014).

institutions and resilience. Of the social institutions, law plays an important role in managing disaster risks and effects. According to Professor Daniel Farber's theory of "the cycle of disaster law," disaster and its management should be examined and discussed in five stages: risk mitigation, disaster event, emergency response, insurance and compensation, and rebuilding. In all stages, law serves an important role, with different functions in each stage.¹³ For example, for mitigation, international conventions force party states to regulate greenhouse gas emissions to reduce the risk and influence of climate change.¹⁴ For emergency response, law clarifies the authority and responsibility of government levels, guiding government officials to respond to disasters efficiently and cooperatively.¹⁵

Farber emphasizes the disaster cycle as a continuous process and that there is an interconnection between all disaster stages. No stage can be viewed in isolation; the disaster management strategies of the stages must be considered and designed in context.¹⁶ A failure in risk mitigation often contributes to later disasters, turning an otherwise avoidable or manageable event into a catastrophe.¹⁷ Successful disaster mitigation and preparedness--for example, proactive disaster laws and comprehensive programs before a disaster actually happens--may reduce the degree of disaster impacts and are more likely to lead to efficient emergency response and effective post-disaster recovery.¹⁸

Similarly, post-disaster relief and reconstruction determine the severity of the impacts on disaster victims and even the likelihood and seriousness of future disasters. The process of rebuilding may provide an opportunity to investigate and solve root causes of disasters, such as by adjusting land use and infrastructure to reduce expected harm from disasters.¹⁹ In this regard, disaster management is not a short-term project. It requires the continuous efforts of long-range investigation, analysis, and improvement. Disaster legal systems must be examined across time to discover their deficiencies and find feasible reforms.

The above-mentioned approaches and theories are adopted by this study to realize, describe, and analyze disaster laws and practices in Taiwan. In addition, discussion of the specific situation of Taiwan may benefit the understanding and management of disasters in a broad way. As introduced above, researches have been done to explore how social institutions are

13. *Id.* at 9.

14. *See id.* at 11-13.

15. *See id.* at 15-16.

16. Daniel A. Farber, *Introduction: Legal Scholarship, the Disaster Cycle, and the Fukushima Accident*, 23 DUKE ENVTL. L. & POL'Y F. 1, 4 (2012).

17. Farber, *supra* note 12, at 9.

18. *Id.* at 18.

19. *Id.*

involved in the occurrence of disasters. This concern can be incorporated with the theory of the cycle of disaster law to further ask: How can the social institution of law alleviate or aggravate disaster risks and impacts in the short and long run? Conversely, how can the law evolve as a result of actual disaster events? To explore possible answers to these questions, it is worthwhile to discuss Taiwan as a case study, as it has been affected by a variety of disasters and has implemented different legal measures to regulate government authorities and guide management efforts. The various disasters, changing laws, and their complex interactions in Taiwan constitute a dynamic relationship, providing abundant materials for an in-depth study of disaster management.

This paper examines the development of disaster management legal system in Taiwan in its particular geographical, meteorological, and social contexts. The paper reviews laws and government authorities on disaster management from the time the Republic of China began to rule Taiwan in 1945. When reviewing the legal history, the paper will clarify, in different periods, which law and government power were in charge of disaster risks and effects, and why the disaster laws and powers changed. Moreover, what were the pros and cons of different legal approaches and authorities to deal with disasters? Based on lessons learned from the experiences in Taiwan, this study aims to highlight problems of the Taiwanese disaster management system and suggest possible improvements for better disaster risk reduction, response, and reconstruction in Taiwan and other societies vulnerable to disasters.

This study not only advances the understanding of Taiwan's legal history, but it also promotes discussion on important issues in the field of disaster law and administrative law: proper division of government authorities and responsibilities for disasters management. In addition, the discussion on the presidential emergency decree for disaster management has implications for constitutional debates. The study promotes a reflection on how laws properly grant and limit the president's power when the country is under serious threat of disaster, attack, and other crises.

Reviewing the general history of disaster laws and management authorities in Taiwan, this paper also lays a foundation for future studies on specific issues regarding disaster law. The current study conducts a thorough examination of the formal rules and government authorities on disaster management in Taiwan's history. Based on this framework, researchers may further discuss particular issues relating to disasters, such as, disaster management through land use regulation and relocation.

Moreover, this study may be a first step in law and society studies on disaster management, which encourages future research on specific disaster laws, events, and communities. Concrete examples are included in this paper

to illustrate the interaction between disaster laws and legal practices. As laws shaped the authorities, policies, and scope of disaster management, the legal practice in actual disaster settings also led to the emergence and change of laws. In the future, social-legal researchers may use more case studies to discuss the subtle interrelationship of legal issue, social context, and historical background regarding the situations surrounding disasters.

Following the introduction, parts two and three respectively examine the two periods of disaster laws and management authorities in Taiwan. In the first period (1945–1999), impacts of natural disasters were principally handled by the executive power through local administrative regulations and presidential emergency decrees. In the second period (2000–present), legislation has assumed a key role in disaster management, with statutes being actively passed and amended to regulate the disaster management authorities and missions in Taiwan. The fourth part discusses challenges faced by the disaster legal system in Taiwan and suggests legal reforms for better disaster mitigation and adaptation. Part five concludes the article.

II. EXECUTIVE AUTHORITY TO RESPOND TO DISASTERS (1945–1999)

The first period of executive power over disaster management lasted for more than half a century in Taiwan, from 1945 to 1999. During this long period, no parliamentary statutes were passed to specifically regulate disaster management. Without a unified legal framework at the national level, government departments worked independently to deal with problems relating to their missions after a disaster had occurred. No single disaster management agency coordinated central and local governments to comprehensively prepare for, prevent, respond to, and recover from major disasters. The problem was especially serious when a large-scale disaster affected multiple regions and overwhelmed local capabilities.²⁰ The following discussion illustrates, when there was no statute regarding disaster management, how the Taiwanese government dealt with disaster impacts through two executive approaches: local administrative regulation and presidential emergency decree.

20. Chou Chia-Yu (周佳宥), *Taiwan Zaihai Fangjiu Fa Zhi Guoqu, Xianzai Yu Weilai* (台灣災害防救法之過去、現在與未來) [*The Past, Present, and Future of the Disaster Prevention and Protection Act in Taiwan*], 62 FA LING YUE KAN (法令月刊) [THE LAW MONTHLY] 103, 105 (2011).

A. *Administrative Regulation on Disaster Management*

Before a national statute on disaster management was enacted in 2000, Taiwan relied on administrative regulations issued by local governments to deal with the impact of natural disasters. Specifically, the primary first-level administrative division of the Republic of China [hereafter “ROC”] is the province/municipality. After the ROC government came into conflict with the Communist Party and retreated from mainland China to Taiwan in 1949, the ROC’s territory consisted of Taiwan Province and a small portion of Fujian Province. In 1967, Taipei City was separated from the jurisdiction of Taiwan’s provincial government and upgraded to Taipei Municipality, and Kaohsiung City became Kaohsiung Municipality in 1979.

With regard to disaster management in Taiwan in the twentieth century, the laws in Taiwan Province had the greatest significance because the province constituted more than 98% of the ROC’s territory.²¹ The province’s population also accounted for 80.43% of the total population in 1979 after Kaohsiung, following Taipei, was separated from Taiwan Province.²² Therefore, this section focuses on the disaster laws in Taiwan Province, introducing the provincial legal system of disaster management and analyzing its characteristics.

1. *Aid After a Natural Disaster*

The first disaster relief law in Taiwan was the Regulations on Disaster Relief in Taiwan Province (臺灣省災害救濟辦法), issued by the Taiwan Provincial Governor’s Office in 1947. The regulations had nine brief articles for disaster response and assistance. According to the regulations, when a disaster occurred, township governments should report to county governments.²³ The county governments then inspected areas affected by the disaster and provided temporary shelter, food, water, and medical care to

21. See Xingzheng Yuan Zhuji Zongchu (行政院主計總處) [Directorate General of Budget, Accounting and Statistics, Executive Yuan], *Gaizhiqian Xianshi Tudi Mianji Zhongyao Tongji Zhibiao (改制前縣市土地面積重要統計指標)* [*The Important Index of County and City Area (Before Reorganization)*], ZHONGHUAMINGUO TONGJI ZIXUN WANG (中華民國統計資訊網) [NATIONAL STATISTICS], <https://statdb.dgbas.gov.tw/pxweb/Dialog/varval.asp?ma=CS0101A0A&ti=&path=../database/CountyStatistics/&lang=9> (last visited Nov. 21, 2018).

22. See Neizheng Bu Huzheng Si (內政部戶政司) [Department of Household Registration, Ministry of Interior], *Renkou Tongji Ziliao (人口統計資料)* [*Demographics*], NEIZHENG BU HUZHENG SI QUANQIU ZIXUN WANG (內政部戶政司全球資訊網) [THE WORLD WIDE WEB OF DEPARTMENT OF HOUSEHOLD REGISTRATION, MINISTRY OF INTERIOR], <https://www.ris.gov.tw/app/portal/346> (last visited Nov. 21, 2018).

23. Taiwansheng Zaihai Jiuji Banfa (臺灣省災害救濟辦法) [Regulations on Disaster Relief in Taiwan Province] § 2 (promulgated and effective Jan. 21, 1947) (Taiwan).

disaster victims.²⁴ If the magnitude and severity of the disaster was beyond the capability of the county governments, they could ask the provincial government for financial support.²⁵

In the following year, 1948, the provincial government promulgated the Regulations on Disaster Relief Fund in Taiwan Province (臺灣省災害協賑辦法), which required the Taiwan Provincial Government and county governments to establish funding for disaster relief.²⁶ While the county governments were the first responders to a disaster, the provincial government would use the funding to provide financial subsidies, food, water, shelter, medical care, and other assistance when a major disaster overwhelmed county capacity and resources.²⁷

In 1956, the Regulations on Disaster Relief in Taiwan Province was abolished. In its stead, the Taiwan Provincial Government issued a more detailed regulation, the Regulations on Relief to Casualties and Collapsed Houses Due to Disasters in Taiwan Province (臺灣省人民因災死傷及住屋倒塌救濟辦法), to articulate specific procedures and government duties of disaster relief for deaths, casualties, and houses damaged by wind, flood, fire, earthquake, or other major disasters.²⁸ After a disaster, county and township officials were to immediately inspect human and property loss, and then the county governments were to report the damages to the Taiwan Provincial Government.²⁹ The county governments were responsible for providing financial assistance, temporary shelter, and food for disaster victims.³⁰ If the disaster relief expense remained under twenty thousand Taiwan dollars, the county governments would cover the costs. If the disaster relief required more than that amount, the county governments paid only a third, and the other two-thirds would be covered by the provincial government.³¹

In this initial stage, a clear and comprehensive legal framework and

24. Regulations on Disaster Relief in Taiwan Province § 4.

25. Regulations on Disaster Relief in Taiwan Province § 6.

26. Taiwansheng Zaihai Xiezheng Banfa (臺灣省災害協賑辦法) [Regulations on Disaster Relief Fund in Taiwan Province] §§ 2-3 (promulgated and effective Mar. 10, 1948) (Taiwan).

27. Regulations on Disaster Relief Fund in Taiwan Province §§ 7, 11.

28. Taiwansheng Renmin Yinzai Sishang ji Zhuwu Daota Jiuji Banfa (臺灣省人民因災死傷及住屋倒塌救濟辦法) [Regulations on Relief to Casualties and Collapsed House Due to Disasters in Taiwan Province] § 2 (promulgated and effective Apr. 12, 1956) (Taiwan), *see* TAIWANSHENG ZHENGFU GONGBAO (臺灣省政府公報) [TAIWAN PROVINCIAL GOVERNMENT GAZETTE], Vol. 45: Summer, No. 12, 127 (Apr. 14, 1956).

29. Regulations on Relief to Casualties and Collapsed House Due to Disasters in Taiwan Province § 3.

30. Regulations on Relief to Casualties and Collapsed House Due to Disasters in Taiwan Province §§ 6, 9.

31. Regulations on Relief to Casualties and Collapsed House Due to Disasters in Taiwan Province § 11. For an actual example, *see* TAIWANSHENG ZHENGFU GONGBAO (臺灣省政府公報) [TAIWAN PROVINCIAL GOVERNMENT GAZETTE], Vol. 46: Spring, No. 6, 46 (Jan. 11, 1957).

government structure of disaster management were not yet established, although the regulations assigned different duties of disaster relief to the provincial, county, and township governments. The county and township governments were the first line responsible for investigating disaster damage and distributing assistance to people affected by disasters, while the disaster relief work was supervised and supported by the Taiwan Provincial Government. The management efforts were limited to emergency response and disaster relief immediately after a disaster. The regulations did not address disaster mitigation, planning, and recovery.³²

2. *Establishing a Local Disaster Management System*

To alleviate and more promptly respond to the impact of disasters, in April 1958 the Taiwan Provincial Government created its first disaster management government organization by issuing the Regulations on the Typhoon, Earthquake, and Disaster Prevention and Relief Council of the Taiwan Provincial Government (臺灣省政府防救颱風地震災害會報設置辦法). According to the regulations, the provincial government would form the Typhoon, Earthquake, and Disaster Prevention and Relief Council when there was imminent threat of typhoon, torrential rain, or landslide in Taiwan.³³ With the police department director as the convener, the council called up senior officials from the Civil Defense Command, Vehicle and Mobility Committee, Office of Civil Affairs, Office of Finance, Office of Construction, Office of Education, Office of Agriculture and Forest, Department of Societal Affairs, Department of Transportation, Department of Health, Police Department, Bureau of Food, Weather Institute, and other departments of the provincial government. This body of officials met and cooperated in coping with possible disaster impacts and damages.³⁴ The council members supervised and coordinated all disaster management efforts of all departments in the provincial government.³⁵

Three months later, in July 1958, a subordinate level of councils for

32. Taiwansheng Zhengfu (臺灣省政府) [Taiwan Provincial Government], *Taiwansheng Zhengfu Weiyuanhuiyi Dangan* (臺灣省政府委員會議檔案) [Taiwan Provincial Government Committee Meeting Archive], GUOSHIGUAN TAIWAN WENXIANGUAN (國史館臺灣文獻館) [TAIWAN HISTORICA], No. 00507002305 (1958), <http://ds3.th.gov.tw/ds3/app005/list3.php?ID1=00507002305> (last visited July 3, 2018).

33. Taiwansheng Zhengfu Fangjiu Taifeng Dizhen Zaihai Huibao Shezhi Banfa (臺灣省政府防救颱風地震災害會報設置辦法) [Regulations on the Typhoon, Earthquake, and Disaster Prevention and Relief Council of the Taiwan Provincial Government] §§ 2, 4 (promulgated and effective Mar. 28, 1958) (Taiwan).

34. Regulations on the Typhoon, Earthquake, and Disaster Prevention and Relief Council of the Taiwan Provincial Government § 3.

35. Regulations on the Typhoon, Earthquake, and Disaster Prevention and Relief Council of the Taiwan Provincial Government §§ 6-7.

disaster prevention and relief in county governments were established to fulfill their responsibility for responding to disasters immediately. The County Typhoon, Earthquake, and Disaster Prevention and Relief Council was formed by local representatives and officials from various departments of the county government relating to disaster matters. The convener of the council was the magistrate of that county, assisted by the police department commissioner as secretary-general of the council. The county-level Typhoon, Earthquake, and Disaster Prevention and Relief Council had primary responsibility for dealing with disaster impacts and communicating closely with the Taiwan Provincial Typhoon, Earthquake, and Disaster Prevention and Relief Council.³⁶

Before long, the two-level disaster management organizations were replaced with a new disaster management governmental structure after a serious flood in 1959. In early August of that year, Typhoon Ellen struck Taiwan and caused serious flooding throughout central and southern Taiwan, which resulted in 667 deaths, 408 people missing, and 942 injured. A total of 305,234 people were affected by the flood.³⁷ Just over 18,000 houses were damaged, and 22,426 houses were rendered completely uninhabitable or inaccessible.³⁸ The total economic loss in agriculture, industry, public infrastructure, and private property reached more than 3.4 billion New Taiwan dollars, equal to one-tenth of the gross national product of Taiwan at that time.³⁹

After the 1959 flood, the Taiwan Provincial Government attempted to improve the existing disaster management structure and its efficiency by specifying duties for each government level on the one hand, and strengthening cooperation of all levels of government on the other.⁴⁰ In 1960, regulations were issued to change the previous provincial-county disaster management structure into a new three-level disaster management system, in which the province, county, and township governments were given detailed articles on specific responsibilities of each government

36. TAIWANSHENG ZHENGFU GONGBAO (臺灣省政府公報) [TAIWAN PROVINCIAL GOVERNMENT GAZETTE], Vol. 47: Autumn, No. 19, 293 (July, 22 1958).

37. TAIWANSHENG ZHENGFU (台灣省政府) [TAIWAN PROVINCIAL GOVERNMENT], BAQI SHUIZAI BAOGAOSHU (八七水災報告書) [TAIWAN PROVINCIAL GOVERNMENT REPORT OF AUGUST 7TH FLOODING] 16 (1959), <https://ahonline.drnh.gov.tw/index.php?act=Display/image/93815rQ8SA-c#Q1Kc> (last visited July 13, 2019).

38. *Id.* at 15.

39. *Id.* at 8-16.

40. See Taiwansheng Zhengfu (臺灣省政府) [Taiwan Provincial Government], *Taiwansheng Zhengfu Weiyuanhuiyi Dangan* (臺灣省政府委員會會議檔案) [*Taiwan Provincial Government Committee Meeting Archive*], GUOSHIGUAN TAIWAN WENXIANGUAN (國史館臺灣文獻館) [TAIWAN HISTORICAL], No.00501063311 (1960), http://ds3.th.gov.tw/ds3/app005/list_pic1.php?ID1=00501063311&v=0105# (last visited July 5, 2018).

organization.⁴¹ When a typhoon warning was issued or when there was threat of a disaster, the Taiwan Provincial Government would create the Typhoon Prevention and Disaster Relief Council.⁴² In response, county governments would form their Typhoon Prevention and Disaster Relief Command Centers, and township governments would establish Typhoon Prevention and Disaster Relief Executive Centers.⁴³ The council, command centers, and executive centers were all temporary organizations operating to prepare for and respond to specific disasters.

In the three-level disaster management structure, township governments had primary responsibility for providing direct assistance to citizens in regards to disaster impacts. With a potential disaster looming, township officials disseminated information concerning the disaster, set up shelters, and helped people evacuate from vulnerable areas and buildings.⁴⁴ During the disaster, township officials, police officers, and firefighters undertook rescue service and provided shelter to the wounded, the homeless, and people whose houses had collapsed.⁴⁵ After the disaster, the township officials examined disaster areas and assessed damages, maintained social order, cleared debris, repaired transportation infrastructure, and requested disaster relief assistance from the county governments.⁴⁶

Township governments did not have much discretion and mostly performed basic disaster response works under the supervision of county governments, especially the County Typhoon Prevention and Disaster Relief Command Centers, which were authorized to guide, determine, and monitor the disaster management efforts. The county governments were supposed to

41. Lin Pei-Shan (林貝珊), Lu Jing-Chein (盧鏡臣) & Deng Tzu-Jeng (鄧子正), *Taiwan Jinnian Zhongda Zaihai ji Qi Dui Fangjiuzai Tixi Zhi Yingxiang Huigu* (台灣近年重大災害及其對防救災體系之影響回顧) [A Review of Recent Major Disasters and Their Impacts on the Disaster Management System in Taiwan], in JINGCHA KEJI XUEYUAN 80 ZHOUNIAN XIAOQING ZHUANSHU (警察科技學院 80週年校慶專書) [BOOK FOR CENTRAL POLICE UNIVERSITY 80TH ANNIVERSARY] 1, 8 (College of Police Science and Technology, Central Police University (中央警察大學科技學院) ed., 2016).

42. Taiwansheng Zhengfu Fangtai Jiuzai Huibao Shezhi Banfa (臺灣省政府防颱救災會報設置辦法) [Regulations on the Establishment of Typhoon Prevention and Disaster Relief Council of the Taiwan Provincial Government] §§ 3-4 (promulgated and effective July 5, 1960) (Taiwan).

43. Taiwansheng Gexianshi Fangtai Jiuzai Zhihui Zhongxin Shezhi Banfa (臺灣省各縣市防颱救災指揮中心設置辦法) [Regulations on the Establishment of Typhoon Prevention and Disaster Relief Command Centers of County/City Governments in Taiwan Province] § 3 (promulgated and effective July 7, 1960) (Taiwan); Taiwansheng Gexiangzhenshi Fangtai Jiuzai Zhixing Zhongxin Shezhi Banfa (臺灣省各鄉鎮(市)防颱救災執行中心設置辦法) [Regulations on the Establishment of Typhoon Prevention and Disaster Relief Executive Centers in Township/City, Taiwan Province] § 3 (promulgated and effective July 7, 1960) (Taiwan).

44. Regulations on the Establishment of Typhoon Prevention and Disaster Relief Command Centers of County/City Governments in Taiwan Province § 6.

45. Regulations on the Establishment of Typhoon Prevention and Disaster Relief Command Centers of County/City Governments in Taiwan Province § 7.

46. Regulations on the Establishment of Typhoon Prevention and Disaster Relief Command Centers of County/City Governments in Taiwan Province § 8.

be in control of the disaster situation and report the information to the Taiwan Provincial Typhoon Prevention and Disaster Relief Council. The provincial council was not directly involved in providing disaster relief to individual disaster victims. Its primary focus was vertical coordination of the disaster management organizations and horizontal collaboration among various departments to deal with the problems and needs resulting from the disaster.

The regulations distinguished the missions assigned to the disaster management organizations at each of the three governmental levels, with the aim of improving their efficiency and accountability. However, all of the disaster management organizations were temporary teams comprised of officials from a variety of departments. The officials gathered for a probable disaster event and were dismissed once they finished solving the problems caused by that specific disaster.

Moreover, instead of officials or experts specializing in disaster management, the police took charge of the local disaster management system. The police department commissioner was authorized to form the Taiwan Provincial Typhoon Prevention and Disaster Relief Council, advised by the Taiwan Garrison Command.⁴⁷ At the county level, police bureau directors were the conveners and deputy-commanders of the Typhoon Prevention and Disaster Relief Command Centers.⁴⁸ In addition, county police stations would establish their disaster prevention and relief command posts, which had the power to (a) assign government vehicles; (b) request help from the police, fire department, and military in neighboring counties; and (c) give orders to the township Typhoon Prevention and Disaster Relief Executive Centers for disaster preparedness and relief.⁴⁹ Similarly, it was the township police station that gathered the township government secretary-general, civil affairs section chief, construction section chief, and other officials to form the township's Typhoon Prevention and Disaster Relief Executive Centers.⁵⁰ Police officers worked with township officials to respond to disasters.⁵¹

47. Regulations on the Establishment of Typhoon Prevention and Disaster Relief Council of the Taiwan Provincial Government § 3.

48. Regulations on the Establishment of Typhoon Prevention and Disaster Relief Command Centers of County/City Governments in Taiwan Province § 3.

49. Regulations on the Establishment of Typhoon Prevention and Disaster Relief Command Centers of County/City Governments in Taiwan Province §§ 4, 6; Regulations on the Establishment of Typhoon Prevention and Disaster Relief Executive Centers in Township/City, Taiwan Province, § 4.

50. Regulations on the Establishment of Typhoon Prevention and Disaster Relief Executive Centers in Township/City, Taiwan Province § 3.

51. *See* Regulations on the Establishment of Typhoon Prevention and Disaster Relief Executive Centers in Township/City, Taiwan Province §§ 6-8.

3. *Local Disaster Management System Refined and Issues Remaining*

In addition to the regulations discussed above, there are other regulations regarding government resource distribution, disaster relief, typhoon prevention, examination of disaster areas, and post-disaster recovery at the local level. To incorporate the various regulations into one inclusive regulation, in 1965, the Taiwan Provincial Government issued the Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province (臺灣省防救天然災害及善後處理辦法).⁵² For the most part, the regulations maintained the existing three-level natural disaster management system, with slight changes to the order and text of the articles. For example, the county disaster management organization retained similar authority and obligation, but its name was changed from the Typhoon Prevention and Disaster Relief Command Center to the Disaster Prevention and Relief Headquarters.⁵³

The Taiwan Provincial Government claimed that the 1965 regulations were issued to cover management works on more types of disasters, extending beyond typhoons to also include earthquakes, floods, and other natural hazards.⁵⁴ Yet, the articles revealed that the major concern of the regulations was still the threat and impact of typhoons, namely strong wind and heavy rainfall. For instance, township executive centers were to inspect and repair vulnerable houses, help people evacuate from low-lying areas, carry out patrols of rivers and dikes, and disseminate warnings and information about typhoons.⁵⁵ When a typhoon warning was issued and in effect, buses were required to carry warning signs to remind the public to be cautious of the danger.⁵⁶ The regulations also had detailed articles regarding the mandate for the Taiwan Provincial Government to hold annual events to spread knowledge of typhoon damage prevention.⁵⁷

52. Taiwansheng Zhengfu (臺灣省政府) [Taiwan Provincial Government], *Taiwansheng Zhengfu Weiyuanhuiyi Dangan* (臺灣省政府委員會議檔案) [*Taiwan Provincial Government Committee Meeting Archive*], GUOSHIGUAN TAIWAN WENXIANGUAN (國史館臺灣文獻館) [TAIWAN HISTORICA], No. 00501078812 (1963), <http://ds3.th.gov.tw/ds3/app005/list3.php?ID1=00501078812> (last visited July 21, 2018).

53. See generally *Taiwansheng Fangjiu Tianran Zaihai ji Shanhou Chuli Banfa* (臺灣省防救天然災害及善後處理辦法) [Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province] (promulgated and effective May. 24, 1965) (Taiwan).

54. Taiwansheng Zhengfu (臺灣省政府) [Taiwan Provincial Government], *Taiwansheng Zhengfu Weiyuanhuiyi Dangan* (臺灣省政府委員會議檔案) [*Taiwan Provincial Government Committee Meeting Archive*], GUOSHIGUAN TAIWAN WENXIANGUAN (國史館臺灣文獻館) [TAIWAN HISTORICA], *supra* note 52.

55. Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province § 17.

56. See Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province §§ 27-30.

57. See Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province §§ 24-36.

The 1965 regulations also maintained the three-level structure of temporary disaster management organizations at the provincial, county, and township levels. When a disaster was anticipated, the provincial, county, and township governments would establish the Disaster Prevention and Relief Council, Headquarters, and Executive Centers to deal with the disaster.⁵⁸ These organizations would be dismissed after their missions of coping with that specific incident were accomplished. When a subsequent disaster occurred, the governments would again establish the temporary organizations, composed of new personnel, to handle that disaster.

The disaster management organizations were formed when a natural disaster was very likely to happen, such as when a typhoon warning was issued, or when a disaster had already happened, such as in the instance of an earthquake. When the governments were caught unprepared for sudden, catastrophic events, they were likely to fail to prevent damage and provide disaster relief. For example, in September 1969, the Disaster Prevention and Relief Council, Headquarters, and Executive Centers were established one day before Typhoon Elsie made landfall in Taiwan. The disaster management organizations had little time to react to the impact of the typhoon and subsequent problems. The communication and coordination among the government organizations were poor as the typhoon swept through Taiwan and caused serious flooding.⁵⁹

The accountability of the members in the disaster management organizations was also ambiguous and confusing when said members suddenly were called upon to work together in a temporary team. In the case of Typhoon Elsie, while the typhoon was looming over Taiwan, no provincial government heads were on duty to monitor the typhoon situation and solve urgent problems.⁶⁰ This example proved that ambiguous authority and duty in disaster management was likely to allow government departments and officials to shirk their responsibilities, assuming or wishing that others would take action to address the problems. Sadly, it usually turned out that no one acted, eventually leading to government failures in disaster response.

58. See Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province § 4.

59. Huang Su-Huei (黃素慧), *Taifeng Zaihou Taiwansheng Zhengfu de Jiuji Cuoshi* (颱風災後臺灣省政府的救濟措施) [*After Typhoon Disaster, The Succors of Taiwanese Provincial Government Relief Policies for Typhoon Disaster*], 60 TAIWAN WENXIAN (台灣文獻) [TAIWAN HISTORICA] 299, 312 (2009).

60. Taiwansheng Zhengfu (臺灣省政府) [Taiwan Provincial Government], *Taiwansheng Zhengfu Weiyuanhuiyi Dangan* (臺灣省政府委員會議檔案) [*Taiwan Provincial Government Committee Meeting Archive*], GUOSHIGUAN TAIWAN WENXIANGUAN (國史館臺灣文獻館) [TAIWAN HISTORICA], No. 00502017201 (1969), <http://ds3.th.gov.tw/ds3/app005/list3.php?ID1=00502017201> (last visited July, 7, 2018).

During this period, disaster management at the local level focused on emergency response to individual, specific natural disaster events. Disaster reduction and planning were not particularly addressed. County and township governments held educational activities for only one week each year to propagate information on preparing for a typhoon disaster and alleviating its damage.⁶¹ Along with these activities, government officials and schools inspected houses and infrastructures that would be subject to typhoon damage.⁶² These efforts were inadequate to reduce disaster risks and minimize disaster damage in the long run. In most cases, the governments rushed to help people when a disaster was imminent or after a disaster already had caused injury and loss.

From a comprehensive perspective, local administrative regulations lacked plans and measures to minimize disaster risks, impacts, and damages. Moreover, the regulations addressed only disasters caused by natural forces, particularly typhoons. Man-made hazards were not included in the disaster legal system. These issues were partially addressed by legislation in 2000, namely, the Disaster Prevention and Protection Act, which established permanent councils in the national, municipal/county, and township governments to develop long-term strategies on a broad range of disasters. The evolution of disaster laws and authorities will be discussed in the third part of this paper.

B. *Presidential Emergency Decree*

1. *The ROC Constitution and Presidential Emergency Power*

When Taiwan relied on local administrative regulations to deal with small and medium disasters, a follow-up question arose: How would the government handle major disasters that overwhelmed local capacities and caused problems not addressed by existing laws? In situations of destructive disasters, the immediate emergency response and disaster relief required effective coordination and communication among agencies and across government levels, necessitating decisive reactions and comprehensive management at a higher level. In the aftermath of the disasters, repairing severe damage also needed flexible and sometimes extraordinary government operations beyond existing laws and normal procedures.

While the existing laws and normal procedures could not be changed by local governments and regulations, the legislature in Taiwan did not actively

61. Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province §§ 24-25.

62. Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province §§ 31-37.

make statutes to deal with disaster injuries and lift legal restrictions on disaster aid and recovery. Instead, it was the president that issued an emergency decree to address difficult problems and emergent needs after a major disaster overwhelmed local governments or wiped out multiple jurisdictions. In Taiwan, the ROC Constitution vested the president with the power to issue emergency decrees in times of serious economic crisis and natural disaster.

According to Article 43 of the Constitution, when a natural calamity, epidemic, or national economic crisis that required emergency measures occurred during the recess of the Legislative Yuan, by resolution of the Executive Yuan Council and in accordance with the law on emergency decree, the president had the power to issue an emergency decree to take necessary actions to handle the situation. The decree had to be presented to the Legislative Yuan for ratification within one month after its issuance. If the Legislative Yuan withheld the ratification, the emergency decree immediately ceased to be valid.

During the period of the martial law system in Taiwan from 1948 to 1991, the presidential emergency power was expanded beyond the Constitutional bounds. While Article 43 of the Constitution imposed multiple restrictions on the issuance of an emergency decree, the 1948 Temporary Provisions Effective During the Period of National Mobilization for Suppression of the Communist Rebellion (動員戡亂時期臨時條款) [hereafter "Temporary Provision"] authorized the president to issue an emergency decree merely by resolution of the Executive Yuan Council. The president was not required to comply with the law on emergency decree, nor was the decree subject to review and validation by the Legislative Yuan. In other words, the legislative oversight of the executive power before and after issuing an emergency decree was completely removed. Under the martial legal framework, the presidential emergency power was not limited by the legislative branch or the law.

After the Temporary Provisions were abrogated in 1991, the presidential emergency power did not return to the regulation of the Constitution. Article 43 of the Constitution was inapplicable because it explicitly required the president to issue an emergency decree in accordance with the law on emergency decree, but legislators in Taiwan never enacted such a law for the president to follow.⁶³ In 1991, this presidential power was modified through amendments to the Constitution. The Seventh Amendment granted the

63. Liu Shing-I (劉幸義), *You Falixue Jiaodu lun "Jinji Mingling Zhidu" Benshen de Hefaxing Wenti* (由法理學角度論「緊急命令制度」本身的合法性問題) [Discussing the Legality of "Emergency Decree System" from Jurisprudence Perspective], 56 YUEDAN FAXUE ZAZHI (月旦法學雜誌) [TAIWAN LAW REVIEW] 18, 21 (1999).

president the power to issue an emergency decree to deal with emergent dangers and grave economic crises by resolution of the Executive Yuan Council. The emergency decree had to be presented to and validated by the Legislative Yuan within ten days after its issuance; otherwise, the decree would cease to be in effect.⁶⁴

Compared to Article 43 of the Constitution, which required the emergency decree to be ratified by the Legislative Yuan within one month, the Seventh Amendment of 1991 requested the legislative ratification in a much shorter period, ten days, to check as soon as possible whether the emergency decree was necessary and legitimate. Yet, the Amendment removed the requirement of following a law on emergency decree and allowed the president to issue emergency decrees regardless of whether the Legislative Yuan was in session for the legislators to promptly make laws. Even if the legislative branch were ready and capable of immediately making laws to address chaos and needs caused by a disaster, the president could still issue an emergency decree if he or she thought it necessary.⁶⁵

Legal scholars have contemplated as to what extent the president could exercise executive discretion, lift legal restrictions, and limit human rights. For example, campaigns and elections of legislative representatives in Taiwan were temporarily suspended from 1978 to 1979 by a presidential decree after the United States ended its diplomatic relations with the ROC. The suspension impeded the voting rights in the ROC Constitution, which might be permitted in the extraordinary martial legal system of the Temporary Provision. Yet, after the martial legal system was lifted, according to the Constitutional Amendments, the emergency decree was thought of as a special type of executive order having authority equal to law. The decree could modify existing laws, but it could neither contradict nor amend Constitutional provisions.⁶⁶

64. The amendments to the Constitution were revised in 1992, 1994, 1997, 1999, 2000, and 2004. Although the article number and legal text were changed, the content of the presidential emergency power was basically the same, *see* Seventh Amendment (1992), Second Amendment (1994), Second Amendment (1997), Second Amendment (1999), Second Amendment (2000), Second Amendment (2004).

65. Liu, *supra* note 63, at 24.

66. *See* Hsu Tzong-Li (許宗力), *Cong Jiueyi Zhenzai Kan Jinji Mingling Xiangguan Wenti* (從九二一震災看緊急命令相關問題) [*Discussing Issues of Emergency Decree Based on the 9/21 Earthquake*], 6 TAIWAN BENTU FAXUE (台灣本土法學) [TAIWAN LAW JOURNAL] 85, 88-89 (2000); Yen Chueh-An (顏厥安), *Jinji Mingling de Xingzhi: Yige Chubu Kanfa* (緊急命令的性質——一個初步看法) [*The Nature of Emergency Decree: A Preliminary Thought*], 6 TAIWAN BENTU FAXUE (台灣本土法學) [TAIWAN LAW JOURNAL] 92, 95 (2000); Lee Chien-Liang (李建良), *Qianxi Jinji Mingling zhi Xianfa Zhengyi: Cong "Jiu Erwu Jinji Mingling" Tanqi* (淺析緊急命令之憲法爭議——從「九二五緊急命令」談起) [*Brief Analysis of the Constitutional Controversies Regarding Emergency Decree: A Discussion Based on the 925 Emergency Decree*], 6 TAIWAN BENTU FAXUE (台灣本土法學) [TAIWAN LAW JOURNAL] 97, 99 (2000).

Even in times of emergency, international humanitarian laws have indicated that governments cannot violate fundamental rights and human dignity. According to the International Covenant on Civil and Political Rights, ratified by Taiwan in 2009, when a state is gravely threatened by an emergency, to ensure its existence, the state may take measures derogating from its obligations under the Covenant. The measures taken are strictly limited to the requirement for the exigency, must be consistent with international laws, and must not involve discrimination solely based on race, color, sex, language, religion, or social origin.⁶⁷ Even in emergency situations, the state shall not violate Articles 6 (no arbitrary deprivation of life), 7 (freedom from cruel and inhumane punishment), 8 (prohibition of slavery), 11 (prohibition of imprisonment for failing to fulfill contractual obligation), 15 (no criminal offense of an act if such act did not constitute a crime when committed), 16 (right to recognition as a person before the law), and 18 (freedom of thought, conscience, and religion) of the Covenant.⁶⁸

2. *Emergency Decrees Issued in Response to Natural Disasters*

(a) Emergency Decree for 8/7 Flood (1959)

From 1945 to 1999, two emergency decrees were issued to address urgent needs and problems stemming from natural disasters: one in 1959, and the other in 1999. The first emergency decree for disaster response and relief was issued after the serious flood in early August 1959. At the end of that August, President Chiang Kai-shek issued an emergency decree to raise reconstruction funds by limiting consumption, increasing taxes, and issuing bonds. The decree was in effect for eleven months, from August 1959 to June 1960.⁶⁹

For the purpose of swift disaster recovery, the 8/7 Flood emergency decree afforded the government considerable flexibility by exempting it from many legal restraints. According to the emergency decree, the government was not bound by the Budget Act to adjust budget allocation and suspend non-urgent costs to allocate expenses for post-disaster reconstruction.⁷⁰ To facilitate the process of rebuilding houses, the period and interest of housing loans handled by the government were not restricted by the Regulations on Public Housing Loans.⁷¹ However, the Budget Act

67. International Covenant on Civil and Political Rights art. 4, ¶1, Dec. 16, 1966.

68. *Id.* art. 4, ¶2.

69. See SIFAYUAN GONGBAO (司法院公報) [JUDICIAL YUAN GAZETTE], Vol. 1:10, 4-5 (Oct. 11, 1959).

70. Emergency Decree § 1 (Aug. 31, 1959).

71. Emergency Decree § 8.

and the Regulations on Public Housing Loans already had articles that contemplated emergency situations to warrant special rules.⁷² The emergency decree also authorized the government to collect a special flood recovery tax along with the normal taxation, electricity fees, and public transportation fares, forcing citizens to share the cost of disaster relief and recovery.⁷³

The articles in the emergency decree provided the government with great discretion and immunity to conduct post-disaster recovery work. The government could expropriate land, labor, and resources for disaster relief and take necessary actions to maintain economic order based on the National Mobilization Law and other laws. If there were no applicable laws, the government could adopt emergency measures to meet actual needs.⁷⁴ The accounting administrative procedures for post-disaster reconstruction costs were exempted from any laws regarding public construction contract and procurement.⁷⁵ The terms like “any laws regarding . . .” and “other related laws” in the articles also made the government immune from a broad scope of regulations when carrying out reconstruction projects.

(b) Emergency Decree for 9/21 Earthquake (1999)

Four decades after the 8/7 Flood in 1959, the second emergency decree in response to a natural disaster was issued when a devastating earthquake hit central Taiwan on September 21, 1999. The earthquake took a terrible toll of 2,455 deaths and 11,305 injuries. The resulting damage included 50,632 houses that were completely destroyed and 53,615 houses that were partially collapsed. Countless infrastructure and transportation facilities were seriously damaged. The total economic loss reached more than three hundred billion New Taiwan dollars.⁷⁶

Four days after the earthquake, on September 25, President Lee Teng-hui issued an emergency decree to exempt the government from normal administrative procedures and legal restrictions to flexibly assist

72. Tu Huai-Ying (涂懷瑩), *Jinji Chufen yu Zaiqu Zhongjian* (緊急處分與災區重建) [*Emergency Decree and Recovery of Disaster Areas*], 12 ZHONGGUO DIFANG ZIZHI (中國地方自治) [CHINA LOCAL SELF-GOVERNMENT] 13, 14 (1959).

73. *Id.*; Zhonghua Minguo Zongtongfu (中華民國總統府) [Office of the President, Republic of China (Taiwan)], Zhonghua Minguo Zongtongfu Minguo Sishiba Nian Ba Yue Sanshiyi Ri Zongtong Jinji Chufenling (中華民國總統府民國四十八年八月三十一日總統緊急處分令) [Emergency Decree] (promulgated and effective Aug. 31, 1959, repealed June 30, 1960) § 3, 5.

74. Office of the President of R.O.C., Emergency Decree § 9.

75. Office of the President of R.O.C., Emergency Decree § 10.

76. XINGZHENGYUAN JIUERYI ZHENZAI ZAIHOU ZHONGJIAN TUIDONG WEIYUANHUI (行政院九二一震災災後重建推動委員會) [9/21 EARTHQUAKE RECONSTRUCTION COUNCIL, EXECUTIVE YUAN], JIUERYI ZHENZAI ZHONGJIAN JINGYAN (SHANG) (九二一震災重建經驗(上)) [EXPERIENCE OF THE 9/21 EARTHQUAKE RECONSTRUCTION (VOL.1)] 4-5 (2006).

citizens affected by the earthquake as quickly as possible.⁷⁷ The decree had twelve articles to regulate disaster relief and recovery funds, rescue and evacuation actions, shelter and temporary housing for disaster victims, and use of public and private resources--including the military--for rescue service and reconstruction work.

The emergency decree for the 9/21 Earthquake raised much legal discussion in Taiwanese society. Most legal scholars agreed that it was necessary and legitimate for the president to issue the emergency decree. The destructive earthquake overwhelmed local capabilities and paralyzed local government operations while no statutes in Taiwan could regulate disaster management and relief at the national level. The overall situation satisfied the constitutional requirements of issuing an emergency decree, so it was legitimate for President Lee to issue the decree to lay down principles for immediate disaster relief and loosen existing restrictions on disaster recovery.⁷⁸

One month later, in October 1999, the Executive Yuan issued the Emergency Decree Execution Outline of September, 1999, to elucidate the emergency decree for the 9/21 Earthquake and submitted the administrative regulation to the Legislative Yuan for their information, but not for ratification. Suspecting the action of the Executive Yuan had violated the Constitutional principle of separation of powers, seventy-nine legislators applied for judicial review to decide whether the Executive Yuan had power to issue supplementary regulation for an emergency decree to clarify its content, and whether the Legislature had power to approve or reject the regulation.

In Interpretation No. 543, the Justices of the Constitutional Court, Judicial Yuan, decided that, in principle, the executive branch could not make regulations to supplement and elaborate an emergency decree. The Constitution and its Amendment granted the executive branch the power to make law--issuing an emergency decree--in only emergency situations. This exception to the constitutional principle was aimed to address imminent danger and immediate needs, so the articles in the decree by themselves must be clear and explicit enough to be enforced right away. The emergency decree should leave no space for the Executive Yuan to issue regulations to supplement the decree.⁷⁹

77. Presidential Emergency Decree for the 9/21 Earthquake (民國八十八年九月二十五日總統緊急命令(九二一震災)) (Sep. 25, 1999).

78. See Hsu, *supra* note 66, at 86; Tsai Maw-In (蔡茂寅), Su Hui-Chieh (蘇慧婕) & Ni Po-Hsuan (倪伯萱), *Jinji Mingling Zhi Xianfa Wenti Yantaohui Yiti Taolun* (緊急命令之憲法問題研討會議題討論) [*Discussion in the Conference on Constitutional Issues of Emergency Decrees*], 6 TAIWAN BENTU FAXUE (台灣本土法學) [TAIWAN LAW JOURNAL]103, 106 (2000).

79. See Sifa Yuan Dafaguan Jieshi No. 543 (司法院大法官解釋第543號) [Judicial Yuan

On the other hand, the Justices recognized the possibility that an emergency decree issued extremely suddenly might fail to address all details and need further explanation. In this event, an article must be included in the emergency decree to explicitly authorize the Executive Yuan to issue supplementary regulations. Only after the emergency decree had been ratified by the Legislative Yuan could the Executive Yuan issue the supplementary regulations. The regulations also had to go through the same legislative review process as ordinary executive orders, being examined and recognized by the Legislative Yuan. If the legislators rejected the supplementary regulations, the regulations would not be in effect.

Nevertheless, the Justices decided that the directions supplementary to the 9/21 Earthquake emergency decree were not unconstitutional because there had been no precedent on this issue before this judicial interpretation. In the current case, the Executive Yuan had sent the supplementary regulation to the Legislative Yuan to respect the legislative power. Although the regulation's content and procedure did not completely meet all the requirements interpreted by the Justices in this decision, the executive regulation was constitutional in this unprecedented case.⁸⁰

3. *Expansion of Presidential Emergency Power*

The above discussion introduces the Constitutional provisions of the presidential emergency power and two actual emergency decrees responding to natural disasters in Taiwan. Although the decrees could guide emergency management and facilitate disaster relief, the exercise of presidential emergency power also raised debates surrounding the Constitution and its practice in Taiwan. The first issue lies in the texts within the Constitution, the Temporary Provisions, and the Amendments to the Constitution. These constitutional provisions have no specific criteria or limitations on the procedure, scope, duration, and other aspects of the presidential emergency decree. Because the provisions were ambiguous, not only the president but also the reviewing authority--the Legislative Yuan--had wide discretion regarding emergency decrees.⁸¹

The ambiguity of the constitutional texts caused a further problem in the practice of issuing emergency decrees. According to the Constitutional legal framework, the content of emergency decrees was limited to measures necessary for urgent needs during and closely following a disaster, but in reality the decrees usually went too far to address issues that were not

Interpretation No. 543] (May 3, 2002) (Taiwan).

80. J.Y. Interpretation No. 543.

81. CHANG WEN-CHEN (張文貞), JINJI ZHUANGTAI FAZHI ZHI TANTAO (緊急狀態法制之探討) [DISCUSSION ON THE LEGAL SYSTEM OF STATE OF EMERGENCY] 3 (2007).

emergent.⁸² Specifically, the 8/7 Flood emergency decree in 1959 paid most attention to measures for long-term disaster recovery, including raising reconstruction funds through additional taxes, issuing government bonds, lifting legal restrictions and simplifying procedures for rebuilding disaster areas. The contents were beyond the function and scope of an emergency decree that was supposed to solve only the most immediate, urgent problems in times of emergency.⁸³

The same issues occurred with the emergency decree for the 9/21 Earthquake in 1999, which not only lacked clear standards for emergent assistance but also extensively included many disaster response and recovery efforts incompatible with the nature of an “emergent” special law.⁸⁴ For example, for the purpose of accommodating disaster victims and reconstructing areas affected by the earthquake, Article 4 of the emergency decree exempted the government from restrictions of the Urban Planning Law, the Regional Plan Act, the Environmental Impact Assessment Act, the Soil and Water Conservation Act, the Building Act, the Land Act, and the National Property Act. The emergency decree also modified laws on government budget and expropriation and increased the punishments for crimes during the disaster period.⁸⁵

The wide scope of the emergency decrees corresponded to the situation that no parliamentary statutes were passed prior to or in the aftermath of disasters before the year 2000. The legislature was passive in making laws to deal with disaster risks and impacts at the national level and in a comprehensive way. As a result, when a serious disaster struck Taiwan and demanded vigorous government actions to handle disaster damages, the president would issue an emergency decree. The legislature maintained silence in not only emergency response but also other disaster management tasks, including disaster mitigation, preparedness, and recovery. To fill this gap, the presidential emergency decrees usually went too far, dealing with not only short-term needs but also long-term issues of disaster recovery.

The expansive exercise of the presidential emergency power on disaster management also reflected the political situation and historical background of Taiwanese society in the latter twentieth century. For more than four decades, Taiwan was strictly ruled by a dictatorship government, and the

82. Tu, *supra* note 72, at 13.

83. See Hsu, *supra* note 66, at 86.

84. See Yen, *supra* note 66, at 96; Huang Jung-Jie (黃俊杰), *Jiuerwu Jinji Mingling zhi Yingxiang Pinggu* (九二五緊急命令之影響評估) [Evaluating the Effects of 925 Emergency Decree], 5 TAIWAN BENTU FAXUE (台灣本土法學) [TAIWAN LAW JOURNAL] 203, 205, 208, 210 (1999).

85. See Yen, *supra* note 66, at 95; Hwang Giin-tarn (黃錦堂), *Jinji Mingling Fazhizhua Wenti zhi Yanjiu* (緊急命令法治化問題之研究) [A Study on Issues of Legalizing Emergency Decrees], 8 XINSHIJI ZHIKU LUNTAN (新世紀智庫論壇) [TAIWAN NEW CENTURY FOUNDATION JOURNAL] 4, 9 (1999).

executive power was expanded in the martial legal system. From 1945 to 1999, the ROC presidents issued a total of thirteen emergency decrees. Two decrees were for natural disasters, and the other eleven decrees were issued to deal with emergency needs and maintain social order in times of political and economic crises.⁸⁶

The content of the emergency decree indicated that the presidents actively exercised their emergency power to deal with problems that they believed to be urgent. Some decrees may be regarded as necessary for an emergency situation. For example, when the diplomatic relations between the ROC and the United States were terminated on December 16, 1978, on that day President Chiang Ching-kuo issued an emergency decree to increase security under the martial law system, maintain economic stability, and postpone the election for central representatives.⁸⁷ However, it was doubtful that all problems addressed by the presidential emergency decrees were really urgent. For instance, the decree issued on November 11, 1948, was to amend the currency laws,⁸⁸ and the decree on July 23, 1949 was for the purpose of issuing government bonds.⁸⁹

III. LEGISLATION ON DISASTER MANAGEMENT (2000–PRESENT)

A. *Beginning of Change: Legislation for 9/21 Earthquake Recovery*

Under the ROC's constitutional system, the presidential emergency decree should address only the most emergent issues and be in effect during the disaster and a short period thereafter. As soon as the state of emergency has eased, the executive authority had to return to its normal function under the constitutional system of checks and balances. Medium- and long-term

86. See TAIWANSHENG ZHENGFU GONGBAO (臺灣省政府公報) [TAIWAN PROVINCIAL GOVERNMENT GAZETTE], Vol. 37: Autumn, No. 45, 558 (Aug. 23, 1948); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 85, 1-5 (Aug. 26, 1948); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 151, 1-2 (Nov. 12, 1948); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 175, 1 (Dec. 11, 1948); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 207, 1 (Jan. 19, 1949); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 216, 1-2 (Feb. 28, 1949); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 231, 1 (July 4, 1949); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 235, 1 (Aug. 1, 1949); JUDICIAL YUAN GAZETTE, *supra* note 69, at 4-5; ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 3448, 3 (Dec. 18, 1978); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 3462, 1 (Jan. 19, 1979); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 4874, 4 (Jan. 14, 1988); ZONGTONGFU GONGBAO (總統府公報) [OFFICE OF THE PRESIDENT GAZETTE], Vol. 6299, 1 (Sep. 27, 1999).

87. OFFICE OF THE PRESIDENT GAZETTE, Vol. 3448, *id.*

88. OFFICE OF THE PRESIDENT GAZETTE, Vol. 151, *supra* note 86.

89. OFFICE OF THE PRESIDENT GAZETTE, Vol. 235, *supra* note 86.

issues regarding the disaster were dealt with by statutes carefully contemplated by the legislators who represented people's opinions and interests. Such legislation process was significant, especially when laws influenced or even restricted rights of people affected by disasters.

The nature of the 9/21 Earthquake emergency decree made it only appropriate for addressing emergent disaster relief. To comprehensively regulate the reconstruction work, four months after the earthquake, in January 2000, the Legislative Yuan passed the Temporary Act for 9/21 Earthquake Reconstruction (九二一震災重建暫行條例) [hereafter "Earthquake Reconstruction Act"], which was in effect for five years and was later extended for another year to 2006.⁹⁰ The law directed the government to manage post-disaster recovery through the following approaches:

1. Establishing reconstruction councils at the national and local levels to assist individuals and communities affected by the earthquake;
2. Providing tax benefits and living assistance to disaster victims;
3. Enacting and amending laws to regulate issues resulting from the earthquake, for example, land rights in relation to the changed landscape and guardianship in the circumstance of multiple family members having died in the earthquake;
4. Loosening legal restrictions and simplifying administrative procedures to accelerate the post-disaster reconstruction process.

For post-9/21 Earthquake reconstruction, the legislature showed its enthusiasm for regulating disaster relief and recovery by not only enacting and amending the Earthquake Reconstruction Act but also making twenty-seven laws in the following eight months for detailed guidance and regulation for disaster recovery.⁹¹ Different from natural disasters managed by the executive power in the previous period, after the 9/21 Earthquake, the legislature took primary responsibility for regulating reconstruction organization, community recovery, financial assistance, land rights within the disaster area, and administrative procedure.

The legislative branch replaced the executive power to lay down

90. Jiueyi Zhenzai Chongjian Zhanxing Tiaoli (九二一震災重建暫行條例) [Temporary Act for 9/21 Earthquake Reconstruction] § 75 (promulgated and effective Feb. 3, 2000, repealed Feb. 4, 2006).

91. See Chung Chii-Day (鍾起岱), *Jiji Dizhen Zaihou Zhongjian zhi Yao: Lun Jiueyi Zaihou Zhongjian Tiaoli de Qidong yu Xiuzheng* (集集地震災後重建之鑰—論九二一震災後重建條例的啟動與修正) [Key to the Successful Reconstruction of the Chi-chi Earthquake: Enactment and Amendment of the 921 Earthquake Reconstruction Act], 11 KONGDA XINGZHENG XUEBAO (空大行政學報) [OPEN PUBLIC ADMINISTRATION REVIEW] 73, 84-86 (2001).

reconstruction principles, modify legal restrictions, and approve special budgets and funds for post-disaster recovery. This shift in the legal and governmental authorities on disaster management reflected the political change in Taiwan. From 1948 to 1992, the executive power in Taiwan--especially the presidential power--was expanded in the martial legal system. After the martial law was lifted, the ROC returned to the normal constitutional legal framework and followed the constitutional principles, including separation of powers and rule of law. Since the complete re-election of the ROC national legislature in Taiwan in 1992, the elected representatives have actively proposed bills and enacted laws based on the situation and needs of the local society.⁹² Government powers and operations that would influence citizens' rights and interests had to be regulated by parliamentary statutes, and disaster management was no exception.

Another change was, as opposed to the disaster management administrative regulations and the emergency decrees in the first period that focused on governmental structure and missions of disaster relief, the laws made for the 9/21 Earthquake began paying attention to the inclusion and empowerment of all stakeholders affected by the earthquake in the post-disaster recovery organization and process. When the Earthquake Reconstruction Act was enacted in January 2000, Article 5 stipulated that the 9/21 Earthquake Reconstruction Council consisted of only executive agency and local government officials.⁹³ Later, the law was amended in October of the same year to modify the composition of the reconstruction council, from government officials exclusively to mandatorily including at least five representatives from disaster victims. The amendment aimed to incorporate people with different backgrounds and opinions in the council, working together on coordination, policymaking, and supervision of reconstruction efforts.⁹⁴

While the legislation attempted to provoke and incorporate different thoughts of disaster recovery by including the disaster victim representatives in the reconstruction councils, the actual practice of disaster reconstruction was a top-down governance model to a large extent. Under pressure for a swift recovery, the 9/21 Earthquake Reconstruction Council sometimes made policies without consulting local governments and citizens. The council also

92. See Sheng Shing-Yuan (盛杏媛), *Lifa Jiguan yu Xingzheng Jiguan zai Lifa Guocheng Zhong de Yingxiangli: Yizhi Zhengfu yu Fenli Zhengfu de Bijiao* (立法機關與行政機關在立法過程中的影響力——一致政府與分立政府的比較) [*The Influence of the Legislative Branch and the Executive Branch in the Process of Lawmaking: A Comparison of the Unified and Divided Governments*], 7 TAIWAN ZHENGZHI XUEKAN (台灣政治學刊) [TAIWAN POLITICAL SCIENCE REVIEW] 51, 68-70 (2004).

93. Temporary Act for 9/21 Earthquake Reconstruction § 5.

94. See Chung, *supra* note 91, at 88.

took charge of issuing regulations and allocating resources for disaster recovery although other executive agencies and county governments might propose reconstruction programs. Still, it depended on the council to decide whether the programs were approved and how much funding was allocated to the programs. In other words, the central government not only provided support to county and township governments but also took leadership and control of the reconstruction policies and resources.⁹⁵

A gap existed between the legislative purpose of decentration and the result of a centralized decision-making process for post-earthquake reconstruction. This division between the law and practice resulted from the fact that county and township governments had limited capability, personnel, and resources to design and implement plans specifically for their areas and communities. According to the Earthquake Reconstruction Act, the Earthquake Reconstruction Council had a mandate to coordinate, review, and supervise recovery works. The council itself was not directly involved in implementing reconstruction projects.

However, in reality, local governments might be unwilling or unable to develop and conduct such programs, so the council substituted for the local governments to run the reconstruction projects. In 2003, the Executive Yuan acknowledged this reality and amended a regulation supplemental to the Earthquake Reconstruction Act, expanding the council's mission to cover recovery works that exceeded the local government's ability, required immediate remedy, or needed collaboration at a higher level.⁹⁶

The post-earthquake reconstruction organization and operation suffered other problems. The Earthquake Reconstruction Council was a temporary organization composed of officials transferred from their original departments for a limited period of time. The council members were not familiar with disaster management law, strategy, and mechanism.⁹⁷ During the reconstruction process, the council frequently modified recovery policies and regulations. On the one hand, the adjustments were made to meet changing situations along the recovery process and address the actual needs of disaster victims. On the other hand, the continual policy alteration indicated that the government officials did not have experience or expertise in managing major disasters, and that the personnel instability of council members influenced the performance of the council.⁹⁸

95. 9/21 EARTHQUAKE RECONSTRUCTION COUNCIL, EXECUTIVE YUAN, *supra* note 76, at 13.

96. *See id.* at 12-13.

97. *See id.* at 14.

98. *See id.* HSU HSUEH-CHI (許雪姬) & CHAN SU-CHUAN (詹素娟), ZAIHOU SHINIAN: JIUERYI DIZHEN KOUSHU FANGWEN JILU (災後十年—九二一地震口述訪問紀錄) [ORAL HISTORY OF 921 EARTHQUAKE ON ITS DECENNIAL] 9, 27, 51-52, 69-72 (2012).

B. *A Comprehensive Disaster Management Legal Framework*

1. *Establishing a National Legal System on Disaster Management*

At the end of the twentieth century, the Taiwanese government began to develop a holistic disaster management legal framework to encompass the full cycle of disasters, from potential risk, to actual impact, to dissolution. In January 1994, the Northridge Earthquake hit the San Fernando Valley region of Los Angeles, causing more than sixty deaths and nine thousand injuries, as well as widespread damages in California. The destructive earthquake and subsequent great loss reminded Taiwanese people how destructive a major disaster could be and that a similar disaster might happen in Taiwan as an island located on the Pacific Rim that is prone to earthquakes. It had been over half a century since the 1935 Taichung Earthquake, which had a death toll of 3,276 in Taiwan. According to statistical data, another big earthquake might strike Taiwan at any time. To prepare for potential huge disasters, Taiwan had to improve the existing disaster legal system, which managed disasters only at the local level.

Considering the high possibility and frequency of disasters in Taiwan, the Executive Yuan started to design a disaster management system at the national level to cope with natural disasters beyond the three disaster types addressed by the local administrative regulations, namely, typhoon, earthquake, and flood.⁹⁹ Just three months after the Northridge Earthquake, on April 26, 1994, a China Airlines flight from Taiwan crashed in Nagoya, Japan, killing 264 passengers and crewmembers. The tragedy made the Executive Yuan expand the draft of its “Natural Disaster” Prevention and Protection Plan to a more inclusive “Disaster” Prevention and Protection Plan that covered hazards caused by any natural and human factors. In August of that year, the Executive Yuan finalized the Disaster Prevention and Protection Plan to regulate the prevention of, response to, and recovery from ten types of natural and man-made disasters.

The 1994 Disaster Prevention and Protection Plan established a four-level disaster management structure in the national, provincial, county, and township governments. In normal times, there were Disaster Prevention Councils at each of the four government levels to make disaster prevention programs. In times of disaster, every government level would establish its Emergency Operation Center to respond to the disaster.¹⁰⁰ Based on this

99. Chou, *supra* note 20, at 105.

100. See Shih Ban-Jwu (施邦築) & Chang Hsin-I (張歆儀), *Taiwan Zaihai Fangjiu Tixi de Yange yu Xianzhuang Tantai* (台灣災害防救體系的沿革與現狀探討) [*Discussing the History and Contemporary Situation of the Disaster Prevention and Response System in Taiwan*], 36 TUMU SHUILI (土木水利) [JOURNAL OF CIVIL AND HYDRAULIC ENGINEERING] 52, 53-54 (2009).

model, in 1996, the Executive Yuan further drafted a bill of disaster management and presented it to the Legislative Yuan, hoping to make the Disaster Prevention and Protection Plan, an executive order that did not have direct legal binding force, into a statutory scheme for all governments and citizens.¹⁰¹

After the bill was introduced to the Legislative Yuan, the bill did not receive much attention and remained pending for three years. From 1996 to 1999, the Internal Administration Committee and the Judiciary and Organic Laws and Statutes Committee of the Legislative Yuan discussed the bill for only three times and failed to reach a consensus on the scope and content of the law. In the committee meetings, the legislators debated the definition of “disaster” in the law and which government agency was the most appropriate authority to undertake disaster management missions.¹⁰² It was not until the destructive 9/21 Earthquake in 1999 that the legislators finally realized the urgent need for a comprehensive disaster management system in Taiwan and speeded up the legislation process.

In June 2000, the Legislative Yuan passed the Disaster Prevention and Protection Act (災害防救法), which constituted the first statutory authority that directed the Taiwanese government to mitigate, prepare for, respond to, and recover from natural and man-made disasters. According to Article 2 of the act, disasters regulated by the law included two categories: (a) natural disasters of wind hazard, flood, earthquake, drought, frost, and mudflow; and (b) fire, explosion, air crash, shipwreck, hazards caused by public gas, fuel pipelines, power transmission line failure, and toxic chemical material. The law adopted the traditional approach to categorize natural and man-made disasters. Based on the category, the law divided disaster management authorities and missions according to the cause and type of disaster, assigning the missions to individual ministries and agencies of the Executive Yuan.¹⁰³

The enactment of the Disaster Prevention and Protection Act in 2000 signified the greatest progress in disaster management in Taiwan because the law created the first national disaster legal system to uniformly regulate all disaster issues in Taiwan. Compared to the previous local regulations that

101. See LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 85:55, 215-17, 222 (1996).

102. See *id.* at 215-24; LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 87:7, 347-88 (1998); LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 87:26, 399-404 (1998); Tai Cheng-Hsin (戴正新), *Woguo Gonggong Zhengce Zhiding Guocheng zhi Yanjiu: Yi Zaihai Fangjiu Fa Weili* (我國公共政策制定過程之研究—以災害防救法為例) [The Study of the Process for Public Policy Making in Taiwan: For the Damage Prevention and Protection Acts Example] 59 (2003) (Unpublished master thesis, National Cheng-Kung University).

103. See *Zaihai Fangjiu Fa* (災害防救法) [Disaster Prevention and Protection Act] § 3 (promulgated and effective July 19, 2000, as amended May 22, 2019).

focused on disasters caused by natural forces, the Disaster Prevention and Protection Act was aimed to address disasters resulting from a broad range of causes. The statute also touched on long-term disaster management issues, especially disaster risk reduction, that had been little addressed in the past.

The new disaster legal system included disaster management organizations at the national, municipal/county, and township levels to replace the previous three-level disaster management structure at province, counties, and townships. The disaster management organization at the provincial level was removed because the Taiwan Provincial Government was downsized in the 1990s. After the ROC president became directly elected by Taiwanese citizens in 1996, the then President-elect Lee Teng-hui initiated government reorganization, attempting to solve conflicts due to the almost exactly overlapping administrative zones of Taiwan Province and the ROC's territory. In 1997, the constitutional amendments terminated the elections for Taiwan Provincial Governor and Taiwan Provincial Council representatives.¹⁰⁴ The constitutional amendment and follow-up legal reforms transferred most of the provincial government powers to the national government and strengthened the self-government of municipalities and counties. The Taiwan Provincial Government no longer had the power and resources to conduct missions of disaster management.¹⁰⁵

2. *Problems of the Disaster Management System*

Compared with the previous local regulations that had addressed only damages caused by past disasters, the Disaster Prevention and Protection Act was designed to manage the full cycle of disasters: spanning from mitigation, to preparedness, to response, and finally to recovery.¹⁰⁶ Despite the progress, the law maintained or even exacerbated some serious problems that had existed in the regulations and the local disaster management system in the first period: fragmentation and discontinuity of disaster management organizations.

First, the Disaster Prevention and Protection Act did not assign an

104. See ZHONGHUA MINGUO XIANFA ZENGXIU TIAOWEN (中華民國憲法增修條文) [AMENDMENTS TO THE CONSTITUTION OF R.O.C.] § 9 (1997) (Taiwan).

105. In 1998, the Taiwan Provincial Government became a council whose members were appointed by the president. Most of the provincial government authorities and duties were transferred to executive agencies and local governments. Since then, the operation of the Taiwan Provincial Government continued to be scaled down. In 2018, the Executive Yuan Council resolution approved that the budget for the Taiwan Provincial Government would be reduced to zero since 2019, see Xinzheng Yuan (行政院) [Executive Yuan Council], Xinzheng Yuan Di 3606 Ci Yuanhui Jueyi (行政院第3606次院會決議) [Resolution No. 3606] (June 28, 2018), <https://www.ey.gov.tw/Page/4EC2394BE4EE9DD0/0161f732-c213-4d06-a37e-d5ee27d8ded2> (last visited Nov. 27, 2018).

106. See Disaster Prevention and Protection Act §§ 18, 22.

existing department or create an independent agency in the national government to forge a comprehensive approach of disaster management and to assume responsibilities for disaster management functions. Instead, the statute distributed the disaster management authorities and missions to a variety of departments. According to Article 3 of the law, individual departments of the Executive Yuan were responsible for managing specific types of disasters (see Table).

Table Management Authorities on Disasters in Taiwan

Responsible Authority	Disaster Type
Ministry of the Interior	Wind hazard, earthquake, serious fire incident, and explosion
Ministry of Economic Affairs	Flood, drought, disaster of public gas and fuel pipelines, and power transmission line failure
Council of Agriculture	Frost and mudflow
Ministry of Transportation and Communications	Air crash, shipwreck, and ground traffic accidents
Environmental Protection Administration	Disaster of toxic chemical material
Other types of disaster were dealt with by the department designated by law or the Central Disaster Prevention and Protection Council.	

However, many incidents are compound disasters that involve multiple causes or precipitate another disaster. Some disasters may not be sharply distinguished and classified into one disaster type. It may be difficult to immediately identify the cause of a disastrous event at the outset and decide which department should be responsible for that disaster.¹⁰⁷ When the accountability for government disaster management is ambiguous, the danger is that every department may assume or hope other agencies will take action to handle the disaster. Such a delay could result in the government failing to respond to a disaster in a timely manner, and the various departments could try to evade being held accountable for poor disaster management.¹⁰⁸

For example, only one month after the Disaster Prevention and Protection Act was enacted, on July 22, 2000, four workers were trapped on a sandbank isolated by the rising water of the Bazhang River after sudden heavy rainfall that afternoon. After two hours had passed, the workers were

107. See FARBER, CHEN, VERCHICK & SUN, *supra* note 7, at 158.

108. This problem was pointed out in 1996 when the third Legislative Yuan discussed the draft articles of the Disaster Prevention and Protection Act the first time, but in 2000 the fourth Legislative Yuan still passed the law which assigned disaster management missions to many ministries and agencies, see LEGISLATIVE YUAN GAZETTE, *supra* note 101, at 220-21.

swept away by the river while the Fire Agency, the National Rescue Command Center, and the Air Police Department were still communicating about the rescue mission. The scene of this tragedy was broadcast live on television news, and the Taiwanese government came under strong criticism for its poor performance and coordination in the emergency response.

Second, although the Disaster Prevention and Protection Act tried to compensate for possible problems of the separate disaster-related responsibilities, the attempt did not quite succeed. Specifically, the Disaster Prevention and Protection Act created the Disaster Prevention and Protection Councils in the national, municipal/county, and township governments to strengthen communication and cooperation between the ministries in the face of a disaster. As mentioned above, each ministry was responsible for distinct types of disasters. To prevent the ministries from experiencing conflicts or duplication of disaster management efforts, the councils would coordinate disaster management works across government departments to perform the councils' primary duty: developing long-term plans to prevent, respond to, and recover from impacts of disasters in Taiwan.

At the national level, the Central Disaster Prevention and Protection Council in the Executive Yuan oversaw disaster management efforts in the whole country. The council's missions included setting fundamental disaster management directions; deciding policy, strategy, and measures for emergency management; and supervising and evaluating the disaster management performance of all levels of government.¹⁰⁹ The Municipal/County Disaster Prevention and Protection Councils were in the middle to approve disaster management plans and measures for the municipal/county jurisdictions. The municipal/county councils also supervised and evaluated disaster prevention and response operations in their areas.¹¹⁰ At the lowest level, the Township Disaster Prevention and Protection Councils made township disaster management plans and implemented emergency response measures.¹¹¹

While the disaster management councils in the national, municipal/county, and township governments were charged with the important task of addressing long-term issues relating to disasters, the councils suffered inherent problems that made them weak and ineffective in reducing disaster risk and improving disaster response. Take the Central Disaster Prevention and Protection Council as an example. Its convener was the premier, and the deputy convener was the vice premier. Most of the councilors were ministers, administrators, and commissioners of the Executive Yuan. Only a small number of the councilors were experts or

109. Disaster Prevention and Protection Act § 6.

110. Disaster Prevention and Protection Act § 8.

111. Disaster Prevention and Protection Act § 10.

scholars who had knowledge and experience in disaster management.¹¹²

For the councilors who served as the department leaders, disaster management missions might not be their first priority when they also needed to focus on their duties within their own departments. Under such a heavy workload, councilors were unlikely to spend much time contemplating the additional duties of disaster management. The Central Disaster Prevention and Protection Council lacked full-time personnel who could be committed to disaster management. The subdivision of the council--the Central Disaster Prevention and Protection Committee--suffered the same problem. The committee was comprised of officials from other departments, such as the vice premier and vice ministers, who were busy working for their respective departments.¹¹³

Both the Central Disaster Prevention and Protection Council and the Central Disaster Prevention and Protection Committee held meetings at a low frequency to discuss and promulgate guidelines on disaster management. The council had a regular meeting once a year and special meetings when needed.¹¹⁴ In the first five years from the time the council was established in 2001, the council had only eight meetings, which generally lasted about two hours.¹¹⁵ Within the limited time of the meetings, the council members could hardly discuss disaster management plans in detail or exchange thoughts between different departments. The meeting records showed that oftentimes the councilors approved disaster management plans without much discussion or alternation of the plan contents.¹¹⁶ The committee was a little better; its members met every other month.¹¹⁷ The infrequent, brief meetings could not completely fulfill the function of an independent agency that was committed to contemplating disaster management plans and implementing those plans.

Third, the function of the Disaster Prevention and Protection Councils was further impaired by other disaster management organizations in Taiwan. While the councils were permanent organizations making long-term disaster management plans, the Disaster Prevention and Protection Act also

112. Disaster Prevention and Protection Act § 7, para. 1; Zhongyang Zaihai Fangjiu Huibao Shezhi Yaodian (中央災害防救會報設置要點) [Directions for Establishment of the Central Disaster Prevention and Protection Council] § 3 (promulgated and effective Aug. 15, 2000).

113. Directions for Establishment of the Central Disaster Prevention and Protection Council § 4.

114. Directions for Establishment of the Central Disaster Prevention and Protection Council § 4, para. 1.

115. See generally Zhongyang Zaihai Fangjiu Huibao (中央災害防救會報) [Central Disaster Prevention and Response Council], *Lici Huiyi Jilu* (歷次會議記錄) [Meeting Records of the Central Disaster Prevention and Protection Council], <https://cdprc.ey.gov.tw/Page/9974B84C86763F32> (last visited July 27, 2019).

116. *Id.*

117. Directions for Establishment of the Central Disaster Prevention and Protection Council §§ 2, 6.

established a parallel government system of temporary Disaster Response Centers to deal with short-term problems caused by individual disasters. Similar to the three-level structure of the Disaster Prevention and Protection Councils, the Disaster Response Centers were formed at the national, municipal/county, and township levels whenever a probable disaster was under way or had already occurred. When a disaster was looming or had transpired, municipal/county governments and township governments would establish local Disaster Response Centers to prepare for and respond to disaster impacts.¹¹⁸ If the risk and impact of a disaster were huge, at the national level, the Executive Yuan could form the Central Disaster Response Center to communicate disaster information and coordinate government-wide emergency response and relief efforts.¹¹⁹

The structure, function, and composition of the Disaster Response Centers were almost the same as the Disaster Prevention and Relief Council, Headquarters, and Executive Centers established by the local administrative regulations in the first period. The temporary disaster management organizations before and after 2000 were all formed to deal with the threat and damage of individual disasters and then dismissed after the disaster diminished. Similar to the leaders of the previous local disaster management organizations, the commanders of the new Disaster Response Centers were also department heads--ministers, municipality mayors/county magistrates, and township mayors--who were not specialized in disaster management. Also, both systems had a three-level structure. The only difference is that the previous local disaster prevention and relief organizations at the provincial, county, and township levels became the Disaster Response Centers of the national, municipal/county, and township governments.

In addition to the permanent councils and temporary centers, other government organizations also shared the power of disaster mitigation, preparation, response, and recovery. For example, the National Fire Agency was responsible for evacuation and rescue services. The National Science and Technology Center for Disaster Reduction was devoted to research on disaster prevention and protection technology.¹²⁰ Under such circumstance, the Disaster Prevention and Protection Councils did not have much authority, or many personnel or resources, to lead and support the national and local governments on disaster mitigation and adaptation in the long run.

The powerless Disaster Prevention and Protection Councils not only

118. Disaster Prevention and Protection Act §12.

119. Disaster Prevention and Protection Act § 13; Zhongyang Zaihai Yingbian Zhongxin Zuoye Yaodian (中央災害應變中心作業要點) [Operation Rules of the Central Disaster Response Center] § 2 (promulgated and effective July 26, 2001).

120. See Disaster Prevention and Protection Act §7, para. 3; Guojia Zaihai Fangjiu Keji Zhongxin (國家災害防救科技中心) [National Science and Technology Center for Disaster Reduction], <http://www.ncdr.nat.gov.tw/> (last visited July 18, 2019).

were a problem on their own but also increased the Disaster Response Centers' burden and difficulty in handling disasters. Because the permanent Disaster Prevention and Protection Councils failed to modify disaster causes and minimize disaster effects on Taiwanese people, the temporary Disaster Response Centers would be continually formed and dismissed whenever a major disaster took place in Taiwan. The vicious circle of forming and dismissing the organizations resulted in serious issues of unsuccessful practice and inconsistent policies on disaster management.

C. *Legal Reforms in Disaster Management*

Since the Disaster Prevention and Protection Act was signed into law, the law has been challenged by typhoons and earthquakes that struck Taiwan and caused serious loss of life, human suffering, and property damage.¹²¹ After the law was enacted in 2000, it has been amended nine times, in 2002, 2008, January and August 2010, 2012, 2016, 2017, and January and May 2019. The reforms were usually triggered by lessons learned from disaster events and legal practice; this was especially true in terms of government failures in managing and addressing disasters.

For example, in May 2002, a China Airlines aircraft crashed in the sea near the Penghu islands, Taiwan, but the sea area was not administered by the Penghu County Government. To clarify which agency should be responsible for disasters in similar conditions, the newly added Section 5, Paragraph 2, Article 3 of the Disaster Prevention and Protection Act, promulgated in 2008, directed the national government to coordinate with local governments to deal with disasters that occurred in maritime space, involved two or more municipal/county administrative zones, or overwhelmed local capacity for disaster response.¹²²

In 2009, severe damages caused by Typhoon Morakot led to the enactment of a special disaster law and the amendment of the Disaster

121. In 2001, Typhoon Toraji struck Taiwan and resulted in 111 deaths, 103 missing, and economic loss of 7.7 billion New Taiwan dollars. Less than two months after Typhoon Toraji, Typhoon Nari brought heavy rainfall in Taiwan. More than four thousand buildings in the Taipei Municipality were flooded, and the Taipei MRT subway took three months to resume operation. In addition, the 3/31 Earthquake in 2002, Typhoon Morakot in 2009, the 2/6 Kaohsiung Earthquake in 2016, and other disasters have occurred in Taiwan and seriously harmed the Taiwanese people. See CHIOU TAI-KUANG (丘台光), MINGUO JIUSHINIAN TAIFENG DIAOCHA BAOGAO-DIBAHAO TAOZHI TAIFENG (民國九十年颱風調查報告－第八號桃芝颱風) [REPORT ON TYPHOON TORAJI IN 2001] 84 (2001), <http://photino.cwb.gov.tw/rdcweb/lib/cd/cd02tyrp/typ/2001/0108.pdf>; HSU HSIN-CHIN (徐辛欽), MINGUO JIUSHINIAN TAIFENG DIAOCHA BAOGAO-DI SHILIUHAO NALI TAIFENG (民國九十年颱風調查報告－第十六號納莉颱風) [REPORT ON TYPHOON NARI OF 2001] 112 (2001), <http://photino.cwb.gov.tw/rdcweb/lib/cd/cd02tyrp/typ/2001/0116.pdf>.

122. LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 97:16, 107-08 (2008).

Prevention and Protection Act. From August 5 to 10, 2009, Typhoon Morakot struck Taiwan and brought about a record-breaking amount of rainfall, which triggered enormous floods, mudflows, landslides, barrier lakes, bridge collapses, and levee breaches.¹²³ The typhoon disaster left 699 people dead and missing; 140,424 houses were damaged, among which 1,766 houses were rendered completely uninhabitable. The total economic loss reached nearly two hundred billion New Taiwan dollars.¹²⁴

Facing the terrible disaster damages, President Ma Ying-jeou did not issue an emergency decree to address disaster issues because the Disaster Prevention and Protection Act was supposed to provide a legal framework for emergency response and disaster relief.¹²⁵ In general, the Taiwanese government followed the law to deal with disaster impacts and damages. Except for extreme cases of major disaster, there was no longer a need for the president to issue an emergency decree like President Lee had done to handle the chaos and damages caused by the 9/21 Earthquake in 1999.

In addition to the existing law that guided the Taiwanese government to respond to Typhoon Morakot, new laws were soon enacted for post-disaster recovery. After Typhoon Morakot caused serious loss of life and property damage in early August, 2009, at the end of that month, the Legislative Yuan passed the Special Act for Post-Typhoon Morakot Reconstruction (莫拉克颱風災後重建特別條例) [hereafter “Special Act”] to lay down disaster relief and recovery principles, create a reconstruction council, and lift legal restrictions that might delay disaster recovery. The enactment of the Special Act affirmed that the legislature became the superior authority to manage disasters in Taiwan. The executive branch had to implement disaster response, relief, and recovery policy in accordance with the direction and rule of law.

Compared to administration regulations issued by the executive branch,

123. See CHEN LIANG-QUAN (陳亮全), MOLAKE TAIFENG ZAIQING ZHI KANCHA YU FENXI (莫拉克颱風災情之勘查與分析) [DISASTER SURVEY AND ANALYSIS OF TYPHOON MORAKOT] 1, 31-33, 40-49 (2011); XINGZHENGYUAN MOLAKE TAIFENG ZAIHOU ZHONGJIAN TUIDONG WEIYUANHUI (行政院莫拉克颱風災後重建推動委員會) [TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN], AI YU XIWANG YUEDONG SHENGLINGLI: MOLAKE TAIFENG ZAIHOU ZHONGJIAN SANZHOUNIAN CHENGGUO HUIBIAN (SHANG) (愛與希望躍動生命力—莫拉克颱風災後重建三周年成果彙編(上)) [LOVE AND HOPE BURSTING WITH VITALITY: ACHIEVEMENTS ON THE THIRD ANNIVERSARY OF POST TYPHOON MORAKOT RECONSTRUCTION (VOL. 1)] 13, 18 (2012).

124. TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN, *id.* at 1.

125. See Zhonghua Minguo Zongtongfu (中華民國總統府) [Office of the President, Republic of China (Taiwan)], Zongtong Chuxi “Chuangxin, Xieli, Yongxu Jiayuan: Molake Taifeng Zaihou Jiayuan Zhongjian yu Yongxu Fazhan Guoji Yantaohui” (總統出席「創新·協力·永續家園—莫拉克颱風災後家園重建與永續發展國際研討會」) [The President Attended the “Innovative, Cooperative, Sustainable Community: Post-Typhoon Morakot Community Reconstruction and Sustainable Development International Conference”], <https://www.president.gov.tw/NEWS/15631> (last visited Aug. 2, 2019).

the legislation of a parliamentary statute--the Special Act--provided a democratic process that allowed legislators to consider and protect the interests of all stakeholders affected by the disaster. While the bill drafted by the Executive Yuan did not stipulate the composition of the Reconstruction Council, the other bill proposed by the opposition party, the Democratic Progressive Party, explicitly required the Reconstruction Council to be composed of government officials, experts, scholars, non-government organizations, and individuals, among whom at least one-fifth of the council members were representatives of indigenous people and typhoon victims. The bill from the Democratic Progressive Party also required that reconstruction works should respect plural cultural characteristics, assure community participation, and also achieve conservation of land and environmental resources.¹²⁶ After discussion and negotiation among the legislators, these requirements were adopted in the Special Act to highlight the importance of public participation and cultural diversity in post-disaster recovery.¹²⁷

The Special Act's regulation on land use in disaster areas provided another example that the legislators considered different opinions and protected the rights of people affected by the typhoon. To ensure human safety and restore land that had been damaged by the floods and mudslides caused by Typhoon Morakot, the Special Act included an article to designate vulnerable land as a "Special Zone," restricting land use in the zone and relocating residents to safer places. In the Executive Yuan's bill, the draft article authorized the government to unilaterally decide which piece of land was too risky to inhabit and should be designed as a Special Zone.¹²⁸ In contrast, the Democratic Progressive Party's bill required projects regarding land zoning and relocation to "be decided through an open and democratic procedure and respect rights of diverse groups to choose their lifestyle, customs, socioeconomic structure, resource management, and land ownership and use."¹²⁹

The regulation on land zoning had significant influence, especially on Taiwanese indigenous peoples because most areas destroyed by Typhoon Morakot were indigenous communities.¹³⁰ When the bills of the Special Act

126. See LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 98:45, 2-11 (2009).

127. See *id.* at 56-57.

128. See *id.* at 6.

129. See *id.* at 18.

130. After the Typhoon Morakot, the Taiwanese government assessed and determined 160 areas unsafe and hazard-prone. Among the 19,191 residents in these risky areas, 13,911 were indigenous people. The indigenous people accounted for 72.5% of the residents in these disaster areas. See TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN, *supra* note 123, at 210.

were discussed in the Legislative Yuan, indigenous legislative representatives from multiple political parties stood up for indigenous rights to defend indigenous peoples against arbitrary relocation and land expropriation by the government. The indigenous representatives requested that residents on the affected lands, especially indigenous people, not be relocated unless they voluntarily agreed.¹³¹ These opinions and motions were negotiated by the legislators and mostly adopted in the final version of the Special Act.¹³²

However, because the Special Act was drafted and passed immediately after Typhoon Morakot, its provisions were not well-considered and resulted in controversies after the law was actually enforced. For land zoning and relocation, the Special Act required the government to consult landowners to reach a consensus on designating a Special Zone, but the hurriedly passed law was ambiguous on the zoning procedure and criteria.¹³³ As a result, it was hard for residents in the disaster areas, mostly indigenous peoples, to participate in the land examination process and influence land assessment results. The residents and the governments also disputed whether the legal text “consensus” required unanimous consent of all landowners to the land zoning proposal.

Eventually, the legal ambiguity led to debates and even lawsuits over the zoning of land affected by Typhoon Morakot. The indigenous communities of Pnguu, Qaljapitj, and Adiri disagreed with the designation of their lands as Special Zones, filing petitions to challenge the land zoning decisions.¹³⁴ After the petitions were rejected by the government, the Adiri community of the Rukai indigenous people filed a lawsuit to claim that tribal members were not adequately informed of and consulted about the zoning proposal and its subsequent legal effects. The plaintiffs, consisting of eleven Adiri members, argued that they had explicitly rejected the land zoning proposal in public meetings with the government. Yet, the courts upheld the executive

131. See LEGISLATIVE YUAN GAZETTE, *supra* note 126, at 41, 45-46, 48-49.

132. See *id.* at 56-57, 75-79.

133. Molake Taifeng Zaihou Zhongjian Tebie Tiaoli (莫拉克颱風災後重建特別條例) [Special Act for Post-Typhoon Morakot Reconstruction], § 20, para. 2: “For the land in an affected area which is endangered or unlawfully used for construction, the Central Government, municipal or county (city) governments may, *after reaching consensus with the original residents*, classify such land as a special zone to restrict residences or may order the residents to resettle, or relocate entire villages, and may grant appropriate accommodation” (emphasis added) (promulgated and effective Aug. 28, 2009, repealed Aug. 29, 2014).

134. ZHANG HENG-YU (張恒裕), MOLAKE TAIFENG ZAIQU HUADING, YUANJZHUDI ANQUAN PINGGU JI HUADING TEDING QUYU (莫拉克颱風災區劃定、原居住地安全評估及劃定特定區域) [DESIGNATION OF TYPHOON MORAKOT DISASTER AREAS, SAFETY ASSESSMENT OF INDIGENOUS LANDS, AND DESIGNATION OF SPECIAL ZONE] 27 (Feb. 18, 2014), <http://morakotdatabase.nstm.gov.tw/download-88flood.www.gov.tw/activity/inheritance/file/pdf/家園重建/1030218-議題四-莫拉克颱風災區劃定、原居住地安全評估及劃定特定區域-張恒裕主秘.pdf>.

decision that the Adiri land was designated as a Special Zone because the Special Act did not require unanimous consent of all landowners. According to the court's interpretation, the application of the law fell within the discretion of the executive agency.¹³⁵

The hasty legislation also indicated that the existing legal framework in Taiwan failed to guide the government to respond well to and recover from disasters. The insufficient and imperfect disaster laws forced the legislators to immediately create the Special Act to deal with problems resulting from Typhoon Morakot. Learning from the typhoon disaster, in 2010, the Legislative Yuan amended the Disaster Prevention and Protection Act to a substantial degree. Among the amendments, the most important change was to establish the Disaster Prevention and Protection Office in the national, municipal/county, and township governments. The offices were equipped with full-time staff committed to long-term disaster risk reduction, planning and preparedness, emergency response, and post-disaster recovery.¹³⁶

At the highest level, the Disaster Prevention and Protection Office in the Executive Yuan is responsible for making disaster management plans for the whole country and coordinating disaster management efforts among government departments. At the middle level, the Municipal/County Disaster Prevention and Protection Offices advise and support the Municipal/County Disaster and Prevention Councils.¹³⁷ At the lowest level, the Township Disaster Prevention and Protection Offices carry out the Township Disaster Prevention and Protection Council's missions, including 1. approving the township disaster management plan; 2. developing disaster management measures and strategies; and 3. providing disaster relief and evacuation assistance.¹³⁸ By establishing the Disaster Prevention and Protection Offices with full-time personnel, the legal reform aimed to strengthen the governments' capacity to cope with disaster risks and impacts.

Nevertheless, the 2010 amendment did not solve all of the problems exposed by the disaster event. Specifically, the Executive Yuan wished to enhance its disaster management efficiency through government reorganization at the national level. It was proposed that the Central Disaster Prevention and Protection Committee be incorporated into the Central

135. See Taipei Gaodeng Xingzheng Fayuan (臺北高等行政法院) [Taipei High Administrative Court], 99 Su Zi No. 1677 (99年度訴字第1677號) (2012) (Taiwan); Zuigao Xingzheng Fayuan (最高行政法院) [Supreme Administrative Court], 101 Pan Zi No. 1073 (101年度判字第1073號) (2012) (Taiwan).

136. See Zhongyang Zaihai Fangjiu Huibao (中央災害防救會報) [Central Disaster Prevention and Response Council], Zhongyang Zaihai Fangjiu Huibao Muliao Danwei (中央災害防救會報幕僚單位) [Central Disaster Prevention and Protection Council Staff], <https://cdprc.ey.gov.tw/Page/A3A8DD96CF74108D> (last visited Aug. 7, 2019).

137. Disaster Prevention and Protection Act § 9, para.2 (as amended Aug. 4, 2010).

138. *Id.* §§ 10-11.

Disaster Prevention and Protection Council because the two organizations' missions highly overlapped.¹³⁹ Still, the legislators kept the Central Disaster Prevention and Protection Committee to operate in parallel with the Disaster Prevention and Protection Council.¹⁴⁰ The problem remained that the council and the committee had very similar missions on disaster management.

IV. CHALLENGES AND SUGGESTIONS FOR DISASTER LAWS IN TAIWAN

A. *Reorganizing Fragmented Authorities on Disaster Management*

The disaster management laws and organizations in Taiwan have been established, developed, and reformed over the past seventy-four years since 1945, but there are still problems in the current legal and governmental structure. One of the greatest issues is fragmentation of disaster management authorities. After the amendments of the Disaster Prevention and Protection Act, in contemporary Taiwan, a variety of departments share disaster management authorities and functions. Many agencies are responsible for specific types of disasters. Moreover, at the national, municipal/county, and township levels, there are permanent organizations for general disaster management plans and temporary organizations for immediate disaster response.

The permanent organizations include the Central Disaster Prevention and Protection Council, the Central Disaster Prevention and Protection Committee, and the Disaster Prevention and Protection Office. They coexist in the Executive Yuan and have overlapping duties.¹⁴¹ In addition, there are other disaster management organizations like the Disaster Prevention and Protection Expert Consultation Committee to develop disaster management policy, the National Science and Technology Center to study disaster prevention and protection technology, and the National Fire Agency to conduct disaster prevention and protection works, including evacuation and rescue services.¹⁴²

In addition to the permanent organizations, the national, municipal/county, and township governments are to form the temporary organization of the Disaster Response Centers for emergency management and disaster relief. The Disaster Response Centers are established each time when a disaster approaches Taiwan or has already occurred. Moreover, if

139. LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 99:4, 94 (2009).

140. LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 99:49, 9-10 (2010).

141. See Chou, *supra* note 20, at 110.

142. Disaster Prevention and Protection Act § 7 (as amended Apr. 13, 2016).

disaster damages were too serious to be repaired by existing government organizations and normal procedures, the legislature might pass laws to create special councils responsible for recovery works of that disaster, like the Reconstruction Council created by the Special Act in the aftermath of Typhoon Morakot.

The disaster events and management practices in Taiwan confirm Farber's theory of the cycle of disaster law, requesting a holistic way to deal with the complete process of disaster. In the disaster cycle, interaction between disasters and laws constitutes a continuous process in which the management of one disaster stage would influence the others. In the first period, no laws governed disaster risk reduction, which increased the severity and burden of disaster response and recovery. To make things worse, the administrative regulations could not deal with major disasters that overwhelmed local governments. After the 8/7 Flood and the 9/21 Earthquake, the presidents had to issue emergency decrees to address serious problems and emergent needs.

Moreover, the small workforce of the Disaster Prevention and Protection Council, Committee, and Office were unable to accomplish a broad range of disaster management missions. It was mainly the temporary organizations that actually undertook disaster response and recovery works, such as the Disaster Response Centers, the Earthquake Reconstruction Council, and the Post-typhoon Morakot Reconstruction Council. However, these organizations were disconnected and did not have consistent policies on disaster management. The previous organization could not share experience with the later organization to improve strategies for disaster mitigation and adaptation.

Nowadays, the increased complexity of society and the change of weather patterns have made disaster management more challenging. The fragmented authorities on disaster management are unable to mitigate and prepare for disasters in a comprehensive system, nor can they respond to and recover from disaster impacts in a timely manner. The disaster management efforts need to be better incorporated into an organization that can consider disasters in an integrated way with a long-term perspective, taking proactive measures to handle dynamic and unpredictable issues from disasters, such as the unprecedented rainfall and problems caused by Typhoon Morakot.

Future amendments to the Disaster Prevention and Protection Act may incorporate the fragmented disaster management authorities in Taiwan into one agency to comprehensively and effectively address the complete process of disasters of any type. Such agency can reduce duplication and conflict in disaster planning among different departments. When a disaster happens, the government can promptly react to the disaster before spending time identifying the disaster cause and assigning missions to the department

responsible for that specific type of disaster.¹⁴³ More important, the full-time personnel in the agency have knowledge of disaster management, and they will work on and be familiar with disaster management operations. The officials can deal with disaster effects according to established principles and accumulate experience of disaster events to improve the disaster management system.

The integrated disaster management organizations should exist at the national and local levels. In the national government, the agency takes responsibility for communication and coordination efforts in multiple jurisdictions and across government levels for swift disaster response and relief when a large-scale disaster occurs and overwhelms local capacities. At the local level, the municipal/county departments and township offices on disaster management will develop long-term plans and take practical actions for disaster mitigation, preparedness, response, and recovery.

Based on the history of disaster laws and legal practices in Taiwan, two issues should be highlighted in the reorganization of the disaster management structure. First, the Taiwanese government should take not only retroactive measures but also proactive measures. In the first period from 1945 to 1999, the local governments focused on disaster response and recovery, neglecting the important tasks of risk reduction and disaster planning in advance of the occurrence of a disaster event. In the second period, the Disaster Prevention and Protection Councils had lacked power, personnel, and resources to make and enforce disaster management plans until it was finally supported by the staff of the Disaster Prevention and Protection Office in 2010.

While successful disaster mitigation and preparedness may alleviate disaster impacts and stimulate disaster recovery, insufficient or no pre-disaster management is likely to aggravate the situation and delay disaster aid. Future legal reforms should pay more attention to disaster risk reduction and mitigation to prevent natural events from causing damage. The law may request the Taiwanese government to adopt more proactive measures, such as establishing an early warning system, providing training and education on disaster risk reduction and preparedness, regularly investigating land condition, maintaining and renovating infrastructure, and mapping and regulating vulnerable areas before a disaster occurs.

Second, the Special Act and subsequent land zoning issues prove that hasty legislation in a chaotic situation is likely to lead to mistakes and cause problems. After Typhoon Morakot seriously damaged Taiwan, the Special Act was drafted and passed within twenty days following the disaster. Having such limited time, the legislators could not carefully consider

143. FARBER, CHEN, VERCHICK & SUN, *supra* note 7, at 158.

possible issues and consequences of the recovery policy, such as how land zoning and relocation might influence the legal, social, cultural, economic, and mental conditions of disaster victims. In addition, the brief and ambiguous articles of the Special Act were unable to effectively restrict government power of land zoning and protect indigenous land rights.

To prevent the problems from reoccurring, the legislature should reform the current Disaster Prevention and Protection Act before the next major disaster comes, clarifying the power of the disaster management agency to regulate its authority and limit its discretion. For specific issues like land zoning and acquisition, legislators should make laws in times of calm to determine how to balance the various interests of land conservation, safety concerns, and property rights.

B. *Strengthening Local Capacity and Resilience to Disasters*

1. *Limited Capacity of Townships to Handle Disasters*

Although this paper suggests that Taiwan should establish an integrated disaster management agency at the national level, it recognizes the central government cannot overlook opinions of local governments, communities, and individuals. On the contrary, good communication and collaboration across all levels of government facilitate disaster management. Partnership with local organizations and people offers an opportunity to understand the actual needs of local communities and empower them as full partners in realizing disaster management success.¹⁴⁴

For disaster management, the role of local governments was supposed to be crucial but was often neglected in Taiwan. Since 2000, the Disaster Prevention and Protection Act has been passed and amended to develop a unified statutory framework for disaster management. The legal reforms focused on the enhancement and concentration of disaster management authorities in the national government. On the few occasions that the legislators amended the law based on local practices, the purpose was not to increase government capacity for disaster management at the local level. Instead, the amendment tried to evade the problem that townships have lacked resources to reduce disaster risks, prepare for and respond to disaster impacts, and recover from disaster damages.

According to the Disaster Prevention and Protection Act, the township governments should have permanent disaster management organizations, including the Disaster Prevention and Protection Council and the Disaster Prevention and Protection Office. However, in reality, most township

144. See FARBER, CHEN, VERCHICK & SUN, *supra* note 7, at 223.

governments did not have enough officials and resources to undertake disaster management tasks. In Taiwan, townships are small administrative zones with limited personnel and resources. It is difficult for a township to cover the expenses associated with full-time positions for designing and implementing long-term disaster management plans specifically for that township. Also, the township governments are usually unable to deal with short-term disaster issues on their own when a disaster strikes. According to records of past disasters in Taiwan, a major disaster could easily overwhelm and paralyze the operation of small township governments.¹⁴⁵

The amendment to the Disaster Prevention and Protection Act in 2012 addressed the fact that the township governments lacked human and monetary resources to fulfill their disaster management missions assigned by the law. Article 26 of the Disaster Prevention and Protection Act required that all levels of government be staffed by full-time officials to implement disaster prevention work, but in fact, the fiscal condition of township governments could not afford the full-time positions. Given that most townships could not satisfy this legal requirement, the legislators recognized the reality of this situation and amended the law to allow township officials in other positions and part-time employees to concurrently do the disaster prevention work.¹⁴⁶ The amendment did not provide the township governments more support for disaster management but rather sidestepped the issue without solving it.

The application of other articles in the Disaster Prevention and Protection Act also exposes the problem of insufficient local capacity of disaster management. Specifically, the act requires the Disaster Prevention and Protection Councils of the national, municipal/county, and township governments to make long-term plans for reducing disaster risk, responding to disaster impact, and recovering from disaster damage.¹⁴⁷ The plans at each government level have different functions. At the national level, the Disaster Prevention and Protection Essential Plan creates a blueprint for disaster management of the country, moving all management efforts toward the same direction so that they function in a coherent way.¹⁴⁸ Every five years, the Central Disaster Prevention and Protection Council thoroughly examines the disaster management practice in Taiwan and updates the Essential Plan to set the main goals and fundamental principles of disaster

145. See Chou, *supra* note 20, at 108.

146. Disaster Prevention and Protection Act § 26 (as amended Nov. 28, 2012); LIFAYUAN GONGBAO (立法院公報) [LEGISLATIVE YUAN GAZETTE], Vol. 101:38, 151 (2012).

147. See Disaster Prevention and Protection Act §§ 6, 8, 10, 17, 20 (as amended Aug. 4, 2010).

148. According to Article 20, Disaster Prevention and Protection Act (2019), Regional Plans for Disaster Prevention and Protection made by municipal/county governments cannot contradict with the Disaster Prevention and Protection Essential Plan, and township Regionals Plans cannot contradict with the municipal/county Regional Plans.

management, outline overall strategies to achieve these goals, and provide guidelines for the local governments to develop their plans for disaster management.¹⁴⁹ Municipal/county governments and township governments are required to renew their Regional Plans for Disaster Prevention and Protection more frequently, every two years. The Regional Plans are more specific and practical, explicitly addressing particular issues regarding disasters most likely to strike the area.

The practice of making Regional Plans shows that these smaller government divisions had limited and uneven capacities for managing disasters. The 2007, 2013, and 2018 Disaster Prevention and Protection Essential Plans emphasized that local governments are to make their Regional Plans according to the actual circumstances of the natural environment and social conditions. Considering disaster management works may vary in each area, the Regional Plans should be made based on local characteristics.¹⁵⁰ Yet, whether a township/district government is able to comply with the request highly depends on the resources and ability of that locality.

Taking the Regional Plans for Disaster Prevention and Protection in Kaohsiung as an example, the area was severely damaged by the floods and mudslides caused by Typhoon Morakot in 2009. The Kaohsiung Municipal Government and its thirty-eight district governments issued Regional Plans that researched the local environment, highlighted different disaster types, and adopted specific methods to deal with disasters. Nevertheless, each district government was able to contemplate and implement its Regional Plan to different extents. For instance, the Namasia District Regional Plan considered disaster preparedness and response based on the standard

149. See Disaster Prevention and Protection Act § 18; Examples of Disaster Prevention and Protection Essential Plans, see Zhongyang Zaihai Fangjiu Huibao (中央災害防救會報) [Central Disaster Prevention and Response Council], *Zaihai Fangjiu Jiben Jihua* (災害防救基本計畫) [*Disaster Prevention and Protection Essential Plan*], <https://cdprc.ey.gov.tw/Page/D99BAB0D863D6ACB> (last visited Oct. 29, 2019).

150. See Zhongyang Zaihai Fangjiu Huibao (中央災害防救會報) [Central Disaster Prevention and Response Council], *Zaihai Fangjiu Jiben Jihua (96 Nian Heding)* (災害防救基本計畫 (96年核定)) [*Disaster Prevention and Protection Essential Plan (Approved in 2007)*] 4 (2007), <https://cdprc.ey.gov.tw/Page/C4D588F619706C77/41274ab1-4418-440d-ab36-dcbfa05e86c1>; Zhongyang Zaihai Fangjiu Huibao (中央災害防救會報) [Central Disaster Prevention and Response Council], *Zaihai Fangjiu Jiben Jihua (102.06.11 Nian Heding)* (災害防救基本計畫 (102.06.11年核定)) [*Disaster Prevention and Protection Essential Plan (Approved on June 11, 2013)*] 21 (2013), <https://cdprc.ey.gov.tw/Page/C4D588F619706C77/b17915c4-8faa-4f9c-9218-097267e0dc35>; Zhongyang Zaihai Fangjiu Huibao (中央災害防救會報) [Central Disaster Prevention and Response Council], *Zaihai Fangjiu Jiben Jihua (107.11.28 Nian Heding)* (災害防救基本計畫 (107.11.28年核定)) [*Disaster Prevention and Protection Essential Plan (Approved on November 28, 2018)*], Chapter 1, 6 (2018), <https://cdprc.ey.gov.tw/Page/C4D588F619706C77/addc9e6e-c1b8-475e-bc18-52e9e7df1aee> (last visited Mar. 9, 2020).

precipitation of the one-hundred-year flood.¹⁵¹ In contrast, the Dashe District Regional Plan included not only the standard precipitation data but also utilized computer simulation and field research in the Dashe District to complete a detailed investigation of neighborhoods vulnerable to flooding.¹⁵²

2. *Diversity, Capacity, and Engagement of Localities in Disaster Management*

As discussed in the previous section, this paper suggests that Taiwan have an organization incorporating the fragmented authorities on disaster management. Such organization considers all disasters from a comprehensive perspective, setting long-term goals and general principles of disaster management for the country. This does not mean that the organization at the national level decides everything and orders lower levels of governments to follow. The guidelines are to help local actors create and implement particular projects of disaster management according to their natural and social contexts. Having sufficient power and resources, the localities can conduct disaster management works, learn from disaster experiences, and build up resilience to disaster risks and impacts in the long run.

If the local governments are not provided with proper resources and opportunities to accumulate experience and increase ability of managing disasters, they will never become able to deal with the risk and impact of disasters based on their understanding of the area. In the first period from 1945 to 1999, the provincial government took major responsibility for implementing measures to address damages caused by natural disasters.¹⁵³ There was a clear hierarchy of the disaster management organizations: the Provincial Disaster Prevention and Relief Council instructed the County Disaster Prevention and Relief Headquarters, which instructed and supervised the Township Disaster Prevention and Relief Executive Center.¹⁵⁴

151. See Gaoxiongshi Namaxiaxiagu Gongsuo (高雄市那瑪夏區公所) [Kaohsiung Municipality, Namasia District Office], *Gaoxiongshi Namaxiaqu Diqu Zaihai Fangjiu Jihua* (高雄市那瑪夏區地區災害防救計畫) [Namasia District Regional Plan for Disaster Prevention and Protection] 13-14 (2019), <https://orgws.kcg.gov.tw/001/KcgOrgUploadFiles/329/relfile/69379/154980/d1d6bb89-e897-4c45-9f8a-48cb25acef6d.pdf>.

152. See Gaoxiongshi Dashequ Gongsuo (高雄市大社區公所) [Kaohsiung Municipality, Dashe District Office], *Gaoxiongshi Dashequ 108 Nian Diqu Zaihai Fangjiu Jihua* (高雄市大社區108年地區災害防救計畫) [Kaohsiung Municipality, Dashe District 2019 Regional Plan for Disaster Prevention and Protection] 12-17 (2019), <https://orgws.kcg.gov.tw/001/KcgOrgUploadFiles/280/relfile/16383/58766/44eabf86-c1ec-4caa-95fa-3d1703ce14c4.pdf>.

153. HSU & CHAN, *supra* note 98, at 37.

154. Regulations on Natural Disaster Prevention, Relief, and Recovery in Taiwan Province § 5

For a long time, the organizations at the county and township levels performed basic works for short-term needs after disasters, including evacuating and rescuing people, providing shelter, and repairing the electrical system. The county and township governments did not have much discretion in deciding policies of emergency response and disaster recovery. Before 2000, these governments lacked power and the experience of independently dealing with disasters. As a result, when the counties and townships were suddenly asked to propose and run projects for post-9/21 Earthquake reconstruction, they could not fulfill the legal mandates. The Earthquake Reconstruction Council itself was busy planning, adjusting, and implementing disaster recovery programs.

However, an overburdened organization in the central government is unable to well coordinate and facilitate disaster management works, and it is likely to cause delay and inefficiency. Instead of only one organization with enormous resources and heavy burden, proper division and distribution of disaster management missions to government organizations, as well as their collaboration, may contribute to effective disaster management. To achieve these goals, the legislature had to directly face the problem of limited local capacity of disaster management and address the problem through appropriate legal reforms.

Past disasters and legal practices in Taiwan show that it is necessary to strengthen local capacity and participation in disaster management. Taking the 2009 Typhoon Morakot as an example, which caused huge losses of life, health, public infrastructure, and private property in Taiwan, after the disaster, the legislature quickly passed the Special Act to facilitate disaster recovery. Yet, in the reconstruction process, the national and local governments had different views on reconstruction policies, and every locality suffered from and dealt with disaster in various ways because of the diverse demographical, cultural, economic, geographical, and meteorological conditions.

When the Special Act was applied to Taiwanese society, gaps appeared between the national and local governments. As discussed in Part III, Section C, the Special Act aimed to protect human safety through restricting land use. The Reconstruction Council also soon decided that permanent relocation was the principal method for helping people affected by the disaster.¹⁵⁵ While the Reconstruction Council at the national level regarded resettlement

(1965).

155. See Xingzhengyuan Molake Taifeng Zaihou Zhongjian Tuidong Weiyuanhui Di 3 Ci Gongzuo Xiaozu Huiyi Jilu (行政院莫拉克颱風災後重建推動委員會第3次工作小組會議紀錄) [Morakot Typhoon Post-disaster Reconstruction Council, Executive Yuan, Work Team 3rd Meeting Record], 3 (Aug. 27, 2009), http://morakotdatabase.nstm.gov.tw/88flood.www.gov.tw/files/committee_workgroup/9.pdf?id=9&type=pdf&location=committee_workgroup (last visited Apr. 24, 2020).

as the primary and most feasible way for reconstruction, many indigenous communities preferred rebuilding their homes at the original sites where they had lived. Local people in the disaster areas and officials in the national government had different perspectives of what “reconstruction” meant and how to achieve successful reconstruction.

Even at the local level, each government and community might adopt particular adaptation strategies based on their actual conditions and needs. After the floods and mudslides of Typhoon Morakot seriously damaged Taiwan, the government assessed 160 affected areas and villages as risky, and residents in the risky areas adopted different strategies to adapt to the disaster impacts. Sixty-one percent of the residents resettled at the suggestion of and with assistance from the government.¹⁵⁶ By relocating, the residents were able to live at safer sites, but they have faced legal, cultural, and economic difficulties associated with displacement.¹⁵⁷ Thirty-nine percent of the residents had little interest in relocation and chose to stay in the affected areas. For instance, the Adiri community disagreed with the government on the land assessment and filed lawsuits to vacate the land zoning decision. The indigenous peoples were closely connected to their land and had their own perspective of safety to argue that their land was not so prone to disasters.¹⁵⁸

The diverse opinions of local governments and communities to mitigate and adapt to disasters cannot be ignored. In the disaster setting, the locals are first responders who directly face disaster effects, and they are also the ones who best realize the strengths, weaknesses, needs, and possible solutions in their actual surroundings. Some scholars suggested that the disaster management burden on township governments be reduced. The small-scale townships usually do not have enough officials and resources to support a wide range of disaster management works, so it may be more feasible to ask the townships to pay full attention to only the implementation of disaster management plans made and assigned by the municipal/county governments, which would be supervised and coordinated by the highest disaster management authorities in the national government.¹⁵⁹ However, this suggestion returns to a top-down model in which specific contexts and needs at the local level were often overlooked by the distant, higher level of

156. TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN, *supra* note 123, at 210.

157. More detailed discussion on cases and issues of relocation, *see* MOLAKE DULI XINWENWANG (莫拉克獨立新聞網) [INDEPENDENT NEWS NET OF MORAKOT], ZAI YONGJIUWU LI XIANGJIA: MOLAKE ZAIHOU SANNIAN, “YONGJIUWU” YU REN DE GUSHI (在永久屋裡想家—莫拉克災後三年,「永久屋」與人的故事) [MISSING HOMES IN PERMANENT HOUSES: STORIES ABOUT PEOPLE AND PERMANENT HOUSES, THREE YEARS SINCE THE DISASTER OF TYPHOON MORAKOT] (2013).

158. 99 *Su Zi No. 1677*; 101 *Pan Zi No. 1073*.

159. *See* Chou, *supra* note 20, at 108-09.

government authority.

Thus, instead of excluding local officials and citizens from decision-making, future reforms in disaster laws should provide substantial support to local governments, communities, and individuals to increase their ability of and engagement in disaster management. When the law requires local governments to have permanent organizations for developing plans for disaster management and conducting management works, the central government should provide more assistance for the county and township governments to examine the local environment, identify potential disaster threats in that area, renovate public infrastructures, hold disaster-response drills, and disseminate information to increase local awareness and preparedness for disasters. Through this process, the localities are able to improve their understanding of and resilience to disasters.

Including local elements and actors in disaster management lets them develop programs that best mitigate disaster risks and adapt to environmental changes in the area. To achieve this bottom-up model, the local governments should be provided with more resources and assistance to build up their capacity of managing disaster risks and impacts. On the other hand, the local governments may incorporate non-government organizations [hereafter “NGOs”] and citizens in disaster management to alleviate the burden on local officials and strengthen the resilience of local communities. Many NGOs in Taiwan have devoted themselves to disaster relief and recovery efforts in response to major disasters. Through close and effective collaboration, it is possible that the engagement of the NGOs in disaster management can help the local governments better handle disaster risks and impacts.

For instance, after the 9/21 Earthquake, the Red Cross Society of the ROC, World Vision Taiwan, the Presbyterian Church in Taiwan, and many other organizations provided shelter, food, and medical care to disaster victims immediately after the earthquake. The NGOs also assisted people in recovering their houses, businesses, and mental health.¹⁶⁰ After Typhoon Morakot, NGOs such as the Tzu-chi Foundation built houses on public land provided by the government to help people move from risky areas to safe sites. Nevertheless, although some large NGOs have substantial resources for disaster aid and recovery, foreign NGOs cannot supersede local operations. In the end, the local governments, communities, and people are those who to make decisions, develop capabilities, and implement strategies for disaster mitigation and adaptation.

160. See XINGZHENG YUAN JIUERYI ZHENZAI ZAIHOU ZHONGJIAN TUIDONG WEIYUANHUI (行政院九二一震災災後重建推動委員會) [9/21 EARTHQUAKE RECONSTRUCTION COUNCIL, EXECUTIVE YUAN], JIUERYI ZHENZAI ZHONGJIAN JINGYAN (XIA) (九二一震災重建經驗(下)) [EXPERIENCE OF THE 9/21 EARTHQUAKE RECONSTRUCTION (VOL. 2)] 489-548 (2006).

It should be noted that the bottom-up model also has some shortcomings, which may be addressed by emphasizing different functions of the national and local governments in different disaster stages. Specifically, in a disaster cycle, management works in every stage are closely connected, but it is also important to distinguish the stages for the particular issues and required efforts in each stage. Generally, the municipal/county and township governments have close relationships with local communities, so the local governments can gradually increase resilience to disasters through investigating the local environment, finding possible threats, improving public infrastructure, and helping communities and people prepare for disasters in the long run. In contrast, the national government has more power, personnel, and resources to effectively coordinate response works and provide assistance when a major disaster occurs and requires immediate reaction.

In the bottom-up model, the local governments take great responsibility for disaster management, and the role of the national government is more that of a coordinator and supporter. In times of calm, the local governments are efficient at realizing local situations and developing disaster mitigation and adaptation strategies to meet actual needs in the diverse surroundings. In times of disaster, the local governments may request help from the central government that acts in a supportive capacity. Even more, the national government may be active in emergency response especially when catastrophic disasters overwhelm the localities, and communications are down.

This request for the higher-level government to take more responsibilities in emergency response can be seen in recent reforms in the United States, where in general the federal government responded to disasters in supplement to the state governments. After government failure in handling the huge damage caused by the 2005 Hurricane Katrina led to strong criticism of the U.S. government, Congress amended the Stafford Act in 2006 to authorize the federal government to take proactive actions in probable major disasters. Compared to the traditional “pull” system, in which the federal government provides assistance at the request of a state after a major disaster has occurred, the new “push” system encourages the federal assistance to be delivered to disaster-prone areas in advance, without waiting for the local governments to ask for help.¹⁶¹

V. CONCLUSION

While natural disasters have frequently struck Taiwan, disaster laws in

161. See FARBER, CHEN, VERCHICK & SUN, *supra* note 7, at 120.

Taiwan have been under-developed and are inadequate for protecting citizens efficiently from disaster impacts. From 1945 to 1999, disaster effects were principally handled by the executive power through local administrative regulations and presidential emergency decrees. In this phase, the executive branch took full authority and responsibility over conducting disaster response and relief efforts. The regulations in Taiwan Province established organizations in province, county/city, and township governments to deal with disaster impacts. In addition to local administrative regulations, the president had constitutional power to issue an emergency decree to address disaster relief and recovery when a disaster was too destructive for the local governments to handle.

Yet, the function of the local regulations and the presidential emergency decrees was limited to handling an imminent disaster or a disaster that had occurred, neglecting the important task of disaster risk reduction. At the local level, disaster management organizations were temporary teams comprising officials from various departments to deal with damages caused by each specific disaster. The temporary teams were unable to make long-term plans for all stages of a disaster, nor could they deal with large-scale disasters and the resulting problems. At the national level, presidential emergency decrees were issued after the 8/7 Flood in 1959 and the 9/21 Earthquake in 1999 had caused huge life and property losses in Taiwan. The decrees covered a wide range of disaster response, relief, and recovery work, which exceeded the constitutional system's design that an emergency decree should address only urgent needs in an exceptional situation.

In the second period beginning in 2000, the legislature assumed a key role in disaster management in Taiwan. After the destructive 9/21 Earthquake, the legislators took vigorous actions to make abundant laws to guide and regulate post-earthquake recovery. In 2000, the Legislative Yuan not only actively passed a series of laws for post-earthquake reconstruction but also enacted the Disaster Prevention and Protection Act to establish a statutory scheme that covers disaster mitigation, preparedness, response, and recovery. The law creates a three-level structure for disaster effects to be managed by national, municipal/county, and township governments. When an unexpected terrible disaster occurred, like the 2009 Typhoon Morakot, the legislators were able to immediately pass laws to address the needs and problems caused by the disaster.

Although the disaster legal system in Taiwan has been established and reformed in the past decades, it still suffers from several problems. One of the greatest issues is the fragmentation of government authorities and responsibilities of disaster management. At the national, municipal/county, and township levels, there are both a temporary center for emergent disaster response and a permanent council for long-term disaster risk reduction and

preparedness. Also, a variety of ministries and agencies are responsible for specific types of disaster. Taiwan lacks a comprehensive approach to disaster management. In addition, little attention has been paid to increasing local capacity for and involvement in disaster mitigation, preparedness, response, and recovery. The local governments have limited personnel and resources to develop disaster management strategies based on specific social, cultural, and environment contexts.

To address these issues, this paper suggests that the Disaster Prevention and Protection Act may be amended to reorganize the disaster management government structure, creating an agency that helps Taiwan prepare for, respond to, and recover from all hazards in a comprehensive way. Such an agency should be granted the power to carefully outline long-term disaster management plans and effectively assist localities when they are affected by disasters. As the agency plays the role of coordinating disaster management efforts across government departments and levels, it is equally important to increase the capacity and resilience of the localities to independently handle disaster risks and impacts. Including the diverse opinions of local government, communities, and individuals will make disaster mitigation and adaptation strategies more likely to meet actual needs caused by different disaster events in the affected areas.

Disaster is a continuous challenge for Taiwan. The legal history shows that actions taken after a disaster has occurred are inadequate to solve the problems caused by typhoons, earthquakes, and other disasters in Taiwan. Disaster laws and policies decided in an emergency or chaotic situation may even aggravate the plights of people affected by the disasters. In the past, disaster laws have been amended based on experiences and lessons learned from disasters that already caused harm in Taiwan. To pursue better disaster management for protecting Taiwanese people, future reforms of disaster laws should be well considered and conducted in times of calm before the next major disaster strikes.

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臺灣災害法制與治理權責 之發展變遷（1945-2019）

郭 詠 華

摘 要

災害治理包含減緩、整備、應變、重建之不同階段，各階段的治理災害互相牽連影響，而處理當前災害的成效，也影響了未來的災害風險和衝擊程度。災害的發生與治理，形成連續不斷的循環過程。為了深入而完整地探討臺灣災害治理的長期變遷，本文檢視臺灣自1945年起迄今，中華民國法制下歷來的災害治理法規與災害防救政府組織及其權責。詳言之，臺灣的災害法制發展可分為二個時期。在1945至1999年間的第一階段，災害治理以行政權為主導，透過地方行政命令與總統緊急命令，來因應災害應變、善後與救助事宜。災害防救機構限於地方政府內的臨時性組織，處理即將發生之災害事件或已發生之災害損失，較少關注減緩災害的面向。自2000年起，臺灣進入災害治理的第二階段，由立法權積極制定與修正〈災害防救法〉，建立全國的災害治理法律框架與災害防救政府體系。針對特定重大災害後的需求與難題，立法院亦迅速通過〈莫拉克颱風災後重建特別條例〉，作為災後重建的規範基礎。然而，在多次修法之後，治理災害的政府組織與職權仍然相當破碎、分散。本文建議臺灣應建立災害治理事宜的專職機關，賦予其充分職權與資源，致力於長期規劃與協調跨政府部門、層級的災害治理工作。此外，地方政府與社群的災害減緩、整備、應變、與重建能力，也必須受到重視和提升。藉由納入在地知識與多元意見，將使臺灣更能依據特定的社會、文化、環境等具體脈絡來擬定政策與法律，減少災害風險與調適災害衝擊。

關鍵詞： 災害治理、災害法之循環、災害防救組織與權責、災害防救法、由下而上治理模式