

SPECIAL ISSUE

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REPUBLIC OF KENYA

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NATIONAL ASSEMBLY BILLS, 2019

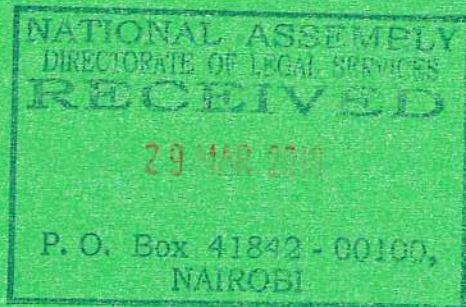
NAIROBI, 1st March, 2019

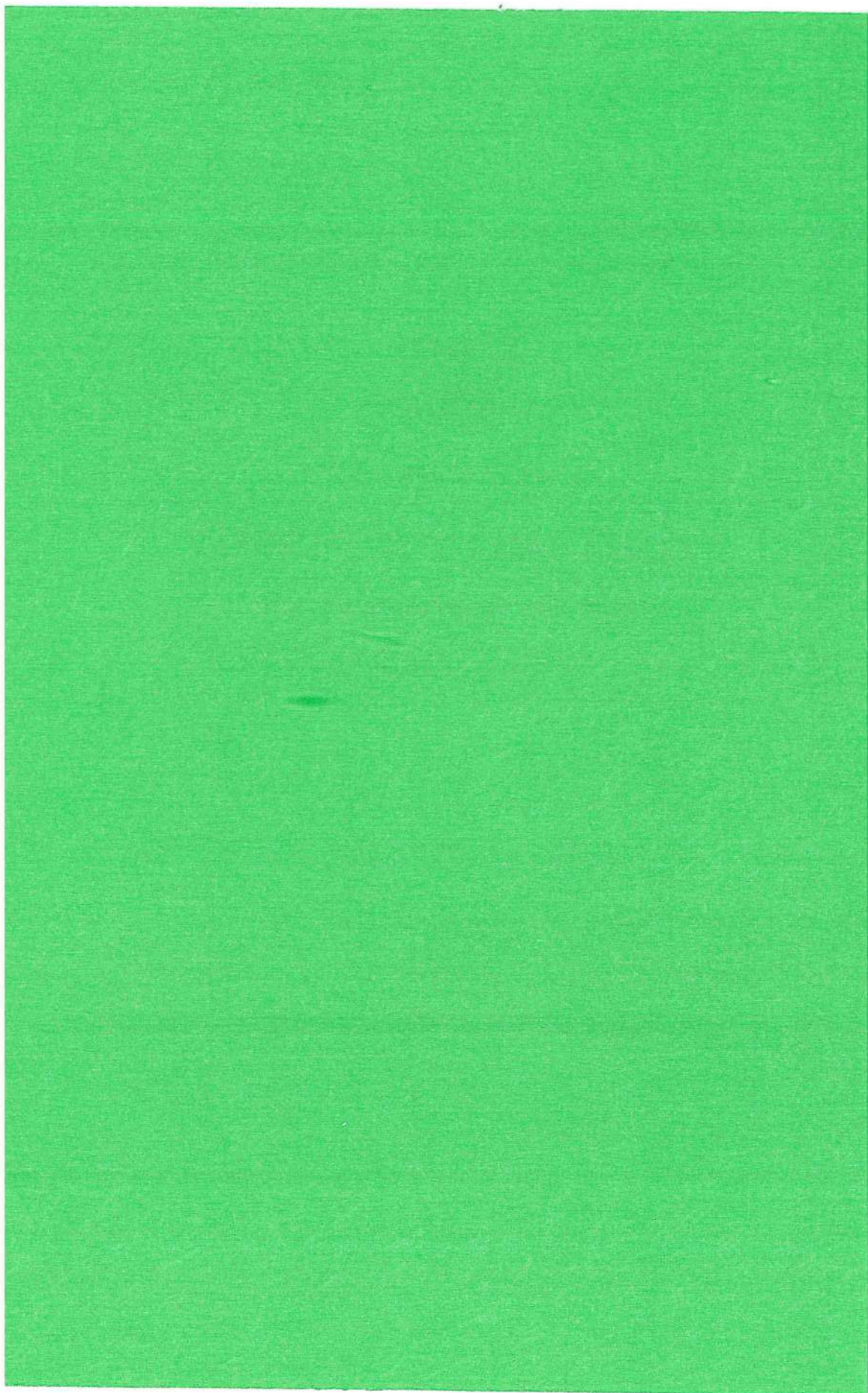
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**THE NATIONAL DISASTER MANAGEMENT
AUTHORITY BILL, 2019**

A Bill for

**AN ACT of Parliament to provide for the establishment
of the National Disaster Management Authority
and for connected purposes**

ENACTED by the Parliament of Kenya, as follows—

PART I - PRELIMINARY

1. This Act may be cited as the National Disaster Management Authority Act, 2019. Short title.

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

“**Authority**” means the National Disaster Management Authority established by section 3;

“**Board**” means the Board of the Authority provided for in section 8;

“**Cabinet Secretary**” means the Cabinet Secretary for the time being responsible for matters relating to co-ordination of national government; and

“**disaster**” means a sudden, calamitous event, caused by nature or human beings, that seriously disrupts the functioning of a community or society and causes human, material, economic or environmental losses that exceed the community's or society's ability to cope using its own resources.

**PART II – ESTABLISHMENT, FUNCTIONS AND
POWERS OF THE NATIONAL DISASTER
MANAGEMENT AUTHORITY**

3. (1) There is established an Authority to be known as the National Disaster Management Authority. Establishment of
the Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

4. (1) The headquarters of the Authority shall be in Nairobi.

Headquarters of the Authority.

(2) The Authority may establish offices in other counties.

5. The Authority shall, in liaison with the county governments, perform the following functions—

Functions of the Authority.

- (a) co-ordinate and control the response to and management of disasters;
- (b) build capacity at both levels of government in crisis response and disaster resilience;
- (c) serve as the command centre for all communication and information relating to response operations;
- (d) co-ordinate disaster management efforts between various government agencies to ensure there is a seamless response to disasters;
- (e) undertake public awareness on disaster preparedness and response;
- (f) establish and operate an effective and efficient National Early Warning Disaster Monitoring Information System;
- (g) facilitate disaster management contingency processes that will result in the formulation of contingency plans to be updated regularly;
- (h) document, publish and disseminate all relevant disaster management data and information to all stakeholders;
- (i) operate a functional and effective monitoring and evaluation system for programming and management of activities in disaster management; and

- (j) perform such other functions as may be necessary for the exercise of its powers and functions under this Act.

6. The Authority shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have the power to—

Powers of the Authority.

- (a) manage, control and administer its assets in such a manner and for such purposes as best promotes the purpose for which the Authority is established;
- (b) open such bank accounts for its funds as may be necessary;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (d) subject to approval of the Cabinet Secretary for the time being responsible for matters relating to finance, invest any of the Authority's funds not immediately required for the purposes of this Act, as it may determine;
- (e) receive gifts, grants, donations or endowments made to the Authority and make disbursements therefrom;
- (f) enter into association with such other bodies or organisations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established; and
- (g) undertake any activity necessary for the fulfilment of any of its functions.

7. The Authority may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions under this Act.

Delegation by the Authority.

8. (1) The management of the Authority shall vest in the Board which shall comprise of the following members—

Board of the Authority.

- (a) a chairperson;
- (b) the Principal Secretary in the Ministry responsible for co-ordination of national government or their representative appointed in writing;
- (c) the Principal Secretary in the Ministry responsible for finance or their representative appointed in writing;
- (d) the Principal Secretary in the Ministry responsible for matters relating to county governments or their representative appointed in writing;
- (e) the Principal Secretary in the Ministry responsible for environment or their representative appointed in writing;
- (f) the Principal Secretary in the Ministry responsible for defence or their representative appointed in writing;
- (g) the Principal Secretary in the Ministry responsible for Health or their representative appointed in writing;
- (h) the Principal Secretary in the Ministry responsible for information or their representative appointed in writing;
- (i) the Principal Secretary in the Ministry responsible for foreign affairs or their representative appointed in writing;
- (j) the Attorney-General or his representative;
- (k) three persons nominated by the Council of Governors; and
- (l) the Director-General.

(2) The Chairperson shall be appointed through a competitive process by the Cabinet Secretary with the approval of the National Assembly.

(3) A person shall be qualified for appointment as Chairperson or member under sub-section (1)(k) if the person—

- (a) is a citizen of Kenya;
- (b) holds a masters degree in disaster and emergency management; and
- (c) has knowledge and experience in disaster and emergency management of not less than fifteen years in the case of the Chairperson, and ten years in the case of a member.

(4) A person shall not be qualified for appointment as Chairperson or member of the Board under sub-section (1)(k) if the person—

- (a) is a State or public officer;
- (b) is a member of a governing body of a political party;
- (c) is an undischarged bankrupt; or
- (d) has been removed from public office for contravening the Constitution or any other law.

9. (1) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if such person—

Vacation of office.

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is absent from three consecutive meetings of the Board without good cause;
- (e) resigns in writing by a notice addressed to the Cabinet Secretary;
- (f) dies; or
- (g) is removed in accordance with the provisions of the Constitution.

(2) The Board shall be properly constituted notwithstanding a vacancy in its membership.

10. The Chairperson and members appointed under section 7 (1) (k) shall hold office for a term of five years renewable for one further term only.

Term of office.

11. The Board shall conduct its affairs in accordance with the provisions of the Schedule, but subject thereto, the Board may regulate its own procedure.

Conduct of business and affairs of the Board.

12. The members of the Board shall be paid such remuneration, allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Remuneration.

13. (1) There shall be a Director-General who shall be the Chief Executive Officer of the Authority and the Secretary to the Board appointed by the Board through a competitive recruitment process.

Director-General.

(2) The Director-General shall be an *ex officio* member of the Board but shall have no right to vote.

14. (1) A person shall qualify for appointment as the Director-General if that person—

Qualification of the Director-General.

- (a) is a citizen of Kenya;
- (b) holds a masters degree in disaster and emergency management; and
- (c) has the relevant expertise qualification and experience in disaster and emergency management of not less than ten years.

(2) The Director-General shall hold office on such terms and conditions of employment as the Board may determine.

15. The Director-General shall be responsible for the—

Functions of the Director-General.

- (a) day-to-day operations of the Authority;
- (b) administration, organisation and control of the staff of the Authority;
- (c) management of funds, property and affairs of the Authority;
- (d) implementation of the policies and programmes of the Authority;
- (e) development of an operations plan for achieving the Authority's objectives; and
- (f) performance of any other duty necessary for the implementation of this Act as may be assigned to the Director-General by the Board.

16. (1) The Board may remove the Director-General from office in accordance with the terms and conditions of service on grounds of—

Removal of the Director-General.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify the removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Director-General shall be—

- (a) informed in writing of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against the allegations.

17. The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine in consultation with the Salaries and Remuneration Commission.

Staff.

18. The Authority may engage the services of such experts in respect of any of its functions in which they are considered to have special competence.

Experts.

19. (1) The common seal of the Authority shall be kept in the custody of the Director-General or of such other person as the Board may direct, and shall not be used except on the order of the Board.

Common seal.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Secretary.

(3) The Board shall in the absence of either the Chairperson or the Director-General, in any particular matter, nominate one member of the Board to authenticate the seal of the Board on behalf of either the Chairperson or the Director-General.

(4) The common seal of the Authority when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Authority under this section shall be presumed to have been duly given.

20. (1) No matter done by a member of the Authority or by any officer, member of staff, or agent of the Authority shall, if the matter or thing is done *bona fide* for the purpose of executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable in an action, claim or demand whatsoever.

Protection from personal liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Authority, shall, if the court holds that such act was done *bona fide*, be paid out of the funds of the Authority, unless such expenses are recovered by him or her in such suit or prosecution.

21. The provisions of section 20 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

PART III – FINANCIAL PROVISIONS

22. The Funds of the Authority shall consist of—

Funds of the Authority.

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Authority;
- (b) gifts, grants, donations or endowments as may be given to the Authority;
- (c) monies that may accrue to or vest in the Authority in the course of the exercise of its functions under this Act;
- (d) fees for services rendered by the Authority; and
- (e) monies from any other lawful source provided for the Authority.

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

Financial year.

24. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Authority for that year.

Annual estimates.

(2) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and, once approved, the sum provided in the estimates shall be submitted to the Cabinet Secretary for approval.

(3) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates approved under subsection (2), or in pursuance of an authorization of the Board given with the prior written approval of the Cabinet Secretary.

25. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

Accounts and Audit.

(2) Within the period of three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Authority in respect of that year together with—

- (a) a statement of income and expenditure during the year; and
- (b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2015.

No. 34 of 2015.

PART IV-RESPONSIBILITY OF NATIONAL AND COUNTY GOVERNMENTS

26. (1) The national government shall, in accordance with Part 1 of the Fourth Schedule to the Constitution, be responsible for disaster management in the country.

Respective roles of national and county governments.

(2) Each county government shall within its area of jurisdiction be responsible for disaster management in accordance with Part 2 of the Fourth Schedule to the Constitution.

(3) The Cabinet Secretary shall, on the advice of the Authority, and in consultation with the county governments develop a national policy on disaster management.

(4) Each county government shall, for the purpose of ensuring uniformity and national standards, through its legislation and administrative actions, implement and act in accordance with the national policy guidelines developed under subsection (3).

27. Each county government may establish a County Government Emergency Fund in accordance with the provisions of the Public Finance Management Act.

County
Government
Emergency Fund.
No. 18 of 2012.

PART V – MISCELLANEOUS PROVISIONS

28. (1) The Board shall, not more than three months after the end of each financial year, prepare a report setting out the operations of the Authority for the preceding year.

Annual Report.

(2) The Cabinet Secretary shall, within thirty days of receipt of the annual report, submit the report to Parliament and the county assemblies.

(3) Parliament or a county assembly may at any time require the Authority to submit a report on a particular issue.

29. Any person may request for information from the Authority and such request for information—

Request for
information.

- (a) shall be addressed to the Chief Executive Officer;
- (b) may be subject to the payment of the prescribed fee; and
- (c) may be subject to confidentiality requirements of the Authority.

30. (1) The right of access to information guaranteed under Article 35 of the Constitution is hereby limited under Article 24 of the Constitution to the nature and extent specified in subsection (2).

Limitation of the
right to access
information.

(2) The Authority may decline to give information to an applicant where in its opinion the divulging of the information would compromise the integrity of the Authority.

31. A person who—

Offences and
penalties.

- (a) without lawful excuse ignores or fails to obey any instruction issued by a member of the Board or an employee or agent of the Authority in the exercise of the powers or the performance of functions of the Authority under this Act;
- (b) wilfully obstructs a member of the Board or an employee or agent of the Authority in the discharge of their lawful duties; or
- (c) misrepresents, knowingly submits false or misleading information to a member of the Board or an employee or agent of the Authority in exercise of the powers or the performance of the functions of the Authority under this Act,

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

32. (1) The Cabinet Secretary may in consultation with the Authority, make regulations for the better carrying into effect the functions of the Act.

Regulations.

(2) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make rules to provide for the better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

Cap. 2.

No. 23 of 2013.

PART VI – SAVINGS AND TRANSITIONAL PROVISIONS

33. (1) The staff of the National Disaster Operation Centre, the National Disaster Management Unit and Department of Special Programmes employed by the Government and who has been made an offer by the

Transfer of staff.

Authority shall be deemed to have been transferred to the Authority and service or employment in the National Disaster Operation Centre, the National Disaster Management Unit and the Department of Special Programmes shall be deemed to be service or employment in the Authority and any employee to whom the Authority does not make an offer shall be re-deployed by the Public Service Commission.

(2) The Director of the National Disaster Operation Centre shall be the Director-General of the Authority and shall serve for his or her unexpired term.

34. All property, except such property as the Cabinet Secretary may specify in writing, which, immediately before the commencement of this Act was vested in the Government for the use of the National Disaster Operation Centre, the National Disaster Management Unit and the Department of Special Programmes for the purpose of disaster risk management, shall, on the date of commencement of this Act, vest in the Authority subject to all interests, liabilities, charges, obligations and trusts affecting that property.

Transfer of assets and liabilities.

35. All rights, interests, obligations and liabilities of the Centre existing immediately before the commencement of this Act under any contract or instrument or in law or in equity shall by virtue of this Act be assigned to and vested in the Authority.

Pending rights and liabilities.

SCHEDULE

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CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The Board shall meet not less than four times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) A meeting of the Board shall be held on such date and at such time as the Chairperson shall appoint.

(3) Unless the majority of the membership of the Board otherwise agree, at least fourteen days notice of every meeting shall be given to every member.

(4) The Chairperson shall on the written application of at least one-third of the members, convene a special meeting of the Board.

(5) The quorum for the conduct of the business of the Board shall be one half of all the members.

(6) The Chairperson shall, when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(7) Unless an unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of interest by Board members.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board.

Execution instruments. of

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish a centralised system of responding to and managing disasters in the country. Kenya has in the recent past experienced various disasters including terror attacks, floods and landslides. The response to these disasters has been largely uncoordinated resulting in more deaths due to infighting among the various agencies. This has also resulted in some victims receiving too much aid while others receive none due to the uncoordinated approach of responding to disasters.

The solution to this problem is to be achieved through the establishment of the National Disaster Management Authority which is to be the main body dealing with disaster management in the country. The Authority is to liaise with other agencies in both the national and county governments in discharging its functions. It is expected that this will result in better response to disaster, saving of lives and ultimately a reduced impact of disasters through the establishment of the National Early Warning Disaster Monitoring Information System.

PART I (Clauses 1-2) of the Bill provides for preliminary provisions of the Bill including the short title of the Act and the interpretation clause.

PART II (Clauses 3-21) of the Bill deals with the establishment, functions and powers of the Authority. Clause 3 specifically establishes the National Disaster Management Authority. The functions and powers of the Authority are outlined under clauses 5 and 6 respectively.

PART III (Clauses 22-25) of the Bill deals with the financial provisions. The sources of funds for the Authority are outlined in clause 22. The Authority is required to comply with prudent financial management systems including the provisions of the Public Audit Act, No. 34 of 2015.

PART IV (Clauses 26-27) of the Bill deals with the respective roles of the national and county governments in disaster management.

PART V (Clauses 28-32) of the Bill contains miscellaneous provisions. It outlines the relevant legislation and guiding principles for the Cabinet Secretary when formulating delegated legislation. It also provides for offences and penalties under the Bill.

PART VI (Clause 33 35) of the Bill deals with savings and transitional provisions.

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

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill affects the functions of the county governments and is therefore a Bill concerning counties for purposes of the Standing Orders.

Statement that 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 to be provided for through the annual estimates.

Dated the 27th February, 2019.

KIMANI ICHUNG'WAH,
Member of Parliament.

