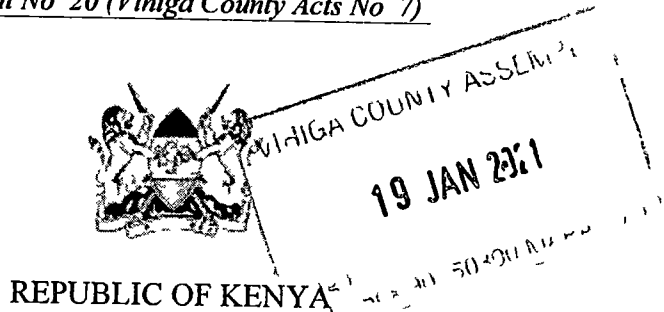


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SPECIAL ISSUE

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VIHIGA COUNTY ACTS, 2020

NAIROBI, 14th December, 2020

CONTENT

Act—

PAGE

The Vihiga County Disaster Management Act, 2020

1

THE VIHICA COUNTY DISASTER MANAGEMENT ACT, 2020

No 7 of 2020

Date of Assent 17th November 2020

Date of Commencement 14th December 2020

ARRANGEMENT OF SECTIONS

Section

PART I—PRELIMINARY

- 1—Short title
- 2—Interpretation
- 3—Objects of the Act

PART II—ESTABLISHMENT OF THE DISASTER MANAGEMENT COMMITTEE

- 4—Establishment of the Disaster Management Unit
- 5—Establishment of the Disaster Management Committee
- 6— Functions of the Committee
- 7—Establishment of the Secretariat
- 8— Functions of the Secretariat
- 9—County Disaster Management Plan
- 10—Implementation of Plan

PART III— DISASTER MANAGEMENT

- 11—Measure by County government
- 12—Period of disaster
- 13—Declaration of disaster
- 14—Communication of declaration
- 15—Duration of declaration
- 16—Steps to abate danger
- 17—Declaration of an Emergency

PART IV—COUNTY EMERGENCY FUND

- 18—Establishment of the County Emergency Fund
- 19—Emergency procurement

PART V—OFFENCES AND PENALTIES

20—Obstruction

21—False claim

22—Misappropriation of money or materials

23—False alarm

24—General penalty

PART VI—MISCELLANEOUS PROVISIONS

25—Power to requisition resources for rescue operations

26—Protection from liability

27—Entry upon property

28—power of Direction

29—Regulations

**THE VIHIGA COUNTY DISASTER MANAGEMENT ACT,
2020**

AN ACT of the County Assembly of Vihiga to provide for a more effective organization of the mitigation of, preparedness for, response to and recovery from emergencies and disasters

ENACTED by the County Assembly of Vihiga as follows—

PART I—PRELIMINARY

Short title

1 This Act may be cited as the Vihiga County Disaster Management Act, 2020

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 Disaster Management Committee established under section 5,

“Donation” has the definition provided under section 47 of the Public Finance Management Act, 2012,

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

“disaster management” means a continuous and integrated process of planning, organizing, 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,

No 7

Vihiga County Disaster Management

2020

- (g) evacuation, rescue and relief
- (h) rehabilitation and reconstruction,

‘Executive Committee Member means the County Executive Committee Member responsible for Public Service, administration and coordination of county affairs,

Emergency is a situation—

- (i) which is more serious than a disaster,
- (ii) which could result or has resulted in causing wide spread human property or environmental losses throughout the county or in parts of the county
- (iii) Which would require a substantial mobilization and utilization of counties resources or which would exceed the ability of the county to cope using its own resources,

Fund means The County Disaster Management Fund established under Part IV

‘Grant has the definition provided under section 47 of the Public Finance Management Act 2012

‘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 8

‘Preparedness ’ means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof,

‘Unit means the Disaster Management unit established in section 4

Object and Purpose

3 The objects of this Act are to—

- (a) establish an efficient structure for the management of disasters and emergencies,
- (b) enhance the capacity of the county government to effectively manage the impacts of disasters and emergencies and to take all necessary action to prevent or minimize threats to life, health and the environment from natural disasters and other emergencies,
- (c) vest authority in persons to act during times of disaster and

emergency in accordance with this Act, and to require the observance and implementation of directives given and initiatives taken by persons authorized under this Act

- (d) implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster or emergency situations in the County, and
- (e) provide for an effective and timely response to disaster and emergencies

PART II—ESTABLISHMENT OF THE DISASTER MANAGEMENT COMMITTEE

Establishment of the Disaster Management Unit

4 (1) There is established the Disaster Management Unit. The Unit shall be headed by the Deputy-Governor as provided for in the First Schedule

- (2) The Unit shall consist of—
 - (a) the Disaster Management Committee established under Section 5, and
 - (b) the Secretariat of Disaster Management established under Part II

Establishment and Composition of the Disaster Management Committee

5 (1) There is established the Disaster Management Committee

- (2) The Committee consists of—
 - (a) the Deputy-Governor who shall be the Chairperson,
 - (b) Executive Committee Member responsible for matters relating to disaster management in the County as directed by the Governor,
 - (c) Executive Committee Member for the time being responsible for matters relating to Environment,
 - (d) two persons with at least 5 years' experience in the area of disaster management appointed by the Governor in writing,
 - (e) a person appointed in writing by the Council of the Kenya Red Cross Society,
 - (f) a person appointed by the National Council of the priory St John ambulance, Kenya,

No 7

Vihiga County Disaster Management

2020

- (g) one person appointed by the County Commissioner in writing,
- (h) a nominee of the Member of the County Assembly of the affected area,
- (i) any other person(s) co-opted by the Committee
- (3) The composition of the Committee shall observe the two-thirds gender rule as far as is possible
- (4) The Committee shall regulate its own procedure on meetings and the quorum of their meeting shall be 1/3 of the members
- (5) The Committee may establish sub-committees consisting of its members to deal with such matters as the Committee may specify
- (6) The expenses of the Committee shall be provided for from the Fund established under section 17 (1)
- (7) The Head of Research and Disaster Management shall be the Secretary of the Committee

Functions of the Committee

6 (1) The functions of the Committee are to—

- (a) ensure 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 organizations, and
 - (iii) communities and individuals,
 - (iv) 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) may make recommendations to any relevant of State organ on—

- (i) draft legislation affecting this Act, or any other disaster management issue, and
- (ii) the national disaster management framework,
- (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) build capacity, training and public awareness in the area of disaster and emergency management,
- (j) co-ordinating disaster management collaborations intra-county, inter-county and nationally,
- (k) exercise any powers and perform any duties delegated and assigned to it under this Act or any other written law
- (2) The Committee may engage in any lawful activity in the county, whether alone or together with any other organization aimed at promoting the proper exercise of its powers or performance of its duties

Establishment of the secretariat

- 7 (1) There is established the Secretariat of Disaster Management
- (2) The Secretariat shall be headed by the Head of Research and Disaster Management in the County who is subject to the direction of the Committee and is responsible to it for the—
- (a) implementation of the decisions of the Committee,
 - (b) day to day management of the affairs of the Unit,
 - (c) organization and management of the employees of the Secretariat,
 - (d) management and accounting of funds, property and affairs of the Unit,
 - (e) implementation of policies and programmes of the Unit and reporting thereon to the Committee,
 - (f) development of operational plans for achieving the objectives of the Unit, and
 - (g) any other function that may be assigned by the Committee

(3) The Head of Research and Disaster Management and other staff of the Secretariat provided in the first schedule shall be persons recruited, employed and deployed by the County Public Service Board

Functions of the secretariat

8 (1) The functions of the secretariat are to—

- (a) formulate the county disaster management policy and submit it to the Committee
- (b) co-ordinate and monitor the implementation of the National Policy on Disaster Management and the County Disaster Management Plan
- (c) examine the vulnerability of different parts of the county to different disasters and specify prevention or mitigation measures
- (d) lay down guidelines to be followed for preparation of disaster management plans by the county departments,
- (e) evaluate preparedness at all governmental or non-governmental levels in the county to respond to disaster and to enhance preparedness
- (f) co-ordinate response in the event of disaster and emergencies,
- (g) give directions to any county department or authority regarding actions to be taken in response to disaster and emergencies
- (h) promote general education awareness and community training in this regard,
- (i) promote the recruitment training and participation of volunteers in disaster management in the county,
- (j) promote disaster management capacity building, training and education including in schools and other institutions in the county,
- (k) provide necessary technical assistance or give advice to local officers for carrying out their functions effectively,
- (l) advise the county government regarding all financial matters in relation to disaster management,
- (m) ensure that communication systems are in order and disaster management drills are being carried out regularly,
- (n) promote the role of citizens in disaster, risk, reduction, mitigation, response and management,

- (o) develop a five-year Disaster Management plan which shall be reviewed annually by the committee and approved by the County Assembly
- (p) capacity building of the staff of the unit, the county and civic education and awareness to the public,
- (q) establish and maintain disaster early warning system,
- (r) co-ordinate fund raising and resource mobilization for disaster management,
- (s) document disaster risk or prone areas in the county and where necessary enforce habituation, and
- (t) perform such other functions as may be assigned to it by the Committee or any other written law

Management Plan

9 (1) The Secretariat shall prepare the five-year County Disaster Management Plan to be called the Vihiga County Disaster Management Plan

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

- (3) 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) the capacity building and preparedness measures to be taken,
 - (e) the roles and responsibilities of each department of the county government in relation to the measures specified in section (b), (c) and (d),
 - (f) the roles and responsibilities of different departments of the county government in responding to any threatening disaster situation or disaster, and
 - (g) the role of citizens in disaster management prevention and mitigation
- (4) The Plan shall be reviewed and updated annually

Implementation of Plan

10 The plan shall be implemented by the Secretariat and give a report to the committee every year to monitor the capacity of the plan and its effectiveness to inform its review

PART III— DISASTER MANAGEMENT

County Government to take measures

11 (1) The Committee in consultation, 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) ensure that resources relating to disaster management and emergencies are so maintained as to be readily available for use in the event of any threatening disaster situation or an emergency,
- (d) 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 Unit,
- (e) carry out relief, rehabilitation and reconstruction activities in the affected area in accordance with the Plan
- (f) establishment of institutions for research, training and developmental programs in the field of disaster management, and
- (g) 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

12 (1) For the purposes of this Act—

(a) a disaster exists when—

- (i) the Governor declares, by Notice, that a disaster exists after receiving advice from the Committee that a disaster has occurred,
- (ii) the President or otherwise any Cabinet Secretary as may be permitted by any written law declares that a disaster has occurred

(b) a threatened disaster exists when—

- (i) the Governor declares by Notice, after receiving advice from the Committee under subsection (2) that there is a substantial prospect that a disaster shall occur, or
- (ii) the National Government or an agency, whether within the county or otherwise, certified by the Unit as an Accredited Disaster Notification Service under subsection (3), broadcasts or otherwise publishes a formal announcement warning person of the threat of the striking of a disaster

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

(3) The Unit 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 disaster

13 Subject to section 10, the Governor with County Assembly Approval may issue a declaration of Disaster which would activate, with immediate effect, the disaster response provisions of the Plan in the event of a disaster

Communication of Declaration

14 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

15 (1) A declaration under section 12 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

Steps to abate Danger

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

- (a) certify that in writing, to the owner or occupant of the property, and
- (b) give the owner specific instructions as to the steps to take to abate or remove the danger within reasonable time of the receipt of the notice

(2) Upon failure to comply with the requirements after notice, the Secretariat 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 Secretariat in the notice to abate or remove the potential danger within reasonable time from the date of receipt of the notice, commits an offence and in addition to any penalty imposed under this Act shall be made to pay any expenses which the Secretariat incurs to abate or remove the danger

(4) An employee or an agent of the Secretariat 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 Secretariat

Declaration of an Emergency

17 (1) An emergency exists when the Governor by Notice, pursuant to a resolution by the County Executive, declares that an emergency has occurred with approval from the County Assembly

(2) Without prejudice to the generality of subsection (1) an emergency exists when—

- (a) a serious, unexpected, and dangerous event requiring immediate unforeseen need for expenditure by the County and no appropriation had been made and/or no specific legislative authority is available, and

- (b) the event contemplated in subsection (2) (a) has caused or threatens to cause damage, loss, hardship or suffering to residents of the County or the environment and the event is limited to the County

PART IV—ESTABLISHMENT OF COUNTY EMERGENCY FUND

Establishment of the County Emergency Fund

18 (1) There is established the County Emergency Fund

(2) The County Executive Committee Member for Finance shall establish the Vihiga County Emergency Fund in accordance with section 110 to 115 of the Public Finance Management Act, 2012

Emergency procurement

19 (1) Where, by reason of any impending disaster or emergency, 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

PART V—OFFENCES AND PENALTIES

Obstruction

20 A person who obstructs the Secretariat 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 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 Kenya Shillings two hundred thousand (KSh 200,000) 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 one million shillings or imprisonment of not more than One (1) year for the director(s) of the company subject to any national legislation

False claim

21 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 Kenya Shillings one hundred thousand (KSh 100,000) or imprisonment of not more than one year, or to both

Misappropriation of money or materials

22 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 willfully compels any other person to do so is liable on conviction, to a fine not exceeding Kenya Shillings five hundred thousand (KSh 500,000) or imprisonment of not more than two years, or to both

False alarm

23 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 Kenya Shillings one hundred thousand (KSh 100 000) or imprisonment of not more than one year, or to both

General Penalty

24 A person who commits an offence under this Act for which no penalty is prescribed is liable on conviction to a fine not exceeding Kenya Shillings one hundred thousand (KSh 100 000) or to imprisonment for a period not exceeding one year, or to both

PART VI—MISCELLANEOUS PROVISIONS

Power to Requisition Resources for Rescue Operations

25 (1) Where it appears to the Unit 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,
- (e) the Unit may, by order in writing, requisition such resources or premises or vehicle, as the case may be, and may make such further orders as may appear to it to be necessary or expedient in this connection

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

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

Protection from personal liability

26 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,
- (c) unless the person was acting in bad faith

Entry upon property

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

Direction for communication of warnings

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

Regulations

29 The County Executive Committee Member may make Regulations on—

- (a) emergency planning for the continuity of functions of departments, boards, commissions, corporations and other agencies of the County,
- (b) the vesting of special powers and duties in various departments and agencies of the county for the purposes of emergency planning and the implementation of emergency management plans,
- (c) the recognition of the professional, trade or other qualifications of persons sent to the County by another jurisdiction under an agreement entered into during a state of emergency or state of local emergency,
- (d) the emergency planning, evaluation, and level of preparedness required of counties,
- (e) emergency planning, evaluation and reporting for nongovernmental entities,–
- (f) the establishment, operation, liability and responsibilities of ground search and rescue organizations,
- (g) prescribing renewal periods for states of emergency, and
- (h) any matter that the executive member considers necessary for the administration of this Act

FIRST SCHEDULE
(SCHEDULE 1)
ORGANISATIONAL STRUCTURE OF THE DISASTER MANAGEMENT UNIT

