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**THE KWALE COUNTY DISASTER MANAGEMENT
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No. 7 of 2016

Date of Assent: 28th October, 2016.

Date of Commencement: See Section 1.

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**THE KWALE COUNTY DISASTER MANAGEMENT
FUND ACT, 2016**

AN ACT of the County Assembly of Kwale to establish the disaster management fund, establish and provide for the maintenance and operation of a system for the anticipation, preparedness, prevention, co-ordination, mitigation and management of disaster situations and the organization of relief and recovery from disasters and; for connected purposes

ENACTED by the County Assembly of Kwale, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kwale County Disaster Management Fund Act, 2016 and shall come into operation upon publication in the *Kenya Gazette*. Short title.

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

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

“Committee” means the Disaster Management Committee established in section 4;

“Directorate” means the Directorate of Disaster Management established in section 7;

“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 whether natural or manmade;

“disaster management” means a continuous and integrated process of planning, organizing, co-ordinating 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 committee member” means the County Executive Committee Member responsible for Public Service and Administration 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.

3. The objects of this Act are to—

Object of the Act.

- (a) establish the county fund for the management or disasters and emergencies;
- (b) establish an efficient structure for the management of disasters;
- (c) 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;
- (d) ensure that the County Government effectively co-ordinates with other relevant agencies to mitigate the impacts of disasters;
- (e) vest authority in persons to act during times of disaster in accordance with this Act, and to require

the observance and implementation of directives given and initiatives taken by persons authorized under this Act; and

- (f) implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster situations in the county.

**PART II—ESTABLISHMENT AND
ADMINISTRATION OF THE DISASTER
MANAGEMENT COMMITTEE AND THE
DIRECTORATE OF DISASTER MANAGEMENT**

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

Establishment and composition of the Disaster Management Committee.

(2) The Committee shall consist of—

- (a) the County Secretary who shall be the chairperson;
- (b) the chief officer in charge of public service and administration in the county;
- (c) the chief officer in charge of finance and economic planning in the county;
- (d) the fund manager who shall be the secretary of the committee;
- (e) a representative from Kenya Red Cross in the County;
- (f) a representative from the National Drought Management Authority in the County;
- (g) a representative from Kenya Wildlife Services in the County;
- (h) a representative from Kenya Maritime Authority;
- (i) a representative from the office of the County Commissioner;

(3) The appointment of the committee members listed in subsection (2) (e) (f) (g) (h) and (i) shall be done by the executive committee member.

5. (1) The functions of the Committee are to—

Functions of the Committee.

- (a) act as a central planning, co-ordinating and monitoring institution for prevention, mitigation, preparedness, response and post disaster recovery;

- (b) advise the County Government on matters relating to disaster management;
- (c) advise the directorate on the progress and constraints in disaster management and on other matters relating to the management of disaster relief operations;
- (d) formulate the county disaster management policy;
- (e) promote education, training and capacity building on disaster management in the county;
- (f) provide necessary technical assistance to County Government directorate of disaster management for carrying out their functions effectively;
- (g) advise the County Government regarding all financial matters in relation to disaster management;
- (h) promote an integrated and co-ordinated approach to disaster management in the county, with special emphasis on prevention, mitigation and disaster risk reduction by other role-players involved in disaster management in the county;
- (i) collaborate with the national government and relevant agencies on matters relating to disaster management;
- (j) act as a repository of, and conduit for, information concerning—
 - (i) disasters;
 - (ii) impending disasters; and
 - (iii) disaster management in the county;
- (k) 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;

- (l) initiate and facilitate efforts to make funding of disaster management in the county available;
- (m) 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;
- (n) promote research into the aspects of disaster management in the county;
- (o) give advice and guidance by disseminating information regarding disaster management in the county, especially to communities in the county that are vulnerable to disasters; and

(2) The Committee may enter into a partnership with any other agency aimed at promoting the proper exercise of its powers or performance of its duties.

6. (1) The Committee shall have all powers necessary for the proper Committee performance of its functions under this Act.

Powers of the Committee.

(2) Despite subsection (1), the Committee has the power to—

- (a) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (b) delegate any of its powers;
- (c) undertake any activity necessary for the fulfillment of any of the functions of the Committee.

7. There is established the Disaster Management Directorate in the county.

Establishment of the Directorate.

8. (1) The Directorate shall be headed by a director who is subject to the direction of the Committee and is responsible to it for the—

Staff of the Directorate.

- (a) implementation of the decisions of the Committee;
- (b) day to day management of the affairs of the Directorate;
- (c) organization and management of the employees of the Directorate; and

- (d) any other function that may be assigned by the Committee.

(2) The director and other staff of the Directorate shall be appointed from among persons working in the department of public service and administration.

9. (1) The functions of the Directorate are to—

Functions of the
Directorate

- (a) co-ordinate and monitor the implementation of the National Policy on Disaster Management and the County Disaster Management Plan;
- (b) examine the vulnerability of different parts of the county to different disasters and specify prevention, reduction or mitigation measures;
- (c) lay down guidelines to be followed for preparation of disaster management plans by the county departments;
- (d) evaluate preparedness at all governmental or non-governmental levels in the county to respond to disaster and to enhance preparedness;
- (e) co-ordinate response in the event of disaster;
- (f) give directions to any county department or authority regarding actions to be taken in response to disaster;
- (g) promote the recruitment, training and participation of volunteers in disaster management in the county;
- (h) promote general education, awareness and community training in this regard;
- (i) provide necessary technical assistance or give advice to local officers for carrying out their functions effectively;
- (j) ensure that communication systems are in order and disaster management drills are being carried out regularly; and
- (k) perform such other functions as may be assigned to it by the Committee or any other written law.

10. (1) The Directorate shall prepare the County Disaster Management Plan for approval by the County Assembly.

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 vulnerability of different parts of the county to different forms of disasters;
 - (c) the manner in which the mitigation measures shall be integrated with the development plans and projects;
 - (d) capacity building and preparedness measures to be taken;
 - (e) the roles and responsibilities of each department of the County Government in relation to the measures specified in section (b), (c) and (d); and
 - (f) the roles and responsibilities of different departments of the County Government in responding to any threatening disaster situation or disaster.
- (3) The Plan shall be reviewed and updated annually.

11. When an emergency exists or is imminent or a disaster has occurred or is imminent, the Directorate or other persons designated in the Plan may cause the Plan to be implemented.

Implementation of Plan.

PART III—MEASURES BY THE COUNTY GOVERNMENT FOR DISASTER MANAGEMENT

12. (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.

Measures to be taken by the County Government.

(2) Without prejudice to the generality of subsection (1), the measures which the County Government may take includes measures with respect to all or any of the following matters, namely—

- (a) co-ordination of actions of the departments and divisions of the County Government, County Governmental and non-governmental organizations in relation to disaster management;

- (b) co-operation and assistance to any other person, as requested by them or otherwise considered appropriate by it;
- (c) establishment of institutions for research, training and developmental programmes in the field of disaster management; and
- (d) such other matters as it considers necessary or expedient for the purpose of securing effective implementation of the provisions of this Act.

(3) The County Government may extend such support to other counties affected by a major disaster as it may consider appropriate.

13. (1) For the purposes of this Act—

Period of disaster.

- (a) a disaster exists when the Governor declares by notice that 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 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 Directorate as an Accredited Disaster Notification Service under subsection (3), 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.

(3) The Directorate 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.

14. (1) Subject to section 12, the Governor may issue a declaration of period of disaster which would activate, with immediate effect, the disaster response provisions of the Plan in the event of a disaster.

Declaration of period of disaster.

(2) Immediately after the declaration of a period of disaster, the Governor shall cause the details of the declaration to be communicated by the most appropriate means to the residents of the affected area.

15. Upon the declaration of a period of disaster, the Governor may, in respect of the county, issue an order to a person to do everything necessary to prevent or limit loss of life and damage to property or the environment, including any one or more of the following—

Declaratory Powers under a Disaster situation.

- (a) cause emergency plans to be implemented;
- (b) utilize any property considered necessary to prevent, combat or alleviate the effects of any disaster;
- (c) authorize or require any qualified person to render aid of such type as that person may be qualified to provide;
- (d) control, permit or prohibit travel to or from any area or on any road, street or highway;
- (e) cause the evacuation of persons and the removal of livestock and personal property and make arrangements for their adequate care and protection;
- (f) control or prevent the movement of people and the removal of livestock from any designated area that may have a contaminating disease;
- (g) authorize the entry into any building, or upon any land;
- (h) cause the demolition or removal of any trees, structure or crops in order to prevent, combat or alleviate the effects of a disaster;
- (i) authorize the procurement and distribution of essential resources and the provision of essential services;

- (j) regulate the distribution and availability of essential goods, services and resources;
- (k) provide for the restoration of essential facilities, the distribution of essential supplies and the maintenance and co-ordination of emergency medical, social and other essential services; and
- (l) expend such sums as are necessary to pay expenses caused by the disaster.

16. (1) The Governor may terminate a period of disaster with respect to period of of disaster the county identified in the declaration of a disaster when, in the opinion of the Governor, the disaster no longer exists. Termination of a period of a disaster.

(2) Upon termination of a period of disaster referred to in subsection (1), the Governor shall cause the details of the termination to be communicated, by the most appropriate means, to the residents of the affected areas in the county.

17. (1) Where the Directorate identifies an area as likely to pose a danger in the event of a disaster, it shall— Steps to abate Danger.

- (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 upon receipt of the notice.

(2) Upon failure to comply with the requirements after notice, the Directorate shall take the steps necessary to give effect to the notice including entry by its employees or agents upon the premises after due notice to the owner or occupant of the premises.

(3) Any step which the Directorate takes under subsection (2) must be reasonable in the circumstances with every care taken to ensure minimal damage to the area.

(4) A person who is served with a notice under subsection (1) and who does not take all the steps as directed by the 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 21 shall be made to pay

any expenses which the Directorate incurs to abate or remove the danger.

(5) 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 IV – FINANCIAL PROVISIONS

18. (1) The County Government shall establish the County Disaster Management Fund that shall be equivalent to 2% of annual county budget. Establishment of the County Disaster Management Fund.

(2) The fund shall be administered by the Fund Manager appointed from among persons working in the county treasury by the County Executive Committee Member for Finance according to the provisions of the Public Finance Management Act, 2012.

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

- (a) 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;
- (b) grants made by the national government or other County Governments; and
- (c) loans, aid or donations from national or international agencies; and
- (d) all monies from any other source provided or donated or lent to the Directorate.

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

(5) The Fund Manager shall administer the County Disaster and Emergency Management Fund subject to the provisions of all laws and regulations relating to public financial management.

19. 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.

Allocation of Funds
for Disaster
Managemnet.

20. (1) Where, by reason of any impending disaster, the Committee is satisfied that immediate procurement of provisions or materials or the immediate application of resources are necessary for rescue or relief, the concerned department may procure the provisions or materials directly.

Emergency
Procurement.

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

21. (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.

Annual Returns.

(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 approved by the Committee before the commencement of the financial year to which they relate and shall be submitted to the executive committee member for transmission to and tabling in the County Assembly.

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

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

Accounts and Audit.

(2) The committee shall submit to the County Assembly quarterly reports on all of its operations;

(3) Within a period of three months after the end of each financial year, the Committee 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; and
- (b) a statement of the assets and liabilities of the Directorate on the last day of that financial year.

(4) 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.

23. The financial year of the Directorate shall be the period of twelve months ending on the thirtieth June in each year. Financial Year.

PART V—OFFENCES AND PENALTIES

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

- (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 an entity, to a fine not exceeding five million shillings.

25. A person who knowingly makes a claim which they know or has reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to disaster from any officer of the County Government is liable, on conviction, to a fine not False Claim.

exceeding one hundred thousand shillings or imprisonment of not more than one year, or to both.

26. A person 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 one million shillings or imprisonment of not more than three years, or to both.

Misappropriation of Money or materials.

27. A person who makes or circulates a false alarm or warning as to a disaster or its severity or magnitude, leading to panic, commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment of not more than one year, or to both.

False Alarm.

(2) Despite subsection (1), no offence is committed where a disaster drill is being carried out.

(3) For the purposes of this section, a disaster drill is a practice of the emergency procedures to be used in case of a disaster.

28. 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.

General Penalty.

PART VI—MISCELLANEOUS PROVISIONS

29. (1) Where it appears to the Directorate that—

Powers to requisition Resources for rescue Operations.

- (a) any resources with the County Government or any authority or person, are needed for the purpose of a prompt response;
- (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;
- (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 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.

(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) The compensation referred to in subsection (2) must be full and paid promptly.

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

30. (1) Where by reason of a disaster which results to substantial 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 property, in addition to relief, rehabilitation or settlement activities; Compensation.

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

31. 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— Protection from personal liability.

- (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.

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

Entry upon property.

33. The Directorate, 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.

Direction for communication of warnings.

34. The executive committee member may make regulations on—

Regulations.

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