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**THE KAKAMEGA COUNTY DISASTER MANAGEMENT
ACT, 2015**

No. 3 of 2015

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**THE KAKAMEGA COUNTY DISASTER MANAGEMENT
ACT, 2015**

AN ACT of the County Assembly of Kakamega to provide for effective organisation and response to emergencies and disasters in Kakamega County

ENACTED by County Assembly of Kakamega, as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Kakamega County Disaster Management Act, 2015.

Interpretation

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

“Affected area” means an area or part of the county affected by a disaster;

“Centre” means a centre established in accordance with section 6 of this Act;

“Chief Officer” means the accounting officer in the Ministry of Public Service and Administration responsible for disaster management;

“Committee” means the Disaster Management Committee established under section 3;

“Disaster” means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, 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 and or magnitude as to be beyond the coping capacity of the community of the affected area;

“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;

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- (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 member” means the county executive committee member responsible for matters relating to public service and administration in the county;

“Fund” means the County Disaster Management Fund established by the county government under section 16;

“Ministry” means the department of the county government and headed by the executive committee member for the time being responsible for matters of public service and administration;

“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 and Manual contemplated under section 5 (1) (i); and

“Preparedness” means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof.

“State of emergency” means the period from the declaration of a disaster by the Governor under section 11 until the declaration by the Governor that such disaster has terminated.

Object and purpose

- 3.** The object and purpose of this Act is to—
- (a) establish an efficient structure for the management of disasters and emergencies;
 - (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 minimize threats to life, health and the environment from natural disasters and other emergencies;
 - (c) vest authority in persons to act during times of disaster and emergency in accordance with this Act, and to require the observance and implementation of directives given and initiatives taken by persons authorized under this Act; and

- (d) Implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster or emergency situations in the county.

**PART II—ESTABLISHMENT AND ADMINISTRATION OF THE
COUNTY DISASTER MANAGEMENT COMMITTEE AND THE
DISASTER OPERATION CENTRE**

Establishment and composition of the Disaster Management Committee

- 4. (1) There is established a committee to be known as the County Disaster Management Committee.
 - (2) The Committee shall consist of—
 - (a) the Governor of the county or a representative appointed in writing by the Governor who shall be the chairperson;
 - (b) the executive member for the time being responsible for matters relating to public service and administration in the county;
 - (c) the County Secretary who shall serve as the secretary of the Committee;
 - (d) Executive Committee Member for the time being responsible for matters relating to Environment;
 - (e) the County Commissioner;
 - (f) the County Police Commander;
 - (g) the County Head of Medical Services;
 - (h) the County Public Works Officer;
 - (i) County Chief Security Officer;
 - (j) the Chief Fire Officer;
 - (k) the Director of the Centre for Disaster Management and Humanitarian Assistance at the Masinde Muliro University of Science and Technology;
 - (l) an officer for the time being responsible for mines and geology in Kakamega County;
 - (m) a person nominated in writing by the Council of the Kenya Red Cross Society;
 - (n) a person nominated by the National Council of the Priory St. John Ambulance Kenya;

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- (o) a representative of the private sector nominated by the Executive Committee Member;
 - (p) a representative from the Inter-Religious Council of Kenya, resident in Kakamega County;
 - (q) a nominee of the Member of the County Assembly of the affected area;
 - (r) any other person(s) co-opted by the committee.
- (3) the Committee may establish sub-committees consisting of its members to deal with such matters as the Committee may specify.
- (4) The expenses of the Committee shall be provided for from the fund established under section 16 (1).
- (5) The Committee shall regulate its own procedure on meetings and the quorum of their meeting shall be 1/3 of the members.

Functions of the Committee

- 5.** (1) The functions of the Committee shall include the following—
- (a) promote an integrated and co-ordinated approach to disaster management in the county, with special emphasis on prevention and mitigation by other role-players involved in disaster management in the county;
 - (b) act as a repository of, and conduit for, information concerning disasters, impending disasters and disaster management in the county;
 - (c) 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;
 - (d) receive any grants, gifts, donations or endowments for purposes of disaster management in the county and their distribution for this purpose there from;
 - (e) initiate and facilitate efforts to make funding of disaster management in the county available;
 - (f) may make recommendations to any relevant State organ on—

- (i) draft legislation affecting this Act, or any other disaster management issue; and
 - (ii) the national disaster management framework;
 - (g) promote research and training into the aspects of disaster management in the county;
 - (h) give advice and guidance by disseminating information regarding disaster management in the county, especially to communities in the county that are vulnerable to disasters;
 - (i) preparation of the County Disaster Management Manual; and
 - (j) exercise any powers and perform any duties delegated and assigned to it under this Act or any other written law.
- (2) The Committee may engage in any lawful activity in the county, whether alone or together with any other organization aimed at promoting the proper exercise of its powers or performance of its duties.

Establishment of the Disaster Operations Centre

6. (1) There is established the County Disaster Operations Centre at such convenient and accessible location as shall be determined by the committee.

(2) The Centre shall serve as the headquarter of the Committee.

Staff at the Centre

7 (1) The Committee shall determine the staff requirements of the Centre and communicate the same to the Minister for the following purposes—

- (a) implementation of the decisions of the Committee;
- (b) management of the day to day affairs of centre;
- (c) preparation of the County Disaster Management Plan; and
- (d) co-ordination and monitoring of the implementation of the National Policy on Disaster Management and the County Disaster Management Plan;
- (e) co-ordination of response in the event of disasters;
- (f) receipt, collation, compilation, storage and dissemination of such information and or data as shall be necessary for communication to the public;

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- (g) surveillance of early warning on vulnerability of any area in the county to disasters;
- (h) ensuring that communication systems are in order and disaster management drills are being carried out regularly; and
- (i) any other function that may be assigned by the Committee.

(2) The Centre referred to in section 6 (1) above shall be administered by an Administrator deployed by the office of the Governor in consultation with the Executive Committee Member who shall deploy such other public officers or staff as may be necessary for the proper and efficient discharge of the functions of the Committee and the Centre under this Act.

Implementation of Plan

8. In the event of a real or apparent emergency and or a disaster has occurred or is imminent, the Committee or other persons designated in the plan shall cause the plan to be implemented.

PART III—DISASTER MANAGEMENT

County government to take measures

9 (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 include 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 at the sub county level; 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 on such terms as shall be decided by the Committee.

Declaration of emergency

10. (1) For the purposes of this Act—

- (a) An emergency exists when the Governor declares, by notice that a state of emergency exists in the county after receiving advice from the Committee;
- (b) a threatened disaster exists when—
 - (i) the Governor declares by notice, after receiving advice from the Committee under subsection (2) that there is substantial prospect that a disaster shall occur; or
 - (ii) an agency, whether within the county or otherwise, acknowledged by the Committee 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 Committee shall formally advise the Governor and at any time it considers appropriate, of the occurrence or the likely occurrence of a disaster.

(3) The Committee may acknowledge an agency, within the county, which it considers to possess the 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) An acknowledgment under subsection (3) may be general or limited to specified kinds of disaster.

Communication of declaration

11. Immediately upon declaration of a state of emergency, the Governor shall cause the details of the declaration to be communicated by the most appropriate means to the residents of the affected area.

Duration of declaration

12. (1) A declaration under section 11 is valid for a period of 14 days from the date of the declaration.

(2) Notwithstanding the provisions of subsection (1) above, the Governor may, if necessary, extend the duration of the declaration for further period of 14 days for as long as the disaster persists.

Emergency powers

13. Upon the declaration of, and during a state of emergency, the Governor may, in respect of the county, issue an order to a person, body of persons or organization 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 things—

- (a) cause emergency plans to be implemented;
- (b) utilize any property considered necessary to prevent, combat or alleviate the effects of any emergency or 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 without warrant;
- (h) cause the demolition or removal of any trees, structure or crops in order to prevent, combat or alleviate the effects of an emergency or 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 emergency.

Termination of a state of emergency

14. (1) The Governor may terminate a state of emergency with respect to the county as identified in the declaration of a state of emergency when, in the opinion of the Governor, and upon advise of the Committee, the emergency no longer exists.

(2) Upon termination of a state of emergency 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.

Steps to abate danger

15. (1) Where the Committee identifies premises as likely to pose a danger in the event of a disaster, it shall—

- (i) certify in writing to the owner or occupant of the property; and
- (ii) instruct the owner on the specific steps to be undertaken to abate or remove the danger within such period as shall be determined by the committee to be adequate.

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

(3) A person who is served with a notice under subsection (1) and who does not take all the steps as instructed by the Committee in the notice to abate or remove the potential danger within such duration as specified under the notice, commits an offence and in addition to any penalty imposed under section 22 shall be liable to pay any expenses which the Committee shall incur in the abatement or removal of the danger.

(4) An agent of the Committee 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 Committee.

PART IV—COUNTY DISASTER MANAGEMENT FUND**County Disaster Management Fund****No. 17 of 2011**

16. (1) The County Government shall establish the County Disaster Management Fund separate from the County Emergency Fund as

established under the Contingencies Fund and County Emergency Funds Act which shall be administered, on behalf of the Committee, by the Chief Officer.

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

- (a) Disbursement by the County Government as provided for under a budget or supplementary budget;
- (b) such monies or assets as may accrue to the Committee in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) grants made by the national government or other county governments; and
- (d) grants, aid or donations from national or international agencies; and
- (e) All monies from any other source provided or donated to the Committee.

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

(4) The Chief 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

17. The County Government shall, in its annual budgets, make provisions for funds for the purposes of carrying out the activities and programmes set out in its Disaster Management Plan.

Emergency procurement

18. (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 or authority may use direct procurement.

(2) The direct procurement referred to in subsection (1) must comply with the Public Procurement and Disposals Act, Chapter 412A, Laws of Kenya.

PART V—OFFENCES AND PENALTIES**Obstruction**

19. A person who obstructs the Committee 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,
- (c) commits an offence and is liable on conviction to—
 - (i) in the case of an individual, to a fine not exceeding one hundred thousand shillings or to imprisonment of not more than one year or to both; or
 - (ii) In the case of a corporation, to a fine not exceeding two hundred thousand shillings.

False claim

20. 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

21. Any person, being entrusted with any money or materials, or otherwise being in custody of money or goods meant for providing relief in or for a disaster or disaster within the county, 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 five hundred thousand shillings or imprisonment of not more than two years, or to both.

False alarm

22. Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment of not more than one year, or to both.

General penalty

23. 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 resources for rescue Operations**

24 (1) Where it appears to the Committee that—

- (a) any resources with the county government or any authority or person, are needed for the purpose of a prompt response; or
- (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; or
- (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 Committee 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.

Protection from personal liability

25. 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, or for any neglect—

- (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

26. A person, in the course of implementing an emergency management plan pursuant to this Act or the regulations may, at any time, enter any property.

Committee's Power of direction

27. The Committee may give direction to any authority or person, body of persons or organization 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

28. The executive committee member with advice from the Centre may make regulations on—

- (a) emergency planning for the continuity of functions of departments, boards, commissions, 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 emergency 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 state of local emergency;
- (d) the emergency planning, evaluation, and level of preparedness required in the county;
- (e) emergency planning, evaluation and reporting for non-governmental entities;
- (f) prescribing the forms to be used for a declaration of a state of emergency and renewals and termination of the same;
- (g) the establishment, operation, liability and responsibilities of ground search and rescue organizations;
- (h) prescribing renewal periods for states of emergency; and
- (i) any matter that the executive member considers necessary for the administration of this Act.