

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY
OFFICIAL REPORT

Tuesday, 8th September, 2020

The House met at 2.33 p.m.

[The Speaker (Hon. (Mrs.) Mwangangi) in the Chair]

PRAYERS

Hon. Speaker: Good afternoon Hon. Members.

Hon. Members: Good afternoon.

Hon. Speaker: I just want to ascertain whether we have a quorum. Can I be taken back to outside sitting?

(Camera was focused to the extended Chamber)

Hon. Kamitu!

Hon. Kamitu: Yes, Madam Speaker.

Hon. Speaker: What do you tell me?

Hon. Kamitu: That there is quorum.

Hon. Speaker: There is quorum? Thank you very much. I thought so. I just wanted some confirmation from two other eyes. Thank you, I welcome you back to the afternoon sitting so let us start. Mr. Clerk.

PAPERS LAID

Hon. Speaker: Thank you, Hon. Members under this Order, we have business as listed in the appendix. I call upon the Member. Hon. Dominic, then Hon. Kisini will be next after Hon. Dominic.

REPORT ON THE REPORT OF THE CONTROLLER OF BUDGET FOR THE FIRST THREE
QUARTERS FOR THE FINANCIAL YEAR 2019/2020

Hon. Ndambuki: Thank you, Hon. Speaker. Hon. Speaker, I wish to lay the following Paper on the Table of the Assembly today, 8th September, 2020; report of the Budget and Appropriations

Committee on the Report of the Controller of Budget for the first three quarters for the Financial Year 2019/2020. Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Ndambuki. Next Member under this order is Hon. Robert Kisini.

REPORT ON THE MACHAKOS COUNTY CLIMATE CHANGE POLICY, 2019

Hon. Kisini: Thank you, Madam Speaker. Hon. Speaker, I wish to lay the following paper on the table of the Assembly today, 8th September, 2020; report of the Committee on Environment, Lands, Energy and Natural Resources on the Machakos County Climate Change Policy, 2019.

Hon. Speaker: Thank you, Hon. Kisini. Next order.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Members, under this Order, we have the business by Hon. Dominic Ndambuki and Hon. Robert Kisini in that order.

REPORT ON THE REPORT OF THE CONTROLLER OF BUDGET FOR THE FIRST THREE QUARTERS FOR THE FINANCIAL YEAR 2019/2020

Hon. Ndambuki: Thank you, Hon. Speaker once again.

Hon. Speaker, that aware that the Office of the Controller of Budget is mandated to oversee and report on implementation of the budgets of both National and County Governments as per Article 228(4) of the Constitution of Kenya 2010;

Aware that the first three quarters report from the CoB was submitted to the County Assembly and it provides information on budget implementation by the 47 Counties covering the period from July, 2019 to February, 2020 and that it contains analysis on county budgets, own source revenue generated, conditional grants and fiscal transfers from the National Governments and expenditure;

Acknowledging that the Committee on Budget analyzed the Machakos County Budget Implementation report as presented by the CoB and compiled a report on the same;

Hon. Speaker, I wish to give notice of motion that this House discusses and approves the report of the Budget and Appropriations Committee on the report of the Controller of Budget for the first three quarters for the Financial Year 2019/20.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you Hon. Ndambuki. Hon. Robert Kisini.

REPORT ON THE MACHAKOS COUNTY CLIMATE CHANGE POLICY, 2019

Hon. Kisini: Thank you, Madam Speaker.

Hon. Speaker, that aware that Climate Change Act No.11 of 2016 defines climate change as a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is

in addition to natural climate change that has been observed during a considerable period;

Hon. Speaker, acknowledging that the County Government of Machakos is cognizant of the fact that its economy and that of the entire Republic is depended on its natural resources. The sustainability of development is usually threatened since these natural resources are affected by climate change. It is for this reason that Kenya has committed itself to put in place measures to address climate change;

Hon. Speaker, I wish to give notice of the motion that this Hon. House discusses and approves the Report of the committee on Environment, Lands, Energy and Natural resources on the Machakos County Climate Change Policy, 2019.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Kisini. Mr. Clerk, proceed.

MOTION

REPORT ON MACHAKOS COUNTY EMERGENCY RESPONSE FUND REGULATIONS, 2020

Hon. Speaker: Thank you. Hon. Members, under this Order, we have one business by Hon. Patrick Kituku.

Hon. Kituku: Thank you, Madam Speaker.

Hon. Speaker, that aware that Article 94(5) of the Constitution provides that no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation and aware that Article 95(6) of the Constitution further provides that an Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority;

Noting that Section 110 of the Public Finance Management Act grants the County Executive Committee Member for Finance with the power to establish an emergency fund with approval of the Assembly based on monies appropriated by the assembly to fund urgent and unforeseen expenditure and further aware that Section 10 of the Statutory Instrument Act provides in a manner in which a Statutory Instrument may be allowed or disallowed;

Hon. Speaker, I wish to move a motion that this Hon. House discusses and approves the committee report on Delegated County Legislation on consideration of the draft Machakos County Emergency Response Fund Regulations, 2020.

Madam Speaker, I wish to call upon Hon. King'ori to second my motion.

Hon. Speaker: Thank you, Hon. Kituku. Hon. King'ori.

Hon. King'ori: Thank you, Madam Speaker. I wish to second.

Hon. Speaker: Thank you, Hon. King'ori. Hon. Patrick, you still have a long way to go before you go back to your comfort zone. Come and be here reading the report now.

Hon. Kituku: Thank you, Madam Speaker.

Hon. Speaker: We shall assist you so that where it is not necessary to go over, we will skip and go to the important areas.

Hon. Kituku: Okay, thank you. Madam Speaker. Report of the select committee on Delegated County Legislation on consideration of the draft Machakos County Emergency Response Fund regulations, 2020.

Hon. Speaker: Skip the preface, establishment and mandate of the Committee because we know the committee is established under Standing Order 190 then we go to Committee membership maybe it is important for the HANSARD to capture.

Committee Membership

Hon. Speaker, Committee membership comprises of:

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| 1. Hon. Patrick Kituku | - Chairperson |
| 2. Hon. George Kingori | - Vice Chairperson |
| 3. Hon. Pauline Munguti | Member |
| 4. Hon. Josphat Kasyoki | “ |
| 5. Hon. Cosmas Kieti | “ |
| 6. Hon. Daniel Kiilu | “ |
| 7. Hon. Stephen Mwanthi | “ |
| 8. Hon. Daniel Mbevi | “ |
| 9. Hon. Thomas Mutinda | “ |
| 10. Hon. John Nzomo Musyimi | “ |
| 11. Hon. Margaret Mbithi | “ |
| 12. Hon. Ikusya Kaloki | “ |
| 13. Hon. Constance Mbula | “ |

Secretariat

- | | |
|-------------------------|------------------|
| (a) Ms. Sarah Mwanja | -Clerk Assistant |
| (b) Ms. Dorothy King'oo | -Legal Counsel |

CONSIDERATION OF THE DRAFT MACHAKOS COUNTY EMERGENCY RESPONSE FUND REGULATIONS, 2020

Background Information and Legal Framework

Hon. Speaker, the Machakos County Emergency Fund Regulations, 2020 emanated from a Statement request which was approved by this Hon. House on 5th May, 2020 requesting the Executive Committee Member responsible for Finance to provide the Assembly with Regulations which shall ensure the expenditure of all activities from Emergency Fund is used in a prudent and responsible way.

The County Assembly of Machakos received the requested Regulations from the Office of the Deputy Governor who is the CEC for Finance and head of County Treasury on 26th May, 2020 by a letter dated 22nd May, 2020. With the instrument having been submitted to the Clerk

of the County Assembly for scrutiny, the committee commenced its consideration immediately by holding the first sitting on 5th June, 2020.

Legal Framework

Emergency Fund

Hon. Speaker, Section 110 of the Public Finance Management Act grants the CECM, Finance the power to establish an emergency fund with approval of the Assembly based on monies appropriated by the assembly to fund urgent and unforeseen expenditure.

Section 111(1) and (2) provides that the CEC-Finance shall administer the emergency fund and establish a separate account where all monies shall be paid. Section 112(1),(2)(a),(b) and (c) and (3)(a) and (b) of PFM Act provides that payment out of the emergency fund shall only be used to meet urgent and unforeseen need for expenditure which there is no legislative authority based on the following:

- a) Payment not budgeted for cannot be delayed until a later financial year without harming the general public interest;
- b) Payment is meant to alleviate the damage, loss, hardship or suffering which may be caused directly by the event; and
- c) The damage caused by the event is on a small scale and limited to the county.

Further unforeseen event is one which threatens damage to human life or welfare or threatens damage to the environment. Section 115 of PFM Act provides that the County Treasury shall, not later than three months after the end of each financial year, prepare and submit to the Auditor General, financial statements in respect of the Emergency Fund for that year.

County Public Fund

Hon. Speaker, Section 116 of PFM Act authorizes CECM, Finance to establish county public funds with the approval of the County Executive Committee and County Assembly and designate a person to administer the fund who must:

- a) Ensure that the earnings of, or accruals to a county public fund are retained in the fund, unless the County Executive Committee member for finance directs otherwise.
- b) Ensure that money held in the fund, including any earnings or accruals referred to in subsection (3) is spent only for the purposes for which the fund is established.

Further the CECM, Finance may wind up the fund with approval of Assembly on condition that:

- a) The fund administrator pay any amount remaining in the fund into the County Exchequer Account; and
- b) The CECM, Finance with the approval of the assembly pays any deficit in the fund from the County Exchequer Account.

Regulation 3(c) of the Public Finance Management (County Governments) Regulations, 2015 provides that the Regulations shall apply to County Public funds established under section 116 of the PFM Act. Regulations 197(a), (b), (c),(d), (e), (f), (g), (h) and (i) of Public Finance Management (County Governments) Regulations, 2015 sets the following criteria for establishing a County Public Fund:

- a) Justification of establishing the fund;
- b) Certification that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;

- c) Clear justification as to why a Fund structure is deemed appropriate for improved service delivery;
- d) Administration costs of the Fund must be three (3%) percent of the approved budgets of the Fund;
- e) Confirmation that the continued existence of the Fund will not be dependent on annual financing from the county exchequer;
- f) If the fund span is less than two years, it must not be approved unless it is for unforeseen and urgent need;
- g) Approval for establishment of the fund must be in writing;
- h) Demonstration of how activities of the proposed County Public Fund will fit in the overall Medium Term Plan and County Fiscal Strategy Paper;
- i) Initial approval for fund establishment must be for a maximum period of 10 years, beyond which the County Executive Committee and County Assembly approvals must be sought.

Regulation 199 Public Finance Management (County Governments) Regulations, 2015 provides that where a fund lifespan has lapsed, winding up process shall start within six months from the date of the lapse and the winding up report shall be submitted to the Auditor-General for audit and the County Assembly. Further, a county public fund may be wound up upon successful completion of the specific objective for which it was created.

2.2.3 Subsidiary Legislations

Hon. Speaker, Section 5(1)(a) and (b) of the Statutory Instruments Act 2013 provides that Regulation making Authority must facilitate public participation and consultation forum before making any statutory instruments.

Section 5A of the Statutory Instruments Act, 2013 provides that every Statutory Instrument must be accompanied by explanatory memorandum on the following:

- a) Statement on the proof and demonstration that sufficient public participation was conducted.
- b) Brief statement of all consultations.
- c) Brief statement of how the consultation was undertaken.
- d) Outline of the results of consultation.
- e) Brief explanation of any changes made as a result of consultation.

Section 8(1) and (2) of the Statutory Instruments Act, 2013 provides that notification and publication of preparation of Statutory instrument must be done in the Gazette and newspaper of nationwide circulation and must be in such a way that people can understand the purpose and content of the notice.

3.0 OVERVIEW OF THE DRAFT MACHAKOS COUNTY EMERGENCY RESPONSE FUND REGULATIONS, 2020

Hon. Speaker, the draft Machakos County Emergence Response Fund Regulations, 2020 seeks to make the following provisions:

- 1. Under Long title** - The Executive Committee Member for Finance seeks to make Regulation pursuant to Section 110, 111, 112, 113, 114, 115, 116, 138 and 139 of PFM and Regulations 69, 70, 71 and 72 of PFM (County Governments) Regulations 2015.

2. **Regulations 3** Seeks to establish the Machakos County Emergency Response Fund.
3. **Regulations 4** Provides that the object and purpose of the Fund is to:
 - a) Mobilize resources to contain spread, effect and impact of pandemic and emergency
 - b) Establish common fund to facilitate fast, transparent, predictable and accountable release of funds for pandemic response management
 - c) Fund capacity and technical expertise development to improve on emergency response and management systems by purchase of essential supplies for public hospitals and other related institutions, health professionals and frontline workers in Machakos County, as need arises;
 - d) Fund programmes and initiatives towards cushioning and provision of emergency relief to the most vulnerable, older and poor persons in urban informal settlements within Machakos County;
 - e) Support and stimulate micro, small and medium enterprises operating within Machakos County that have been rendered vulnerable by a pandemic;
 - f) Identify and lease facilities for accommodation of the frontline health workers and other officers who deal directly with patients/victims of such a pandemic;
 - g) Fund restoration of the Machakos County facilities being used for compulsory quarantine for safe use by the hosting institutions;
 - h) Improve the effectiveness and efficiency of the emergency response management system in the county;
 - i) Enhance the capacity of the relevant research institutions in handling a pandemic surveillance; and
 - j) Facilitate resilience building, preparedness and timely response to emergencies during different stages in order to reduce and minimize their negative effects.
4. **Regulation 5** Provides that sources of monies for the fund include:
 - a) Monies appropriate by the Assembly;
 - b) Monies donated by National Emergence Response Fund;
 - c) Monies donated by Council of Governors;
 - d) Voluntary contributions from public and private persons;
 - e) Grants and donations from county and national entities;
 - f) Grants and donations from government parastatals, non-state entities (NGO, Development Partners);
 - g) Any grant, donations, subscriptions, bequest or gifts from donors, well-wishers (Public Officers, Private persons and Kenyans in diaspora);
 - h) In-kind donations from well-wishers (medical equipment and supplies, pharmaceutical and non-pharmaceutical supplies, sanitary supplies, relief foods, tents and blankets; and
 - i) Monies approved from other sources by County Executive Committee.
5. **Regulation 6** provides that “emergency” is defined as stipulated in Section 112(3) of PFM Act, 2012. Further, it provides that on occurrence of unforeseen need, the Governor shall direct the CEC-Finance with necessary technical and professional advice to satisfy if it meets criteria of emergence as stipulated in Section 112(2) and (3) upon which the CEC-Finance shall declare an emergency.

- 6. Regulation 7** Provides that the CEC-Finance shall administer the fund and may delegate the administration of the fund to a relevant Chief Officer for give time period as need maybe. Further the Governor shall appoint two CECs in whose portfolio the emergency is related to administer the fund.
- 7. Regulation 8** Provides that the Machakos County Intergovernmental Multi-Agency Emergency Response Committee shall be established upon declaration of pandemic by the President of international or national magnitude and shall comprise of the following:
- a) Governor- Chairperson
 - b) County Commissioner and other relevant National Government representatives;
 - c) Relevant representatives of the County executive;
 - d) Speaker and other relevant representatives of the Machakos County Assembly; and
 - e) Representatives of other relevant state and county corporations.
- Further, the Committee shall ensure establish structures and operating procedures to address all aspects of pandemic or emergence in Sub County, ward/ divisions, locations and sub-locations/ village level based on approved National and County Government structural units.
- 8. Regulation 9** provides that the functions of the Machakos County Intergovernmental Multi-Agency Emergency Response Committee includes:
- a) Provision of policy and institutional leadership with regards to the Fund;
 - b) Lead in the strategic planning and management of pandemic and/emergency and responsive management of the full pandemic and/or emergency cycle;
 - c) Initiate and coordinate the day to day activities in relation to the fund;
 - d) Ensure participatory partnership between itself and development partners, international agencies and other bodies in equivalent efforts of emergency response;
 - e) Oversee the establishment and the supervision of the Sub County, ward / division, location, sub-location and village committee under the national and county governments structural units;
 - f) Inform and create regular public awareness on matters pertaining a pandemic and/or an emergency, as the case may be;
 - g) Develop budget proposals with liaison with relevant county departments;
 - h) Analyze and propose appropriate emergency mitigation strategies;
 - i) Coordinate with the national government institutions and other county governments where necessary;
 - j) Make institutional structural provisions for agencies at sub-county, wards, divisional, locations, sub - locations and village / community levels to strengthen bottom-up community participation in all aspects of a pandemic and/or emergency response
 - k) Ensure a continuous two-way flow of information and communication;
 - l) Provide a well-structured participation of the society in emergency response, particularly, including the communities;
 - m) Develop and supervise activities and work plans;
 - n) Engage the services of experts where necessary;

- o) Analyze the nature of an emergency and propose appropriate mitigation strategies; and
- p) Oversee the monitoring and evaluation of the programs and activities under the Fund.

9. Regulation 10 seeks to establish the Machakos County Resource Mobilization *ad hoc* Committee which shall be appointed by the Governor for such term as may direct from the following:

- a) Private Sector;
- b) Development Partners;
- c) Religious sectors;
- d) Professionals;
- e) Machakos county appointed representatives relevant to a particular emergency; and
- f) Any other person as may be necessary;

Further, the Governor shall in undertaking the above appointment ensure inclusion of women, youth and persons with disabilities.

10. Regulation 11 Provides that the functions of the Machakos County Resource Mobilization *ad hoc* Committee includes the following:

- a) Ensuring establishment of an imperative enabling system responsible for effective and accountable adequate resource mobilization for the Fund.
- b) Advocating for funding and donation, in cash and in-kind, from development partners and the public by using available and existing media platforms;
- c) Identifying possible corporate, international and individual benefactors;
- d) Keeping a register of the donations received and a register of the disbursements as per the second schedule of the regulations;
- e) Regularly update the Governor and the County Executive Committee Member for finance on the progress of any ongoing activities;
- f) Deliberating on appropriate logistics and such measures as may be appropriate in carrying out their functions; and
- g) Performing any other functions that shall be assigned by the Governor from time to time for the proper administration and management of the Fund and such a duty shall be assigned in writing.

11. Regulation 12 provides that the expenditure of monies of the fund shall:

- a) Be made in respect of expenses incurred in achieving the objects and purpose Fund;
- b) Be based on cost of estimates prepared by Fund administrator and approved by the Committee;
- c) Be based on projects and programmes approved by the Committee; and
- d) Not be used to support political parties or entities.

12. Regulation 13 provides that the fund administrator shall establish and maintain separate bank for the fund where all monies for the fund shall be kept---

Hon. Speaker: Bank account may be?

Hon. Kituku: Sorry?

Hon. Speaker: Is it bank account or maintained separate banks?

Hon. Kituku: Sorry separate...I will read

12. Regulation 13 provides that the fund administrator shall establish and maintain separate bank account for the fund where all monies for the fund shall be kept;
Further, the Signatory of the fund shall be the fund administrator and two other authorized signatories.
13. Regulation 14 provides that the fund administrator shall ensure that the fund account is not overdrawn.
14. Regulation 15 provides that monies shall be withdrawn from the fund for purposes of promoting the objects and purpose of the fund.
Further records of expenditure of fund shall be kept and maintained accordance with PFM Act and the Regulations.
15. Regulation 16 provides that the Fund shall be governed based on financial and procurement laws and Regulations as applicable.
16. Regulation 17 provides that the fund administrator shall prepare quarterly financial and non-financial reports and submit to the Committee, the County Executive Committee and the County Assembly.
17. Regulation 18 provides that the Committee shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.
Further the fund Administrator shall prepare financial statements of the Fund.
18. Regulation 19 provides that the Committee must ensure that the administration costs of the Fund do not exceed 3 per cent of the Fund.
19. Regulation 20 provides that when the fund shall be wound up, cash balances shall be transferred to the County Exchequer Account while other assets of the Fund shall be transferred to the department of health and Emergency Response or as the case maybe.
20. Regulation 21 creates an offence relating to any person who knowingly makes a claim which they have reason to believe to be false for obtaining any relief, assistance, repair, reconstruction or other benefits consequent to an emergency from any officer of the county government where upon conviction they shall be liable upon conviction to Ksh. 1 million or imprisonment of not more than two years, or to both.
21. Regulation 22 creates an offence relating to any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in the Act and these Regulations where upon conviction, they shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding Ksh. 10 million or to both
22. Regulation 23 creates an offence relating to any person who does not adhere to directives and/or guidelines provided by the government, both on national and county level, and/or aids, directly or in-directly, in the spread of a pandemic or outbreak or disaster where upon conviction shall be liable for an imprisonment for a term not exceeding 10 years or a fine not exceeding Ksh. 10 million or both.

23. The First Schedule provides as follows as relates to the conduct of meeting of the Committee
- a) Committee meetings shall be convened and chaired by the Chairperson who shall determine the agenda of the meeting as relates to date, time and venue. The CEC Finance shall chair the meeting in absence of the Chairperson. Further, in absence of the Chairperson and Vice-Chairperson, members present shall elect a Chairperson to chair the meeting;
 - b) The Chairperson shall convene a special meeting upon written requisition by one third of members of the Committee;
 - c) Ordinary Committee meeting shall be convened upon issuance of at least fourteen days' written notice to all Committee members while special Committee meeting shall be convened within seven days of receipt of the request for special meeting;
 - (a) The quorum for the Committee to conduct its business shall be two-thirds of all the members;
 - (b) Decision of the Committee shall be by consensus unless where a vote is required, a decision shall be by simple majority;
 - (c) The Committee may conduct joint meeting with any other body for purposes of carrying out its mandate;
 - (d) The Committee may invite non-members to attend and participate in their meeting but shall not have voting rights;
 - (e) The Committee may establish *ad hoc* Committee to perform a specific function;
 - (f) The Committee shall develop directives, guidelines, work plans and framework for proper management of fund and emergency response; and
 - (g) The Committee may regulate its own procedure.

4.0 PRESENTATION BY MACHAKOS COUNTY TREASURY AND MACHAKOS COUNTY LAW OFFICE

Hon. Speaker, Article 195(1) of the Constitution of Kenya states that, a County Assembly or any of its Committees has power to summon any person to appear before it for the purpose of giving evidence or providing information. The Clerk of the Assembly by a letter Ref: MKSCA/PCS/CMM/JLA/Vol.2/22 dated 4th August, 2020 invited the following officer for a meeting at the Assembly Chamber on 10th August, 2020 at 2.00 p.m. to address concerns raised by the Committee in consideration of the draft Regulations.

- a) Machakos County Executive Committee Member responsible for Finance;
- b) Machakos County Chief Officer, Department of Finance and Revenue Collection; and
- c) Chief Officer Legal, Machakos County Law Office.

Hon. Speaker, during the meeting held on 10th August, 2020, the Chief Legal Officer on behalf of the Machakos County Treasury requested the Committee to give them time to respond by way of submission issues raised by the Committee and forward the same to the Assembly by 14th August, 2020.

By a letter Ref: GMC/CLO/CA/13/2019 dated 11th August, 2020 and received by the County Assembly on 19th August, 2020, the Chief Officer, Legal forwarded a response on some of the issues raised by the Committee as relates to the draft Regulations.

The following is a summary of the issues the committee raised in respect to the Regulations and the response by the County Law office dated 11th August, 2020.

S/ NO	ISSUES	Committee Remarks	County Treasury /Law Office Res ponse
1.	Regulation 1	<p>There is a need to define the term “Emergency” and its scope (Regulation should not touch on Covid-19 only but should accommodate all sorts of calamities like flood, locust, bombing, food insecurity among others.</p>	<p>The term emergency in this context emanates from section 110 of the PFM Act and if defined, we shall be limiting the scope. Again if we define the term, we will open the regulations to criticism as to whether such future occurrences meet the definition used since these regulations are in line with the PFMA so we do not need to define the term</p>
2.	Regulation 4	<p>Object and purpose of the fund: The Regulations only address pandemic relating to the COVID 19 and therefore should be redrafted to reflect other pandemics that are cross-cutting and are of unforeseen natural and unnatural calamities that may occur within the County</p>	<p>These are universal Objects and purpose with no mention of COVID 19. The Regulations mention terms such as pandemic and emergencies not Covid 19.</p>

<p>3.</p>	<p>Regulation 5</p>	<p>Sources of funds: (a) That the Council of Governors (COG) is a statutory body established under Intergovernmental Relations Act under Section 19 whose sources of monies is appropriated by Parliament of Kenya through Division of Revenue and subsequently the Appropriation Act. Hence it may be difficult for monies to be received directly from the Council of Governors as it comes directed from consolidated fund unlike the County Revenue Fund.</p>	<p>Of importance to note is that these Regulations are to help the County Government to serve the public better and more effectively and we should not be so restrictive to the sources of fund. If the regulations cannot be broad enough to allow monies from all legal and possible avenues, then the main goal cannot be achieved.</p> <p>Generally, Regulations have not legal authority to oust any existing lawful processes as to the involvement of the County Assembly and the County Executive. So if any funds to be</p>
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		<p>(b) On grants and donations from public County and National entities, may not be achievable as currently there is no Legal framework for inter- county transfer of funds.</p> <p>(c) On donations from well-wishers including medical equipment and supplies, pharmaceutical and non-pharmaceutical supplies, sanitary supplies, relief foods, tents and blankets, Committee resolved that the Regulations should not limit donations to matters relating to health but must be across all sectors and aspects of it natural and unnatural calamities that may occur within the County Further, it should be wide ranging to serve the current and future generation.</p> <p>(d) Monies from any other sources approved by the County Executive Committee, the committee noted that all persons, state officer and public officers are bound by the National Values and Principles of governance stipulated in Article 10 of the Constitution, when enacting laws and also when making policy decisions and therefore resolved that the County Executive Committee have no powers to approve funds from any other sources without the knowledge of the County Assembly</p>	<p>approved have to involve the county Assembly, then that is the process to be followed.</p>
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4.	Regulation 7	Members disagreed with the provision by saying it won't be possible to have more than one Executive Committee Member administering the Fund since it's against Section 110 of the PFM Act. The committee therefore	An emergency/ pandemic can be cross cutting, so if we limit the Regulations to just one, department then what happens if 2 or 3 departments are directly involved
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		resolved that the Regulation should be amended to provide a specific department to be dealing with pandemic. eg Health Department.	and/ or affected in such?
5.	Regulation 12	<p>Expenditure of the funds:</p> <p>(a) The fund shall be administered by the user department upon a written requisition by the person designated by the CECM Finance of the said user department.</p> <p>(b) The Chief Officer, County Treasury will therefore transfer the said funds to the user department upon declaration and approval of an Emergency subject to Section 112(2) and (3) of the PFM Act,2012</p>	The expenditure of the fund is stipulated under Section 112 of the PFMA the regulations are just amplifying that.
6.	Regulation 13	<p>Bank Account for the fund</p> <p>(a) Signatory of the fund to be limited to two person's Only (That is the fund administrator and the chief officer of the user department)</p>	For accountability purposes, three people are better.
7.	Regulation 20	Winding up of the fund should be in compliance with section 116 PFM and Regulation 198 and 199 of the PFM (County Government Regulations 2015)	The Regulations acknowledge the PFM Act on winding up.

<p>8.</p>	<p>Regulation 21</p>	<p>The CECM does not have powers to create offences and penalty as provided for in Regulation 21, 22 & 23 of draft regulations because the said subsidiary legislative authority is not stipulated in section 110, 111, 112,113,114,115,116,138, and 139 of the Public Finance Management Act 2012. This is because,</p> <p>a) The Regulations should be read together with the offences and penalty provided under section 196, 197, 198, 199, 200, 201, 202, 203 and 204 of PFM Act</p> <p>b)Article 94 (5) and (6) of the Constitution provides as follows:</p> <p>“(5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.</p> <p>(6) An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5) shall expressly specify the purpose and objectives for which that authority is conferred the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority”</p>	<p>The PFMA gives the CECM powers to create an Emergency fund and Regulations thereof. It is then obvious that such regulations as to penalties and offences will be provided for but in line with existing PFMA provisions. Otherwise, how will the enforcement of the regulations be done and effected?</p> <p>b)Article 94 (5) and (6) of the Constitution provides as follows:</p> <p>“(5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.</p> <p>(6) An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5) shall expressly specify the purpose and objectives for which that authority is conferred the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority”</p>
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General Comments

1. Need to be specific which Fund is being established either Fund under Section 116 or 110 of the PFM Act.
2. The draft Regulation as forwarded by the County Treasury on 26th May, 2020 to the County Assembly did not incorporate the following which is a requirement under Section 5A and Section 6 of Statutory Instruments Act, 2013
 - (a) Explanatory memorandum as relates to the following:
 - i) Statement on the proof and demonstration that sufficient public participation was conducted.
 - ii) Brief statement of all consultations.
 - iii) Brief statement of how the consultation was undertaken.
 - iv) Outline of the results of consultation.
 - v) Brief explanation of any changes made as a result of consultation.
 - b) Section 6: Regulatory Impact Statement; they did not give the Committee response on that.

COMMITTEES OBSERVATIONS

The committee examined the Machakos County Emergency Response Fund regulations, 2020 against the Constitution of Kenya, the Public Finance Management Act, 2012 and the Statutory Instrument Act, 2013 and made the following observations.

1. Statutory Timelines: The regulations were not published in the Gazette as required, hence not within the Statutory timelines contemplated under Section 11(1) of the Statutory Instrument Act 2013.
2. Consultation and Public Participation: The regulation contravenes Article 10 and 18 of the Constitution and Section 5, 5A, of the Statutory Instruments Act which require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.
3. Regulatory Impact Statement: Section 6, 7 and 8 of the Act requires the regulatory-making authority to carry out a regulatory impact assessment and submit to the Assembly a regulatory impact statement if the proposed regulation has significant cost or impact to the community or a sect of the community. The said document was not provided.

COMMITTEE RECOMMENDATIONS

Hon. Speaker, having examined the Machakos County Emergency Response Fund regulations, 2020 against the Constitution of Kenya, the Public Finance Management Act, 2012 and the Statutory Instrument Act, 2013, the committee recommends that the House annuls the said Statutory Instrument for failing to demonstrate that sufficient public participation was done, contrary to Article 10 and 18 of the Constitution and Section 5, 5A and schedule to the Statutory Instrument Act.

Hon. Speaker, It is therefore my privilege, on behalf of Delegated County Legislation committee to table this report for consideration and adoption. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Hon. Members, you have heard the report.

(Question proposed)

Hon. Members, the motion is open for debate. Hon. Museku.

Hon. Museku: Thank you, Madam Speaker for giving me the chance to contribute on this response on this report on the emergency fund regulation which have been brought before this House.

Madam Speaker, having listened to the report which has been read by the Chairman of Delegated Legislation Committee and having considered the issues which they have raised in that report and their recommendations, it appears as though the regulations or the so-called regulations which were presented to the committee do not meet the criteria set in the law. It appears there are significant flaws in the process which was used in coming out with those regulations including as the committee has aptly pointed out not sufficient public participation done for all relevant stakeholders.

It also brings into question issues on administration of the fund where clarity on where the fund will be administered from is not set. As we are all aware, a fund cannot be administered by more than one person, that is the reason why it is called a fund and it has to have a specific area which is administering the fund even if it is affecting multiple departments then the administrator of that fund for example would be saying should be sitting in the department of finance so that they can be able to administer the fund on behalf of all the relevant departments.

Madam Speaker, considering the gravity of the issue at hand and considering that we do need these regulations as quickly as possible, my suggestion would be that the committee might need to re-look again at the various issues jointly with the Executive before presentation of this report to the House.

I am saying this in view on the fact that once a report is adopted by this House, six months will have to pass before we can be able to revisit the same issue again yet when we talk about emergency fund, we are talking about an emergency which can happen tomorrow and hence the requirement for us to have or the need for this Hon. House to enact these regulations as quickly as possible.

Madam Speaker, I would thereof personally recommend the report is taken back to the Committee for them to continue looking at it with the Executive to see how the Executive can fast track public participation on this very important document so that we can be in line with the necessary constitutional articles which require public participation and also to align it with the fund administration and the sourcing of funds. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, I have been listening to the motion as the report was being read and the recommendation that was made and as Hon. Museku has put it, we do not need to belabour on this point. We do need these regulations like yesterday as a county and because I proposed the question, it was intentional so that this report becomes a property of this House and under Standing Order 50 on Manner of debating motions;

(1) When a Motion has been moved and if necessary seconded, the Speaker shall propose the question thereon in the same terms as the Motion, and debate may then take place upon that question.

(2) At the conclusion of the debate, the Speaker shall put the question.

(3) Despite paragraph (2), the Speaker may, on the request of a member.....and that request has been made by Hon. Museku, defer the putting of the question to the following day in which case the Speaker shall thereupon nominate a time at which the question shall be put.

Hon. Members, guided by that Standing Order and also Standing Order 1, I am directing that this report goes back to the committee that has prepared this report and that the committee urgently engages the Executive so that the particular flaws on public participation and on publication are addressed.

The reason is that even if you proceeded and voted in favour of this Regulations, they will still be questionable and we do not want to be found having to have followed a flawed process and because this is a matter that we urgently need to be put behind us, the committee needs to take up this matter urgently with the Executive and the necessary publication be done like tomorrow and public participation be undertaken like tomorrow and you bring a report back to this House.

So, the Committee on Delegated Legislation should bring back the report not later than 29th September, 2020 because we need to debate in a proper manner and on the right footing and pass this resolution. Thank you very much Hon. Members.

(Applause)

ADJOURNMENT

Hon. Speaker: At this point, the sitting is adjourned and we are going to continue on 15th September, 2020. Have a good time Hon. Members.

The House rose at 3.4 p.m.