

SPECIAL ISSUE

Kenya Gazette Supplement No. 13 (Homa Bay County Bills No. 9)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

HOMA BAY COUNTY BILLS, 2019

NAIROBI, 5th August, 2019

CONTENT

Bill for Introduction into the County Assembly of Homa Bay —

PAGE

The Homa Bay County Disaster and Emergency Management Bill, 2019 ...1

**THE HOMA BAY COUNTY DISASTER AND EMERGENCY
MANAGEMENT BILL, 2019**

ARRANGEMENT OF CLAUSES

Clauses

PART I — PRELIMINARY

- 1— Short title.
- 2— Interpretation.
- 3— Object and purpose of the Act.

PART II — COUNTY DISASTER MANAGEMENT STRUCTURE

- 4— Disaster and Emergency Management Council.
- 5— Establishment of the Directorate.
- 6— Functions of the Directorate.
- 7— Administration of the Directorate.

PART III—COUNTY DISASTER MANAGEMENT PLAN

- 8— The Plan.
- 9— Role of the County Government.

PART IV—FINANCIAL PROVISIONS

- 10— County Disaster Management Fund.
- 11— Estimates.
- 12— Maintaining of books.
- 13— Financial Year.
- 14— Offences.

PART V—PROVISIONS ON DELEGATED POWERS

- 15— Emergency declaration.
- 16— Rules
- 17— Principles and Standards of delegated power.

PART VI—FINAL PROVISIONS

- 18— Transitional.

SCHEDULE

**THE HOMA BAY COUNTY DISASTER AND EMERGENCY
MANAGEMENT BILL, 2019**

A Bill for

**AN ACT of the Homa Bay County Assembly to provide for the
Management of disasters and emergencies in Homa Bay County
and for connected purposes**

ENACTED by the County Assembly of Homa Bay as follows—

PART I — PRELIMINARY

Short title and commencement

1. This Act may be cited as the Homa Bay County Disaster and Emergency Management Act, 2019 and will come into operation 14 days after publication in the Kenya Gazette.

Interpretation

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

“Council” means the Disaster and Emergency Management Council established by Section 4;

“Disaster” means a situation in any part of the County—

- (a) That arises from any happening, whether natural or otherwise, including—
 - (i) any naturally occurring event affecting the whole or any part of the County; or
 - (ii) any fire caused by any means; or
 - (iii) any aspect of the safety of a water vessel or aircraft in the County; or
 - (iv) any outbreak or spread of disease affecting humans, plants or animals; or
 - (v) any event, natural or otherwise, which threatens the supply of water or the quality of water resources in the County; or
 - (vi) any other emergency event resulting from terrorism, systems failure, infrastructure failure or human error; and
- (b) which involves threat or danger to human life or health, or to the environment; and
- (c) which might require response agencies to respond under this Act;

“Director” means the Director of the Directorate of Disaster and Emergency Management appointed under section 7;

“Directorate” means Directorate of Disaster and Emergency Management established by section 4;

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

“Disaster risk reduction” means all mitigation activities undertaken in accordance with this Act to reduce the risk of hazards to the community and its property;

“Emergency” means a situation—

- (a) which is more serious than a disaster;
- (b) which could result or has resulted in causing widespread human, property or environmental losses throughout the County or in any part of the County; and
- (c) which would require a substantial mobilization and utilization of the County’s resources which would exceed the ability of the County to cope using its own resources;

“Fund” means the Homa Bay County Emergency Fund established pursuant to Section 110 of the Public Finance Management Act, 2012;

“Plan” means the Homa Bay County Disaster Management Plan prepared pursuant to Section 6;

“Recovery” means the medium and long term activities undertaken for physical, social, Economic and environmental regeneration after a period of emergency.

Object and Purpose of the Act

3. The objects and purpose of the Act are to—

- (a) establish an efficient structure for the management of disasters and emergencies by promoting cooperation amongst 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;
- (b) require the preparation and implementation of a Plan consisting of the response agency plans prepared by the response agencies and other groups and institutions in accordance with the requirements of this Act;

- (c) vest authority in persons and agencies to act during times of disaster and emergency in accordance with the plans approved under this Act, and to require the observance and implementation of directives given and initiatives taken by persons authorized under this Act;
- (d) otherwise enhance the capacity of the County Government, relevant agencies and the community 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;
- (e) implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster or emergency situations in the County; and
- (f) facilitate procedures aimed at implementing recovery activities in the aftermath of disasters and emergencies.

PART II—COUNTY DISASTER MANAGEMENT STRUCTURE

Disaster and Emergency Management Council

4. (1) There is established the Homa Bay County Disaster and Emergency Management Council.

- (2) The Council shall consist of—
 - (a) the Deputy Governor who shall be the Chairperson;
 - (b) the County Executive Member responsible for Public Safety;
 - (c) the County Executive Member responsible for Finance;
 - (d) the County Executive Member responsible for Health
 - (e) the County Executive Member responsible for Environment;
 - (f) the County Executive Member responsible for Public Works
 - (g) the County Executive Member responsible for Culture and Social Services;
 - (h) the County Executive Member responsible Lands, Housing, Physical Planning;
 - (i) the Secretary to the Homa Bay County Public Service Board;
 - (j) the County Commissioner;
 - (k) the County Commandant of Police;

- (l) The County Liaison Officer of the Kenya Red Cross Society or representative of any other organization serving as auxiliary of the public authorities in the humanitarian field;
 - (m) at least two representatives of the public, representing both genders duly appointed by the Governor with approval from the County Assembly; and
 - (n) the County Director for Disaster preparedness and response who shall be the Secretary.
 - (o) "at least a representative of the youth and persons with disabilities appointed by the Governor, with the approval of the County Assembly.
- (3) The Council shall —
- (a) set policies with the approval of the County Assembly on disaster and emergency management;
 - (b) approve the county disaster management Plan;
 - (c) review, approve and endorse recommendations of the Director of the County during any period of a disaster or emergency and give any order or direction necessary for the Plan to be implemented;
 - (d) implement the National Government Policy on Disaster and emergency Response;
 - (e) report to the County Assembly quarterly on the implementation status of the county disaster management Plan;
 - (f) discharge any other responsibility as provided by this Act or any other law.
- (4) The Council shall report annually to the County Assembly on the status of disaster and emergency response preparedness of the County.
- (5) The conduct and regulation of the business and affairs of the Council shall be as provided in the Schedule.
- (6) Except as provided in the Schedule, the Council may regulate its own procedure.

Establishment of the Directorate of Disaster and Emergency Management

5. (1) There is established, the Directorate of Disaster and Emergency Management which shall be a department in the County public service.

- (2) The Directorate shall —

- (a) be the secretariat of the Council; and
- (b) be under the direct management and supervision of the Council.

Functions of the Directorate

6. The Directorate shall —

- (a) assess and review all disasters and emergencies and make appropriate recommendations to the Council;
- (b) prepare and subject to the Council's approval implement the Plan;
- (c) co-ordinate and monitor the implementation of the national and county disaster management policy;
- (d) ensure that areas in the County vulnerable to disasters are identified and measures for the prevention of disasters and the mitigation of its effects are undertaken by the departments of the County;
- (e) undertake any activity relating to raising the capacity within the County to effectively respond to disasters and emergencies;
- (f) ensure that the guidelines for prevention, mitigation, preparedness and response measures laid down are implemented by all County departments;
- (g) ensure that the Plan is publicized and that all sectors of the community are made aware of the possible threats arising from disasters and emergencies, and of the need to be prepared to respond to such threats so as to protect human life and health and the environment;
- (h) ensure that a coordinated inter-agency approach is undertaken in relation to all disaster and emergency planning, risk reduction and preparedness, and response and recovery activities;
- (i) implement the decisions of the Council and give proper effect to the provisions of this Act and the Plan;
- (j) ensure that preparedness activities are undertaken as required, including public awareness raising, training, simulation exercises, planning and the establishment of facilities and communications;
- (k) organize and co-ordinate specialized training programmes for officers of the Directorate and volunteer rescue workers in the County;

- (l) set up, maintain, review and upgrade the mechanisms for early warnings and dissemination of proper information to the public;
- (m) identify buildings and places which could be used as relief centres or camps in case of disasters and make arrangements for water supply and sanitation for such buildings or places;
- (n) put in place collaboration measures with other appropriate persons or national government agencies;
- (o) advise the County Government on all matters relating to disaster and emergency response;
- (p) ensure that such relevant agencies or institutions as may be determined by the Director, prepare their own disaster management plans;
- (q) assist response agencies and the community generally to identify, implement and participate in disaster risk reduction activities and programmes;
- (r) collate the plans prepared under Part 4 and refer them to the Council for approval; and
- (s) undertake such activities as are necessary to prepare for responses to disasters and emergencies;
- (t) establish a multi-agency disaster operations centre;
- (u) regulate other disaster management agencies in the County;
- (v) perform such other functions as may be conferred by the Council or any other written law.

Administration of the Directorate

7.(1) The Directorate shall be headed by a Director of Disaster and Emergency Management.

(2) the Director shall be appointed by the County Public Service Board through a competitive and transparent process.

(3) A person shall be appointed as a Director if that person —

- (a) is a Kenyan citizen;
- (b) is a holder of at least a first university degree in a course relevant to matters of disaster and emergency management;
- (c) satisfies the requirement of Chapter Six of the Constitution; and
- (d) has knowledge, experience and a distinguished career of not less than five years in the relevant field.

(4) The Council shall, in consultation with the County Public Service Board determine such number of staff as may be required for the proper execution of the functions of the Directorate.

(5) The Director shall be the overall head of the Directorate and shall be responsible for—

- (a) day to day running and operation of the Directorate;
- (b) administration, organize and control of staff of the Directorate
- (c) management of funds, property and affairs of the Directorate;
- (d) implementation of policies and programmes of the Directorate and reporting thereon to the Council;
- (e) development of operational plans for achieving the objectives of the Directorate; and
- (f) performance of any other function necessary for the implementation of this Act, as may be determined by the Council.

(6) (a) There is established a sub- county disaster management council which comprises of the following:

- (i) Sub – county administrator who shall be the chairperson
 - (ii) The sub-county OCPD
 - (iii) The sub-county public health officer
 - (iv) The sub-county environment officer
 - (v) A representative from the civil society organizations appointed by the umbrella body representing the civil society groups working within the sub- county.
- (b) The following are the functions of the sub-county disaster management council;”
- (i) Oversee the application of the County Disaster Management Plan during any period of a disaster or emergency and give any recommendations necessary for the Plan to be implemented
 - (ii) Oversee the implementation of risk reduction, preparedness, response and recovery activities by all county government agencies and other agencies performing roles related to disaster management.
 - (iii) Implement the national government policy on disaster and emergency response.

- (iv) Discharge any other responsibility as provided by this Act or the county disaster management Plan.

PART III—COUNTY DISASTER MANAGEMENT PLAN

The Plan

8. (1) There shall be prepared a plan for disaster management for the County to be called the Homa Bay County Disaster Management Plan

(2) The Plan shall be prepared by the Directorate having regard to the National Government Disaster Management Policy and shall be approved by the Council.

(3) The Plan shall include—

- (a) measures to be taken for the prevention Disasters or the mitigation of their effects;
- (b) measures to be taken for the integration of mitigation measures in the development plans;
- (c) the minimum standards of relief to be provided in case of Disasters and emergencies;
- (d) measures to be taken for preparedness and capacity building to effectively respond to any threatening disaster or emergency situations;
- (e) roles and responsibilities of different county government Departments and other such agencies not being part of the County government structure;
- (f) mechanisms for the sharing of disaster management plans formulated by other disaster management agencies; and
- (g) information regarding the vulnerability of different parts of the County to different forms of disasters.

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

(5) The County government shall make appropriate provisions for financing the measures carried out in the Plan.

Role of the county government

9. The county government shall—

- (a) ensure that officers and employees are trained for Disaster management;
- (b) ensure that resources relating to disaster management are so maintained as to be readily available for use in the event of any threatening disaster situation or disaster;

- (c) ensure that all construction projects under it or within its jurisdiction conform to the standards and specifications laid down for prevention of disasters and mitigation by the Directorate; and
- (d) carry out relief, rehabilitation and reconstruction activities in the affected area in accordance with the Plan.

Disaster Emergency response

10. (1) Where, upon occurrence of a disaster, the Council is satisfied that immediate procurement of provisions or materials, or the immediate application of resources are necessary for rescue or relief, the Council may authorize the directorate to procure the provisions or materials directly.

(2) The procurement referred to in subsection (1) shall be done in accordance with the applicable provisions of the written law relating to public procurement,

PART IV—FINANCIAL PROVISIONS**County Disaster Management Fund**

11. (1) There is established the County Disaster Management Fund, which shall be administered by the Director.

(2) The Fund shall be financed from—

- (a) Such monies appropriated from the County Revenue
- (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; and
- (d) loans, aid or donations from national or international agencies; and
- (e) all monies from any other source provided or donated to the Directorate.

(3) The Fund shall be used towards meeting the expenses for emergency preparedness, response, mitigation, relief and reconstruction in the county after a disaster, provided that the fund shall not be used for any purpose other than the purpose for which it is established.

Expectation of the Fund

12. (1) There shall be paid out of the Fund monies for meeting the expenses for emergency preparedness response, mitigation, relief and reconstruction in the Homa Bay County, upon occurrence of a disaster.

(2) For purposes of this Act, the Fund shall be accessible to other auxiliary Government agencies involved in disaster management, with the approval of the Council.

Estimates

13. (1) Before the commencement of each financial Year, the directorate shall prepare financial estimates for that year.

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

- (a) funding of training, research and development of activities of the Directorate;
- (b) funding of education, training and capacity building on disaster management in the County; and
- (c) such other matters as the Directorate may consider fit

(3) The annual estimates shall be submitted to the County Executive Member responsible for matters relating to disaster and emergency management for approval, and once approved, shall be include in the estimates for the relevant sector submitted for approval by the County Assembly.

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

Maintaining books

14. (1) The Directorate 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 Council shall 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;
- (b) a statement of the assets and liabilities of the Directorate on the last day of that financial year; and
- (c) 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.

15. Any person who—

- (a) obstructs any officer or employee of the County government or Directorate in the discharge of their functions under this Act;
- (b) refuses to comply with any direction given by or on behalf of the County government in exercise of the functions under this Act;
- (c) knowingly makes a false claim for obtaining any relief or assistance or any other benefits that may accrue as a result of a disaster;
- (d) Knowingly makes or circulates a false alarm or warning as to a disaster or its severity or magnitude leading to panic;
- (e) fails to discharge their duties as accorded by this Act; or
- (f) Interferes or destroys any equipment meant to achieve the objectives of this Act.

Commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding one year, or both.

PART V — PROVISIONS ON DELEGATED POWERS

Emergency Declaration

16. (1) The Council may issue a declaration of disaster which would activate the county disaster response mechanisms.

(2) Nothing in this section affects the power of the Head of State to make proclamations of emergency as per the Constitution of Kenya or other relevant national law in the event of any disaster or emergency.

Rules

17. (1) The County Executive Committee Member responsible for public safety shall, on the recommendation of the Council, make rules generally for the better carrying out of the provisions of this Act.

(2) Without prejudice to the generality of the foregoing, such rules may provide for—

- (a) Prescribing anything required to be prescribed under this Act;
- (b) The forms and fees for the purposes of this Act.

Principles and standards of delegated power

18. The principles and standards applicable to the Delegated power referred to under section 14 are those found in—

No.23 of 2013

Cap.2

- (a) the Statutory Instruments Act, 2013;
- (b) the Interpretation and General Provisions Act;
- (c) the Constitution and any national law;
- (d) the general rules of international law as specified under Article 2(5) of the Constitution; and
- (e) Any treaty and convention ratified by Kenya under Article 2 (6) of the Constitution.

PART VI—FINAL PROVISIONS

Transitional

19. (1) In this section—

“effective date” means the day upon which this Act comes into operation; and “former Department” means the Department or unit responsible for disaster management within the County public service existing immediately before the effective date.

(2) On the effective date, all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the former Department, shall by virtue of this sub-section, vest in the Directorate.

(3) On the effective date, all rights, powers and liabilities, whether arising under any written law or otherwise which immediately before such day were vested in, imposed on or enforceable against the former Department shall, by virtue of this sub-section, be deemed to be vested in, imposed on or enforceable against the Directorate.

(4) On the effective date, any person who, immediately before the commencement of this Act was a member of staff of the former Department shall be deemed to be a member of staff of the Directorate for the unexpired period of his or her service.

(5) Any reference in any written law or in any document or instrument to the former Department shall on and after the appointment day, be construed to be a reference to the Directorate.

(6) The annual estimates of the former Department for the financial year in which the effective date occurs shall be deemed to be annual estimates of the Directorate for the remainder of that financial year, but

such estimates may be varied by the County Executive Member responsible for matters relating to disaster

and emergency management as he or she may deem necessary.

(7) The administrative directions made by the former Department or by the Member of the County Executive which are in force immediately before the appointed day shall, on and after such day, have force as if they were directions made by the Directorate or the Member of the County Executive under this Act.

SCHEDULE (S,4(5))

PROVISIONS ON CONDUCT OF AFFAIRS AND BUSINESS OF THE COUNCIL

Tenure of Council

1. The members of the Council other than ex-officio office Members shall, subject to the provisions of this Schedule, hold office for a period of five years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

Vacation of Office

2. (1) A member other than an ex-officio member may—

- (a) at any time resign from office by notice in writing to the Governor;
- (b) be removed from office by the Governor on recommendation of the Council if the member—
 - (i) has been absent from three consecutive meetings of the Council without its permission;
 - (ii) is found to have contravened the provisions of Chapter six or thirteen of the Constitution;
 - (iii) is convicted of a criminal offence that amounts to a felony in Kenya;
 - (iv) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or
 - (v) is otherwise unable or unfit to discharge his functions.

Meetings

3. (1) The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding sub-paragraph (*1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

(3) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(4) The quorum for the conduct of the business of the Council shall be half of the total members including the Chairperson or the person presiding.

(5) The members of the Council shall, during their first meeting after appointment elect one of their number to be the Vice Chairperson who shall preside whenever the Chairperson is absent, with all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any Matter before the Council shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to sub-paragraph (6), no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Council may determine its own procedure and the procedure for any committee of the Council and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Council

4. (1) The Council may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) Members of the committees shall be drawn from the members of the Council, but a committee may co-opt any other person, not exceeding three persons, as may be necessary to discharge its mandate.

(3) The Council shall appoint the Chairperson of a committee established under sub-paragraph (1) from amongst its members.

(4) The Council may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(5) All decisions by the committees appointed under sub-paragraph (1) shall be ratified by the Council.

(6) Without prejudice to the generality of sub-paragraph (1), the Council shall ensure the establishment of separate committees responsible for—

- (a) management issues;
- (b) practice issues; and
- (c) training and assessment issues.

Disclosure of interest

5. (1) A member who has an interest in any contract, or other Matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under sub-paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Council who contravenes sub-paragraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

Contracts and instruments

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate would not require to be under seal, any be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.

7. The affixing of the common seal of the council shall be authenticated by the signature of the chairperson and the secretary and any document not required by law to be made under seal and all decisions of the council shall be authenticated by the signatures of the chairperson and the secretary.

8. The council shall in the absence of either the chairperson or the secretary in any particular matter nominate one member to authenticate the seal of the council on behalf of either the chairperson or the secretary.

MEMORANDUM OF REASONS AND OBJECTIVES

The Bill has been submitted by the Chairman of the Disaster, Emergency and Special Programmes Committee.

The Bill seeks to establish an efficient structure for the management of disasters and emergencies by promoting cooperation amongst agencies with the role in disaster management. Clauses 4,5,6 and 7 provide the establishment, functions, powers of Homa Bay Disaster and Emergency management Council and the Directorate of Disaster and Emergency Management. Clauses 8,9 and 10 outlines policy guidelines on disaster and Emergency preparedness, mitigation, response and Management through County Disaster management Plan.

Clauses 11, 12,13, 14 and 15 provides for the Financial provisions known as County Disaster management Fund

Clauses 16,17 and 18 provide for delegation of powers for making rules generally for better carrying out the provisions of the Bill.

Clause 19 provides for Financial provisions when the Bill comes into law

The enactment of this Bill shall make the alignment with the provision of the Constitution of Kenya 2010, the County Government Act, 2012 and the Homa Bay County Emergency Fund Act, 2016.

JOEL OCHOLA MOLA,
Chairperson, Committee on Disaster, Emergency and Special Programmes.