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**TANA RIVER COUNTY ACTS, 2020**

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ACT, 2020**

**No. 6 of 2020**

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**THE TANA RIVER COUNTY DISASTER RISK MANAGEMENT  
ACT, 2020**

**AN ACT of the County Assembly of Tana River to provide for the effective organisation of the mitigation, prevention, preparedness, response and recovery from emergencies and disasters, and for connected purposes.**

**ENACTED** by the County Assembly of Tana River as follows—

**PART I — PRELIMINARY**

**Short Title**

1. This Act may be cited as the Tana River County Disaster Risk Management Act, 2020.

**Interpretation**

2. In this Act—

“Allocation” means funds allocated by the County Assembly for purposes of the Fund;

“Committee” means the Disaster Risk Management Committee established under Section 4 of this Act;

“Compensation” means any assistance by the county government that seeks to restore normalcy of life and livelihoods other than relief, rehabilitation and reconstruction after a disaster;

“County Assembly” means the County Assembly of Tana River;

“County Government” means the County Government of Tana River;

“Department” means the county department on special programmes;

“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 the 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, organising, co-ordinating, resource mobilisation and implementing measures which are necessary or expedient for strategies meant for including but not limited to preparedness, mitigation, response and recovery;

“disaster risk management” means the systematic process of using administrative directives, organisations, and operational skills and capacities to implement strategies, policies and improved coping capacities in order to lessen the adverse impacts of hazards and the possibility of disaster;

“emergency” means a natural or manmade phenomenon which may cause physical damage, economic losses or threaten human life and wellbeing within the County;

“exposure” means the combination of the probability of an event and its negative consequences;

“financial year” has the meaning accorded in the Public Finance Management Act, 2012;

“Fund” means the County Disaster risk management Fund established under Part IV of this Act;

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

“Plan” means the County Disaster risk management Plan drawn in accordance with Section 12 of this Act;

“preparedness” means the knowledge and capacities by governments, professional response and recovery organisations, communities and individuals to effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazard events or conditions;

“prevention” means the outright avoidance of adverse impacts of hazards and related disasters;

“recovery” means the restoration, and improvement where appropriate, of facilities, livelihoods and living conditions of disaster-affected communities including efforts to reduce disaster risk factors;

“response” means the provision of emergency services and public assistance during or immediately after disaster in order to save lives, reduce health impacts, ensure public safety and meet the basic subsistence needs of the people affected; and

“Sub-Committee” means the subcommittee established under the Schedule.

### **Objects and Purposes of the Act**

3. The objects and purpose of this Act shall be to—

- (a) establish an efficient structure for the management of disasters and emergencies by promoting cooperation amongst agencies with a role in disaster risk management, and enhancing their capacities to maintain the provision of essential services, including psycho social services, during periods of disaster and emergency;
- (b) ensure preparation and implementation of a County disaster risk management plan consisting of the response agency plans prepared by the response agencies and other groups and institutions;
- (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) 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 which 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 RISK MANAGEMENT STRUCTURE**

### **The Disaster Risk Management Committee**

- 4. (1) There is established the Disaster Risk Management Committee.
- (2) The Committee shall consist of—
  - (a) the Governor or his representative;
  - (b) the County Commissioner or his representative;
  - (c) the County Executive Committee Member responsible for matters relating to disaster management;

- (d) the County Executive Committee Member responsible for matters relating to finance;
- (e) the Chief Officer responsible for special programmes;
- (f) the County Liaison Officer of the Kenya Red Cross Society; and
- (g) the County Liaison Officer of the National Drought Management Authority.

#### **Functions of the Committee**

5. (1) The Committee shall be responsible for the following—

- (a) examine the vulnerability of different parts of the County to different disasters and identify specific prevention, reduction or mitigation measures;
- (b) lay down guidelines to be followed for preparation of disaster and emergency management plans by the County departments;
- (c) evaluate preparedness at all governmental or non-governmental levels in the County to respond to disaster and emergencies and to enhance preparedness;
- (d) co-ordinate response in the event of disaster or emergency;
- (e) promote the recruitment, training and participation of volunteers in disaster and emergency management in the County;
- (f) to administer and mobilize resources for the County Disaster risk management Fund;
- (g) to negotiate with the central government and other counties on trans-border disasters and emergencies;
- (h) implement the national government's policy on disaster and emergency response;
- (i) to oversee the implementation of disaster risk reduction, preparedness, response and recovery activities by all County Government sectors and agencies performing roles related to disaster risk management;
- (j) to approve, review, amend and endorse recommendations of the Committee; oversee application and implementation of the County Disaster risk management Plan during any period of disaster or emergency and give orders or directions necessary for the implementation of the Plan; and

- (k) discharge any other responsibility or exercise any other power as provided by this Act or the County Disaster risk management Plan.

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

#### **Powers of the Committee**

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

(2) Notwithstanding subsection (3), 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; and
- (c) undertake any activity necessary for the fulfilment of any of the functions of the Committee.

#### **Conduct of business of the Committee**

7. Unless otherwise expressly provided in this Act, the conduct and regulation of the business and affairs of the Committee shall be as provided in the Schedule.

#### **Function of the department**

8. The department on special programmes shall be responsible for—

- (a) formulation of the County Disaster Risk Management Plan, County Disaster Risk Reduction Action Plan, Contingency Plans, and Emergency Response Plans;
- (b) implementation of the decisions of the Committee and give proper effect of this Act and the Plan;
- (c) identifying the areas in the county vulnerable to disasters, measures for the prevention of disasters and the mitigation of its effects and ensuring such steps as necessary are undertaken by the relevant departments of the County;
- (d) taking measures to ensure capacity building of the County to effectively respond to disasters and emergencies;

- (e) ensuring that the guidelines for prevention, mitigation, preparedness and response measures laid down in the Plan are implemented by all county departments;
- (f) undertaking and coordinating specialised training programmes for officers of the Department and volunteer rescue workers in the County;
- (g) establishing a multi-agency stakeholder forum at the County, sub county and ward level for disaster risk management in the County; and
- (h) performing such other functions as may be conferred upon it by the Committee or any other written law.

### **PART III — COUNTY DISASTER RISK MANAGEMENT PLAN**

#### **Disaster Risk Management Plan**

9. (1) The Director shall prepare or cause to be prepared at regular intervals (not exceeding five years) a County Disaster Risk Management Plan, comprising the statement of the arrangement for the coordinated response to threat, event and aftermath of disaster in the County.

(2) Notwithstanding the provision of subsection (1) the Director shall give due regard to the National Policy on Disaster Risk Management and shall be subject for approval by the Committee.

#### **Contents of the Plan**

10. (1) The Plan as drawn above shall contain—
- (a) measures to be taken for the prevention of 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 imminent disaster or emergency situations; and
  - (e) roles and responsibilities of different county government departments and other agencies not being part of the county government.

(2) The Committee shall cause the Plan includes procedures for approving and managing assistance sought or offered in responses to any needs arising in the County from disasters and emergencies.

(3) The Plan may include any appropriate financial arrangements to support all aspects of the Plan; including any other aspect of disaster and emergency management which the Committee considers will achieve the objects of this Act.

#### **Implementation of the Plan**

11. (1) When an emergency exists or is imminent or a disaster has occurred or is imminent, the Committee or other persons designated in the plan may cause the plan to be implemented.

(2) Notwithstanding the provisions of any other Act, during any period of emergency the powers conferred on any agency, organization or person under the County Disaster Risk Management Plan shall be exercisable in accordance with the terms and requirements stated in this Act.

#### **Review and amendment of the Plan**

12. (1) All plans prepared and approved in accordance with this Part shall be reviewed at periods to be determined by the Committee or the Department;

(2) The Department shall ensure that the County Disaster Risk Management Plan, and each of its component parts, is reviewed—

- (a) whenever a review is considered necessary by the Disaster Risk Management Committee; or
- (b) not later than 3 years after the adoption of the County Disaster Risk Management Plan in accordance with this Act; or
- (c) after each period of emergency.

#### **Roles of the County Government in disaster risk management**

13. The County Government shall—

- (a) take such measure as necessary for training of officers and employees for purposes of disaster risk management;
- (b) ensure that resources relating to disaster risk 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 in the Physical Planning Act and the National Policy for Disaster risk management for prevention of disasters and mitigation; and
- (d) carry out relief, rehabilitation and reconstruction activities in the affected areas in accordance with the Plan.

**Period of disaster or emergency**

14. (1) For the purposes of this Act—
- (a) a disaster or emergency exists when the Governor declares, by notice in the *Gazette*, that disaster or emergency exists;
  - (b) a potential disaster exists when—
    - (i) the Governor declares by notice in the *Gazette* 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 Committee as an accredited disaster notification service under subsection (3), broadcasts or otherwise publishes a formal disaster warning persons of a potential disaster.
- (2) The Committee shall advise the Governor on request, and at any time it considers appropriate, the occurrence or likely occurrence of a disaster or emergency.
- (3) The Committee 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 or emergency, as an accredited disaster or emergency notification service for the purposes of this Act.
- (4) A certification under subsection (3) may be general or limited to specified kinds of disaster or emergency.

**Declaration of period of disaster or emergency**

15. (1) Subject to Section 17 the Governor may issue a declaration of period of disaster or emergency which would activate with immediate effect, the disaster and emergency response provisions of the Plan in the event of a disaster.

(2) Immediately after the declaration of a period of disaster or 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.

(3) Upon the declaration of a period of disaster or emergency, the Governor may 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 of the following—

- (a) cause emergency plans to be implemented;
- (b) utilize any property considered necessary to prevent, combat or alleviate the effects of any disaster or emergency;
- (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 person 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 or emergency;
- (i) authorize the procurement and distribution of essential resources and the provision of essential services;
- (j) regulate the distribution and availability of essential goods, service 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) expand such sums as are necessary to pay expenses caused by the disaster or emergency.

**Termination of a period of disaster**

16. (1) The Governor may terminate a period of disaster or emergency within the County identified in the declaration of a disaster or emergency when, on advise of the Committee, the disaster or emergency no longer exists.

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

**Steps to abate danger**

17. (1) Where the Committee or the Department, as the case may be, identifies premises likely to pose 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 four weeks of the receipt of the notice.

(2) Upon failure to comply with the requirements after notice, the Committee 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 paragraph (a) and who does not take all the steps as directed by the Committee 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 25 shall be made to pay any expenses which the Committee incurs to abate or remove the danger.

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

(5) Where the Committee is satisfied that immediate procurement of provisions or materials, or the immediate application of resources are necessary for rescue or relief, then it may authorise the Committee to procure the provisions or materials directly.

(6) The procurement under sub section (5) shall be carried out in accordance with the laws relating to public procurement

#### **PART IV — FINANCIAL PROVISIONS**

##### **Disaster Risk Management Fund**

18. (1) The County Government shall establish the Disaster Risk Management Fund.

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

- (a) such monies as may be appropriated from the County Revenue;
- (b) such monies or assets as may accrue to the Committee in the course of the exercise of its powers or the performance of its functions under this Act;
- (c) grants made by the national government or other county governments;
- (d) loans, aid or donations from national or international agencies; and
- (e) all monies from any other lawful source provided, donated or lent to the Committee.

(3) The Fund shall be utilised towards meeting the expenses for emergency preparedness, response, mitigation, risk reduction, relief and reconstruction after a disaster in the County.

(4) The County Executive Committee Member shall appoint an administrator of the Fund in accordance with the provisions of Section 116 (2) of the Public Finance Management Act.

##### **Expenditure of the Fund**

19. (1) All expenses for meeting emergency preparedness, response, mitigation, relief and reconstruction within the County shall be paid out of the Fund, upon occurrence of a disaster.

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

##### **Allocation of the Fund**

20. (1) Before the commencement of each financial year, the Committee shall cause to be prepared estimates of the revenue and expenditure for that year.

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

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

(3) The annual estimates shall be approved by the Department before the commencement of the financial year to which they relate and shall be submitted to the county executive committee member responsible for disaster and emergency management for transmission to and tabling in the County Assembly.

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

**Accounts and audit**

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

(2) Within a period of three months after the end of each financial year, the Department shall submit to the Auditor-General statements of account of the Committee in respect of that year together with—

- (a) a statement of the income and expenditure of the Committee during that financial year; and
- (b) a statement of the assets and liabilities of the Committee on the last day of that financial year.

(3) The annual accounts of the Department must be prepared, audited and reported upon in accordance with the provisions of Articles 226 and 229 of the Constitution and the law relating to public audit.

**PART V— OFFENCES AND PENALTIES****Misappropriation of the Fund and relief materials**

22. Any person who is entrusted with or is a custodian of the Fund, monies or materials meant for providing relief to disaster victims shall be committing an offence and will be liable to a fine not exceeding five hundred thousand shillings or to a term of imprisonment not exceeding two years, or both, if he/she—

- (a) solicits or receives money fraudulently on behalf of disaster victims or activities;
- (b) uses money meant for disasters activities other than those prescribed under this act;
- (c) trades or disposes of relief items or materials for disaster victims or interventions;
- (d) destroys relief items or materials in part or whole; or
- (e) wilfully compels any other person to do.

**False statements, claims and alarm**

23. (1) A person who—

- (a) knowingly, makes a claim which they know or has reason to believe to be false for obtaining any relief items, material and financial assistance, or other services related to rehabilitation, reconstruction and recovery after a disaster;
- (b) forwards or presents false claims or other benefits consequent to disaster from any officer of the county government;

Commits an offence and is liable, on conviction, to a fine not exceeding Kenya shillings one hundred thousand or imprisonment of not more than one year, or to both.

(2) A person who—

- (a) uses print media;
- (b) electronic media;
- (c) traditional methods of communication;
- (d) to spread or circulate a false alarm or warning on a disaster, or its severity or magnitude, leading to panic in part or whole county other than routine drills commits an offence and is liable to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding 1 year, or both.

**Obstruction**

24. A person who obstructs the Committee 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 to—
- (i) in the case of an individual, to a fine not exceeding five hundred thousand shillings or to imprisonment of not more than six months or to both; or
  - (ii) in the case of a corporation, to a fine not exceeding Kenya shillings five million

#### **General penalty**

25. 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**

#### **Immunity from liability**

26. No action or legal proceedings 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
- (c) .

#### **Claims for compensation and remuneration**

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

(2) The amount and extent of compensation shall be determined by the Committee.

(3) An application for compensation under this part shall be made to the Department within one year after occurrence of the disaster in the form in which the Department may from time to time determine.

(4) All outstanding claims for damages of previous disaster will cease on the commencement date of this Act.

### **Victims of Disaster**

28. The victims of disaster shall utilise all donations, in money or any other forms solely for the purpose of rehabilitation or recovery.

## **PART VII — PROVISIONS ON DELEGATED POWERS**

### **Regulations**

29. The County Executive Committee Member responsible for special programmes shall, on the recommendation of the Committee, make regulations on—

- (a) emergency planning for the continuity of functions of departments, Committees, 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;
- (d) the emergency planning, evaluation, and level of preparedness required of the disaster risk management agencies;
- (e) emergency planning, evaluation and reporting for non-governmental entities; and
- (f) the establishment, operation, liability and responsibilities of ground search and rescue organisations.

**SCHEDULE**

[Section 7]

**CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE****Declaration of emergency**

1. Subject to the provisions of this Act, the Governor may issue a declaration of emergency within the County for the county disaster response mechanisms to take such measures as necessary to mitigate on the disaster.

**Tenure of office**

2. Members of the Committee other than *ex-officio* members shall, subject to the provisions of this Schedule, hold office for a period of five years, and 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**

3. Any 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 Committee where the member—
  - (i) has been absent from three consecutive meetings of the Committee 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/her functions.

**Sub-Committees of the Committee**

4. (1) Where it deems appropriate, the Committee may set up a Sub-Committee of persons from amongst its members for the performance of such duties and responsibilities it may from time to time appoint.

(2) Notwithstanding the provision of sub section (1) above, the Sub-Committee so constituted may where it deems appropriate; appoint another person not being from the Committee, but not exceeding three, for effective performance of its duties.

(3) The Sub-Committee shall formulate its own rules for regulation of its functions, but all its decisions shall be subject to ratification by the Committee.