

SPECIAL ISSUE

Kenya Gazette Supplement No. 6 (Marsabit County Bills No. 3)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

MARSABIT COUNTY BILLS, 2023

NAIROBI, 13th September, 2023

CONTENT

Bill for Introduction into the County Assembly of Marsabit—	PAGE
The Marsabit County Disaster Risk Management Bill, 2023	1

**THE MARSABIT COUNTY DISASTER RISK MANAGEMENT
BILL, 2023**

ARRANGEMENT OF CLAUSES

Clause

PART I — PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Application.
- 4—Objectives of the Act.
- 5—Guiding principles.
- 6—County Disaster Risk Management Strategy.

**PART II—INSTITUTIONAL ARRANGEMENT AND
ADMINISTRATION OF DISASTER RISK MANAGEMENT**

- 7—Establishment of the County Disaster Risk Management Committee.
- 8—Functions of the Committee.
- 9—Powers of the Committee.
- 10—Vacation of office.
- 11—Conduct of business and affairs of the Committee.
- 12—Establishment of the Directorate of Disaster Risk Management.
- 13—Functions of the Directorate.
- 14—The role of the Governor.
- 15—The powers of the Governor.
- 16—The Governor may delegate powers or functions.
- 17—The role of the County Executive Member.
- 18—County Stakeholder Forums.
- 19—Obligations of the County Government Departments.
- 20—Role of the Stakeholders.
- 21—Protection from personal liability.

**PART III — DECLARATION OF A STATE OF DISASTER IN THE
COUNTY**

- 22—Procedure during disaster events.

23—Classification of disasters.

24—Declaration of a state of disaster in the County.

25—Request for national assistance.

PART IV—FINANCIAL PROVISIONS

26—The County Disaster Risk Management Fund.

27—Appropriation from the County Assembly and other sources of funds.

28—Bank Account.

29—Annual estimates.

30—Accounts and audit.

31—Procurement in times of a disaster.

PART V — MISCELLANEOUS PROVISIONS

32—Requisition of resources.

33—Offences.

34—Savings and Transitional provisions.

35—Regulations.

SCHEDULE

**THE MARSABIT COUNTY DISASTER RISK MANAGEMENT
BILL, 2023**

A Bill for

**AN ACT of the County Assembly of Marsabit for the performance of
the function of disaster risk management, and for connected
purposes**

ENACTED by the County Assembly of Marsabit, as follows—

PART I — PRELIMINARY

Short title and commencement

1. This Act may be cited as the Marsabit County Disaster Risk Management Act, 2023 and shall come into force on the fourteenth day after its publication in the *Kenya Gazette*.

Interpretation

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

“Climate change” means any change in the climate of any given area that persists for decades or longer, arising from either natural causes or human activity;

“Chief Officer” means the Chief Officer in the Department responsible for Disaster Risk Management;

“Committee” means the County Disaster Risk Management Committee established under section 7;

“County” means Marsabit County;

“County Executive Committee” means the County Executive Committee of Marsabit established in accordance with Article 176 of the Constitution;

“County Executive Member” means the County Executive Committee Member responsible for Disaster Risk Management;

“County government” means the County Government of Marsabit provided for under Article 176 of the Constitution;

“directorate” means the Directorate with the overall responsibility of performing the functions of disaster risk management in the County as established in section 11;

“disaster” means any serious disruption in the functioning of a community which causes widespread human, material, economic or environmental loss that exceeds the ability of the affected community to cope using its own resources;

“disaster risk assessment” means the methodology of determining the nature and extent of disaster risk by analyzing potential hazards and evaluating existing conditions of vulnerability that together could potentially harm exposed people, property, livelihoods and the environment on which they depend;

“disaster risk management” means the systematic process of managing uncertainty to minimize potential harm and loss, including using administrative directives, institutions and operational skills and capacities to implement strategies, policies and coping mechanisms in order to lessen the adverse impacts of hazards and the possibility of disaster;

“early warning system” means the set of capacities needed to generate and disseminate timely and meaningful warning information to enable individuals, communities and organizations threatened by a hazard to prepare and to act appropriately and in sufficient time to reduce the possibility of harm or loss;

“Governor” means a county governor elected in accordance with Article 180 of the Constitution;

“hazard” means any potentially damaging physical event, phenomenon or human activity that may cause the loss of life or injury, property damage, socio-economic disruption or environmental degradation, including latent conditions that may present future threats;

“knowledge management” means the process of capturing, creating, distilling, disseminating and utilizing know-how;

“mitigation” means the lessening or reduction of the adverse impacts of hazards and related disasters;

“monitoring” means the routine and continuous assessment of a situation or progress in implementation of a disaster management intervention;

“preparedness” means the knowledge and capacities developed by individuals, communities and organizations to effectively anticipate, respond to, and recover from, the impacts of likely, imminent or current hazards;

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

“reconstruction” means the process of rebuilding the life support systems, including redistributive restocking, and furthering the development of communities affected by disasters;

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

“rehabilitation” means restoration of the socio-economic institutions and structures of the communities affected by disasters, in readiness for reconstruction;

“resilience” means the ability of a system or community exposed to hazards to resist, absorb, accommodate and recover from the effects of a hazard in a timely and efficient manner, including through preservation and restoration of its essential basic structures and functions;

“resources” means material, human, financial and other assets available to a community, system or organization;

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

“stakeholder” means an individual, groups of individuals or organization that impacts and are impacted by the activities, products or services of the County Government and include the public, service providers and suppliers, National and County Governments and their agencies, media and the community;

“sustainable development” means development that meets the needs of the present without compromising the ability of future generations to meet their own needs;

“volunteer” means an individual who offers his or her time, skills or resources to provide services by free choice for the benefit of the county without the expectation of financial gain other than reimbursement of reasonable expenses.

“vulnerability” means the characteristics and circumstances of a community, system or asset, determined by physical, social, cultural, economic and environmental factors or processes, which increase the susceptibility of the community, system or asset to the damaging effects of a hazard.

Application

3. (1) This Act shall apply to —

(a) the geographical jurisdiction of Marsabit County; and

- (b) extra territorial jurisdiction of Marsabit County, subject to the assessment of the severity of the disaster by the Committee in consultation with the Directorate.

(2) With respect to sub-section 3(1) (b), the Act shall apply with necessary modifications and the County Government of Marsabit shall cooperate and collaborate with the National Government and any neighbouring County Government to manage and suppress the effects of the disaster.

Objects of the Act

4. The objectives of this Act shall be to—

- (a) establish an institutional framework to enhance effective and efficient coordination of disaster risk management within the County;
- (b) promote and strengthen the technical capacity of the Directorate in multi-hazard risk assessments and disaster risk management;
- (c) mainstream disaster risk management in plans and programmes at all levels and sectors in the County;
- (d) establish a mechanism to secure resources for disaster risk management in the County;
- (e) promote investment in disaster risk management in the County;
- (f) provide a framework for nurturing and sustaining partnerships, synergies and networks in disaster risk management within the County;
- (g) vest relevant persons and offices with the authority to act in accordance with this Act;
- (h) promote linkages between disaster risk management and sustainable development;
- (i) establish a knowledge management system for disaster risk management in the County;
- (j) incorporate the use of indigenous knowledge and best practises in disaster risk management; and
- (k) promote a culture of safety and resilience to disasters, through the use of knowledge, innovation and education.

Guiding principles

5. The guiding principles in the implementation of this Act shall be—

-
- (a) observance and compliance with good governance in accordance with Article 10 of the Constitution;
 - (b) ensuring public participation and community involvement;
 - (c) consultation and co-operation between the National Government, County Government and stakeholders;
 - (d) the values and principles of public service in accordance with Article 232 of the Constitution;
 - (e) observance and implementation of Article 2(5) and (6) of the Constitution;
 - (f) adoption and implementation of local and international best practices;
 - (g) embracing an all-hazard approach and principle of subsidiarity;
 - (h) ensure mainstreaming of climate change and gender; and
 - (i) acknowledgement and incorporation of indigenous knowledge.

County Disaster Risk Management Strategy

6. (1) The County Executive Member shall within four months of the commencement of this Act formulate a County Disaster Risk Management Strategy.

(2) The object of the County Disaster Risk Management Strategy shall be to—

- (a) articulate the vision the County on disaster risk management;
- (b) be a guide for the formulation of the County Action Plan on disaster risk management;
- (c) ensure that the approach of the County in disaster risk management is aligned with national, regional and international norms;
- (d) provide for the adaptation of best practices to the local context;
- (e) advise on the integration of disaster risk management in the County Integrated Development Plan;
- (f) pronounce the County Investment Strategy in disaster risk management;
- (g) seek to engage every resident of the County in the disaster risk management planning and implementation; and
- (h) advance stakeholders' roles and responsibilities in disaster risk management programmes in the County.

(3) The County Executive Member shall periodically review the County Disaster Risk Management Strategy and may, by notice in the *Kenya Gazette*, publish a revised County Disaster Risk Management Strategy.

(4) The County Executive Member and all relevant public bodies shall, when exercising or performing any statutory function, take into account and give effect to the County Disaster Risk Management Strategy.

(5) The County Executive Member shall, when formulating the County Disaster Risk Management Strategy under sub-section (1), consult the public and stakeholders.

(6) The County Executive Member shall publish and publicize the current or revised county disaster risk management strategy to the residents of the County through such means as the County Executive member may consider necessary.

PART II — INSTITUTIONAL ARRANGEMENT AND ADMINISTRATION OF DISASTER RISK MANAGEMENT

Establishment of the County Disaster Risk Management Committee

7. (1) There is established an unincorporated body known as the County Disaster Risk Management Committee.

(2) The Committee shall comprise of —

- (a) a Chairperson who shall be appointed by the Governor;
- (b) the County Commissioner;
- (c) the Chief Officer in the Department responsible for Disaster Risk Management;
- (d) the Chief Officer in the Department responsible for Finance;
- (e) the Chief Officer in the Department responsible for Environment;
- (f) a representative of the Kenya Red Cross Society;
- (g) one member appointed by the Governor in consultation with the organization for the time being recognized by the County Government as the umbrella organization representing the stakeholders in disaster risk management;
- (h) four other persons, not being public officers, appointed by the Governor, each being a resident of a sub-county in the County.

(3) (a) In appointing the members of the Committee under sub-sections 2(a), (g) and (h) the Governor shall observe the

principle of gender equity, representation of the youth and persons with disability.

- (b) A member of the Committee appointed under sub-sections 2(a), (g) and (h) shall serve for a term of three years, renewable for one further term.
- (c) The members of the County Committee shall serve on a part time basis and shall be paid such allowances as shall be determined by the County Government in consultation with the Salaries and Remuneration Commission.
- (4) The Chief Officer shall be the Secretary to the Committee.
- (5) The Committee may from time to time constitute technical working groups for the better carrying out of its functions.
- (6) The Committee may co-opt into the membership of the technical working groups constituted under sub-section (5) other persons whose knowledge and skills are found necessary for the functions of the Committee.
- (7) The Committee shall ensure that in undertaking its functions and in exercising its powers under this Act, it shall observe and uphold the guiding principles in this Act and national values and principles of governance enshrined in the Constitution.
- (8) A person shall be qualified for appointment under sub-sections 2 (a) (g) and (h) if such person —
 - (a) holds a minimum of a bachelor’s degree from a university recognized in Kenya;
 - (b) has knowledge and experience of at least five years in matters relating to disaster risk management;
 - (c) satisfies the requirements of Chapter Six of the Constitution.

Functions of the Committee

8. The functions of the Committee shall be to—

- (a) ensure that county departments and agencies have adequate human resources, tools, materials and financial resources for the effective implementation of disaster risk management activities at all levels;
- (b) receive and examine disaster risk assessment reports from the directorate in the county and recommend remedial measures to be taken, if any;
- (c) commission studies and research on disaster risk management;

- (d) where appropriate, advise the Governor to declare a state of disaster within the County;
- (e) liaise with other County Governments, National Government and any other stakeholders and partners on matters related to disaster risk management in the County;
- (f) in consultation with the Governor, mobilize resources within the county and outside the County to manage disaster risk;
- (g) coordinate disaster response interventions in the County;
- (h) receive any other relevant reports from the Directorate and other departments in the County; and
- (i) perform any other functions necessary under this Act or any other written law.

Powers of the Committee

9. (1) The Committee shall have all the powers necessary for the proper performance of its functions under this Act and, in particular, the Committee shall have power to—

- (a) summon any member, officer or employee of the County Government or any other person to appear before the Committee concerning matters relevant to its functions;
- (b) summon any member, officer or employee of the county government or any other person to produce any books or documents relating to the functions of the Committee;
- (c) require any department or entity of the County or any other body to provide such information in such manner and within such time as it may determine;
- (d) cause any department or entity of the County to provide facilities and resources, financial or other, within their control, for the protection and preservation of life and property in disaster risk management;
- (e) require the County Government to provide additional information or to explain any inconsistency, where the Committee determines, based on information it may have obtained;
- (f) establish technical working groups for the better carrying out of its functions;
- (g) co-opt into the membership of technical working groups established under paragraph (f) other persons whose knowledge

and skills are found necessary for the functions of the Committee;

- (h) in consultation with the Governor, issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled in accordance with this Act;
- (i) issue orders or directions to ensure compliance with this Act;
- (j) receive any gifts, grants, donations or endowments and to make legitimate disbursements there from;
- (k) in consultation with the County Executive Committee member for Finance, invest any moneys or funds received not immediately required for the purposes of this Act;
- (l) co-operate with other institutions and organizations undertaking functions similar to its own, whether within Kenya or otherwise including entering into partnerships and agreements pursuant to this Act; and
- (m) offer services to any person upon such terms as the Committee may from time to time determine.

(2) The Committee may, by resolution either generally or in any particular case, delegate to a technical working group of the Committee or to any member, officer, employee or agent of the County Government, the exercise of any of the powers of the Committee or the performance of any of the functions or duties of the Committee.

(3) A delegation by the Committee under paragraph (2)—

- (a) shall be subject to any conditions the Committee may impose;
- (b) shall not divest the Committee of its responsibility concerning the exercise of the delegated power; and
- (c) may be withdrawn at any time and, if a delegated power is withdrawn, any decision made by the delegatee in relation to the delegated power may be withdrawn or varied by the Committee.

Vacation of office

10. The office of the Chairperson or a member of the Committee shall become vacant if the member—

- (a) resigns by issuing notice in writing addressed to Governor;

- (b) is absent from three consecutive meetings of the Committee without the permission of the Chairperson;
- (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
- (d) is convicted of an offence that constitutes a serious violation of Chapter Six of the Constitution;
- (e) is unable, by reason of mental or physical infirmity, to discharge his or her functions; or
- (f) dies.

Conduct of business and affairs of the Committee

11. (1) The Committee shall meet as often as its business requires and especially so during a state of disaster.

(2) The Committee may regulate its own procedure at its meetings.

(3) The business and affairs of the Committee shall be conducted in accordance with the First Schedule to this Act.

(4) The Committee shall be responsible to the Governor in the performance of its functions under this Act.

Establishment of the Directorate of Disaster Risk Management

12. (1) There is established a directorate to be known as the County Disaster Risk Management Directorate which shall have the overall responsibility of performing the functions of disaster risk management in the County.

(2) The Directorate shall be established as an office in the County Public Service and within the Department responsible for Disaster Risk Management.

(3) The Directorate shall comprise of—

- (a) a Director who shall be competitively recruited and assigned by the County Public Service Board;
- (b) sub-county disaster risk management officers appointed by the County Public Service Board;
- (c) ward disaster risk management officers appointed by the County Public Service Board; and
- (d) other officers appointed by the County Public Service Board.

(4) The Directorate shall serve as the Secretariat to the Committee.

(5) The Directorate shall decentralize its services to the lowest possible unit of the County's administration to ensure the provision of disaster risk management services throughout the County.

Functions of the Directorate

13. (1) The functions of the Directorate shall be to —

- (a) act as the central planning, coordinating and monitoring institution for disaster management in the County;
- (b) implement the decisions of the Committee solely or in collaboration with other County departments;
- (c) ensure the implementation of any National Disaster Risk Management Strategy or Action Plan;
- (d) coordinate and monitor all disaster risk management activities in the County;
- (e) coordinate and monitor the implementation of the disaster risk management programmes through community participation and public awareness campaigns;
- (f) work in close collaboration with other state agencies to develop and improve early warning systems and advisory mechanisms for all-natural hazards affecting the County;
- (g) develop and implement a County multi-hazard emergency alert system to provide accurate and timely advice to the public and key stakeholders;
- (h) undertake hazard specific risk assessments in the County;
- (i) support National Government Ministries, County Government departments, stakeholders and communities in building capacity for disaster risk management;
- (j) facilitate and coordinate the conduct of regular trainings, drills and simulation exercises to test the adequacy of disaster response plans in the County;
- (k) undertake and participate in post-disaster reviews, including lessons drawn from previous disasters in disaster preparedness and response plans in the County;
- (l) assist relevant stakeholders to develop an appropriate risk transfer mechanism for post-disaster recovery and rehabilitation purposes in the County;
- (m) collaborate with all relevant stakeholders to integrate disaster risk management into the County Integrated Development Plans

including any County environment-related policies and plans, County land use planning, County natural resources management policies and plans, County education and social development plans, County economic and sectoral policies, County infrastructure plans, County climate change plans, County gender plans and any other County plans;

- (n) foster County cooperation in disaster risk management issues, including best practices and sharing of expertise;
- (o) promote research and development and undertake studies on disaster risk management matters;
- (p) publish and disseminate information concerning disaster risk management;
- (q) develop and maintain a common repository of relevant research and operational projects and results on disaster risk management in the County;
- (r) develop and implement warehouse management procedures in the County;
- (s) develop and maintain a county disaster register and a database of stakeholders and beneficiaries in the County;
- (t) submit quarterly reports to the Committee and the County Executive Member;
- (u) carry out such other activities as may be necessary or expedient for the administration of this Act.

The role of the Governor

14. The Governor shall in the discharge of his or her functions—

- (a) receive quarterly reports from the Committee on the status of disaster risk management in the County;
- (b) be the sole spokesperson of the county during times of disaster or potential danger and issue such communique through the media; and
- (c) perform any other roles as may be necessary or expedient for the administration of this Act.

The powers of the Governor

15. (1) The Governor shall in the discharge of his or her functions exercise the following powers—

- (a) mobilize resources and raise funds to meet disaster risk management needs in the County;
- (b) on the advice of the Committee declare or terminate a disaster; and
- (c) issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled in accordance with this Act;

Governor may delegate powers or functions

16. (1) The Governor may, by resolution either generally or in any particular case, delegate to the Committee, a technical working group of the Committee or to any member, officer, employee or agent of the County Government, the exercise of any of his or her powers or the performance of any of the functions or duties of the Governor.

(2) A delegation by the Governor under paragraph (1)—

- (a) shall be subject to any conditions the Governor may impose;
- (b) shall not divest the Governor of his or her responsibility concerning the exercise of the delegated power; and
- (c) may be withdrawn at any time and, if a delegated power is withdrawn, any decision made by the delegatee in relation to the delegated power may be withdrawn or varied by the Governor.

The role of the County Executive Member

17. (1) The County Executive Member shall in the discharge of his or her functions—

- (a) formulate the overall policy on disaster risk management in the County;
- (b) provide general direction to the directorate in the performance of functions in disaster risk management in the County;
- (c) communicate and transmit resolutions of the Committee to the directorate, other departments in the County and organized groups of stakeholders in the County; and
- (d) perform any other roles as may be necessary or expedient for the administration of this Act.

County stakeholder forums

18. (1) The County Executive Member may convene a consultative stakeholders forum on disaster risk management issues in the County.

(2) The consultative stakeholder’s forum envisaged under sub-section (1) may be formally or informally constituted by the County Executive Member.

(3) The County Executive Member may convene an informal County stakeholders forum by convening meetings, colloquiums, webinars, workshops or other informal consultative platforms.

(4) Despite sub-section (3), the County Executive Member may constitute a formal consultative stakeholders forum—

- (a) at a specified period of time, in regular intervals, through a notice in the *Kenya Gazette*; and
- (b) whose membership shall be ad hoc and shall draw from the stakeholders in the County.

(5) In regards to the formal or informal consultative stakeholder forums convened under this section—

- (a) the Directorate shall serve as the Secretariat;
- (b) the Directorate shall collate and transmit any resolution to the Committee through the County Executive Member; and
- (c) the Committee shall receive and act on all resolutions received in accordance with their functions and powers under this Act.

(6) The County Executive Member may make regulations and give directions for the implementation of this section.

Obligations of the County Government departments

19. (1) Every department in the County Government shall be obligated to collaborate, consult and cooperate amongst each other in the performance of their functions under this Act.

(2) Despite the generality of sub-section (1) every department in the County Government shall in consultation with the Directorate—

- (a) prepare and submit annual contingency plans to the Committee on any risks or hazards;
- (b) conduct investigations, surveys, researches and analysis related to risks and hazards;

- (c) provide and share information with each other and with the Directorate and Committee;
- (d) allocate and avail resources, financial and other, towards disaster risk management activities; and
- (e) fulfil any other obligations as may be necessary or expedient for the administration of this Act.

Role of the stakeholders

20. Any stakeholder based in the County shall support the Directorate and Committee in the administration of this Act and shall—

- (a) engage in the activities of the County stakeholder forums convened under this Act;
- (b) participate in the development and implementation of disaster risk management response plans;
- (c) avail resources, financial and other, towards disaster risk management activities in the County;
- (d) provide and share information with the Directorate and the Committee;
- (e) provide technical assistance to the Directorate in the preparation of hazard specific plans;
- (f) perform any other roles as may be necessary or expedient for the administration of this Act.

Protection from personal liability

21. No liability, civil or criminal, shall be incurred by any person in respect of any act done or omitted in good faith in the discharge of his functions, or the exercise of his powers, under this Act.

PART III — DECLARATION AND TERMINATION OF A STATE OF DISASTER IN THE COUNTY

Procedure during disaster events

22. (1) When a disastrous event occurs or threatens to occur in the county, the Committee shall determine whether the event is a disaster under this Act, and, if so, immediately—

- (a) initiate the implementation of the County Disaster Risk Management Plan or Strategy;
- (b) record the particulars concerning the disaster in the register;

- (c) assess the magnitude and severity or potential magnitude and severity of the disaster; and
 - (d) inform the Governor of the disaster and its initial assessment of the magnitude and severity or potential magnitude and severity of the disaster.
- (2) When assessing the magnitude and severity or potential magnitude and severity of a disaster, the Committee—
- (a) shall consider information and recommendations concerning the disaster;
 - (b) may enlist the assistance of an independent assessor to evaluate the disaster on site; and
 - (c) may classify the disaster as a county disaster in accordance with section 23.

Classification of disasters

- 23.** (1) A disaster is a county disaster if—
- (a) it affects the County; and
 - (b) the county is able to effectively manage it.
- (2) Until a disaster is classified by the Committee, it shall be deemed a County disaster.
- (3) Despite the classification of a disaster under this section designating primary responsibility for managing a disaster to the County Government, the two levels of government may assist each other in managing the disaster.
- (4) The County Executive Member may make regulations and give directions for the implementation of this section.

Declaration of a state of disaster in the County

24. (1) If at any time it appears to the Governor, on the advice of the Committee that any disaster in any area within the County is of such a nature and extent that exceptional measures are necessary to assist and protect the public of such area or that circumstances are likely to arise making such measures necessary, the Governor in consultation with the County Assembly may declare that with effect from a date specified by him or her in such declaration, a state of disaster exists within the area defined in such declaration and such declaration shall be published in the *Kenya Gazette*.

(2) Where a state of disaster is declared under sub-section (1), the Governor in may issue directions or authorise the issue of directions concerning—

- (a) the release of any available resources of a department, including food items, non-food items, equipment, vehicles and facilities;
- (b) the release of personnel from any department to provide services;
- (c) the evacuation of any person from the disaster affected area to temporary shelters;
- (d) the regulation of the movement of persons and goods to, from and within the disaster affected areas;
- (e) the regulation of traffic to, from and within the disaster affected area;
- (f) the control and occupancy of premises in the disaster affected area;
- (g) the facilitation of response and post disaster recovery and reconstruction;
- (h) steps to facilitate the delivery of national relief assistance; and
- (i) any other measure that may be necessary to prevent the escalation of the disaster or to alleviate, contain and minimise the impact of the disaster.

(3) The powers referred to in sub-section (2) may be exercised only to the extent that is necessary for the purpose of—

- (a) assisting and protecting the public;
- (b) providing relief to the public;
- (c) protecting property; or
- (d) dealing with the destructive and other impacts of the disaster.

(4) A state of disaster declared under sub-section (1) shall remain in force until such time as the Governor may determine and such determination shall be published in the *Gazette*.

(5) In determining a disaster, the provisions of sub-section (1) shall apply with necessary modifications.

(6) The County Executive Member may make regulations for the implementation of this section.

Request for national assistance

25. (1) Where the Committee assesses the severity of a disaster and determines that it is beyond the County capabilities, the Governor may, on the recommendation of the Committee, or on his or her own initiative, seek national relief assistance.

(2) Any relief assistance under paragraph (1) shall be coordinated according to national guidelines.

(3) Any national agency or institution together with any of its personnel offering relief assistance shall cooperate and coordinate with the Directorate and any other departments in the County, where necessary, in the relief efforts.

(4) Any national agency or institution offering relief assistance shall ensure that the disaster relief and initial recovery assistance are provided in accordance with this Act and principles of humanity, neutrality and impartiality.

(5) Where, as a result of a request for national relief assistance under sub-section (1), any goods are imported as aid to persons affected by a disaster, the goods shall, pursuant to the relevant legislation, be released, free of duty, excise duty and taxes.

(6) Notwithstanding any other enactment, the County shall ensure that necessary facilities are provided to those who are providing national relief assistance assisting in the aftermath of a disaster under this section.

(7) In the event that international relief assistance is required, the Governor shall engage with the relevant agencies and institutions at National level and this section shall apply with necessary modifications.

PART IV — FINANCIAL PROVISIONS

Marsabit County Disaster Management Fund

26. (1) The County Executive Committee Member for Finance shall, within six months of the commencement of this Act and upon meeting the minimum requirements under the Public Finance Management Act and any other relevant law, establish the Marsabit County Disaster Risk Management Fund.

No. 18 of 2012

(2) Further to paragraph (1), the County Executive Committee Member for Finance shall publish regulations under the Public Finance Management Act and any other relevant law for the management, operation and winding up procedure for the Fund.

Appropriation from the County Assembly and other sources of funds

27. (1) The County Assembly shall appropriate monies to the Directorate for the purposes of undertaking the functions under this Act.

(2) The Directorate may also receive such other monies as may accrue to it in the performance of its functions under this Act or monies from any other source provided for or donated or lent to the Directorate.

(3) Grants and donations shall be accounted for in accordance with the Public Finance Management Act and any other relevant law.

(4) Wherever possible, donations and grants shall only be used for the purpose for which they have been granted or donated, however, where no conditions are attached, they shall be used for the purposes of furthering the functions of the Directorate.

(5) In consultation with the County Executive Committee Member for Finance and any donor, as the case may be, the Directorate may invest and retain such surplus funds which funds shall be utilized for the furtherance of the functions of the Directorate.

Bank Account

28. (1) For purposes of section 24, the County Executive Committee Member for Finance shall, facilitate the opening and maintenance of bank accounts by the Directorate for purposes of operationalizing disbursements of conditional grants, donations and any other monies designated for disaster risk management, as may be prescribed in accordance with the provisions of the Public Finance Management Act and any other relevant law.

(2) Funds identified and designated for disaster management in subsection (1) shall not be appropriated for any other purpose.

Annual estimates

29. (1) At least three months before the commencement of a financial year, the Directorate shall cause to be prepared the estimates of revenue and expenditure of the Directorate for that year.

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

- (a) the operations and administration expenses of the Committee;
- (b) the operations and administration expenses for the county stakeholder forums;
- (c) operations of the Directorate in the management of disasters in their areas;

- (d) funding of training, research and development of activities of the Directorate;
- (e) funding of education, training and capacity building on disaster management in the County;
- (f) the provision of essential commodities and other relief to victims of any disaster, hazard or emergency;
- (g) the restoration, reconstruction and rehabilitation of areas affected by any disaster, hazard or emergency;
- (h) the payment of any compensation due to a person under this Act;
- (i) preparedness, prevention, mitigation of, and recovery from, disasters; and
- (j) any other payments due under this Act.

(3) The annual estimates shall be submitted to the County Executive Member for approval.

(4) Notwithstanding sub-section (1), there shall be paid out of the funds of the Directorate, all expenditure incurred by the Directorate and the Committee in the exercise of their powers or the performance of their functions under this Act.

(5) No expenditure shall be incurred for the purposes of the Directorate except in accordance with the annual estimates approved under sub-section (2), or in pursuance of an authorization of the County Executive Member.

Accounts and audit

30. The accounts of the Directorate shall be audited and reported upon in accordance with the Constitution, the Public Audit Act and any other relevant legislation.

Procurement in times of a disaster

31. (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 Directorate may use direct procurement method or any other appropriate procurement method considering the circumstances.

(2) In approving procurements under sub-section (1), the relevant accounting officer shall be furnished with adequate evidence to verify the urgency and justify the direct procurement method or any other alternative procurement method.

(3) If there is a conflict between this Act, the regulations or any directions of the Directorate and a condition imposed by a donor of funds, the condition imposed by the donor shall prevail with respect to a procurement that uses those funds and no others.

No. 33 of 2015

(4) This section shall be implemented in accordance with the Public Procurement and Asset Disposal Act, 2015 and any other relevant law.

PART V—MISCELLANEOUS PROVISIONS

Requisition of resources

32. (1) Where it appears to the Committee that—

- (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 likely to be needed for the purposes of 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 a certain order with regard to certain property in their possession or under their management,

the Committee 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 persons engaged being owners or custodians of premises, resources or vehicles affected by orders issued under paragraphs (a), (b), (c), and (d) in sub-section (1), shall be entitled to claim reasonable compensation from the Directorate as is admissible under any law for the time being in force.

(3) The compensation referred to in sub-section (2) shall be full and paid promptly.

(4) Where human resources are needed in form of volunteers, the Directorate shall compensate them in accordance with recommendations from the Salaries and Remuneration Commission.

Offences

33. (1) Any person who—

- (a) assaults, obstructs, threatens, intimidates, abuses or insults a person in the discharge of his or her functions; or exercise of his or her powers under this Act;
- (b) diverts relief goods, equipment or other aid commodities to persons other than the rightful recipient or consignee;
- (c) substitutes or replaces relief goods, equipment or other aid commodities with items of inferior or cheaper quality;
- (d) prevents, obstructs or deliberately hinders relief activities;
- (e) makes false claims of losses due to a disaster;
- (f) publishes or broadcasts false news about disasters through the media;
- (g) causes or provokes a disaster;
- (h) refuses to provide assistance or resources when requested under this Act;
- (i) contravenes any order issued under this Act;
- (j) wilfully fails or refuses to comply with any direction in a state of disaster,

commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

(2) The County Executive Committee member in consultation with the County Attorney shall put in place arrangements with—

- (a) the Director of Public Prosecution to facilitate prosecution of persons who commit offences under this Act;
- (b) the Judicial Service Commission for the purpose of allocation and designation of magistrates to adjudicate on criminal matters arising from this Act and for the transmission of fines paid by those convicted of offences under this Act into the County Revenue Fund; and
- (c) any relevant public authority dealing with matters of incarceration of criminal suspects and convicts under this Act.

Savings and Transitional Provisions

34. (1) In this section—

“effective date” means the day upon which this Act comes into operation; and

“former Directorate” means the Directorate responsible for disaster management within the county public service existing immediately before the effective date.

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

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

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

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

(6) The annual estimates of the former Directorate for the financial year in which the effective date occurs shall be deemed to be annual estimates of the Directorate for the remainder of that financial year, but such estimates may be varied by the County Executive Member as he or she may deem necessary.

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

Regulations

35. (1) The County Executive Member shall, on the recommendation of the Committee make regulations generally for the better carrying out of the provisions of this Act.

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

- (a) format and timelines for the provision of information as required under section 9(c);

- (b) issuance of orders and directions by the Committee under section 9;
- (c) the forms and fees for the purposes of this Act; and
- (d) any other matter necessary for the implementation of this Act.

SCHEDULE

[Section 11]

CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

Meetings

1. The Committee shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Committee in any financial year.

Election of Vice-chairperson

2. At the first meeting, the Committee shall elect a vice-chairperson amongst their number and regard shall be taken to ensure that the Chairperson and Vice-chairperson shall be of opposite gender.

Time and place of meetings

3. A meeting of the Committee shall be held on such date and at such time and place as the Committee may determine.

Special meetings

4. The Chairperson shall, on the written application of one-third of the members, convene a special meeting of the Committee.

Quorum

5. The quorum for the conduct of business at a meeting of the Committee shall be any five members.

Voting

6. The Chairperson shall preside at every meeting of the Committee at which he or she is present and in the absence of the Chairperson at a meeting, the Vice-chairperson, shall preside and in the absence of both the Chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairperson.

Decisions of the Committee

7. Unless a unanimous decision is reached, a decision on any matter before the Committee shall be by concurrence of a majority of all the members present and voting at the meeting.

Validity of proceedings

8. Subject to paragraph 5, no proceedings of the Committee shall be invalid by reason only of a vacancy among the members thereof.

Signification of instruments and decisions of the Committee

9. Unless otherwise provided by or under any law, all instruments made by and decisions of the Committee shall be signified under the hand of the Chairperson.

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to establish the County Disaster Risk Management Committee and the Directorate for Disaster Risk Management to ensure that there is co-ordination of disaster risk management issues in the County. The Bill incorporates the National Government in the County Disaster Risk Management Committee because disaster risk management is a shared function. Further it also incorporates the non-state actors and key stakeholders due to the cooperative and consultative nature of disaster risk management. The Bill also outlines the process for the declaration and termination of a disaster including powers vested in the Governor, the County Disaster Risk Management Committee and the County Executive Member.

The main premise of the Bill is to approach disaster risk management in a manner that seeks first to respond effectively and in a timely manner to any disaster or risk of disaster, and to prevent the adverse effects of a disaster, recover, as far as may be possible, the livelihood of communities affected by a disaster.

The enactment of the Bill will assist in the efficient and effective management of disasters across the County.

PART I-contains preliminary provisions.

PART II-establishes the Institutional Framework on Disaster Risk Management which include the County Disaster Risk Management Committee and the Directorate for Disaster Risk Management as well as the County Stakeholders Forum.

PART III-contains provisions dealing with the manner in which disasters may be classified, declared or terminated.

PART IV-contains financial provisions.

PART V-contains miscellaneous provisions on requisition of resources. The part also creates offences and prescribes penalties thereto.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill delegates legislative powers to the County Executive Member responsible for matters relating to Disaster Risk Management and the County Executive Committee member responsible for Finance. The Bill limits right to movement.

Statement that the Bill concerns the County Government

The Bill contains provisions affecting the functions, powers and finances of the County Government.

The Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill will occasion additional expenditure of public funds.

Dated the 5th September, 2023.

JOSEPH ADMEN LERUK,
*Chairperson, Committee of Administration,
County Cohesion and ICT.*