

**CLERK**  
**NAIROBI CITY**  
**COUNTY ASSEMBLY**  
**P. O. Box 45844-00100**  
**NAIROBI**



**NAIROBI CITY COUNTY ASSEMBLY**

**FIRST ASSEMBLY - THIRD SESSION**

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**REPORT OF THE SECTORAL**  
**COMMITTEE ON CULTURE AND COMMUNITY SERVICES ON THE**  
**CONSIDERATION OF THE NAIROBI CITY COUNTY DISASTER AND**  
**EMERGENCY MANAGEMENT FUND BILL, 2015**

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**Clerk's Chambers,**  
**Nairobi City County Assembly**  
**City Hall Buildings**  
**Nairobi**

**AUGUST, 2015**

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## **1.0 PREFACE**

**Mr. Speaker Sir,**

The Sectoral Committee on Culture and Social Services is established under Standing Order No. 191. Its mandate pursuant to Standing Order 191(5) is to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- b) study the programme and policy objectives of departments and the effectiveness of the implementation;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyse the relative success of the departments as measured by the results obtained as compared with its stated objectives;*
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 185(Committee on Appointments); and*
- g) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

The Committee comprises the following Members:-

- 1. Hon. Ronald Milare, MCA – (Chairman)**
- 2. Hon. Oscar Lore, MCA (Vice-Chairman)**
3. Hon. Tabitha Ndigirigi, MCA
4. Hon. Asha Abdi Sosso, MCA
5. Hon. Nancy Mwaura, MCA
6. Hon. Andrew Macharia, MCA
7. Hon Benadette W. Ng'ang'a, MCA
8. Hon. Janet Wala, MCA

9. Hon. David Mberia, MCA
10. Hon Rose Nancy Luchiri, MCA
11. Hon. Janet Kimondo, MCA
12. Hon. Paul Kiguathi Kados, MCA
13. Hon. Joash Omwenga, MCA
14. Hon. Kennedy Ng'ondi, MCA
15. Hon. Jackson Kiama, MCA
16. Hon. Elizabeth Sang, MCA
17. Hon. Martin Kinyanjui, MCA

**Mr. Speaker Sir,**

In accordance with the Second Schedule of the Standing Orders, the Sectoral Committee is mandated to consider all matters relating to:-

- a) Cultural activities, Public entertainment, Public amenities, Betting, Casinos and other forms of gambling, Racing, Liquor licensing, Cinemas, Video shows and hiring, Libraries, Museums, County parks, Recreation facilities, Firefighting Services and disaster management, Control of drugs and pornography; and*
- b) Ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level.*

**Mr. Speaker Sir,**

On Wednesday, 17<sup>th</sup> June 2015, the Nairobi City County Disaster and Emergency Management Bill, 2015 was read a First Time and thereafter committed to the Sectoral Committee on Culture and Social Services for consideration pursuant to Standing Order 121.



**Mr. Speaker Sir,**

The Committee placed a notice in the local dailies on Friday 19<sup>th</sup> June, 2015 calling for any representations and amendments from the public on the Bill Pursuant to Article 196(b) of the Constitution of Kenya and Standing Order 121(3) which require public participation in the legislative and other business of the Assembly and its Committees. Following the notice, the Committee received written memoranda from the following stakeholders;

- i) Ministry of Defense
- ii) Kenya Red cross; and
- iii) St. Johns Ambulance

The Committee held a total of seven (7) meetings and a retreat to consider the Bill and all representations received. The Committee further held a meeting with officials of the Kenya Red cross. All the stakeholders were agreeable in principle with the Bill although they proposed amendments to certain Clauses. From the outset, the Committee noted that the Bill as drafted had been wrongly referenced as from clause three (3).

**Mr. Speaker Sir,**

While examining the Bill, the Committee noted the following:

1. The principle objective of the Bill is to provide a mechanism for responding and addressing disasters and emergencies in the County.

***The Committee acknowledges that paragraph twelve (12) of part two (2) of the Fourth Schedule to the Constitution devolves the role of disaster management to County Governments. Nairobi City County has experienced numerous disasters particularly in the informal settlements and low income areas. These disasters include fire outbreaks, contagious diseases, terrorist attacks, industrial accidents and collapse of buildings, amongst others. However, lack of a comprehensive legal and institutional frame work to guide response to disasters and emergencies, explains the often poor coordination and response whenever such disasters occur. It's from this backdrop that the Committee fully supports the enactment of the proposed law***

*to first, give effect to the provisions of paragraph twelve (12) of part two(2) of the Fourth Schedule to the Constitution and second, to address the challenge facing the County with respect to disaster and emergency management. However, such legislation must be devoid of ambiguities and any potential source of conflicts among stakeholders involved in emergency response.*

2. **Part I** of the Bill contains provisions setting out the preliminary matters with regards to the Bill. Clause 1 sets out the short title while Clause 2 deals with the interpretation of terms as used in the Bill. Clause 3 drafted as Clause 2 outlines the objects and purpose of the Bill.

*The Committee observed that the short title fails to provide the accurate citation of the Bill by leaving out the word "County". On interpretation, the Kenya Red Cross proposed that a "ship" referred to in sub-clause 2(iii) should be replaced with a "water vessel" since there is no possibility of having a ship within Nairobi City County. Similarly, the Kenya Red Cross proposed that terrorism should be included among the disasters. The Committee concurred with both proposals.*

3. **Part II** of the Bill deals with the County disaster management structure. Clause 4 erroneously referred to as Clause 3 establishes the Emergency Management Council an entity responsible for policy formulation. Clause 5 again erroneously named Clause 4 sets out the functions of the Directorate which is the policy implementing entity while Clause 6 named 5 provides for the administration of the directorate.

*The Committee supports the creation of the council as a policy formulating and not implementing entity, however, it proposes reviewing the membership to include the County Executive Committee Member responsible for Culture and a representative from the County Public Service Board. In addition, St. Johns Ambulance proposed that they too be included as members of the council. However, the*



*Committee noted that the Bill had already addressed their concerns in sub-clause 2(k). The Committee was concerned that the proposed law goes ahead to confer roles to the Directorate while the same is not established. As such, the Committee proposed an amendment to first establish the Directorate before allocating it roles. In addition, the Directorate should fall under the relevant Sector and not independent as contemplated by the Bill. In addition, the Committee agreed with Kenya Red Cross's proposal of adding the Directorate another key function of establishing a multi-agency disaster operations centre to coordinate disaster and emergency response.*

4. **Part III** of the Bill provides for the preparation of the County disaster management plan and the role of the County Government in disaster management. Clause 7 drafted as Clause 6 mentions the contents of the plan and how it should be prepared while Clause 8 drafted as Clause 7 contains the specific roles of the County Government.

*The Committee fully supports the need for planning as this will improve the manner of responding to disasters by all agencies involved. The Committee further proposed that all agencies contemplated in sub clause 3(e) should share their plans in order to determine their strategies and capacities in disaster management.*

5. **Part IV** of the Bill deals with the financial provisions. Clause 9 drafted as Clause 8 establishes the County emergency fund. Clause 10 drafted as Clause 9 deals with estimates for the Directorate.

*The Committee finds this part crucial since one of the challenges that has affected disaster response in the County is either lack of funds or how they are managed. The Committee observed that the emergency fund established should be consistent with the provisions of the Public Finance Management Act, 2012. In addition, the Committee agreed with the proposal by the Kenya Red Cross that the fund should*

*be accessible to other auxiliary government agencies involved in disaster management within the framework of the disaster management council. Further the Committee concurred with the proposals of the Assembly Fiscal Analyst that the estimates of the Directorate should be presented together with those of the relevant sector since the Directorate contemplated in the Bill shall not be a separate entity of the County. The Committee also noted that Clause 12 drafted as Clause 11 is superfluous hence the Committee proposed its deletion. In the same spirit, the Committee observed that to maintain a coherent structure of the Bill, Clause 13 drafted as 12 on offences should be under a separate part.*

6. **Part V** of the Bill contains provisions on delegated powers. Clause 14 drafted as Clause 13 provides for the declaration of emergency by the council. Clause 15 drafted as 14 gives the relevant County Executive Committee Member powers to make rules.

*The Committee recommends that there should be a new clause dealing with disaster and emergency response mechanism. This should also entail issues of procurement of materials/services meant for assisting those affected by emergencies as soon as they occur. The Committee further proposes that all regulations made by the CEC Member must receive County Assembly approval.*

7. **Part VI** deals with transitional matters. This includes issues of effective date and transition to new entities established by the proposed law.

*The Committee observed that the Bill should expressly provide for the existing laws (by-laws) repealed by the proposed law.*

8. The Schedule deals with matters related to tenure of office for members of the council, meetings of the council, sub-committees of the council, and executing contracts.

*The Committee observed that there was need for clarity on whether members of the Council would draw allowances during meetings of*



***the council. In addition, the Committee opined that there was no need for a common seal for the council since the Council established doesn't have body corporate status.***

**Mr. Speaker Sir,**

As already alluded to, Nairobi City County has continued to face a rising degree of vulnerability to disaster risk. Residents are usually affected in such a manner that their lives and livelihoods are seriously disrupted beyond their capacity to cope or withstand using their own resources. As a result, affected populations suffer serious widespread human, material, economic or environmental losses. Despite this vulnerability, the County, so far does not have a comprehensive emergency and disaster management legal framework.

In view of the above realities, and based on the un-coordinated response to disasters and emergencies, the enactment of the proposed law is long overdue. The Bill provides adequate structures, procedures, financial and inter-agency coordination mechanisms which will help in timely response to disasters whenever they occur.

***The Committee further proposes that the Nairobi City County Fire and Rescue Services Bill, 2015 which is before the Assembly and awaiting Second Reading be withdrawn so that it can be aligned with the provisions of the Nairobi City County Disaster and Emergency Bill, 2015.***

**Mr. Speaker, Sir,**

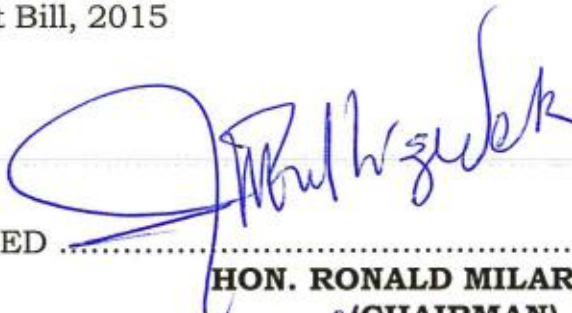
The Committee will propose amendments to the Bill in Clauses 1, 2, 4,5,6,7, 9, 10, 11, 12, 13, 14, 15, 16, 17 and the Schedule. Some of the amendments are editorial while others are to cater for the concerns of stakeholders.

**Mr. Speaker Sir;**

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the County Assembly for the support and services extended to Members of the Committee to enable them complete the exercise smoothly. I am grateful to the Members of the Committee whose commitment enabled the Committee to comprehensively consider the Bill. Special thanks to the secretariat for their support and the Stakeholders whose views enriched the process.

On behalf of the Committee, I now have the honor and pleasure to present this report on the consideration of the Nairobi City County Disaster and Emergency Management Bill, 2015

Thank You.

  
SIGNED .....  
**HON. RONALD MILARE, MCA**  
**(CHAIRMAN)**  
DATE..... 26/8/2015 .....



## **2.0 COMMITTEE STAGE AMENDMENTS TO THE NAIROBI CITY COUNTY DISASTER AND EMERGENCY MANAGEMENT BILL, 2015**

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**NOTICE** is given that the chairperson of the Committee on Culture and Social Services intends to move the following amendments to the Nairobi City County Disaster and Emergency Management Bill, 2015 at the Committee Stage—

### **LONG TITLE**

**THAT**, the Long Title be amended by inserting the word “City” immediately after the words “emergencies in Nairobi”.

### **○ CLAUSE 1**

**THAT**, clause 1 be amended by inserting the word “County” immediately before the word “Disaster”.

### **CLAUSE 2**

**THAT**, clause 2 be amended—

(a) in the definition of the term “disaster”, by—

(i) deleting the word “ship” appearing in paragraph (a)(iii) and substituting therefor the word “water Vessel”;

(ii) inserting the word “terrorism” immediately before the words “systems failure” in paragraph (a)(vi);

(b) by deleting the definition of the term “fund” and substituting therefor the following new definition—

“Fund” means the Nairobi City County Emergency Fund established pursuant to section 110 of the Public Finance Management Act, 2012”;

(c) by deleting the definition of the term “plan” and substituting therefor the following new definition—

“Plan” means the Nairobi City County Disaster Management Plan prepared pursuant to section 6”.

### CLAUSE 3

**THAT**, clause 3 be amended—

(a) in subclause (1), by inserting the words “Nairobi City” immediately before the word “Disaster”;

(b) in subclause (2), by—

(i) deleting paragraph (g) and substituting therefor the following new paragraph—

“(g) the County Executive Member responsible for culture and social services”;

(ii) inserting the following new paragraph immediately after paragraph (h)—

“(h) the Secretary to the Nairobi City County Public Service Board”;

(c) in subclause (3), by inserting the words “with the approval of the County Assembly” immediately after the words “set policies” in paragraph (a).

### NEW CLAUSE

**THAT**, the following new clause be inserted immediately after clause 3—

Establishment of the Directorate of Disaster and Emergency Management.	<b>3A.</b> There is established the Directorate of Disaster and Emergency Management as an office in the county public service.
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### CLAUSE 4

**THAT**, clause 4 be amended by inserting the following new paragraphs immediately after paragraph (s)—

“(t) establish a multi-agency disaster operations centre;



“(u) regulate other disaster management agencies in the County;

“(v) perform such other functions as may be conferred by the Council or any other written law”.

#### **CLAUSE 5**

**THAT**, clause 5(1) be amended by deleting the word “office” appearing immediately before the word “Directorate”.

#### **CLAUSE 6**

**THAT**, clause 6 be amended—

(a) in subclause (1), by inserting the words “City” immediately before the word “County”;

(b) in subclause (3), by inserting the following new paragraph immediately after paragraph (e)—

“(f) mechanisms for the sharing of disaster management plans formulated by other disaster management agencies;

“(g) information regarding the vulnerability of different parts of the County to different forms of disasters”.

#### **NEW CLAUSE**

**THAT**, the following new clause be inserted immediately after clause 7—

Disaster  
emergency  
response.

**7A.** Where, upon occurrence of a disaster, the Council is satisfied that immediate procurement of provisions or materials, or the immediate application of resources are necessary for rescue or relief, the Council may authorise the Directorate to procure the provisions or materials directly.

(2) The procurement referred to in subsection (1) shall done in accordance with the applicable provisions of the written law relating to public procurement.

**CLAUSE 8**

**THAT**, clause 8 be deleted and replaced with the following new clause—

Expenditure of the Fund.                    **8.** (1) There shall be paid out of the Fund monies for meeting the expenses for emergency preparedness, response, mitigation, relief and reconstruction in the Nairobi County, upon occurrence of a disaster.

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

**CLAUSE 9**

**THAT**, clause 9 be amended by deleting subclause (3) and substituting therefor the following new subclause—

“(3) The annual estimates shall be submitted to the County Executive Member responsible for matters relating to disaster and emergency management for approval, and once approved, shall be included in the estimates for the relevant sector submitted for approval by the County Assembly.”

**CLAUSE 10**

**THAT**, clause 10 be amended in subclause (2), by deleting the word “must” wherever it occurs and substituting therefor the word “shall”.

**CLAUSE 11**

**THAT**, clause 11 be deleted.

**CLAUSE 15**

**THAT**, clause 15 be amended by deleting the expression “section 57” and substituting therefor the expression “section 14”.

**CLAUSE 16**



**THAT**, clause 16 be amended—

- (a) in subclause (2), by deleting the word “Council” and substituting therefor the word “Directorate”;
- (b) in subclause (3), by deleting the word “Council” and substituting therefor the word “Directorate”;
- (c) in subclause (4), by deleting the word “Council” and substituting therefor the word “Directorate”;
- (d) in subclause (5), by deleting the word “Council” and substituting therefor the word “Directorate”;
- (e) by deleting subclause (6) and substituting therefor the following new subclause—

“(6) The annual estimates of the former Department for the financial year in which the effective date occurs shall be deemed to be the annual estimates of the Directorate for the remainder of that financial year, but such estimates may be varied by the County Executive Committee Member responsible for matters relating to disaster and emergency management as he or she may deem necessary”;

- (f) in subclause (7), by deleting the word “Council” and substituting therefor the word “Directorate”.

## **SCHEDULE**

**THAT**, the Schedule be amended—

- (a) in paragraph 4, by inserting the following new subparagraph immediately after subparagraph (1)—

“(1A) Members of the committees shall be drawn from the members of the Council, but a committee may co-opt any other person, not exceeding three persons, as may be necessary to discharge its mandate”;

- (b) by deleting paragraph 7.

