

THE COUNTY DISASTER MANAGEMENT BILL, 20...

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A Bill for

AN ACT of the [Insert name of County] County Assembly to provide for a more effective organisation of disaster risk reduction and mitigation of, preparedness for, response to and recovery from emergencies and disasters; and for connected purposes.

ENACTED by the [Insert name of County] County Assembly as follows—

PART 1—PRELIMINARY

Short title 1. This Act may be called the.....[Insert name of County] Disaster Management Act, 20...

Interpretation 2. In this Act, unless the context otherwise requires—

"affected area" means an area or part of the country affected by a disaster;

“Committee” means the Disaster Management Committee established in section 4;

“Directorate” means the Directorate of Disaster Management established in section 7;

"disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area whether natural or manmade;

"disaster management" means a continuous and integrated process of planning, organising, coordinating and implementing measures which are necessary or expedient for—

- (a) prevention of danger or threat of any disaster;
- (b) mitigation or reduction of risk of any disaster or its severity or consequences;
- (c) capacity-building;
- (d) preparedness to deal with any disaster;
- (e) prompt response to any threatening disaster situation or disaster;

- (f) assessing the severity or magnitude of effects of any disaster;
- (g) evacuation, rescue and relief;
- (h) rehabilitation and reconstruction;

“executive committee member” means the county executive committee member responsible for matters relating to disaster management in the county;

"mitigation" means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;

"Plan" means the County Disaster Management Plan prepared under section 10;

"preparedness" means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof.

Objects of the Act

3. The objects of this Act are to—

- (a) establish an efficient structure for the management of disasters;
- (b) enhance the capacity of the county government to effectively manage the impacts of disasters and emergencies and to take all necessary action to prevent or minimise threats to life, health and the environment from natural disasters and other emergencies;
- (c) ensure that the county government effectively coordinates with other relevant agencies to mitigate the impacts of disasters;
- (d) vest authority in persons to act during times of disaster in accordance with this Act, and to require the observance and implementation of directives given and initiatives taken by persons authorised under this Act; and
- (e) implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster situations in the county.

**PART II—ESTABLISHMENT AND ADMINISTRATION OF THE
DISASTER MANAGEMENT COMMITTEE AND THE
DIRECTORATE OF DISASTER MANAGEMENT**

[This model law takes into account instances where a county does not desire an institutional framework for disaster management.]

Establishment and composition of the Disaster Management Committee

- 4. (1) There is established the Disaster Management Committee.**
- (2) The Committee consists of—

- (a) the Governor of the county or a representative appointed in writing by the Governor who shall be the chairperson;
- (b) the executive committee member responsible for matters relating to disaster management in the county;
- (c) two persons working in the area of disaster management appointed by the executive member;
- (d) a person nominated in writing by the Secretary General of the Kenya Red Cross Society;
- (e) a representative of the private sector appointed in writing by the chairperson of an association representing the private sector; and
- (f) the chief executive officer the Fire and Rescue Services Authority in the county or a person nominated in writing by the Chief Executive Officer.

(2) The appointment of the Committee members listed in subsection (1)(c), (d), (e) and (f) shall be done by the executive member.

(3) The chief executive officer appointed in section 7 shall be the Secretary of the Committee.

Functions of the
Committee

- 5.** (1) The functions of the Committee are to—
- (a) advise the county government on matters relating to disaster management;
 - (b) formulate the county disaster management policy;
 - (c) promote education, training and capacity building on disaster management in the county including in schools;
 - (d) advise the county government regarding all financial matters in relation to disaster management;
 - (e) promote an integrated and co-ordinated approach to disaster management in the county, with special emphasis on prevention, mitigation and disaster risk reduction by other role-players involved in disaster management in the county;
 - (f) collaborate with the national government and relevant agencies on matters relating to disaster management;
 - (g) act as a repository of, and conduit for, information concerning—

- (i) disasters;
- (ii) impending disasters; and
- (iii) disaster management

in the county;

(h) act as an advisory and consultative body on issues concerning disasters and disaster management in the county to—

- (i) state organs;
- (ii) the private sector and non-governmental organisations; and
- (iii) communities and individuals;

(i) initiate and facilitate efforts to make funding of disaster management in the county available;

(j) may make recommendations to any relevant of State organ on—

- (i) draft legislation affecting this Act, or any other disaster management issue; and
- (ii) the national disaster management framework;

(k) promote research into the aspects of disaster management in the county;

(l) give advice and guidance by disseminating information regarding disaster management in the county, especially to communities in the county that are vulnerable to disasters; and

(2) The Committee may enter into a partnership with any other agency aimed at promoting the proper exercise of its powers or performance of its duties.

Powers of the
Committee

6. (1) The Committee has all powers necessary for the proper performance of its functions under this Act.

(2) Despite subsection (1), the Committee has the power to—

- (a) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (b) delegate any of its powers;

(c) undertake any activity necessary for the fulfilment of any of the functions of the Committee.

Establishment of the Directorate

7. There is established the Disaster Management Directorate in the county.

Staff of the Directorate

8. (1) The Directorate shall be headed by a chief executive officer who is subject to the direction of the Committee and is responsible to it for the—

(a) implementation of the decisions of the Committee;

(b) day to day management of the affairs of the Directorate;

(c) organization and management of the employees of the Directorate; and

(d) any other function that may be assigned by the Committee.

(3) The chief executive officer and other staff of the Directorate shall be persons recruited, employed and deployed by the County Public Service Board.

Functions of the Directorate

9. (1) The functions of the Directorate are to—

(a) coordinate and monitor the implementation of the National Policy on Disaster Management and the County Disaster Management Plan;

(b) examine the vulnerability of different parts of the county to different disasters and specify prevention, reduction or mitigation measures;

(c) lay down guidelines to be followed for preparation of disaster management plans by the county departments;

(d) evaluate preparedness at all governmental or non-governmental levels in the county to respond to disaster and to enhance preparedness;

(e) co-ordinate response in the event of disaster;

(f) give directions to any county department or authority regarding actions to be taken in response to disaster;

(g) promote general education, awareness and community training in this regard;

- (m) promote the recruitment, training and participation of volunteers in disaster management in the county;
- (h) provide necessary technical assistance or give advice to local officers for carrying out their functions effectively;
- (i) ensure that communication systems are in order and disaster management drills are being carried out regularly; and
- (j) perform such other functions as may be assigned to it by the Committee or any other written law.

County Disaster
Management Plan

10. (1) The Directorate shall prepare the County Disaster Management Plan.

(2) The Plan includes information on—

- (a) the vulnerability of different parts of the county to different forms of disasters;
- (b) the measures to be adopted for prevention and mitigation of disasters;
- (c) the manner in which the mitigation measures shall be integrated with the development plans and projects;
- (d) capacity building and preparedness measures to be taken;
- (e) the roles and responsibilities of each department of the county government in relation to the measures specified in section (b), (c) and (d); and
- (f) the roles and responsibilities of different departments of the county government in responding to any threatening disaster situation or disaster.

(3) The Plan shall be reviewed and updated annually.

Implementation of
Plan

11. The Directorate or other persons designated in the Plan may cause it to be implemented when a disaster has occurred or is imminent.

PART III—MEASURES BY THE COUNTY GOVERNMENT FOR DISASTER MANAGEMENT

Measures to be taken
by the county
government

12. (1) Subject to the provisions of this Act, the county government may take all such measures as it considers necessary or expedient for the purpose of disaster management.

(2) Without prejudice to the generality of subsection (1), the measures which the county government may take includes measures with respect to all or any of the following matters, namely—

- (a) co-ordination of actions of the departments and divisions of the county government, county governmental and non-governmental organizations in relation to disaster management;
- (b) co-operation and assistance to any other person, as requested by them or otherwise considered appropriate by it;
- (c) establishment of institutions for research, training and developmental programmes in the field of disaster management; and
- (d) such other matters as it considers necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.

(3) The county government may extend such support to other counties affected by a major disaster as it may consider appropriate.

Period of disaster.

13. (1) For the purposes of this Act—

- (a) a disaster exists when the Governor declares, by notice in the County Gazette, that disaster exists after receiving advice from the Committee that a disaster has occurred;
- (b) a threatened disaster exists when—
 - (i) the Governor declares by notice in the County Gazette, after receiving advice from the Committee under subsection (2) that there is a substantial prospect that a disaster shall occur; or
 - (ii) an agency, whether within the county or otherwise, certified by the Directorate as an Accredited Disaster Notification Service under subsection (3), broadcasts or otherwise publishes a formal announcement warning persons of the threat of the striking of a disaster.

(2) The Directorate shall advise the Committee on request, and at any time the Directorate considers appropriate, of the occurrence of, or of the likely occurrence of, a disaster.

(3) The Directorate may certify an agency, within the county, which they consider to have a high level of technical expertise in the prediction or assessment of risk of any kind of disaster, as an

Accredited Disaster Notification Service for the purposes of this Act.

(4) A certification under subsection (3) may be general or limited to specified kinds of disaster.

Declaration of period
of disaster

14. (1) Subject to section 12, the Governor may issue a declaration of period of disaster which would activate, with immediate effect, the disaster response provisions of the Plan in the event of a disaster.

(2) Immediately after the declaration of a period of disaster, the Governor shall cause the details of the declaration to be communicated by the most appropriate means to the residents of the affected area.

Declaratory powers
under a disaster
situation

15. Upon the declaration of a period of disaster, the Governor may, in respect of the county, issue an order to a person to do everything necessary to prevent or limit loss of life and damage to property or the environment, including any one or more of the following—

(a) cause emergency plans to be implemented;

(b) utilize any property considered necessary to prevent, combat or alleviate the effects of any disaster;

(c) authorize or require any qualified person to render aid of such type as that person may be qualified to provide;

(d) control, permit or prohibit travel to or from any area or on any road, street or highway;

(e) cause the evacuation of persons and the removal of livestock and personal property and make arrangements for their adequate care and protection;

(f) control or prevent the movement of people and the removal of livestock from any designated area that may have a contaminating disease;

(g) authorize the entry into any building, or upon any land;

(h) cause the demolition or removal of any trees, structure or crops in order to prevent, combat or alleviate the effects of a disaster;

(i) authorize the procurement and distribution of essential resources and the provision of essential services;

(j) regulate the distribution and availability of essential goods, services and resources;

(k) provide for the restoration of essential facilities, the distribution of essential supplies and the maintenance and co-ordination of emergency medical, social and other essential services; and

(l) expend such sums as are necessary to pay expenses caused by the disaster.

Termination of a period of disaster

16. (1) The Governor may terminate a period of disaster with respect to the county identified in the declaration of a disaster when, in the opinion of the Governor, the disaster no longer exists.

(2) Upon termination of a period of disaster referred to in subsection (1), the Governor shall cause the details of the termination to be communicated, by the most appropriate means, to the residents of the affected areas in the county

Steps to abate danger

17. (1) Where the Directorate identifies an area as likely to pose a danger in the event of a disaster, it shall—

(a) certify that, in writing, to the owner or occupant of the property; and

(b) give the owner specific instructions as to the steps to take to abate or remove the danger upon receipt of the notice.

(2) Upon failure to comply with the requirements after notice, the Directorate shall take the steps necessary to give effect to the notice including entry by its employees or agents upon the premises after due notice to the owner or occupant of the premises.

(3) Any step which the Directorate takes under subsection (2) must be reasonable in the circumstances with every care taken to ensure minimal damage to the area.

(4) A person who is served with a notice under subsection (1) and who does not take all the steps as directed by the Directorate in the notice to abate or remove the potential danger within four weeks from the date of receipt of the notice, commits an offence and in addition to any penalty imposed under section 21 shall be made to pay any expenses which the Directorate incurs to abate or remove the danger.

(5) An employee or an agent of the Directorate exercising a function under this section must properly identify themselves to the occupant or owner of the property on which the danger was identified, by the production of their badge, tag or other identification device provided by the Directorate.

PART IV—FINANCIAL PROVISIONS

Establishment of the
County Disaster
Management Fund

18. The county government shall establish the County Disaster Management Fund which shall be administered, on behalf of the Directorate, by the chief executive officer.

(2) The County Disaster Management Fund shall be financed from the following sources, namely—

- (a) such monies or assets as may accrue to the Directorate in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) grants made by the national government or other county governments; and
- (c) loans, aid or donations from national or international agencies; and
- (d) all monies from any other source provided or donated or lent to the Directorate.

(3) The County Disaster Management Fund shall be used towards meeting the following expenses for emergency preparedness, response, mitigation, relief and reconstruction in the county after a disaster.

(4) The chief executive officer shall administer the County Disaster Management Fund subject to the provisions of all laws and regulations relating to public financial management.

Allocation of funds for
disaster management

19. The county government shall, in their annual budgets, make provisions for funds for the purposes of carrying out the activities and programmes set out in its Plan.

Emergency
procurement

20. (1) Where, by reason of any impending disaster, the Committee is satisfied that immediate procurement of provisions or materials or the immediate application of resources are necessary for rescue or relief, the concerned department may procure the provisions or materials directly.

(2) The procurement referred to in subsection (1) shall comply with the laws relating to public procurement.

Annual estimates

21. (1) Before the commencement of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure of

the Directorate for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Directorate for the financial year concerned and, in particular, shall provide for the—

(a) funding of training, research and development of activities of the Directorate;

(b) funding of education, training and capacity building on disaster management in the county; and

(c) such other matters as the Directorate may consider fit.

(3) The annual estimates shall be approved by the Committee before the commencement of the financial year to which they relate and shall be submitted to the executive committee member for transmission to and tabling in the County Assembly.

(4) Expenditure of the Directorate shall not be incurred except in accordance with the annual estimates approved under subsection (3).

Accounts and audit

22. (1) The Committee shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities.

(2) Within a period of three months after the end of each financial year, the Committee must submit to the Auditor-General the accounts of the Directorate in respect of that year together with—

(a) a statement of the income and expenditure of the Directorate during that year; and

(b) a statement of the assets and liabilities of the Directorate on the last day of that financial year.

(3) The annual accounts of the Directorate must be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

Financial year

23. The financial year of the Directorate shall be the period of twelve months ending on the thirtieth June in each year.

PART V—OFFENCES AND PENALTIES

Obstruction

24. A person who obstructs the Directorate or any person in the performance of an action authorized by this Act or who contravenes or fails to comply with—

(a) a provision of this Act or any regulation; or

(b) a direction, order or requirement made pursuant to this Act or the regulations,

commits an offence and is liable on conviction to—

(a) in the case of an individual, to a fine not exceeding five hundred thousand shillings or to imprisonment of not more than six months or to both; or

(b) in the case of an entity, to a fine not exceeding five million shillings.

False claim

25. A person who knowingly makes a claim which they know or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the county government is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment of not more than one year, or to both.

Misappropriation of money or materials

26. A person being entrusted with any money or materials, or otherwise being in custody of money or goods meant for providing relief in a threatening disaster or disaster, misappropriates or disposes of such money or materials or any part or wilfully compels any other person to do so, is liable on conviction, to a fine not exceeding one million shillings or imprisonment of not more than three years, or to both.

False alarm

27. A person who makes or circulates a false alarm or warning as to a disaster or its severity or magnitude, leading to panic, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment of not more than one year, or to both.

(2) Despite subsection (1), no offence is committed where a disaster drill is being carried out.

(3) For the purposes of this section, a disaster drill is a practice of the emergency procedures to be used in case of a disaster.

General penalty

28. A person who commits an offence under this Act for which no penalty is prescribed is liable on conviction to a fine not exceeding one hundred thousand shillings or to imprisonment for a period not exceeding one year, or to both.

PART VI—MISCELLANEOUS PROVISIONS

Power to requisition

29. (1) Where it appears to the Directorate that—

resources for rescue operations

- (a) any resources with the county government or any authority or person, are needed for the purpose of a prompt response;
- (b) any building or building materials or land or premises to demolish any building or other structure, as the case may be, is needed or likely to be needed for the purpose of rescue operations;
- (c) any vehicle including bulldozers, tractors, motor vehicles, carts, carriages, boats and other means of transport by air, land or water is needed or is likely to be needed for the purposes of transport of resources from disaster affected areas or transport of resources to the affected area or transport in connection with rescue, rehabilitation or reconstruction; or
- (d) directions are required to be issued to any person to abstain from a certain act or to take certain order with regard to certain property in their possession or under their management;

the Directorate may, by order in writing, requisition such resources or premises or vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in this connection.

(2) The owners of premises, resources or vehicles affected by orders issued under paragraphs (b), (c), and (d) in subsection (1), shall be entitled to claim reasonable compensation as admissible under any law for the time being in force.

(3) The compensation referred to in subsection (2) must be full and paid promptly.

(4) Where a person is aggrieved by the amount of compensation awarded under subsection (2), the person may within thirty days appeal to Court.

Protection from personal liability

30. No action or proceeding may be brought against any person acting under the authority of this Act, including an agent, for anything done, or not done—

(a) in the performance or intended performance of a duty under this Act; or

(b) in the exercise or intended exercise of a power under this Act;

unless the person was acting in bad faith.

Entry upon property

31. A person, in the course of implementing an disaster management plan

pursuant to this Act or the regulations may, at any time, enter any property.

Direction for communication of warnings

32. The Directorate, with authorization from the Committee, may give direction to any authority or person in control of any audio or audio-visual media or such other means of communication as may be available to carry any warning or advisories regarding any threatening disaster situation or disaster, and the said media or means of communication must comply with such direction.

Regulations

33. The executive committee member may make regulations on—

- (a) emergency planning for the continuity of functions of departments, boards, corporations and other agencies of the county;
- (b) the vesting of special powers and duties in various departments and agencies of the county for the purposes of emergency planning and the implementation of disaster management plans;
- (c) the recognition of the professional, trade or other qualifications of persons sent to the county by another jurisdiction under an agreement entered into during a state of emergency or a period of disaster;
- (d) the emergency planning, evaluation, and level of preparedness required of counties;
- (e) emergency planning, evaluation and reporting for non-governmental entities;
- (f) prescribing the forms to be used for a declaration of a period of disaster and renewals and termination of the same;
- (g) the establishment, operation, liability and responsibilities of ground search and rescue organizations; and
- (m) any matter that the executive committee member considers necessary for the administration of this Act.