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A Bill for

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 1 – PRELIMINARY

Short title

1. This Act may be called the Vihiga Disaster Management Act, 2018.

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 in section 3;
"Unit" means the Disaster Management unit established in section 6;
"Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, 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;
- (g) evacuation, rescue and relief;
- (h) rehabilitation and reconstruction;

“executive member” means the county executive committee member responsible for matters relating to disaster management in the county;

"mitigation" means measures aimed at reducing the risk, impact or effects of a disaster or threatening disaster situation;

"Plan" means the County Disaster Management Plan prepared under section 10;

"preparedness" means the state of readiness to deal with a threatening disaster situation or disaster and the effects thereof.

Objects of the Act

- 3.** The objects of this Act are to—
- (a) establish an efficient structure for the management of disasters and emergencies;
 - (b) enhance the capacity of the county government to effectively manage the impacts of disasters and emergencies and to take all necessary action to prevent or minimize threats to life, health and the environment from natural disasters and other emergencies;
 - (c) vest authority in persons to act during times of disaster and emergency in accordance with this Act, and to require the observance and implementation of directives given and initiatives taken by persons authorized under this Act; and
 - (d) implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster or emergency situations in the county.
 - (e) Provide for an effective and timely response to disaster and emergencies.

**PART II – ESTABLISHMENT AND ADMINISTRATION OF THE
DISASTER MANAGEMENT COMMITTEE AND THE
UNIT OF DISASTER MANAGEMENT**

Establishment and

- 4.** (1) There is established the Disaster Management Committee.

composition of the
Disaster Management
Committee

- (2) The Committee consists of—
- (a) the Governor of the county or the Deputy Governor who shall be the chairperson with the Governor having the first priority to decide;
 - (b) the executive member responsible for matters relating to disaster management in the county;
 - (c) Two persons with experience in the area of disaster management appointed by the Governor;
 - (d) a person appointed in writing by the Council of the Kenya Red Cross Society;
 - (e) a representative of the private sector appointed in writing by the chairperson of an association representing the private sector;
 - (f) One person appointed by the County Commissioner; and
 - (g) the Head of the Disaster Management unit in the County Government who shall be secretary to the Committee.
- (2) The composition of the Committee shall observe the two thirds gender rule as far as is possible.
- (3) The chief executive officer appointed in section 7 shall be the Secretary of the Committee.

Functions of the
Committee

- 5.** (1) The functions of the Committee are to—
- (a) promote an integrated and co-ordinated approach to disaster management in the county, with special emphasis on prevention and mitigation by other role-players involved in disaster management in the county;
 - (b) act as a repository of, and conduit for, information concerning disasters impending disasters and disaster management in the county;
 - (c) act as an advisory and consultative body on issues concerning disasters and disaster management in the county to—
 - (i) state organs;
 - (ii) the private sector and non-governmental organisations; and

- (iii) communities and individuals;
 - (d) receive any grants, gifts, donations or endowments for purposes of disaster management in the county and 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) Coordinating disaster management collaborations intra-county, intercounty 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 Unit **6.** There is established the Disaster Management Unit in the county.

Staff of the Unit **7.** (1) The Unit shall be headed by the Head of 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 Unit; and
- (d) any other function that may be assigned by the Committee.

- (3) The chief executive officer and other staff of the Unit shall be persons recruited, employed and deployed by the County Public Service Board.

Functions of the
Unit

8. (1) The functions of the Unit are to—

- (a) formulate the county disaster management policy;
- (b) coordinate 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;
- (g) give directions to any county department or authority regarding actions to be taken in response to disaster;
- (h) promote general education, awareness and community training in this regard;
- (j) promote the recruitment, training and participation of volunteers in disaster management in the county;
- (k) promote disaster management capacity building, training and education, including in schools and other institutions in the county;
- (i) provide necessary technical assistance or give advice to local officers for carrying out their functions effectively;
- (j) advise the county government regarding all financial matters in relation to disaster management;
- (k) ensure that communication systems are in order and disaster management drills are being carried out regularly;
- (l) Promote the role of citizens in disaster, risk, reduction, mitigation, response and management;
- (m) Develop a five-year Disaster Management plan which shall be reviewed annually by the committee and approved by the County Assembly;

County Disaster
Management Plan

- (n) Capacity building of the staff of the unit, the county and civic education and awareness to the public;
 - (o) Manage and account for the Disaster Management Fund established under this Act;
 - (p) Establish and maintain disaster early warning system;
 - (q) Coordinate fund raising and resource mobilization for disaster management;
 - (r) Issue the Emergency and Disaster Management compliance certificate annually to all businesses and institutions within the county;
 - (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.
- 9.** (1) The Unit shall prepare the five-year County Disaster Management Plan.
- (2) The Plan includes information on—
 - (a) the vulnerability of different parts of the county to different forms of disasters;
 - (b) the measures to be adopted for prevention and mitigation of disasters;
 - (c) the manner in which the mitigation measures shall be integrated with the development plans and projects;
 - (d) 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.
 - (3) The Plan shall be reviewed and updated annually.

**Implementation of
Plan**

- 10.** The plan shall be implemented by the unit 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 - MEASURES BY THE COUNTY GOVERNMENT FOR
DISASTER MANAGEMENT**

**County government to
take measures**

- 11.** (1) Subject to the provisions of this Act, the unit in consultation with the committee may take all such measures as it considers necessary or expedient for the purpose of disaster management.
- (2) Without prejudice to the generality of subsection (1), the measures which the county government may take includes measures with respect to all or any of the following matters, namely—
- (a) co-ordination of actions of the departments and divisions of the county government, county governmental and non-governmental organizations in relation to disaster management;
 - (b) co-operation and assistance to any other person, as requested by them or otherwise considered appropriate by it;
 - (c) establishment of institutions for research, training and developmental programs in the field of disaster management; and
 - (d) such other matters as it considers necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.
- (3) The county government may extend such support to other counties affected by a major disaster as it may consider appropriate.

Period of emergency

12. (1) For the purposes of this Act—

- (a)** a disaster exists when the Governor declares, by Notice, that an emergency 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 under subsection (2) that there is a substantial prospect that a disaster shall occur; or
 - (ii)** an agency, whether within the county or otherwise, certified by the 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 Unit shall advise the Committee on request, and at any time the Unit 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 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. 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 Unit 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 reasonable time of the receipt of the notice.

(2) Upon failure to comply with the requirements after notice, the Unit 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 Unit 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 section 25 shall be made to pay any expenses which the Unit incurs to abate or remove the danger.

(4) An employee or an agent of the Unit 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 Unit.

PART IV – FINANCIAL PROVISIONS

Vihiga County Disaster Management Bill, 2018

Establishment of the
County Disaster
Management Fund

17. The county government shall establish the County Disaster Management Fund which shall be administered, on behalf of the Unit, by the Head of Disaster Management unit.

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

- (a) such monies or assets as may accrue to the Unit in the course of the exercise of its powers or the performance of its functions under this Act;
- (b) Monies appropriated through the budgeting process and approved by the County Assembly;
- (c) Fees and levies charged on the Emergency and Disaster Management Compliance certificate;
- (d) grants made by the national government or other county governments; and
- (e) loans, aid or donations from national or international agencies; and
- (f) all monies from any other source provided or donated or lent to the Unit.

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

(4) The Head of the Disaster Management Unit shall administer the County Disaster Management Fund subject to the provisions of all laws and regulations relating to public financial management.

Allocation of funds for disaster
management

18. The county government shall, in their annual budgets, make provisions for funds for the purposes of carrying out the activities and programs set out in its Plan.

Emergency procurement

19. (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.

PART V - OFFENCES AND PENALTIES

Obstruction

20. A person who obstructs the Unit or any person in the performance of an action authorized by this Act or who contravenes or fails to comply with—

(a) a provision of this Act or any regulation; or

(b) a direction, order or requirement made pursuant to this Act or the regulations, commits an offence and is liable on conviction to—

(i) in the case of an individual, to a fine not exceeding two 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 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 one hundred thousand shillings 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 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

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 one hundred thousand shillings 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 one hundred thousand shillings or to imprisonment for a period not exceeding one year, or to both.

PART VI – MISCELLANEOUS PROVISIONS

Power to requisition resources for rescue operations

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;

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.

Disaster Management

Compliance Certificate

26. (1) All businesses, enterprises and institutions within the County shall comply with the Disaster Management Guidelines provided by the unit and apply for an Emergency and Disaster Management Compliance certificate to the unit.

(2) The unit shall upon application and payment of the requisite fees issue an Emergency and Disaster Management compliance certificate to businesses, enterprises and institutions within the county.

Protection from
personal liability

27. 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

28. 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

29. The Unit, with authorization from the Committee, may give direction to any authority or person in control of any audio or audiovisual 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

30. The Head of Disaster Management unit 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
- (m) any matter that the executive member considers necessary for the administration of this Act.

Vihiga County Disaster Management Bill, 2018
