

THE SIAYA COUNTY DISASTER MANAGEMENT BILL, 2015

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THE SIAYA COUNTY DISASTER MANAGEMENT BILL, 2015

A Bill for

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

ENACTED by the County Assembly of Siaya as follows—

PART I—PRELIMINARY

Short Title 1. This Act may be cited as the Siaya County Disaster Management Act, 2015.

Interpretation 2. In this Act—

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

"committee" means the Disaster Management Committee established under section 4;

"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 the 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; and

(h) rehabilitation and reconstruction;

“executive committee member” means the county executive committee member responsible for matters relating to finance 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 7;

"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, property 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**

**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 his or her representative appointed in writing by the Governor and who shall be the chairperson;
 - (b) the executive committee member responsible for matters relating to finance in the county;
 - (c) two persons working in the area of disaster management appointed by the executive committee member in charge of finance;
 - (d) a person nominated in writing by the Secretary General of the Kenya Red Cross Society;
 - (e) a representative of the private sector nominated in writing by the chairperson of an association representing the private sector;
 - (f) a representative of the Kenya Fire Brigade nominated in writing;
 - (g) a representative of the Kenya Ports Authority nominated in writing;
 - (h) a representative of the Kenya Ferry Services nominated in writing;
- (2) The appointment of the Committee members listed in subsection (1) (d),(e), (f), (g) and (h) shall be done by the executive member.
- (3) The executive committee member shall be the Secretary of the Committee.
- (4) The members of the committee shall serve on a part time basis.

**Functions of the
Committee**

- 5.** (1) The functions of the Committee are to—
- (a) coordinate and monitor the implementation of the County Policy on Disaster Management and the County Disaster Management Plan;
 - (b) examine the vulnerability of different parts of the county to different disasters and identify specific 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;
 - (h) promote the recruitment, training and participation of volunteers in disaster management in the county;
 - (i) advise the county government on matters relating to disaster management;
 - (j) formulate the county disaster management policy;
 - (k) promote education, training and capacity building on disaster management in the county including in schools;
 - (l) advise the county government regarding all financial matters in relation to disaster management;
 - (m) 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;
 - (n) collaborate with the national government and relevant agencies on matters relating to disaster management;
 - (o) act as a repository of, and channel for information concerning
 - (i) disasters;
 - (ii) impending and potential disasters; and
 - (iii) disaster management;
 - (p) 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;
- (q) initiate and facilitate efforts to make funding of disaster management in the county available;
 - (r) promote research into the aspects of disaster management in the county; and
 - (s) give advice and guidance by disseminating information regarding disaster management in the county, especially to communities that are vulnerable to disasters;
- (2) The committee may enter into a partnership with any other organisation aimed at promoting the proper exercise of its powers or performance of its duties.

Powers of the Committee

6. (1) The committee shall possess all powers necessary for the proper performance of its functions under this Act.
- (2) Notwithstanding subsection (1), the committee has the power to—
- (a) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
 - (b) delegate any of its powers;
 - (c) Undertake any activity necessary for the fulfilment of any of the functions of the Committee.

County Disaster Management Plan

7. (1) The Committee 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 paragraph (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 the Plan

6. Any person or organisation 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 County Government

7. (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

- 8.** (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 potential 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 Committee as an accredited disaster notification service under subsection (3), broadcasts or otherwise publishes a formal disaster warning persons of a potential disaster.

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

(3) The committee 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

9. (1) Subject to section 10 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

10. Upon the declaration of a period of disaster, the Governor may 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 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

11. (1) The Governor may terminate a period of disaster within the county identified in the declaration of a disaster when, on advise of the committee, 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

- 12.** (1) Where the Committee identifies potential cause of disaster it shall-
- (a) certify in writing to the owner or occupier of the potential source of the threat; and
 - (b) give the owner or occupier specific instructions as to the steps to take to abate or remove the danger upon receipt of the notice. The notice shall identify the specific action to be taken and the time frame within which such action shall be undertaken.
- (2) Upon failure to comply with the requirements after the notice, the Committee 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 Committee 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 Committee 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 Committee incurs to abate or remove the danger.
 - (5) An employee or an agent of the Committee exercising a function under this section must properly identify himself or herself 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—FINANCIAL PROVISIONS

Authority to open
a bank account by
the Disaster
Management
Committee

- 15.** (1) The Committee shall open a bank account which shall be administered on behalf of the Committee by the Secretary.
- (2) The account shall be financed from the following sources —
- (a) such monies, levies 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;
 - (b) grants made by the national government or other county governments;
 - (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 Committee.

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

(4) The secretary shall administer the account subject to the provisions of all laws and regulations relating to public financial management.

**Allocation of funds
for disaster
management**

16. 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 the disaster management.

**Emergency
procurement**

17.(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 and in conformity with all applicable procurement laws.

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

Annual estimates

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

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

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

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

(c) such other matters as the Committee 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 Committee shall not be incurred except in accordance with the annual estimates approved under subsection

(3) and in line with the Public Finance Management Act.

Accounts and audit **19.** (1) The Committee shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities.

(2) The annual accounts of the Committee 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 **20.** The financial year of the Committee shall be the period of twelve months ending on the thirtieth June in each year.

PART V—OFFENCES AND PENALTIES

Obstruction **21.** 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 provision of this Act 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 six months or to both; or

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

False claim **22.** 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 a 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 **23.** A person being entrusted with any money or materials, or otherwise being in custody of money or goods meant for providing relief in a 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

24. (1) 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

25. 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

26. (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;

(b) any building, premises or other structure that is needed for purposes 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 Committee may make an order in writing as may be necessary or expedient in mitigating the disaster.

(2) The owners of premises, resources, vehicles or other property 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 appeal to Court.

Entry on property

27. A person in the course of implementing a disaster management plan pursuant to this Act, or the regulations may at any time, enter any property.

Direction for communication of warnings

28. 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 may comply with such direction.

Regulations

29. 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
- (h) Any matter that the executive committee member considers necessary for the administration of this Act.

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HON. JOHN GARE
MCA, WEST SAKWA WARD