REPUBLIC OF KENYA

THE NATIONAL TREASURY AND PLANNING

IN THE MATTER OF PUBLIC PARTICIPATION ON THE DRAFT

REGULATORY IMPACT ASSESSMENT (RIA)

ON

THE PUBLIC FINANCE MANAGEMENT (DISASTER MANAGEMENT FUND) REGULATIONS 2022

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EXECUTIVE SUMMARY

This Regulatory Impact Assessment (RIA) is a policy tool whose purpose is to examine and measure the likely benefits, costs and effects of the proposed Public Finance Management (Disaster Management Fund) Regulations, 2022 pursuant to Sections 6 & 7 of the Statutory Instruments Act (No. 23 of 2013). It examines the impact on the establishment of the Disaster Management Fund whose main objective is to mobilize resources towards efficient and effective disaster management in Kenya. The Fund is aimed at creating a singular pool of funds to be directed towards receipt and disbursement of monies for disaster management in Kenya.

This RIA is divided into 12 parts. Part 1 is the Introduction which outlines the unique nature of the Fund and emphasizes that it provides complementary financing for disaster management for both levels of Government and any entity seeking to access the Fund will be required to demonstrate that a funding gap exists and there is no duplication of efforts.

Part 2 of the RIA captures a statement of the objectives of the Regulations and the reasons for them.

Part 3 of the RIA outlines the salient features of the Regulations and the Fund. It gives a general summary of the provisions of the Regulations.

Part 4 provides a background and context of the history of disasters in Kenya and details how disaster management in Kenya has faced challenges due to inadequate financing as well as coordination hiccups.

Part 5 of the RIA dives into a comparative analysis taking us on a journey across the globe of countries that have successfully established and implemented disaster management funds such as Thailand and India. It also looks at commitments on disaster management financing at regional level and examples of Funds established in Kenya to manage disasters.

Part 6 takes us into the policy and legal framework for disaster management and outlines commitments from the Vision 2030, Constitution of Kenya 2010 and other strategies adopted by the country.

Part 7 is on the consultative process adopted to develop the RIA. It states the initial consultative process and other engagements with experts, agencies and general public.

Part 8 of the RIA provides for the regulatory and non-regulatory options that were available and reasons why other options are not appropriate. It also justifies why the regulatory option is appropriate.

Part 9 expounds the effect of the proposed legislation, including in the case of a proposed legislation which is to amend an existing statutory instrument and the effect on the operation of the existing statutory instrument.

Part 10 of the RIA is a cost benefit analysis that weighs the costs of implementing the proposed regulations against the benefits of what the proposed regulations are anticipated to bring. The RIA examines the costs and benefits of implementing regulatory measures in Kenya in order to support an effective and coordinated response to disasters to save lives, reduce the impact of disasters on affected communities and safeguard economic development.

Part 11 & 12 are the conclusion and recommendations on the option to adopt. This RIA concludes that the proposed Public Finance Management (Disaster Management Fund) Regulations, 2022, will improve disaster response management, efficient coordination of actors, effective liaison, coordinate disaster preparedness, mitigation, recovery and most important of all save lives in Kenya. The RIA recommends the approval of the proposed Public Finance Management (Disaster Management Fund) Regulations 2022.

1. INTRODUCTION

Disaster Management is a concurrent function as provided for in Paragraph 12 of the Fourth Schedule of the Constitution of Kenya, 2010. The Public Finance Management Act, 2012, empowers both levels of Government to establish Funds for disaster management. The Fund is a common basket drawing resources from Government, development partners, private sector among other lawful sources, for efficient and effective management of disasters in the country. However, this Fund is unique in that it provides complementary financing for disaster management for both levels of Government. Entities seeking to access the Fund will be required to demonstrate that a funding gap exists and that there are no duplication of efforts.

Section 24(4) of the Public Finance Management Act, 2012 donates power to the Cabinet Secretary responsible for The enabling powers to make the Regulations is conferred by section 24 (4) of the Public Finance Management Act 2012 and its attendant Regulations. The National Policy for Disaster Risk Management recommended the establishment of a disaster management fund that will receive contributions from the Exchequer and donations from individuals, the private sector and the civil society and development partners for disaster management activities.

The existing laws and regulations establish various Funds which are limited in scope and do not provide for a set aside Fund for comprehensive and effective disaster management. The proposed regulations seek to create a common basket for receipt and disbursement of funds for disaster management.

Regulation Making Authority

The Regulation making Authority is the National Treasury in which the Cabinet Secretary pursuant to section 24 (4) of the Public Finance Management Act (No. 18 of 2012) has the mandate to make the Public Finance Management (Disaster Management Fund) Regulations, 2022.

2. A STATEMENT OF THE OBJECTIVES OF THE PROPOSED LEGISLATION AND THE REASONS FOR THEM

The overall objective of the Fund is to mobilize resources towards efficient and effective disaster management.

The specific objectives of the Fund are to—

(a) Facilitate disaster preparedness, mitigation, response, and recovery.
(b) provide a common basket for receipt and disbursement of funds for disaster management;
(c) Provide financing mechanisms for timely, transparent, and accountable disaster management.
(d) support capacity development of institutions mandated with disaster management;
(e) Support agencies dealing with early warning systems for disaster management;

(f) Support, programmes, projects or activities to further the objectives under this regulation; and
(g) Perform any other purpose approved by the Board that would enhance the development and promotion of prudent disaster management in the country.

3. SALIENT FEATURES OF THE REGULATIONS AND THE FUND

The Salient features of these proposed Regulations are as follows:

(a) the interpretation, objects and purpose of the Fund;
(b) the establishment of the Fund and sources of the Fund including the initial capital of the Fund of Kenya Shillings three (3) billion to be appropriated by parliament in the financial year 2022/23;
(c) the establishment and functions of the Disaster Management Fund Board;
(d) The Regulations exempts Drought related disasters;
(e) the Administrator of the Fund shall be the accounting officer responsible for disaster management or any other person designated by the Cabinet Secretary for the National Treasury;
(f) retention of receipts and accruals at the end of each financial year for use to further the object and purpose for which the Fund is established for;
(g) the regulations provide for the application of Government Financial Regulations and procedure in the administration of the Fund;
(h) The Fund shall be accessed by both levels of Government;
(i) the regulations also provide for the criteria for accessing the funds of the Fund and allocation for the various disaster management cycles namely mitigation, preparedness, response and recovery;
(j) the regulations also provide for oversight of Parliament through annual reporting to the Auditor General and quarterly reporting on projects financed by the Fund;
(k) maintenance of proper records in the management and administration of the Fund including reporting requirements to comply with the provisions of the Public Finance Management Act, 2012;
(l) offences and penalty for misappropriation of the Fund; and
(m) The procedure for winding-up of the fund.

4. BACKGROUND AND CONTEXT

Disasters present among the most serious threats to sustainable development. In Kenya, the economic impacts of disasters such as floods, drought, landslides, terrorism, structural collapses, amongst others, are estimated to generate a fiscal liability equivalent to 2 to 2.4% of the Gross Domestic Product each year on average. The increasing intensity and magnitude of disasters in Kenya are exacerbated by unplanned rapid urbanization and climate extremes, community conflicts mostly over natural resources, and other security threats.

Kenya experiences frequent, localised or widespread and intense disasters that include but not limited to floods, droughts, landslides, terror attacks, fires, dam tragedy, structural collapses, mudslides, desert locust invasion, rising of water levels in lakes, seismic shocks and most recently the COVID-19 global pandemic.

Management of disasters in Kenya faces challenges of inadequate funds by agencies responsible for disaster management. In particular, disaster response and recovery efforts have been affected the most by insufficiency in funds.

In light of the cycle of limited financial resources, the Government reallocates budgetary resources from development programmes. This impacts negatively on the implementation of national development programs and projects. The resources reallocated are never enough for effective management of disasters due to the strict requirements of the PFM Act, 2012 on reallocation of appropriated funds. On the other hand, dependence on Humanitarian assistance has not been has not yielded the best result due to delays, unpredictability and cost-inefficiencies.

5. COMPARATIVE ANALYSIS

5.1 International context

The National Disaster Fund in India

The Republic of India has a National Disaster Response Fund (NDRF), which is established under section 46 of the Disaster Management Act, 2005. Individual States in India are also allowed to establish their own specific State Disaster Response Fund. The NDRF supplements State Disaster Response Fund (SDRF) of a State, in case of a disaster of severe nature, provided adequate funds are not available in SDRF. In addition, every Government Ministry of India is required to make provision in its annual budget for funds for the purpose of carrying out activities and programmes set out in the Disaster Management Fund.

The model of the Kenya's Disaster Management Fund is expected to operate in the same manner as that of India. Once these Regulations are enacted, Kenya will be a pace setter within the region by putting in place a sustainable financing for management of disasters.

Thailand's National Catastrophe Insurance Fund

The National Catastrophe Insurance Fund (NCIF) for the Republic of Thailand was introduced following devastating floods which left many business operators and individuals unable to obtain affordable insurance policies which covered flooding and other natural disasters. The Fund's objective is to offer insurance coverage against disasters. The NCIF covers floods, earthquakes and storm damage but in order to qualify for a pay-out. For the Fund to be activated, the catastrophe must fall under one of the following conditions: -

a) The Cabinet has to announce the affected area a disaster zone upon the advice of the Department of Disaster Prevention and Mitigation, Ministry of Interior; or

b) The total claims made by the insured through NCIF policies exceeds Baht 5 billion (Approx. 150,000,000); or

c) An earthquake of magnitude Richter Scale 7 or more; or

d) A storm with wind speed of at least 120 kilometers per hour.

5.2 Regional Context

The African Union (AU) Regional Strategy for Disaster Risk Reduction (DRR) was adopted during the 3rd Ordinary session of the Head of States in Addis Ababa, Ethiopia with a call to develop a programme of action for its implementation. To discharge their leadership and stewardship responsibilities effectively, AU governments are required to express commitment setting aside the requisite financial resources to deal with disasters.

One way to achieve this is to strengthen dedicated public funding for DRR through special funds. To date, there are a number of AU Member States that have provided for in the Constitutions mechanism for Funding disasters. Kenya through its Constitution 2010 has a legal mandate of allocating Ksh. 10 Billion annually under the Contingency Fund to allow it address unforeseen disaster if and when they happen. Indeed, this can be promoted throughout the region. Governments are encouraged to demonstrate their commitment to DRR by adopting a resolution as part of the approval process of the Africa Regional Strategy for DRR to commit and allocate a percentage of national financial resources directly to DRR.

The IGAD has put in place a Disaster Risk Management Programme. The Programme was launched in 2004 and since then, it has contributed to Disaster Risk Reduction (DRR) in the IGAD region through the development of national policies and strategies, providing a regional platform to discuss the DRM Agendas and developing capacity of Member States to prepare and respond to disasters.

The DRM programme aims at developing regional and national disasters preparedness and response capacity. It supports the elaboration of policies, legislation and agreements for disasters management. It strengthens regional collaboration, educates for disaster management and mobilizes resources. Among others, it has developed the regional framework for integrating DRM and Climate Change Adaptation in the IGAD region and a regional framework for Flood Risk Management with a special focus on flood early warning systems.

The programme is an active member of global and continental Disaster Risk Management platforms and works very closely with UNDRR, the African Union Commission, Regional Economic Communities (RECs) and other DRM platforms to implement the Sendai Framework for Disaster Risk Reduction.

The Key outputs of the IGAD DRM Strategy include successful development of three regional frameworks for DRM, mainstreaming DRM and Climate Change Adaptation into school curricula, development of a regional flood risk management strategy and a framework for integrating DRM and Climate Change Adaptation in the region, 600 technical staff from Member States have been trained, and Contribute to global, continental and regional DRM platforms representing the IGAD and its Member States.

In addition, The IGAD region has developed the IGAD Drought Disaster Resilience and Sustainability Initiative (IDDRSI) for its member states. The IDDRISI focuses on the drought resilience and conflict management to ensure a "resilient IGAD Region." Its objectives include ensuring reduced vulnerability to disasters; food security and sustainable livelihood systems among others.

The COMESA Member States have put in place various initiatives on Disaster Risk Management. Experts in disaster management, mitigation and climate change in eastern and southern Africa want COMESA to finalize expeditiously the regional climate resilience framework and hold a validation meeting with all Member States. In a meeting last week in Chisamba, Zambia, the experts, comprising of Senior government officials representing 13 COMESA countries, pledged to work together to strengthen their policy and coordination mechanisms. This is in line with the COMESA regional climate resilience framework. They also agreed to use the framework as a guide to strengthen their national policies in handling issues brought about by climate change.

Member States of the Southern African Development Community (SADC) are vulnerable to a range of natural disasters and, since many events affect several countries simultaneously, a regional approach to managing the risks is appropriate and necessary. Since 2000, countries in Southern Africa have experienced an increase in the frequency, magnitude and impact of drought and flood events. Climate change is expected to significantly affect the region and increase risks related to water resources, fire, and agriculture and food security. Furthermore, island states, such as Seychelles, have their own unique set of problems – climate change has left the country in danger of losing its protective reef barrier and a sea-level rise could threaten its survival.

All SADC Member States have disaster management structures that undertake national activities, sometimes with assistance from international organisations and cooperating partners. When unexpectedly heavy floods displaced more than a million people in Southern Africa in 2007, SADC began to meet annually to prepare for future occurrences. SADC established a Disaster Risk Reduction Unit responsible for coordinating regional preparedness and response programmes for trans-boundary hazards and disasters. The SADC Regional Platform for Disaster Risk Reduction was inaugurated in 2011.

At the East Africa Community (EAC) level, Article 111 of the EAC Treaty requires Member States to take necessary steps towards disaster preparedness, management, protection and mitigation specially to control of natural and manmade disasters. In a bid to realize this commitment, EAC Member States enacted the EAC Disaster Risk Reduction Act, 2016 to strengthen disaster management in the region.

5.3 Domestic Context

Kenya established the National Drought Emergency Fund (NDEF) to manage drought related disasters through enactment of PFM (Drought Emergency Fund) Regulations, 2021. This indeed, is a positive government policy shift towards sustainable drought management rather than *ad hoc* interventions which have been witnessed in the past. The NDEF is expected to improve the effectiveness and efficiency of drought risk management system in the Kenya.

At the wake of COVID-19 global pandemic, the Government of Kenya enacted a Public Finance Management (Covid-19 Emergency Response Fund) Regulations, 2020. The Regulations established a Covid-19 Fund whose principal role is to mobilize resources for emergency response towards containing the spread, effect, and impact of Covid-29 Pandemic.

Ad-Hoc Fund established to focus on response to the COVID -19 pandemic. Kenya is also susceptible to other disasters, both natural and human induced such floods, landslides, pest invasion, drought, seismic shocks, and structural collapse, among others.

6. POLICY AND LEGAL FRAMEWORK

Vision 2030 emphasizes that the management of these disasters is a cross-cutting issue that requires collaborative action by public and private sector agencies at national, county and community levels. Kenya's five-year Medium-Term Plan III (2018 -2022) requires Government Ministries, Departments and Agencies to mainstream disaster management in their annual work plans and budgets.

Further, the Constitution of Kenya 2010 underscores the importance of disaster management and assigns the responsibility to the two levels of Government. In particular, the Fourth Schedule of the Constitution assigns disaster management to both levels of Government as provided for under paragraph 24 and 12 of Part 1 and 2 respectively.

Kenya has put in place a National Disaster Risk Management Policy. This policy steers the country towards a structured and coordinated approach with regard to the regulation of funding for disaster management from both the Government and Non-state actors. It has been proven in other jurisdictions that there is often a strong relationship between a structured funding mechanism and effective disaster response, long- term recovery from a disaster and the prevention and mitigation of future disasters. The policy proposes the establishment of a Disaster Risk Management Fund which will provide sufficient resources to address all phases of disasters including preparedness, prevention, mitigation, response and recovery (rehabilitation and reconstruction).

Kenya made a milestone in successfully developing Disaster Risk Financing Strategy (2018- 2022). The strategy emphasizes that disaster risk financing is a key component of a comprehensive approach to disaster risk management. Disaster risks financing complements disaster risk reduction and resilience measures by helping the government address residual risks. It is a proactive approach focused on planning financial responses in advance to better manage the cost of disasters, ensure predictable and timely access to needed resources, and ultimately mitigate long-term fiscal impacts. The goal of the Strategy is to increase the ability of the National and County Governments to respond effectively to disasters, thereby protecting development goals, ensure fiscal stability and wellbeing of its citizens. The Strategy provides various disaster risk financing instruments that Kenya has put to effectively and efficiently allow for resource mobilization.

The Regulations propose to pool the funds for disaster management into one common basket with the exception of Drought which is already being dealt with under the National Drought Emergency Fund (NDEF). The Regulations are in harmony with other legislations including the Public Finance Management Act, 2012. It must be noted that these Regulations do not in any way impede the County Governments from establishing their own county level public funds for the management of disasters.

Notwithstanding the above, Government Ministries, Departments and Agencies will continue to receive the normal budgetary allocations for dealing with disaster prevention and preparedness as envisaged under the Third Medium Term Plan (2018-2022) as part of a wider government initiative to mainstream disaster management at all levels of Government.

7. STAKEHOLDER CONSULTATIONS

7.2 Initial Development & Consultation Process

The need for a Disaster Management Fund was necessitated by the National Security Advisory Committee (NSAC) meeting of December, 2019. The meeting directed the National Treasury to consider establishing a Standing Disaster Management Fund to enhance disaster response and mitigation measures. Following the approval of the establishment of the Fund by the Cabinet Secretary of the National Treasury and Planning, an Inter-agency Taskforce was appointed to develop the Public Finance Management (Disaster Management Fund) Regulations.

Letters were sent in January, 2020 to relevant Ministries, Departments and Agencies to nominate suitable officers to be part of the Inter-Agency Taskforce to formulate the Regulations. The membership of the Taskforce was drawn from representatives from the National Treasury, Ministry of Interior and Coordination of National Government, Ministry of Devolution (then Devolution and the ASALs), National Drought Management Authority and the State Law Office (Office of the Attorney General and Department of Justice).

The Taskforce held an inaugural meeting in March, 2020 and this was followed by development of a zero-working draft of the Regulations in April and June, 2020. The Taskforce then held virtual consultative meetings in July and August, 2020 to discuss and further enrich the zero-working draft. This was then followed by a Taskforce working retreat during the week of 31st August, 2020 – 4th September, 2020 to further update and enrich the draft Regulations. The draft Regulations were also uploaded on the National Treasury website in October 2020.

7.3 County Government Consultations

The first stakeholder meeting was held in November 2020 in Kisumu and Mombasa Counties and involved a physical meeting with the 47 county Governments. This meeting brought together all the County Secretaries, and County Executive Committee members in charge of finance, Environment and climate change, and disaster management. The Council of Governors also participated in this process.

The aim of the consultative meeting with County Governments was to gain insights into what were viewed by County Governments as prevailing issues or concerns to be addressed by these Regulations since the Disaster management is a shared function between both levels of Government.

County Governments provided written memoranda on comments, questions and issues during the stakeholder forums. The Issues raised at the county stakeholder consultation forums were reviewed by the Taskforce, addressed in a matrix of comments and factored in the drafting and development of the proposed Public Finance Management (Disaster Management Fund) Regulations. Where comments were not considered, reasons were provided in the matrix.

7.4 Consultations with technical institutions

The hardcopies of draft Regulations were shared with Ministries, Departments and Agencies (MDAs), Development Partners and other non-state actors vide letters dated 13th and 15th January, 2020. The MDAs included Ministry of Defense, State Department for Crops Development and Agricultural Research, State Department for Livestock, State Department for Fisheries and Blue Economy, Ministry of Environment and Forestry, Ministry of Water, Sanitation and Irrigation, Ministry of Health, State Department for Transport, State Department for Infrastructure, State Department for Housing and Urban Development, State Department for Lands, State Department for Physical Planning, State Department for Higher Education, State Department for Tourism, State Department for Wildlife, State Department for Petroleum and State Department for Mining.

The non-state actors and development Partners included UN OCHA, CARE International, Save the Children International-Kenya, World Food Programme (WFP) – Kenya, Kenya Red Cross Society, United Nations Development Programme – Kenya, United Nations High Commission for Refugees (UNHCR)- Kenya, United Nations Children's Fund (UNICEF) –Kenya and United States Agency for International Development (USAID) Kenya.

In addition, the draft Regulations were availed, vide email dated 26th January, 2020, to representatives of the National Platform for Disaster Risk Management for comments.

The membership of the National Disaster Risk Management Platform is drawn from the following institutions: Ministry of Defense, Ministry of Devolution (then Ministry of Devolution and the ASALs), Ministry of Sports, Culture and Heritage, Ministry of Agriculture, Livestock, Fisheries and Irrigation, Ministry of Education, Ministry of Health, Ministry of Water and Sanitation, Ministry of Energy, Ministry of East African Community and Regional Development, Kenya Meteorological Department, National Disaster Management Unit, State Department for Public Works, National Environment Management Authority, National Drought Management Authority, Kenya Red Cross Society, Kenya Private Sector Alliance, St. John Ambulance, Kenyatta University, Mt. Kenya University, Masinde Muliro University, Cooperative University of Kenya, Inter-Governmental Authority Development, Regional Center for Resource Mapping for Development, Kenya4Resilinec, Resq247, Development Initiatives, ACT Alliance, Department for International Development, Oxfam Kenya, Council of Governors, and United Nations Development Program – Kenya. The MDAs, some development partners and non-state actors, and some members of the National Platform for Disaster Risk Management provided comments in January and February 2021. The World Bank also provided comments on the Regulations in February 2020.

Another Taskforce working session was held in March, 2021 to incorporate comments received from the various stakeholders. The working session also involved virtual consultations with some of the stakeholders namely: Kenya Law Reform Commission, Kenya Red Cross and Masinde Muliro University. The taskforce prepared a matrix of comments with responses.

7.5 Internal Stakeholder Consultations

A virtual meeting with Senior Management at the National Treasury was chaired by the Director of Financial and Sectoral Affairs on behalf of the Principal Secretary for the National Treasury on 22nd July, 2021 to receive comments from the Senior management at the National Treasury.

Input from stakeholders were considered and assessed by the Taskforce during a virtual meeting held on 1st September, 2021 and issues that were agreed upon to be included in the Regulations were incorporated. A matrix of comments and responses was also prepared.

7.6 Legal requirements relating to consultation and public participation

The process of stakeholder consultations in preparation of the draft Regulations in line with Article 10, of Constitution of Kenya 2010, and Section 5 of the Statutory Instruments, Act 2013.

7.7 Approach and methodologies

The following approaches and methodologies were applied during the stakeholder consultation process:

- Physical meetings
- Letters
- Virtual Meetings
- Emails
- National Treasury website
- Publishing in local dailies
- Gazette Notice

8. REGULATORY AND NON-REGULATORY OPTIONS AND REASONS WHY OTHER OPTIONS ARE NOT APPROPRIATE

8.1 OPTION 1 : STATUS QUO/ DO NOTHING OPTION AND IMPACT ANALYSIS

Option 1: Status Quo/Do nothing option	Impact
There are Funds established to deal with emergency response as opposed to disaster management. These include:	
1) **Contingencies Fund-** This is established by Article 208 of the Constitution of Kenya, 2010, and operationalized under Sections 20 - 23 of the Public Finance Management Act, 2012. It is established for urgent and unforeseen need for expenditure for which there is no other authority.	Only focuses on response towards unforeseen events. The Contingencies Fund cannot be used for expenditures related to disaster preparedness, mitigation and recovery. Further, it is noted that "unforeseen events" may sometimes go beyond disasters and could include other matters of public interest which cannot be delayed and may not be classified as disasters. In this regard, the proposed dedicated Disaster Management Fund will handle efficient and effective disaster management as stipulated in the

	proposed Regulations, while Contingencies Fund could be dedicated towards those other unforeseen even events which also the country may be faced with and may not have been budgeted for and which are also of public interest.
2) **County Level Emergency Funds** – Section 110 of the Public Finance Management Act, 2012, provides for the establishment of County Level Emergency Funds. The purpose of an Emergency Fund is to enable payments to be made in respect of a county when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises.	Can only cover disasters classified under Level 1- Localized emergency events dealt within the regular operating mode of the protective, emergency and health services in Villages, Wards and Sub-County.; and Level 2- Emergency events that overwhelm the capacity of the resources in Sub-County, but which do not overwhelm the capacity of the County resources to respond and recover. The County Level Emergency Funds cannot cover Level 3 disasters - Emergency events that overwhelm a County and require mobilizing national resources to respond and recover. In addition, these Funds do not cover Level 4 disasters - Emergency events that overwhelm the existing National response capacity, thus prompting the President to seek Regional/International assistance to support the country in response and recovery. In addition, the County Level Emergency Funds cannot be used for expenditures related to disaster preparedness, mitigation and recovery.
3) **National Government Constituencies Development Fund** – Section 8 of the National Government Constituencies Development Fund provides Emergency Reserve as follows: (1) A portion of the Fund, equivalent to five per centum (hereinafter referred to as the "Emergency Reserve") shall remain unallocated and	Five percent reserved for emergency response at constituency level and may not be sufficient.

shall be available for emergencies that may occur within the Constituency. (2) The Constituency Committee shall determine the allocation of the emergency reserve in accordance with the Act. (3) "Emergency" shall be construed to mean an 'urgent, unforeseen need for expenditure for which it is in the opinion of the committee that it cannot be delayed until the next financial year without harming the public interest of the constituents.	
4)National Drought Emergency Fund – This is established by the Public Finance Management (National Drought Emergency Fund) Regulations, 2021. The purpose of the Fund is to improve the effectiveness and efficiency of the drought risk management system in the country.	Only addresses drought related disasters. Kenya is also susceptible to other disasters, both natural and human induced such as floods, landslides, pest invasion, epidemic and pandemics, seismic shocks, structural collapse, among others. In addition, drought related disasters are characterized as being predictable, slow onset and require significant resources, while other disasters are unpredictable, rapid onset and require significant resources, hence drought be handled separately from other disasters.
5. **COVID-19 Emergency Response Fund-** This is established by the Public Finance Management (COVID-19 Emergency Response Fund) Regulations, 2020. The purpose of the Fund is to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic.	Ad-Hoc Fund established to focus on response to the COVID -19 pandemic. Kenya is also susceptible to other disasters, both natural and human induced such floods, landslides, pest invasion, drought, seismic shocks, structural collapse, among others.
6. Humanitarian assistance -Humanitarian organizations are key players and often first responders in instances of rapid onset disasters.	Dependence on Humanitarian assistance does not yield the best result due to delays, unpredictability and cost-inefficiencies. In addition, over reliance on humanitarian assistance, may compromise the country's sovereignty.
7. Voluntary contributions from the public – In some instances, the Government calls upon the public to offer	These voluntary contributions are often characterized by delays and

financial and material support in the event of disasters.	unpredictability. In addition, funds raised through this approach are often directed towards responding to the disaster at hand. Funds raised through voluntary contributions may not cover expenditures related to disaster preparedness, mitigation and recovery.
7. Uncoordinated financing to manage disasters in disaster management	Uncoordinated financing in disaster management sometimes leads to delays in targeting affected communities in the event of disasters

8.2 OPTION 2 AND IMPACT ANALYSIS

Option 2: Administrative Measures	Impact
Administrative measures involve non-regulatory mechanisms comprising of: **1) issuance of directives and circulars** to the various entities and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law. These include:	Use of this approach involves good will in the beginning, lethargy in the middle of the process and abandonment at the end. When applying this approach, there is no guarantee of achieving the objectives of Disaster Risk Management. It compromises on accountability of actions and Funds hence compromises on long term sustainability of this approach. Compromises on robust and consistent non -state actors' participation. In addition, there are processes that cannot be undertaken through an administrative option such as: • Ring fencing funds for disaster management • Appointing a Board • Appointing a Fund administrator • Requirements for reporting • Drawing Fund from the exchequer • Apportionment of Funds from

	the exchequer • Setting an eligibility criterion to access the Funds • Imposing suctions on misappropriation of the Funds
2)Budget re allocations - In light of the cycle of limited financial resources, the Government is often left with the option of Budget re allocations to respond to the effects of disasters.	Budgetary reallocations divert resources away from development programmes. This impacts negatively on the implementation of national development programs and projects, hence compromising of overall economic growth. In addition, the resources reallocated are never enough for effective management of disasters due to the strict requirements of the Public Finance Management Act, 2012 on reallocation of appropriated funds.

8.3 OPTION 3 AND IMPACT ANALYSIS

Option 3: Regulatory Option	Impact
Establish the Public Finance Management (Disaster Management Fund) Regulations, 2022	Having a dedicated disaster management Fund will: • ensure that all the phases of the disaster management cycle are addressed in accordance to the provisions stipulated in the Regulations. • Ensure that those disasters that are rapid onset, unpredictable and also require significant resources will be adequately managed. • Supports implementation of disaster management in a concurrent manner as stipulated in the Fourth Schedule of the Constitution of Kenya, 2010. • Supports the attainment human rights, environmental, economic and social- rights, right to life, right to clean environment, right to highest attainable standards

	of health, right to human dignity, right to own property. • It also supports the prudent use of public resources. • Support putting in place early warning mechanisms. • Ensures accountability of actions and Funds for sustainability of disaster management over the long-run. • Supports robust and consistent participation of non -state actors', for example development partners and private sector. • Will be managed through a defined governance structure hence allowing for: ❖ Ring fencing funds for disaster management ❖ Appointing a Board ❖ Appointing a Fund administrator ❖ Requirements for reporting ❖ Drawing Fund from the exchequer ❖ Apportionment of Funds from the exchequer ❖ Setting an eligibility criterion to access the Funds ❖ Imposing sunctions on misappropriation of the funds for disaster management, among other critical processes.

8.4 JUSTIFICATION FOR OPTION 3: REGULATORY APPROACH

In order to comprehensively address governance, accountability, coordination and sustainability of public funds in relation to disaster management for those disasters that are rapid onset, unpredictable and also require significant resources, the impact analysis above, indicate that Option 3 – Public Finance Management (Disaster Management Fund), Regulations, 2022, is the most viable option.

9.0 THE EFFECT OF THE PROPOSED LEGISLATION, INCLUDING IN THE CASE OF A PROPOSED LEGISLATION WHICH IS TO AMEND AN EXISTING STATUTORY INSTRUMENT THE EFFECT ON THE OPERATION OF THE EXISTING STATUTORY INSTRUMENT.

9.1 Table 1: Effect on Taxes, fees, revenues, public sector, private and business, fundamental rights, and existing legal framework

Component	Effect
Taxes, fees and revenues	The regulatory instrument will neither impose, waive nor vary any tax or fees imposed under any law in Kenya. The grants and donations will increase revenue for the government. Similarly, proceeds from investment will generate additional revenue to the Government.
Public Sector	The Fund shall be accessed by both levels of Government subject to the eligibility criteria set out in the Regulations thereby strengthening intergovernmental relations in coordination of disaster management. It will also lead to effective implementation of the concurrent functions of disaster management in line with the provisions of the fourth Schedule of the Constitution. Similarly, it will enhance planning for disaster management.
Private sector and business	The operationalization of this regulation will invite a closer working relationship between Government and private sector and contribute to a more stable business environment.
Fundamental rights and freedoms	The approval of these Regulations will contribute towards attainment and protection of rights provided for under the Constitution namely right to property, safe and clean environment, food security, highest attainable standards of health, life, and human dignity
Existing legal framework	In developing these regulations, task force took cognizance of existing legal frameworks in disaster management. Some of the existing legal frameworks in disaster management include Public Funds established under the PFM Act, 2012- Contingency Fund and County Emergency Funds and any other County Funds for DRM, NDEF. Further, and the provisions of the Regulations are in statutory harmony with the Constitution, Acts of Parliament and other subsidiary legislations. These Regulations will not affect normal budgetary allocations for disaster management to MDAs.
Covid-19 Fund	These Regulations were developed to mobilize resources for emergency response towards containing the spread, effect and impact of COVID-19 pandemic. These regulations do not amend any existing statutory instrument.

10. COST BENEFIT ANALYSIS

10.1 COSTS

The following are the costs related to implementation of these Regulations:

(a) **Seed Capital** – For FY 2014/15, 2015/16 and 2016/17, on average, the Government spent Ksh. 3 Billion to respond to disasters excluding drought. This amount informs the proposed initial seed capital of the Fund set at Ksh 3 billion.

(b) **Annual budgetary allocations** – The Government will also allocate financial resources to go towards the Fund every financial year. The amount to be allocated shall be requested by the Board based on the estimated budget.

10.2 BENEFITS

The following are the benefits related to implementation of these Regulations

(a) **Avoids duplication of funding for disaster management** – The Regulations provide that a request for funding of activities on disaster mitigation and preparedness be accompanied by proof that the funding of that activity does not duplicate existing efforts.

(b) **Creation of a common basket Fund for disaster management** – The Regulations allow for consolidation of funds from various sources such as Government, Development partners, private sector and any other lawful sources. This will encourage participation and investment of Non-State Actors in Disaster Management.

(c) **Better planning and coordination for disaster management activities** – The Regulations provide for *ex-ante* disaster management through upfront budgeting for disasters thereby eliminating resource re-allocations from the annual budget or frequent request for resource mobilization through declaration of a specific disaster as a national emergency.

(d) **Enhanced intergovernmental relations in disaster management** – The institutional arrangement in the Regulations includes both National and County Government. Similarly, both National and County Government entities may access the Fund for disaster management subject to the requirements.

(e) **Timely response to disasters** – The Regulations provide for institutional arrangement and the requisite resources to perform the disaster management functions efficiently.

(f) **Enhance transparency and accountability** – The Regulations provide for proper accounting and auditing to ensure prudential use of resources in line with Article 201 of the Constitution.

(g) **Comprehensive and integrated disaster management** –The Regulations provide for a holistic approach that gives appropriate attention and resources to the four phases of disaster management namely prevention, preparedness, mitigation, response and recovery. This is envisaged to accrue benefits to the community, businesses and future generations.

(h) **Reduction in loss of lives and livelihoods** – In 2020, 237 people perished due to floods and landslides. This could have been avoided if the country had a coordinated disaster management system and a Fund.

(i) **Reduction of cases of human displacement** – 211,000 people were displaced in 2018 while in 2020, 161 people were displaced as a result of floods alone. This could have been minimized with disaster management system and a Fund.

(j) **Reduction in loss of property and infrastructure** – Disasters cause loss to property and damage to infrastructure. This could have been minimized with disaster management system and a Fund.

(k) **Contribute towards climate resilient communities, infrastructure and environmental conservation** – Effective disaster management will leverage on the Government's interventions to build resilient communities as well as promoting/ enhancing environmental conservation.

11. CONCLUSION

The proposed draft Public Finance Management (Disaster Management Fund) Regulations, 2022 are necessary in the establishment and operationalization of the Disaster Management Fund to mobilize resources towards efficient and effective disaster management in the country.

There are significant benefits that the country will realise by having a dedicated Disaster Management Fund to complement disaster risk management in the country.

The draft Regulations have been prepared pursuant to Section 24 (4) of the Public Finance Management Act, 2012 and in compliance with the Statutory Instruments Act, 2013.

The proposed Public Finance Management (Disaster Management Fund) Regulations, 2022 is the most viable regulatory option.

12. RECOMMENDATION

We recommend that the Public Finance Management (Disaster Management Fund) Regulations, 2022 be approved.

13. DRAFT COPY OF THE STATUTORY RULE

A copy of the draft Public Finance Management (Disaster Management Fund) Regulations, 2022 can be down loaded from www.treasury.go.ke.

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