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SUPPLEMENT***

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THE BUSIA COUNTY DISASTER MANAGEMENT BILL, 2015

A Bill for

AN ACT of the Busia County Assembly to provide for a more effective organisation of, preparedness for, response to, recovery, reconstruction and mitigation of disaster, and for connected purposes.

ENACTED by the Busia County Assembly as follows—

PART I—PRELIMINARY

Short title.

1. This Act may be cited as the Busia County Disaster Management Act, 2015 and shall come into effect on the 14th day after gazettment.

Interpretation.

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

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

“Committee” means the County Disaster Management Committee established in section 12;

“Council” means the Council established under section 9;

“County” means Busia County;

“County Assembly” means Busia County Assembly;

“County Government” means the County Government of Busia;

“Directorate” means the directorate established under section 14;

“Disaster” means a serious disruption of the functioning of a county or a society within the County causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources;

“disaster management” means all activities undertaken in accordance with this Act for prevention, mitigation, preparedness, response and recovery from disasters and emergencies;

“disaster preparedness” means a state of readiness to deal with a threatening disaster situation or the effects thereof and includes any activity undertaken in anticipation of a disaster, hazard or other emergency situation in order to reduce any negative impact;

“disaster risk reduction” means a conceptual framework of elements considered with possibilities to minimise vulnerabilities and disaster risks throughout a society to avoid, prevent or limit the adverse impacts of hazards;

“emergency” means a sudden, unexpected or impending situation that may cause injury, loss of life, damage to property and interference with the normal activities or functioning of a community or society and which, therefore, requires immediate attention and remedial action;

“Executive Member” means the County Executive Committee Member for the time being responsible for matters relating to disaster management in the County;

“functions” includes powers and duties;

“financial year” means the period of twelve months ending on the thirtieth of June in each year;

“Fund” means the Disaster Management Fund established under section 29;

“hazard” means a natural or man-made phenomenon which may cause physical damage, economic losses, or threaten human life and well-being, if it occurs in an area of human settlement, agricultural or industrial activity;

“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 17;

Objectives of the Act.

3. The objectives of this Act are to—
- (a) establish an efficient institutional framework for the management of disasters and emergencies;
 - (b) facilitate and co-ordinate the development and implementation of an integrated disaster preparedness and emergency management system in the County;
 - (c) establish and provide effective response, relief and recovery management structures in the event of disasters and emergencies by promoting co-operation amongst governmental and non governmental agencies with a role in disaster management, and enhancing their capacities to maintain the provision of essential services including psychosocial services during periods of disaster and emergency;
 - (d) 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;
 - (e) to ensure that the public and their property are as well secured and protected from disasters and emergencies as is reasonably possible;
 - (f) encourage public, community and private sector participation in disaster preparedness and emergency intervention;
 - (g) 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 authorised under this Act;

- (h) implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster or emergency situations in the County; and
- (i) to require the preparation and implementation of the plan consisting of response, agency plans prepared by the response agencies and other groups and institutions in accordance with the requirements of this Act.

Guiding Principles.

4. All persons, institutions and organs applying and or implementing the provisions of this Act shall be guided and governed by the principles that—

- (a) every person in the County has a right to life as guaranteed in the Bill of Rights in the Constitution and no person shall be denied emergency medical treatment;
- (b) it is a duty of both the State and the County to observe, respect, protect, promote and fulfil the rights and freedoms of individuals in the Bill of Rights;
- (c) it is a fundamental responsibility of both the State and the County and their organs and institutions to—
 - (i) facilitate and co-ordinate the development and implementation of comprehensive integrated disaster management systems;
 - (ii) avoid and deal with both natural and human-made disasters and emergencies; and
 - (iii) mitigate the impact of the effect thereof;
- (d) the County shall adopt an inclusive, participatory, multi-disciplinary and multi-sectoral approach in matters relating to the implementation of this Act; and
- (e) the public, private sector and civil society shall co-operate and be facilitated to effectively participate in the implementation of this Act.

PART II—ROLES AND RESPONSIBILITIES

Participation by other Stakeholders.

5. The County Government, the public and all institutions in the County shall each jointly and severally contribute to and participate in the establishment, implementation and maintenance of a sound disaster preparedness and emergency management system and programs under this Act.

Adoption of an Integrated Approach.

6. The County Government shall adopt a comprehensive and integrated approach to disaster management in the County and, either alone or in co-operation and collaboration with relevant stakeholders, address effective disaster management systems.

Roles and Responsibilities of the County Government.

7. (1) In collaboration and co-operation with other stakeholders, the County Government shall develop, implement and ensure due compliance with disaster preparedness and emergency mitigation policies and strategies in all relevant areas of government activity, including land use planning, infrastructure provision, and building standards.

(2) The County Government shall facilitate the establishment of a system to mobilise resources and create a fund to provide County support for emergency relief and community recovery when the County and National emergency response resources are insufficient.

(3) The County Government shall make arrangements and establish programs, within the County, with a view to contribute to the development and maintenance of a disaster and emergency situation by—

- (a) ensuring that there are in place in the County, relevant legislative, regulatory, institutional and financial arrangements and services including security, fire, ambulance, health and water rescue services;
- (b) establishing partnerships and co-operating and collaborating with the National and other county governments

- and local and international agencies, to develop capacity for dealing with emergencies and disasters;
- (c) in collaboration with appropriate National agencies in the County, co-ordinating National functions in the County and providing assistance to other counties and states when requested;
 - (d) providing the public in the County with information of how the County addresses the risks and impacts of hazards through a collaborative approach to the prevention of, preparedness for, response to and recovery from disasters;
 - (e) minimising vulnerability to hazards, protect life, property, the environment adverse social impacts during disasters and facilitating recovery, rehabilitation and reconstruction;
 - (f) ensuring provision of appropriate hazard and emergency awareness, education programmes and warning systems;
 - (g) ensuring that the community and disaster management agencies are prepared for and able to respond to disasters;
 - (h) maintaining adequate levels of well equipped and trained career and volunteer disaster response personnel;
 - (i) ensuring that post-emergency assessment and analysis is undertaken; and
 - (j) co-ordinating County efforts and undertaking research on policy and information in disaster preparedness and emergency management, mitigation practice and identifying County priorities for disaster mitigation.

Roles and Responsibilities of
the Relevant Stakeholders.

8. Without prejudice to the generality of section 5, the following stakeholders shall be responsible for and participate in disaster preparedness and emergency management in the manner provided—

- (a) individuals, families and the community shall take measures to safeguard and protect themselves and their property against risk by actively participating in and promoting of awareness creation, identify risks, adopt mitigation measures and render voluntary services in the event of an emergency;
- (b) personnel in disaster management services and other agencies shall be adequately equipped and shall promptly and efficiently respond to disaster and or emergency alerts;
- (c) the insurance industry shall, wherever possible, advocate risk mapping and mitigation, and assist emergency management agencies with the necessary research and investment for improved hazard identification, risk assessment and mitigation efforts and provide access to affordable insurance against emergencies;
- (d) land use planning shall take into account hazard risks as a mitigation measure in preventing future emergency losses in areas of new development;
- (e) urban planning and design shall include implementation of the best practices that take into account emergency risk reduction measures;
- (f) developers, architects, engineers and the construction industry shall, whenever designing and constructing a building, ensure that their projects do not compromise the long-term safety of those that will live and work in their developments, or increase hazard risks for others in society;

- (g) the architectural and engineering professions shall promote best practices and innovation and educate their members in hazard impacts on structures through tertiary courses and continuing professional education;
- (h) infrastructure providers, owners and operators of essential infrastructure such as telecommunications systems, electricity generation and distribution networks, water and gas pipelines and reticulation networks, sewerage systems, and airports, bridges, tunnels and roads systems shall ensure continuity and quality of services, including priorities for the restoration of services;
- (i) learning and research institutions shall conduct relevant research and promote education on disaster risk reduction;
- (j) businesses and primary producers shall develop and implement plans and strategies to reduce the risk and minimise the impact of disasters by taking appropriate and logistical measures; and
- (k) broadcasters and other media operators in the County shall collectively and individually undertake to ensure that educational and warning messages on disasters and emergencies are disseminated and distributed as required by the public.

PART III— INSTITUTIONAL FRAMEWORK ON DISASTER MANAGEMENT

Establishment and Composition
of the Council.

9. (1) There is hereby established in the County, a Council to be known as the Disaster and Emergency Management Council.

(2) The Council shall be constituted by eleven members as follows—

- (a) the Governor who shall be the chairperson;
- (b) the County Commissioner who shall be the Vice Chairperson;
- (c) the Executive Member who shall be the secretary;
- (d) the County Commander;
- (e) the Speaker of the County Assembly;
- (f) the Executive Member for the time being responsible for finance;
- (g) the Executive Member for the time being responsible for health and sanitation;
- (h) one person nominated by the Kenya Red Cross Society;
- (i) one representative from civil society organisations active on disaster management in the County;
- (j) one representative from the Christian religion; and
- (k) one representative from the Muslim religion.

Functions of the Council.

10. The Council shall have the following functions—

- (a) to review, approve and endorse where appropriate, any recommendation or advice given by the Committee and to give direction to the County Government departments and agencies to ensure that its decisions are immediately carried out;
- (b) to require the implementation of the planning requirements provided for in the Plan and to approve the County Disaster Management Plan and any modification of the plan;
- (c) to oversee the application of the Disaster Management Plan during any period of

- a disaster or emergency and give any order or direction necessary for the plan to be implemented;
- (d) to oversee the implementation of risk reduction, prevention, preparedness, response and recovery activities by all County Government agencies and other agencies performing roles related to disaster management;
 - (e) to lead, co-ordinate, mobilise resources and enhance ministries, institutions, relevant authorities, professional entities, local and international organisations and development partners, public and private institutions and communities in taking action and implementing measures of disaster prevention and mitigation, disaster risk reduction, preparedness, response and recovery aimed at the protection of life and wellbeing of the people, properties, environment and for sustainable development;
 - (f) to ensure that Disaster Management is a County priority with a strong institutional and co-ordination mechanism;
 - (g) to ensure all County policies, plans and initiatives integrate Disaster Risk Reduction matters;
 - (h) to develop or strengthen disaster preparedness mechanisms for effective response at community level including but not limited to establishing strategic stockpiles, contingency Planning, search and rescue, First Aid, disaster recovery planning, among others;
 - (i) to develop a disaster management information system including early warning and disaster information database;

- (j) to ensure disaster management is integrated and mainstreamed into critical sectors including but not limited to health, construction, infrastructure, agriculture, water, environment and natural resources, County economic plans and physical planning;
- (k) to mainstream climate change related risks;
- (l) to establish County disaster dissemination and education strategies including factoring Disaster Risk Reduction issues into county education system and community awareness strategy;
- (m) to review and approve proposed agencies for Disaster Management by the Committee and their plans and budget for funding from the Fund;
- (n) to discharge any other responsibilities or exercise any other powers as provided in the Act or the County Disaster Management Plan.

Consultation and Co-operation
with National Agencies.

11. (1) In performing its functions under this Act, the Council shall collaborate and co-operate with the National agency and or personnel in the County charged with responsibility to manage disasters and emergencies in the County on behalf of the National Government.

(2) For the purposes of subsection (1), the Council shall regularly hold consultative sessions with the National Disaster and Emergency Management agencies on such matters as may be deemed necessary and may form joint committees in furtherance thereof.

Establishment of the Disaster
Management Committee.

12. (1) There is established the County Disaster Management Committee.

(2) The Committee consists of—

- (a) the Executive Member as the chairperson;

- (b) the Chief Officer in charge of Disaster Management as the Secretary;
- (c) the Chief Officer in charge of Finance;
- (d) the Chief Officer in charge of health and sanitation;
- (e) the Chief Officer in charge of water, environment and natural resources;
- (f) the County Director of Disaster Management;
- (g) the County Director of education;
- (h) the Chairman of the County Assembly Committee on Disaster Management;
- (i) a person nominated by the Kenya Red Cross Society;
- (j) a representative of the civil societies active on disaster management in the County; and
- (k) one person nominated by the County Commissioner from the security department.

(3) The appointment of the committee members listed in subsection (1) (i), (j) and (k) shall be done by the Executive Member.

(4) In the absence of the Chairperson, the members of the Committee shall elect one of the members to chair the Committee meeting.

Functions of the Committee.

13. The functions of the committee shall be to—

- (a) implement 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 make disbursements for this purpose there from;
 - (e) initiate and facilitate efforts to make funding of disaster management in the County available;
 - (f) make recommendations to any relevant State organ on—
 - (i) subsidiary legislation affecting this Act, or any other disaster management matter; and
 - (ii) the National Disaster Management framework;
 - (g) promote research 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) vet and recommend three agencies for approval by the council for implementation of Disaster Management in the County; 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 organisation aimed at promoting the proper exercise of its powers or performance of its duties.

Establishment of a Directorate.

14. (1) There is hereby established in the County Public Service, a directorate to be known as the County Directorate for Disaster Management which shall be headed by the County Director for Disaster Management.

(2) The County Director for Disaster Management and other staff of the Directorate shall be persons recruited, employed and deployed by the County Public Service Board.

Functions of the Directorate.

15. (1) The Directorate shall be answerable to the Committee and shall be responsible for—

- (a) implementation of the County and National policies on disaster preparedness and emergency management;
- (b) implementation of the decisions of the Council under the direction of the Executive Member;
- (c) advancing disaster preparedness and emergency management measures in the County;
- (d) facilitation and co-ordination of the development and implementation of integrated disaster management systems in the County;
- (e) day-to-day management of the affairs of the Directorate;
- (f) organisation and management of the staff of the Directorate; and
- (g) any other function that may be assigned to it by the Committee.

(2) Without prejudice to the generality of sub section (1) the Directorate shall carry out such activities as may be necessary to give effect to the objects of this Act and shall—

- (a) develop and implement policies and programmes to achieve and maintain an appropriate state of county and sectoral preparedness to cope with all emergencies in the County;

- (b) lay down guidelines to be followed in the preparation of disaster management plans by the County departments and co-ordinate response in the event of disaster;
- (c) formulate and develop the County Disaster Management Plan;
- (d) establish and maintain the County disaster inventory;
- (e) evaluate preparedness at all governmental and non-governmental levels in the County to respond to disaster and to enhance preparedness;
- (f) give directions to any County department or authority regarding actions to be taken in response to disaster;
- (g) co-ordinate and monitor the implementation of both the National and County policies on disaster management and the County Disaster Management Plan;
- (h) collaborate with administrators, the private sector, civil society and the communities in the sub-counties, towns and urban centres, wards and villages and encourage and support disaster preparedness and mitigation measures;
- (i) provide appropriate training programmes and consulting services related to all aspects of disaster preparedness, disaster mitigation, loss reduction, and disaster management;
- (j) plan and implement programmes to enhance public awareness and understanding of disaster related issues, emergency management, hazard prevention and other similar matters;
- (k) identify and analyse hazards or emergency situations and conduct related operational research into their effects;

- (l) examine the vulnerability of different parts of the County to different disasters and specify prevention or mitigation measures and advise the Committee;
- (m) promote general education, awareness and community training and in this regard, promote disaster management capacity building, training and education in learning institutions in the County;
- (n) promote the recruitment, training and participation of volunteers in disaster management in the County;
- (o) provide necessary technical assistance or give advice to local officers to carry out their functions effectively;
- (p) advise the County Government regarding all financial matters in relation to disaster management;
- (q) encourage the public and private sector to make appropriate provision for their own preparedness, as well as at community and multi-government levels;
- (r) encourage and promote public private sectors co-operation in disaster preparedness and emergency management;
- (s) ensure that communication systems are in order and disaster management drills are being carried out regularly;
- (t) establish and maintain a Fire and Rescue Service within the County;
- (u) ensure that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the discharge of functions;
- (v) establish, maintain and manage mutual assistance and co-operation agreements with the National Government, other County governments and or

organisations with regard to matters of disaster preparedness and management of emergencies;

- (w) co-ordinate all emergency services and other resources used in an emergency; and
- (x) perform such other functions as may be assigned to it by the Committee or any other written law.

PART IV—MEASURES BY THE COUNTY GOVERNMENT FOR DISASTER MANAGEMENT

County Government to take Measures.

16. (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—

- (a) co-ordination of actions of the departments and divisions of the County Government, County Governmental and non-governmental organisations 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.

County Disaster Management
Plan.

17. (1) The Directorate shall prepare the County Disaster Management Plan containing and including information on—

- (a) prevention measures that seek to eliminate or reduce the impact and susceptibility of hazards and increase the resilience of the community to the impact;
- (b) prevention strategies and hazard-specific control programs including building flood levees, bushfire mitigation, installation of smoke detectors, fire alarms and extinguishers and border control as a measure of public health strategy and community education and awareness;
- (c) programs that allow emergency managers and responders to understand their roles, responsibilities, capabilities and capacities and those of others and the vulnerability of different parts of the County to different forms of disasters;
- (d) plans for co-ordinated emergency responses in anticipation of, during and immediately after an emergency in order to ensure that its effects are minimised

- and that people affected are given immediate relief and support to ensure continuity and consistency between response and recovery;
- (e) plans for recovery to address reconstruction, rehabilitation and re-establishment so as to leave the community more resilient than before;
 - (f) clear roles and responsibilities for different departments of the County Government and other players in responding to any threatening disaster situation or disaster;
 - (g) the manner of integrating the mitigation measures with the development plans and projects of the County;
 - (h) legislation and policy to support the preventive measures; and
 - (i) capacity building and preparedness measures to be taken;

(2) Despite subsection (1), the Directorate shall cause to be prepared emergency plans to guide immediate response when disaster strikes in accordance to section 25.

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

Implementation of the Plan.

18. The County Director for Disaster Management and other persons designated in the County Disaster Management Plan shall, in consultation with the Executive Member, cause the plan to be implemented as soon as the declaration of the occurrence of a disaster or emergency is made by the Governor.

Accreditation and Certification of Disaster Notification Services.

19. (1) The Committee may certify an agency, within the County, which it considers 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.

(2) A certified accredited disaster notification service may make broadcasts and or publications under this Part in the County.

(3) A certification under subsection (1) may be general or limited to specified kinds of disaster.

Declaration of Disaster.

20. (1) Upon a decision being taken by the Council that a disaster has occurred or an emergency exists, the Governor may, by notice in the *County Gazette*, declare that a disaster has occurred;

(2) Where the Council, through the Executive Member, advises that there is a substantial prospect that a disaster shall occur, the Governor may, by a Notice in the *County Gazette*, declare that a threatening disaster exists.

(3) An agency, whether within the County or otherwise, certified by the Committee as an Accredited Disaster Notification Service under this Act, may, in a prescribed manner, notify the directorate and broadcast or otherwise publish a formal announcement warning persons of the threat of the striking of a disaster.

(4) The Directorate shall, immediately upon receipt of the notification under sub-section (3), advise the Council thereof and, if it considers appropriate, take necessary action.

Issuance of Declaration Notifications.

21. (1) On the declaration of a disaster or emergency, the Governor shall issue a declaration of disaster or emergency and—

- (a) place a copy thereof before the County Executive Committee; and
- (b) forward a copy thereof to the Speaker of the County Assembly.

(2) The declaration of the occurrence of a disaster shall activate the emergency plan prepared pursuant to section 17 (2).

(3) The County Executive Committee shall, as soon as practicable, but not later than seven days after

the declaration, consider and express itself on the declaration and forward its decision to the County Assembly.

(4) Not later than ten days after the declaration of the occurrence of a disaster or emergency, the Speaker of the County Assembly shall cause to be tabled in the County Assembly, the signed copy of the declaration by the Governor and the decision of the County Executive Committee for the Assembly's debate and resolution.

Communication of Declaration.

22. Immediately after the 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.

23. (1) A declaration under section 20 is valid for a period of 14 days from the date of the declaration.

(2) Despite subsection (1), the Governor may, if necessary, extend the duration of the declaration for further periods of 14 days each.

Period of Disaster.

24. (1) For the purposes of this Act—

(a) a disaster exists when the Governor declares, by Notice, that a 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, after receiving advice from the Committee 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 section 19, 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.

Declaratory Powers Under
Disaster Situation.

25. Upon the declaration of, and during a state of emergency, the Governor may, in respect of the county, issue an order to a person or persons 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) utilise any property considered necessary to prevent, combat or alleviate the effects of any emergency or disaster;
- (c) authorise 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) authorise 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) authorise 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) cause to be expended such sums as are necessary to pay expenses caused by the emergency.

Termination of a Period of Disaster.

26. (1) On the instruction of the Council through the Executive Member an emergency in respect whereof a declaration was made no longer exists in the County, the Governor may terminate the state of emergency either wholly or in respect of a part thereof.

(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.

Responsibility for Co-ordination.

27. On the making of an order under section 20, the County Director of Disaster Management, with the written authority of the Executive Member, shall be responsible for the co-ordination and implementation of any or all necessary plans or programs prepared pursuant to this Act and all persons and agencies involved in the implementation are subject to the control and direction of the executive member or the Director appointed.

Steps to Abate Danger.

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

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

- (ii) give the owner specific instructions as to the steps to take to abate or remove the danger within four weeks of the receipt of the notice.

(2) Upon failure to comply with the requirements after notice, the Directorate shall take the necessary steps 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) 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 41 shall be required to pay any expenses which the Directorate incurs to abate or remove the danger.

(4) 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 V — FINANCIAL PROVISIONS

Establishment of the County
Disaster Management Fund.

29. There is established a Fund in the County to be known as the County Disaster Management Fund which shall be administered in accordance with this Act.

Sources of the Fund.

30. The Fund shall be financed from the following sources—

- (a) monies or assets as may be appropriated to the Fund by the County Assembly;
- (b) 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;

- (c) grants made by the National Government or other County governments;
- (d) loans, aid, donations or gifts from National, international agencies and individuals; and
- (e) all monies from any other source provided or donated or lent to the Directorate.

(2) The Fund may only be used by the County Government to meet urgent and unforeseen expenses relating to disasters and emergencies in the County.

(3) Without prejudice to the generality of subsection (2), the Fund may be used by the County Government for—

- (i) disaster preparedness;
- (ii) emergency responses;
- (iii) disaster mitigation; and
- (iv) emergency relief and reconstruction.

(4) The Executive Member shall, in consultation with the Committee and subject to this Act and the Public Finance Management Act, establish the criteria with which the Fund may be used under this Act.

(5) Subject to this Act and the provisions of the Public Finance Management Act, the Chief Officer shall be the accounting officer in respect of the administration and management of the Fund.

Allocation of Funds for
Disaster management.

31. 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.

Role of the Administrator of
the Fund.

32. (1) The administrator of the Fund—

- (a) shall establish and maintain a separate account in respect of the Fund into which all money appro-

- priated to the Fund shall be paid;
- (b) shall in consultation with the Executive Member responsible for finance, and subject to this Act, administer and manage the Fund.

(2) The Executive Member may, after consultation with the Executive Member responsible for finance, authorise payment from the Fund only—

- (a) if he or she is satisfied that there is an urgent and unforeseen need for expenditure;
- (b) if the payment shall be in accordance with operational guidelines made under regulations approved by the County Assembly under this Act; and
- (c) if the provisions of the Public Finance Management Act have been adhered to and complied with.

Access of the Fund by
Accredited Agencies.

33. Agencies vetted by the Committee and approved by the Council shall access funds from the Fund based on their annual plans and budgets being approved by the Council.

Emergency Procurement.

34. (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 laws relating to public procurement.

Annual Estimates.

35. (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 provisions 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 for 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.

Accounts and Audit.

36. (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.

PART VI—OFFENCES AND PENALTIES

Obstruction.

37. A person who obstructs the Directorate or any person in the performance of an action authorised 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—

- (i) 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
- (ii) in the case of a corporation, to a fine not exceeding five million shillings.

False Claim.

38. Whoever 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.

39. Whoever, 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 five hundred thousand shillings or imprisonment of not more than two years, or to both.

False Alarm.

40. 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.

41. 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 VII—MISCELLANEOUS PROVISIONS

Power to Requisition Resources
for Rescue Operations.

42. (1) Where it appears to the Directorate 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.

(2) 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.

(3) 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.

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

Equipment for Emergency Services.

43. The executive member shall provide and maintain, or contribute to the provision and maintenance of any equipment, facilities and services that the executive member considers appropriate for promoting the efficiency and effectiveness of emergency services.

Powers of an Authorised Person.

44. (1) A person in the County public service who is authorised in writing by the Governor or the Executive Member for the purposes of this section, may do anything that the person believes to be necessary—

- (a) to prevent or contain an emergency or to protect life or property if the person reasonably believes that an emergency has broken out or is about to break out; or
- (b) to rescue people or protect them or their property from serious harm, if the person reasonably believes a road traffic accident has occurred; or
- (c) to discharge any function conferred on the directorate or other public officer in relation to the emergency, if the person reasonably believes an emergency of another kind has occurred; or
- (d) to prevent or limit damage to property resulting from action taken as mentioned in paragraph (a), (b) or (c).

(2) In particular, a public officer who is authorised as mentioned in subsection (1) may under that subsection—

- (a) enter premises or a place, by force if necessary, without the consent of the owner or occupier thereof;

- (b) move or break into a vessel without the consent of its owner;
- (c) close a road;
- (d) stop and regulate traffic; or
- (e) restrict the access of persons to premises or a place.

(3) A person commits an offence, if without reasonable excuse, the person obstructs or interferes with a public officer or other authorised person taking action authorised under this section.

(4) Upon conviction of an offence under subsection (3), a person is liable to a fine not exceeding five hundred thousand shillings; or imprisonment for a term not exceeding three years; or to both.

Identification of Agents and Officers.

45. 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.

Compensation.

46. (1) Where by reason of a disaster which results in a substantial loss of life or human suffering or damage to, and destruction of property or a large scale migration of the affected people consequent to the disaster, the affected people shall be compensated for the loss of life or property, in addition to relief, rehabilitation, or settlement activities.

(2) The amount of compensation shall be determined by the County Government.

Protection from Liability.

47. 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.

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

Direction for Communication
of Warnings.

49. The Directorate, with authorisation 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.

50. (1) The Executive Member may make such regulations and guidelines as may be necessary for the better carrying out of the objectives of this Act.

(2) Without prejudice to the generality of subsection (1), the Executive Member may make regulations regarding—

- (a) membership of committees at the sub county and ward level;
- (b) proper administration of the Fund;
- (c) meetings of the Council and the Committee;
- (d) remuneration and allowances of the members of the Committee and staff of the directorate in consultation with the County Public Service Board; and
- (e) any other matter as may be necessary for the effective performance of the objectives of this Act.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to provide a legal framework for an effective organisation of the mitigation of, preparedness for, response to, and recovery from emergencies and disaster as has been encompassed in its long title.

PART I deals with preliminary provisions of the Bill and includes the objectives that the Bill seeks to achieve and the guiding principles in the implementation of the Act.

PART II talks of the roles and responsibilities of stakeholders and of the County Government in the implementation of the provisions of the Act.

PART III seeks to establish the institutional framework administering Disaster Management including the Council, Committee and the Directorate of Disaster Management. It makes provisions for the composition of the three institutions, together with its functions and powers. Sections 14 and 15 seek to establish the office of the directorate, its staff and functions, with the Directorate being mandated to prepare the County Disaster Management Plan and ensuring its implementation.

PART IV makes provisions for measures to be taken by the County government for disaster management. Section 16 outlines the measures to be undertaken while sections 20 to 28 deal with the declaration of disaster, period of disaster, duration of the disaster and the communication of the disaster to the affected persons.

PART V deals with provisions relating to finances. Sections 29 to 36 establishes the County Disaster Management Fund and provisions for allocation of funds for disaster management, emergency procurement, provisions for annual estimates and accounts and audits.

PART VI deals with provisions relating to offences and penalties in relation to contravention of some of the provisions of the Bill. Sections 37, 38, 39 and 40 respectively outline the offences as hereunder; the offence of obstruction, false claim, misappropriation of money or materials and offence of false alarm. Section 41 gives the general penalty under the Act.

PART VII provides for the miscellaneous provisions that deal with power to requisition resources for rescue operations, compensation of victims of disaster, protection from liability of persons acting under the authority of this Bill, entry upon property, direction for communication of warnings and the general regulations to be made by the executive member.

Pursuant to Standing Order No. 114 of the Busia County Assembly Standing Orders, at Section 50 of the Bill, the Executive Member is given delegatory powers

to make regulations for the proper achievement of the objectives of the Act but with proper consultation and recommendations from the appropriate bodies and entities.

The Bill at Section 25 provides for the limitation to the freedom of movement as encompassed at Article 39 of the Constitution in case of a disaster or emergency.

This Bill concerns the County Government and is under the ambit of County Government functions as outlined at Schedule 4 part 2 of the Constitution of Kenya, 2010 and specifically at paragraph 12 thereof.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be provided for in the County Government of Busia Estimates.

Dated this 10th Day of March 2015

Lucas Wakuloba
*Member County Assembly, Chairperson
Committee on Transport, Public Works and Disaster Management*

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Busia County Disaster Management Bill, 2015
