



REPUBLIC OF KENYA

MINISTRY OF ROADS AND TRANSPORT

REGULATORY IMPACT ASSESSMENT

FOR THE

CIVIL AVIATION (AERONAUTICAL SEARCH AND RESCUE) REGULATIONS, 2024

November, 2024

*This Regulatory Impact Assessment (RIA) has been prepared by the Cabinet Secretary - Ministry of Roads and Transport*

*Section 6 and 7 of the Statutory Instruments Act, Cap 2A*

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## CHAPTER ONE: INTRODUCTION

### 1.1 Regulatory Authority and the Legal Mandate

Kenya Civil Aviation Authority is established under the Kenya Civil Aviation Act, Cap 394 (the Act) with the primary functions being regulation and oversight of aviation safety and security, economic regulation of air services and development of civil aviation, provision of air navigation services, and training of aviation personnel as guided under the provisions of the convention on international civil aviation, related ICAO Standards and Recommended Practices (SARPs), the Act, and the Civil Aviation Regulations.

The object and purpose for which the Authority was established are, to economically and efficiently plan, develop and manage civil aviation, regulate, and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act.

Section 82 (1) of the Act empowers the Cabinet Secretary, at the time being responsible for matters relating to transport, to make Regulations to give effect to and for the better carrying out of the objects and purposes of the Act, and to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

Additionally, section 82(2) of the Act specifically provides that the regulations may provide for:

- (a) requiring the flight crew, and persons, performing prescribed functions in relation to the operation or maintenance of aircraft, air navigation services, design and construction of aircraft to be the holders of licences of specified kinds;
- (b) providing for the conditions under which and in particular the aerodromes to or from which, aircraft entering or leaving Kenya may fly and the conditions under which aircraft may fly from one part of Kenya to another;
- (c) providing for the conditions under which passenger and cargo may be carried by air and under which aircraft may be used for other commercial, industrial or gainful purposes, and for prohibiting the carriage by air of goods of such classes as may be prescribed;
- (d) minimizing or preventing interference with the use or effectiveness of apparatus used in connection with air navigation and air navigation services and prohibiting or regulating the use of such apparatus and the display of signs and lights liable to endanger aircraft;
- (e) generally securing the safety, efficiency, and regularity of air navigation and safety of aircraft and of persons and cargo carried therein, and for preventing aircraft endangering other persons;
- (f) requiring persons engaged in or in connection with meteorology to supply meteorological information for the purpose of air navigation;
- (g) regulating the making of signals and other communications by or to aircraft and persons carried therein;
- (h) subject to any other written law, prescribing a civil air ensign for Kenya and regulating the use of any other ensign established for purposes connected with air navigation;
- (i) prohibiting aircraft from flying over such areas in Kenya as the Cabinet Secretary may by order published in the Gazette declare to be prohibited areas;

- (j) providing for the investigation in such manner as may be prescribed, including by means of a tribunal established for the purpose, of any accident arising out of or in the course of air navigation and occurring either in or over Kenya or occurring elsewhere to Kenya aircraft;
- (k) prohibiting access to or interference with aircraft to which an accident has occurred, and authorizing any person, so far as may be necessary for the purpose of an investigation, to have access to, remove, take measures for the preservation of, or otherwise deal with any such aircraft;
- (l) requiring any person who owns an aircraft or who carries on the business of operating aircraft for hire or reward to furnish to such authorities as may be prescribed such information relating to the aircraft and the use thereof, the crew, the mail, the passengers and the cargo carried, as may be prescribed;
- (m) providing for the licensing, inspection and regulation of aerodromes, access to places where aircraft, have landed or may land, access to aircraft factories or maintenance establishments or places where aircraft parts and engines are maintained, for the purpose of inspecting work therein carried on in relation to aircraft or parts thereof.
- (n) the classification and use of airspace and the control and use of air routes and provisions of search and rescue facilities;
- (o) the control and operation of the aircraft within or directly above the aerodrome for the purpose of limiting or mitigating the effect of noise;
- (p) regulating aviation security operations and providing for security audits and inspections, tests of aircraft, aerodromes, regulated agents and any pre-flight and post flight passenger processing and screening area;
- (q) providing for the regulation of the safe transport of dangerous goods by air; and
- (r) providing for the establishment of air accident and incident prevention programs.

## **1.2 Requirements of the Statutory Instruments Act**

The Statutory Instruments Act, Cap 2A (SIA) is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the Regulation-Making Authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument. SIA further sets out certain key elements that must be contained in the RIA namely:

- (a) a statement of the objectives of the proposed legislation and the reasons for them
- (b) a statement explaining 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
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives;
- (e) the reasons why the other means are not appropriate;
- (f) any other matters specified by the guidelines;
- (g) a draft copy of the proposed statutory rule. Section 5 of SIA requires an RMA to conduct public consultations drawing on the knowledge of persons having

expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

### **1.3 What is a Regulatory Impact Assessment (RIA)?**

RIA is a systemic approach of critically assessing the positive and negative effects of proposed or existing regulations and non-regulatory alternatives. It is an analytical report to assist decision makers to arrive at an informed policy decision.

As an aid to decision making, RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory option provides the greatest net public benefit.

Typically, the structure of a RIA should contain the following elements: title of the proposal, the objective and intended effect of the regulatory policy, an evaluation of the policy problem, consideration of alternative options, assessment of all their impacts distribution, results of public consultation, compliance strategies, and processes for monitoring and evaluation.

RIA promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee. From a societal viewpoint, RIA confirms whether a proposed regulation is welfare enhancing, in that, the benefits will surpass costs.

RIA therefore has an overall objective of not only improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, but also integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental Authority.

## **CHAPTER TWO: PURPOSE AND OBJECTS OF PROPOSED REGULATIONS**

### **2.1 Scope**

The Civil Aviation (Aeronautical Search and Rescue) Regulations 2024 (proposed Regulations) shall apply to all aircraft requiring aeronautical search and rescue services and to persons or organizations responsible for the maintenance and operation of Aeronautical Search and Rescue services in Kenya and in areas over the high seas to which Kenya has been given responsibility under the regional air navigation plan.

### **2.2 Objectives and purpose of the proposed regulations**

The general objective of these regulations is to assist Kenya in meeting their search and rescue (SAR) needs and obligations accepted under the Convention on International Civil Aviation. These obligations, relate to the coordination of aeronautical search and rescue services.

The specific objectives of the Regulations include to:

- (a) provide requirements for establishment of search and rescue units such as: Rescue coordination centers, Rescue sub centers and alerting posts;
- (b) provide guidelines for establishment of search and rescue services;
- (c) provide guidelines for finding of persons in distress and removing them to a place of safety;
- (d) outline requirements for provision of assistance to aircraft in distress and to survivors of aircraft accidents, regardless of the nationality or status of such persons or the circumstances in which such persons are found; and
- (e) defining requirements for providing search and rescue aid to aircraft in need of assistance.

### **2.3 An Overview of the Proposed regulations**

Salient Features include:

PART I— Preliminary Provisions (Citation, Interpretation and Application).

PART II— Aeronautical Search and Rescue Organization

PART III—Cooperation and Coordination of Aeronautical Search and Rescue Services

PART IV—Preparatory Measures

PART V—Operating Procedures

PART VI— GENERAL PROVISIONS

SCHEDULE - Aeronautical Search and Rescue Signals

## CHAPTER THREE: BACKGROUND AND CONTEXT

### 3.1 Policy Background

#### 3.1.1 International

**(a) The Sustainable Development Goals (SDGs),**

The SDG also known as the Global Goals, were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. Goal 9 of the SDGs advocates for building resilient infrastructure, promoting inclusive and sustainable industrialization, and fostering innovation. Kenya intends to provide access to safe, affordable, accessible, and sustainable *transport* systems for all, improving road safety, notably by expanding public *transport* by 2030.

**(b) Convention of International Civil Aviation (Chicago Convention)**

Kenya, by virtue of Articles 2 (5) and (6) of the Constitution has ratified and become part of the international participants in the aviation space. The International Civil Aviation Authority (ICAO) was established as a specialized United Nations (UN) agency under the Convention of International Civil Aviation (Chicago Convention) which helps 193 countries to cooperate and share their skies to their mutual benefit. To achieve this, ICAO has provided for the establishment of international Standards and Recommended Practices (SARPs) the uniform application of which is necessary in order to achieve the highest practicable degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. Kenya as a contracting state has an obligation under Article 25 and 37 to the Convention on international civil aviation to assist aircraft in distress and transpose the SARPs into state regulation. The draft Civil Aviation (Aeronautical Search and Rescue) Regulations, 2024 correspond to the SARPs issued by ICAO as Annex 12 to the Convention on international civil aviation.

#### 3.1.2 Regional

Regionally, Kenya is a member of the African Civil Aviation Commission (AFCAC) which is a specialized body of the African Union (AU) whose mandate is to create a safe, secure, efficient, and sustainable civil aviation industry across Africa that propels development through furthering connectivity. Further, under the East African Community, Kenya is a member of Civil Aviation Safety and Security Oversight Agency (CASSOA) which is established under Article 92 of the EAC Treaty which in summary states that the Partner States shall undertake to make air transport services safe, efficient and profitable; adopt common policies for the development of civil air transport in the region; harmonize civil aviation rules and regulations and coordinate measures and co-operate in the maintenance of high security.

Under commitments under these regional arrangements and the aspiration to ensure that the regional air transport industry is appropriately managed, Kenya is obliged to issue these regulations to fulfill the regional obligations to a safe, secure and economically viable air transport system.

### **3.1.3 Domestic**

#### **(a) Kenya Vision 2030**

The Kenya Vision 2030 is a nationwide multi-sectorial document that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement. The V2030 aspires for a country firmly interconnected through a network of roads, railways, ports, air, water and sanitation facilities, and telecommunications. The expansion, modernization and management of the aviation sector continues to enhance air transport safety, security, and connectivity across the country and beyond. Civil aviation is a critical catalyst for global and national development. Air transport in Kenya has continued to grow and has contributed to job creation and increased interaction and trade with other countries. As part of the implantation of the Vision 2030, the Kenya Kwanza administration adopted the Bottom-Up Economic Transformation Agenda (BETA) that will be implemented over the next five years. The agenda is built on six main pillars, to be being implemented through five (5) MTP IV sectors that include Infrastructure. One of the aims under infrastructure sector is to enhance transport connectivity and the provisions of the regulations are meant to institutionalize a civil aviation regulatory and oversight framework that promotes a sustainable safe and secure air transport system in Kenya.

#### **(b) Constitution of Kenya 2010**

The Constitution recognizes civil aviation as one of the functions under the National Government in the fourth schedule. Chapter 4 of the Constitution provides for the Bill of Rights. Article 46 provides for consumer protection where it applies to goods and services offered by public entities or private persons. Aviation Consumers have rights for services of reasonable quality; information necessary for them to get full benefit from the services; and protection of their economic interests. Chapter 6 of the Constitution provides for leadership and integrity including the conduct of state officers and public officers. Employees and officers of the Authority are public officers hence they are bound by the principles of Chapter 6 of the Constitution. The regulations have largely provided for standardized ways of provision of quality services, information to be used by its consumers for protection of their economic interest, data protection issues, access to information while maintaining technical infrastructure within the aviation sector.

#### **(c) Civil Aviation Act**

The Civil Aviation Act, Cap 394 was enacted to provide for the control, regulation and orderly development of civil aviation in Kenya; and for connected purposes. Section 4 of the Act provides that the provisions of the Act and regulations made thereunder unless expressly excluded shall apply to: aerodromes used for civil aviation in Kenya; air services established or operating in Kenya; any aircraft registered by the Authority; any foreign aircraft within the Kenya territory; aviation personnel and training schools certified by the Authority; enterprises operating in Kenya in the design, manufacture, maintenance, repair and modification of aircraft

and aircraft parts or components; and air navigation facilities and services in Kenya. Section 82 provides for the Regulations that can be made by the Cabinet Secretary responsible for aviation matters to transport to give effect to the Act and for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention on aviation ratified by Kenya.

**(d) Statutory Instruments Act, CAP 2A**

This Act provides rules for the making and revocation of Statutory Instruments made directly or indirectly under any Act of Parliament or other written legislation. The object of this Act is to provide a comprehensive regime for the making, scrutiny, publication and operation of statutory instruments by:

- (a) requiring regulation-making authorities to undertake appropriate consultation before making Statutory Instruments;
- (b) requiring high standards in the drafting of Statutory Instruments to promote their legal effectiveness, clarity and intelligibility to anticipated users;
- (c) improving public access to Statutory Instruments;
- (d) establishing improved mechanisms for parliamentary scrutiny of Statutory Instruments; and establishing mechanisms to ensure that Statutory Instruments are periodically reviewed and, if they no longer have a continuing purpose, repealed.

The Act also makes provision for the making of regulatory impact statements under section 6 as well as contents of the regulatory impact statement under section 7.

**3.2 International Context**

The Convention on International Civil Aviation, which, has been ratified by Kenya established the International Civil Aviation Organization (ICAO) with a mandate to support, coordinate and help countries to diplomatically and technically realize a uniquely rapid and dependable network of global air mobility, connecting families, cultures, and businesses all over the world, and promoting sustainable growth and socio-economic prosperity wherever aircraft fly.

As a global forum of States for international civil aviation. ICAO develops policies and Standards, undertakes compliance audits, performs studies and analyses, helps and builds aviation capacity through many other activities and the cooperation of its Member States and stakeholders.

Article 37 of the Convention on International Civil Aviation provides for Adoption of international standards and procedures requiring each contracting State undertaking to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation.

The International Civil Aviation Organization adopts and amends international standards and recommended practices and procedures dealing with various aspects of air navigation and such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate.

Further, Article 12 of the Convention requires that each contracting State undertakes to adopt measures to ensure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force. Each contracting State undertakes to keep its own regulations in these respects uniform, to the greatest possible extent, with those established from time to time under this Convention. Over the high seas, the rules in force shall be those established under this Convention. Each contracting State undertakes to ensure the prosecution of all persons violating the regulations applicable.

Internationally, each of the 193 contracting States has, in compliance with their national commitments and obligations under the Convention, established national civil aviation regulations with the objective of governing the aviation industry in their jurisdiction.

Article 12 of the Convention relating to scheduled air services provides that no scheduled international air service may be operated over or into the territory of a contracting State, except with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.

The lack of an appropriate set of regulations in one contracting state jeopardizes the safety, security and economic status of international air navigation. The Civil Aviation (Aeronautical Search and Rescue) Regulations 2024 are therefore proposed to ensure fulfilment of state obligation and alignment of the Kenyan aviation system with international requirements and allow Kenya effectively to explore the potential economic and geopolitical benefits of participating in international air navigation.

### **3.3 Domestic Context**

The Kenya Civil Aviation Authority is established under the Civil Aviation Act with the object and purpose for which the Authority as established shall be, to economically and efficiently plan, develop and manage civil aviation, regulate, and operate a safe civil aviation system in Kenya in accordance with the provisions of the Act. Further The Civil Aviation Act require that the Cabinet Secretary shall make regulations to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.

The proposed Regulations enable KCAA to effectively discharge its mandate by establishing operational standards that ensure that the aviation system in Kenya is aligned to the standards established internationally and applicable globally.

## **CHAPTER FOUR: EVALUATION OF THE PROBLEM**

The Civil Aviation (Aeronautical Search and Rescue) Regulations, 2018 were last gazetted vide Legal Notice No. 119 of 2018. ICAO has adopted several amendments to annex 12 to the Chicago convention on which the regulations are based hence operating standards and requirements have since changed. As such, the regulations promulgated in 2018 are no longer current and lack the benefit of the amendments adopted since. Kenya is therefore not in compliance with the terms of the convention of which it is a signatory. The gaps in the regulations then can only be bridged through revocation of these regulations and promulgating the proposed regulations.

The proposed regulations seek to address the gaps as explained below.

### **3.3.1 Compliance with International Obligation**

While the International Civil Aviation Organization has a responsibility to adopt and amend from time to time, international standards and recommended practices and procedures dealing with Aeronautical Search and Rescue services in accordance to Article 37 to the Chicago Convention, Kenya, as a contracting State has agreed to collaborate in securing the highest practicable degree of uniformity in its regulations, standards, procedures, and organization in relation to Aeronautical Search and Rescue operations with those adopted and amended by ICAO.

To achieve effective compliance with the terms of the Convention, State regulations should be comprehensive, clear, consistent, and up to date. The regulations should conform with the Annexes to the Convention.

It is the responsibility of a State to develop and implement a process to ensure the timely amendment of the specific operating regulations, as necessary, in order to keep pace with the amendments to the Annexes to the Convention. The system in place should ensure that the regulations are issued at the appropriate level, as provided for by the civil aviation act. It is also required that the State ensures that the overall legislation is consistent and, in particular, that regulations are repealed when replaced by new ones.

At regional level, Kenya is a member of the East Africa Community treaty. The East Africa Community Civil Aviation Safety and Security Agency (EAC CASSOA) coordinates aviation activities at regional level and serves as the Regional Safety Oversight Organization. To achieve uniformity and standardization at regional level, member states have agreed to jointly develop the harmonized model EAC civil aviation regulations which member States should adopt. These Regulations when promulgated will therefore reflect those developed at regional level.

### **3.3.2 Enhance aviation Safety**

Safety is a core value-offering of rapid and dependable air services, and international cooperation on aviation safety by governments and industry groups. Initiatives taken by ICAO in collaboration with contracting States have helped commercial air transport to become the safest way to travel.

Aviation Safety is the state in which risks associated with aviation activities, related to, or in direct support of the operation of aircraft, are reduced and controlled majorly through proactive means to an acceptable level.

ICAO working together with member States are currently working toward their agreed global safety target of zero fatalities by 2030, in tandem with the strengthening of their regulatory capacities, while pursuing a range of programmes and targets relevant to current core areas of global aviation safety planning, oversight, and risk mitigation.

Over the years, ICAO and its Member States have collaborated to develop uniform Standards and Recommended Practices (SARPs) and procedures for the safe and orderly development of international civil aviation as well as for sound and economical international air transport services. United by a common cause and commitment, ICAO and its Member States have been able to confront crucial issues and, to a great degree, overcome the challenges encountered.

A number of factors that are in play underline the importance of renewed commitment and political will on the part of governments:

- (a) an increased involvement of non-traditional sectors in civil aviation, necessitating a significantly heightened attention to matters of aviation safety within the context of wider policy initiatives;
- (b) increasing globalization of civil aviation itself, exemplified by foreign and multi-national ownership and alliances of airlines, joint marketing arrangements, multinational approaches to both technical and economic regulations, along with increasing interaction between domestic and international civil aircraft operations;
- (c) an increasing demand for flights and for the infrastructure and services that such demand generates. The growth of air transport is surpassing the capacity of many aerodromes and airspace utilization, causing authorities to reconsider concepts, processing methods and facilities. This presents the challenge of providing additional capacity while maintaining or even improving safety levels;
- (d) increasingly intense social, economic, political, environmental and other pressures on civil aviation policy, particularly at the national and regional levels. Such pressures can result from rapid changes to socio-economic systems, which can have global effects (for example, rising expectations by society of safety levels). These pressures can also lead to conflicts such as those between safety and environmental obligations. In meeting environmental obligations, those relating to safety should not be compromised;
- (e) aviation safety is essential to ensure the healthy development of the air transport sector, which is a catalyst for sustainable development. Air transport impacts tourism and trade. It serves as the main mode of transportation to deliver humanitarian relief and response

to crises and public health emergencies. It generates other socio-economic benefits which help eradicate poverty by creating jobs and enhancing air connectivity.

The State has the responsibility to regulate and supervise all aviation activities within Kenya to ensure the safe, efficient and regular operation of air services.

As such, for the State to effectively oversight aviation activities in Kenya, it must be supported with a robust and up to date regulations. The lack of up to date Aeronautical Search and Rescue regulations therefore introduces a gap in requirements to be implemented by designated Aeronautical Search and Rescue Agency and limits the State in undertaking its oversight responsibility over the agency and organizations providing Aeronautical Search and Rescue within jurisdiction of Kenya.

### **3.3.3 Operational rights to other jurisdictions**

Kenya's Geopolitical location attracts many a person and operator from other jurisdictions. Many airlines and air operators operating into, out of and through Kenya emanate from states that have standardized their regulations with SARPS adopted and amended by the International Civil Aviation Organization. Kenya as a State therefore stands to gain if operational rights and State regulations mirror those of jurisdictions of the target operators. The way to achieve this uniformity is by developing Kenyan regulations in line with ICAO SARPS as adopted and amended from time to time.

### **3.3.4 Reduction of cost of doing business**

The regulatory framework in place may encourage or discourage people and organizations from doing business. The sustainability of the civil aviation system is increasingly linked to the cost of doing business. Civil aviation is a cost intensive venture requiring huge sums of money to procure aviation systems, establish the requisite infrastructure, purchase aircraft and run an airline to name a few. A poorly regulated industry may never thrive owing to the negative perception associated with it, the associated high cost of doing business, high insurance premiums and the losses resulting from doing business in such an environment.

To reduce unwarranted losses, high cost of doing business and an unstable business environment, proper regulations are required. A robust regulatory framework goes a long way in assuring investors that they can invest without worrying about the possibility of their investment suddenly going down the drain because of preventable incidents, accidents, flight delays, unwarranted competition and inefficiencies in aeronautical search and rescue services provision. Robust regulations provide the confidence, cushion and order necessary to gain such confidence.

Establishing robust regulations for Aeronautical Search and Rescue service providers also assures air operators that the Kenyan airspace is safe, well structured and designed to accommodate optimum aircraft volumes, the aeronautical search and rescue service providers' personnel are adequately qualified before being assigned operational duties, the services provided meet international standards and that traffic can be expedited through allocation of the most optimum flight profiles to enable saving on fuel burn.

## **CHAPTER FIVE: PUBLIC PARTICIPATION AND STAKEHOLDER CONSULTATION**

### **5.1 Legal requirements relating to public participation and consultation**

The Statutory Instruments Act provides for the requirement for public participation and consultation in the rule making process. The need to amend the Civil Aviation (Aeronautical Search and Rescue) Regulations 2018, was necessitated by a series of ICAO State Letters informing the State of amendments to annex 12 that would become effective on specified dates. Kenya as a contracting State was therefore required to bring its regulations into uniformity with the adopted and amended SARPS.

Public participation plays a crucial role in democratic governance by ensuring transparency, inclusivity, and accountability in decision-making processes. The Constitution of Kenya 2010, places emphasis on public participation as a fundamental principle of governance. Article 10 of the Kenya Constitution outlines the values and principles of governance, including public participation, which is crucial for achieving accountability, transparency, and public involvement in decision-making processes.

In addition, Article 118 of the constitution establishes the right to public participation in legislative and other processes of the State, ensuring that the public has an opportunity to participate in matters that affect them directly.

The requirement for public participation applies to regulation making too. As such, before the draft regulations would be forwarded for promulgation, a series of stakeholder and public engagements were conducted.

### **5.2 The Process of Public Consultation**

The first of a series of stakeholder meetings covering a set of eleven (11) civil aviation regulations was physically held at the Ole Sereni Hotel in Nairobi on 30<sup>th</sup> April 2019. The second Stakeholders meeting was hybrid (both physically at Four Points Hotel and virtually) between 14<sup>th</sup> – 18<sup>th</sup> June 2021. The third public engagement was a physical meeting with stakeholders held at the Emara Olesereni Hotel between 14<sup>th</sup> and 15<sup>th</sup> February 2022.

In each of the engagements, comments and input from stakeholders were taken and incorporated into the regulations as appropriate and the outcome presented in the succeeding engagement forum. To conclude stakeholder engagement, the Authority organized for a final regulations validation workshop at the Panari Hotel in Nairobi between 6<sup>th</sup> and 8<sup>th</sup> May 2024 to allow

stakeholders to confirm that the Authority had considered and incorporated their comments and input in the final drafts of the regulations. This was the final activity that paved way for the regulation review to proceed to the next stage.

### **5.3 Public Notice and awareness**

The stakeholders' engagement forum was advertised in one of the major local dailies in accordance with applicable requirements for stakeholder engagement. The sets of regulations that were to be discussed during the public participation forum were well spelt out in the advert. A form to collect stakeholder comments was uploaded with the regulations on the KCAA website [www.kcaa.or.ke](http://www.kcaa.or.ke). The advert also highlighted how prospective participants would register for the public forum.

### **5.4 Public participation forum**

The physical stakeholder engagement was conducted at the Ole Sereni Hotel in Nairobi on 30<sup>th</sup> April 2019 and attended by 102 participants. The virtual stakeholder engagement held between 14<sup>th</sup> and 18<sup>th</sup> June 2021 attracted a total attendance of 718 members of the public and aviation stakeholders.

The Stakeholder engagement reports, Local daily newspaper adverts, copies of signed or digital attendance lists as applicable, Matrices containing input from stakeholders and how the same were incorporated in the regulations form annexures to this report.

### **5.5 Analysis and Feedback**

The Authority received many memoranda from the industry and general public using the forms provided to collect stakeholder feedback. Some memoranda were delivered physically, in writing or through email. Memoranda received before stakeholder meetings were analysed, the Authority's response documented in a matrix and the same presented during the physical or virtual stakeholder engagement sessions.

Every additional effort was made to analyse each comment and give feedback to every input received from stakeholders initially on the floor of the physical or virtual engagement during question-and-answer sessions which came immediately after regulation presentations, or in writing where stakeholder input and comments were received in writing or after the engagement sessions.

For stakeholder input and comments requiring substantial analysis and amendment to draft regulations, the stakeholders were invited to shed more light on their comments and requests through physical/virtual meetings, in writing or email. Their input was then discussed and analysed together with the regulation drafters and when consensus had been reached, the regulations were either redrafted to incorporate their input or retained as were where taking the

industry comments in full would make the State to contravene ICAO standards to ensure that the State didn't contravene international standards and practices.

At all stages of regulation making, the Authority kept contact lines with stakeholders open to ensure that as important players they were fully involved and that they felt part of the process.

## CHAPTER SIX: COST BENEFIT ANALYSIS

### 6.1 Cost benefit analysis

The benefits that will accrue from promulgation of the proposed regulations far outweigh the projected costs to be incurred mainly by the Aeronautical Search and Rescue services provider and air operators. The costs are mainly related to initial implementation costs to achieve compliance with the regulatory requirements and retrofitting aircraft to be able to operate in the new airspaces. Requirements for aeronautical search and rescue personnel will, however, incur additional costs owing to the need for their regular maintenance.

It is however impossible to fully quantify the cost that goes into ensuring that aviation safety, which is a cardinal element of all civil aviation activities is maintained at all times. Furthermore, standards to be complied with the promulgation of these regulations have been meticulously studied and tried at international level. The results of such trials and tests have proven that the benefits accrued are worth the cost hence the adoption of the standards and recommended practices into ICAO annex 12.

Table 1 below summarizes the problems promulgation of new regulations is supposed to treat, the proposed amendments as well as the attached benefits and costs.

Table 1: Cost Benefit analysis

| PROBLEM                                                | PROPOSED REFORM                                                                                                                                                    | BENEFITS                                | COST |
|--------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|------|
| Generic citation                                       | Citation amended for currency of Regulations                                                                                                                       | Clarity of Regulation                   | NIL  |
| New provision following amendment of annex 12 inserted | 6. (8) Each rescue coordination centre and, as appropriate, rescue sub-centre shall maintain up-to-date contact details in the Operations (OPS) Control Directory. | Compliance with International provision | NIL  |
| New provision                                          | 6. (9) Each rescue coordination centre and, as                                                                                                                     | Compliance with International           | NIL  |

|                                                         |                                                                                                                                                                                                                                                                                             |                                         |                                                        |
|---------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--------------------------------------------------------|
| following amendment of annex 12 inserted                | appropriate, rescue sub-centre shall subscribe and maintain access to the location of an aircraft in distress repository (LADR).                                                                                                                                                            | provision                               |                                                        |
| Amended for clarity                                     | <b>10.</b> (1) (d) aeronautical search and rescue aircraft are equipped with a device for homing on distress frequencies and on such other frequencies as may be prescribed;                                                                                                                | Clarity of Regulation                   | A minimum initial cost related acquiring new equipment |
| New provision following amendment of annex 12 inserted  | <b>10.</b> (3) The designated aeronautical search and rescue agency shall locate, at appropriate aerodromes, survival equipment suitably packed for dropping by aircraft.                                                                                                                   | Compliance with International provision | Minimum cost for the survival equipment                |
| New provision following amendment of annex 12 inserted  | <b>10.</b> (4) Each search and rescue aircraft, when used for search and rescue over maritime areas, should carry a droppable device for measuring actual surface drift.                                                                                                                    | Compliance with International provision | Minimum cost for the droppable equipment               |
| Amended for clarity and to incorporate annex amendments | <b>11.</b> (4) (a) joint training exercises involving its RCCs, RSCs and aeronautical search and rescue units, those of other states and operators, in order to promote aeronautical search and rescue efficiency; and                                                                      | Clarity of Regulation                   | Minimum cost for the exercise for the teams involved.  |
| Renumbered for continuity as per annex                  | <b>11.</b> (5) The designated aeronautical search and rescue agency in coordination with the authority and relevant government authorities shall establish letters of agreement with aeronautical search and rescue service providers within the state and with all aeronautical search and | Clarity of Regulation                   | Minimum cost during the development phase.             |

|                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                          |     |
|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-----|
|                                                                                                                         | rescue agencies of contiguous states to strengthen aeronautical search and rescue cooperation and coordination.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                          |     |
| Renumbered for continuity as per annex                                                                                  | <b>11.</b> (6) Subject to sub-regulation (1), the designated aeronautical search and rescue agency shall set forth in the agreements, the conditions for entry of each other's aeronautical search and rescue units into respective territories and ensure that these agreements also provide for expediting entry of such units with the least possible formalities.                                                                                                                                                                                                                                                                                                     | Clarity of Regulation                                                    | NIL |
| Provision omitted from previous regulation inserted while sub-regulation is enhanced to incorporate annex 12 amendments | <p><b>12.</b> (1) The designated aeronautical search and rescue agency shall arrange for all aircraft, vessels and local services and facilities which do not form part of the search and rescue organization to cooperate fully with the latter in search and rescue and to extend any possible assistance to the survivors of aircraft accidents.</p> <p>(2) The designated aeronautical search and rescue agency shall ensure the closest practicable coordination between the relevant aeronautical and maritime authorities to provide for the most effective and efficient search and rescue services.</p> <p>(3) The designated aeronautical search and rescue</p> | Compliance with International provisions and of consistence regulations. | NIL |

|                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                          |              |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|--------------|
|                                                        | <p>agency shall ensure that their search and rescue services cooperate with those responsible for investigating accidents and with those responsible for the care of those who suffered from the accident.</p> <p>(4) Rescue units shall, when practicable, be accompanied by persons qualified in the conduct of aircraft accident investigations to facilitate accident investigation.</p> <p>(5) The designated aeronautical search and rescue agency shall designate a 24-hour search and rescue point of contact available for the receipt and acknowledgement of COSPAS-SARSAT distress alert data that ensures timely notification to the responsible rescue coordination centre for the initiation of appropriate search and rescue response action.</p> |                                          |              |
| New provision following amendment of annex 12 inserted | <b>17.</b> (2) (e) the position, course and speed of aircraft that may be able to provide assistance to aircraft in distress; and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Compliance with International provisions | NIL          |
| New provision following amendment of annex 12 inserted | <b>17.</b> (2) (f) where the search and rescue region includes maritime areas, the position, course and speed of ships that may be able to provide assistance to aircraft in distress.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Compliance with International provision  | NIL          |
| New provision following                                | <b>18.</b> (4) (j) the methods for obtaining approval to allow search and rescue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Compliance with International provision  | Minimum cost |

|                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                               |                          |
|--------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------------------------|
| amendment of annex 12 inserted                                           | units from an assisting State to enter into the territory of the State of the RCC;                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                               |                          |
| Revised for clarity                                                      | <b>18.</b> (7) The designated Aeronautical Search and Rescue agency shall prepare and keep updated, an Aeronautical Search and Rescue manual containing the necessary procedures for aeronautical search and rescue operations and matters connected therewith to facilitate the implementation of the Aeronautical Search and Rescue plan.                                                                                                                                                                                                                                            | Clarity of Regulation         | NIL                      |
| To correct the wrong reference to regulation 14 instead of regulation 18 | <b>19.</b> The designated aeronautical search and rescue agency shall ensure that each aeronautical search and rescue unit—<br>(a) is cognizant of all parts of the plans of operation described in regulation 18 that are necessary for the effective conduct of its duties;<br>(b) keeps the rescue coordination centre informed of its preparedness;<br>(c) maintains readiness and the required number of aeronautical search and rescue facilities; and<br>(d) maintains adequate supplies of rations, medical stores, signaling devices and other survival and rescue equipment. | Clarity of Regulation         | NIL                      |
| Revised to incorporate a                                                 | <b>20.</b> The designated aeronautical search and                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Compliance with International | Minimum cost in training |

|                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                         |              |
|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--------------|
| new provision following amendment of annex 12                          | rescue agency shall provide for regular training and exercises for its aeronautical search and rescue personnel which include both land and maritime environments as appropriate, containing both search and rescue elements, remote from an aerodrome.                                                                                                                                                                                            | provision                               |              |
| Revised to incorporate a new provision following amendment of annex 12 | <b>21.</b> (1) The designated aeronautical search and rescue agency shall ensure that search and rescue personnel that may be required to respond to an aircraft accident site are trained in the management of related occupational health risks.                                                                                                                                                                                                 | Compliance with International provision | NIL          |
| Amended for clarity and renumbered                                     | <b>21.</b> (2) The Cabinet Secretary shall ensure that wreckage resulting from aircraft accidents within Kenya or, in the case of accidents on the high seas or in areas of undetermined sovereignty within the Nairobi search and rescue region is removed, obliterated or charted following completion of the accident investigation, if its presence might constitute a hazard or confuse subsequent aeronautical search and rescue operations. | For ease of identification.             | Minimum cost |
| Marginal note revised following annex 12 amendment                     | <b>27.</b> Procedures at the distress scene.                                                                                                                                                                                                                                                                                                                                                                                                       | Clarity of Regulation                   | NIL          |
| New provision following                                                | <b>27.</b> (2) (c) (vi) whether any distress signals, including distress beacon                                                                                                                                                                                                                                                                                                                                                                    | Compliance with International           | NIL          |

|                                                        |                                                                                                                                                                                                                                                                                    |                                         |     |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----|
| amendment of annex 12 inserted                         | transmissions, have been received or observed;                                                                                                                                                                                                                                     | provision                               |     |
| Amended as per annex                                   | 27. (2) (c) (ix) apparent best ground access route to the distress scene;                                                                                                                                                                                                          | Compliance with International provision | NIL |
| New provision following amendment of annex 12 inserted | 27. (2) (c) (x) position and description of any other craft in the area that may assist; and                                                                                                                                                                                       | Compliance with International provision | NIL |
| Amended as per annex                                   | 27. (3) The first aircraft to reach the distress scene if not an aeronautical search and rescue aircraft, shall take charge of on-scene activities of all other aircraft subsequently arriving until the first aeronautical search and rescue aircraft reaches the distress scene. | Compliance with International provision | NIL |
| New provision following amendment of annex 12 inserted | 27. (8) When carrying a device for measuring actual surface drift in accordance with regulation 10 sub-regulation (4), a search and rescue aircraft shall drop the device as soon as it reaches the scene of an accident.                                                          | Compliance with International provision | NIL |
| Renumbered                                             | 28. (1) Whenever a distress transmission is intercepted by a pilot-in-command of an aircraft, the pilot shall, if feasible—                                                                                                                                                        | Correct order                           | NIL |
| Revised for clarity                                    | 28. (2) (a) record, and report as soon as possible, the position where the transmission was first received;                                                                                                                                                                        | Clarity of regulation                   | NIL |
| New provision following                                | 28. (2) (b) not alter any settings for squelch on the aircraft's radio; and                                                                                                                                                                                                        | Compliance with International provision | NIL |

|                                                        |                                                                                                                                                                                                     |                                         |     |
|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|-----|
| amendment of annex 12 inserted                         |                                                                                                                                                                                                     |                                         |     |
| New provision following amendment of annex 12 inserted | <b>28. (2) (c)</b> if feasible, continue to monitor the frequency until such time as the signal ceases, and inform the appropriate rescue coordination centre or air traffic services unit of such. | Compliance with International provision | NIL |

## 6.2 Consideration of Alternatives to the proposed Regulations

Table 2.

| Option                                                                                                 | Impact                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Option One: Maintenance of the Status Quo</b>                                                       | <p>(a) Maintaining status quo means that no regulations are developed, thus the challenges of currency and keeping up with the international obligations and requirements will not be met.</p> <p>(b) Kenya won't be complying with terms of the Convention to which it is a signatory and hence will attract ICAO Universal Safety Oversight – continuous Monitoring Approach (USOAP-CMA) Audit findings.</p> <p>(c) Lack of regulations that are current will place Kenya behind other States with more current and robust regulations thereby denying the State the much desired investment in the aviation industry.</p> |
| <b>Option Two: Administrative measures</b>                                                             | Involves the issuance of directives and circulars to the various entities and hoping that they will be implemented. Administrative measures are not enforceable and may be challenged in court of law.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Option Three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024</b> | <p>Promulgation of the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024 will enhance safety by ensuring that that Kenya;</p> <p>(a) Secures the highest practical degree of uniformity in regulations, standards, procedures and organization in relation to aircraft, personnel, airways and auxiliary</p>                                                                                                                                                                                                                                                                                                  |

|  |                                                                                                                                                                                                                                                                                                                                                                                                     |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p>services in all matters in which such uniformity will facilitate and improve air navigation</p> <p>(b) Achieves a high effective implementation of standards and recommended practices by ensuring that there is compliance with ICAO standards</p> <p>(c) Can effectively regulate and oversight the Aeronautical Search and Rescue providers in compliance with the regulations</p> <p>(d)</p> |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### 6.3 Impact analysis of the Options

Table 3

| <b>Aviation Sector</b> | <b>Option one: Maintenance of the Status Quo</b>                                                                                                                                                                                                                                                                                                                        | <b>Option two: Administrative measures</b>                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024</b>                                                                                                                                                                                                                                                                 |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Air Operators          | <p>Maintaining the current regulations poses the following challenges:</p> <ol style="list-style-type: none"> <li>1. Denies the operators the benefit of enjoying new technology that can transform their business model</li> <li>2. Denies operators the benefits accrued from choosing the most optimum route for lack of assurance of the safety of their</li> </ol> | <ol style="list-style-type: none"> <li>1. Air operators need clear regulations and guidelines. Administrative documents lack the same legal standing as formal regulations and mainly contain procedural information. Dependence on administrative documents may lead to uncertainty in compliance.</li> <li>2. Without a framework of formal regulations, there may be variations in how administrative documents are interpreted and applied across different air</li> </ol> | <ol style="list-style-type: none"> <li>1. Promulgation of these Regulations will establish and enhance safety standards, reducing the risk of accidents and incidents.</li> <li>2. These Regulations will carry legal weight, hence clear that compliance is a requirement. Operators therefore know that they will be held accountable for non-compliance,</li> </ol> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                                                                                                                                                                            | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                                                                                                       |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | <p>aircraft while transiting over the Kenyan airspace.</p> <p>3. Safety standards may be outdated, increasing the likelihood of accidents and incidents.</p> <p>4. Operational inefficiencies due to deficiencies in addressing current industry practices and emerging technologies, the use of which would make flight more efficient and environmentally friendly.</p> <p>5. Air operators may find it difficult to implement</p> | <p>operators.</p> <p>3. The process of developing administrative documents may not normally involve the same level of stakeholder consultation as formal regulatory development, potentially resulting in overlooked stakeholder concerns or needs.</p> <p>4. Administrative documents may not impose clear accountability measures, making it difficult to hold persons responsible for non-compliance.</p> <p>5. Persons may find it challenging to comply with administrative documents if they lack the rigor and specificity that formal regulations provide.</p> <p>6. Administrative documents may not provide the comprehensive</p> | <p>thereby improving overall industry adherence to safety practices.</p> <p>3. The New regulations promote uniformity across the aviation sector, ensuring that all operators adhere to the same standards, which enhances safety and operational efficiency.</p> <p>4. Well-defined regulations provide clear guidance for air operators, helping them understand their responsibilities and the requirements they must meet for</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                                                    | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                                                                                                                                 |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | <p>new technology since there are no supporting regulations.</p> <p>6. Air operators, their passengers and industry partners, may lose confidence in the safety and reliability of air transport services.</p> <p>Unclear regulations can lead to legal challenges and increased liability for airlines.</p> | <p>guidance and training necessary for effective implementation, leading to gaps in knowledge and skills among maintenance personnel.</p> <p>7. Relying on administrative documents may lead to a fragmented approach to regulation, with varying practices that hinder safety and efficiency across the aviation sector.</p> <p>Operators may resist adopting administrative documents that lack the authority and clarity of formal regulations, resulting in a lack of commitment to compliance.</p> | <p>compliance.</p> <p>5. The Civil Aviation (Aeronautical Search and Rescue Regulations) regulations will enhance confidence among air operators by demonstrating a commitment to safety and regulatory compliance.</p> <p>6. Updated regulations will address new technologies, practices, and safety concerns, ensuring that the regulatory framework remains relevant and effective.</p> <p>7. By aligning regulations with international standards, the</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                        | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                               | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                      |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                   | <p>CAA can facilitate smoother operations and acceptance by foreign aviation authorities, improving global cooperation which is a benefit to air operators.</p> <p>A robust regulatory framework can promote a safer and more efficient aviation environment, which can contribute to the growth of the aviation sector and the broader economy.</p> |
| ANS Provider    | <p>Maintaining the current regulations poses the following challenges:</p> <ol style="list-style-type: none"> <li>1. Difficulty in attracting international clients who are not assured of aviation safety in Kenya hence choosing to</li> </ol> | <p>Involves 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 a court of law. These include Advisory Circulars and Aeronautical Information Circulars</p> <ol style="list-style-type: none"> <li>1. Administrative documents lack the same legal standing as formal regulations and</li> </ol> | <ol style="list-style-type: none"> <li>1. Promulgation of these Regulations will establish and enhance safety standards, reducing the risk of accidents and incidents.</li> <li>2. These Regulations will carry legal weight, hence they will be clear that</li> </ol>                                                                               |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                                                                                                                                                                                                 | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | <p>route over longer routes that pass over States perceived to run safer aviation activities.</p> <p>2. Safety standards may be outdated, increasing the likelihood of accidents and incidents.</p> <p>3. Operational inefficiencies due to a deficiency in addressing current industry practices and emerging technologies, the use of which would make flight more efficient and environmentally friendly.</p> <p>4. Aeronautical Search and Rescue</p> | <p>mainly contain procedural information. Dependence on administrative documents may lead to uncertainty in enforcement and compliance.</p> <p>2. Without a framework of formal regulations, there may be variations in how administrative documents are interpreted and applied across the industry.</p> <p>3. The process of developing administrative documents may not normally involve the same level of stakeholder consultation potentially resulting in overlooked stakeholder concerns or needs.</p> <p>4. Administrative documents may not impose clear accountability measures, making it difficult to hold persons responsible</p> | <p>compliance is a requirement. Air Navigation Service providers will therefore know that they will be held accountable for non-compliance, thereby improving overall industry adherence to safety practices.</p> <p>3. The New regulations promote uniformity across the aviation sector, ensuring that all ANS providers adhere to the same standards, which enhances safety and operational efficiency.</p> <p>4. Well-defined regulations provide clear guidance for ANS providers, helping them understand their responsibilities</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                                                                                                                                                                        | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | <p>service providers may find it difficult to implement new technology which would increase airspace throughput and enhance safety.</p> <p>5. Stakeholders, including passengers and industry partners, may lose confidence in the safety and reliability of air transport services.</p> <p>Non-compliance with regulations can lead to legal challenges and increased liability for airlines and maintenance organizations.</p> | <p>for non-compliance.</p> <p>5. Persons may find it challenging to comply with administrative documents if they lack the rigor and specificity that formal regulations provide.</p> <p>6. Administrative documents may not provide the comprehensive guidance and training necessary for effective implementation, leading to gaps in knowledge and skills among maintenance personnel.</p> <p>7. Relying on administrative documents may lead to a fragmented approach to regulation, with varying practices that hinder safety and efficiency across the aviation sector.</p> <p>Stakeholders may resist adopting administrative documents that lack the authority and clarity of formal regulations, resulting in a lack of commitment to</p> | <p>and the requirements they must meet for compliance.</p> <p>5. The Civil Aviation (Aeronautical Search and Rescue Regulations) regulations will enhance confidence among aeronautical search and rescue service providers by demonstrating a commitment to safety and regulatory compliance.</p> <p>6. Updated regulations will address new technologies, practices, and safety concerns, ensuring that the regulatory framework remains relevant and effective.</p> <p>7. By using regulations aligned with</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                              | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                              |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |                                                                                                                                                                                                                                                                          | compliance.                                                                                                                                                                                                                                                                                                                                                                                      | <p>international standards, the Aeronautical Search and Rescue service provider can facilitate smoother operations.</p> <p>A robust regulatory framework can promote a safer and more efficient aviation environment through effective air navigation services.</p>                                                          |
| The State       | <p>1. Difficulty on the part of the State carrying out effective oversight owing to deficiencies in the current regulations.</p> <p>2. The inability to provide up to date Aeronautical Search and Rescue services regulations can stifle the growth of the aviation</p> | <p>1. Administrative documents lack the same legal standing as formal regulations and mainly contain procedural information. Depending on them may lead to uncertainty in enforcement and compliance.</p> <p>2. Without a framework of formal regulations, the State may not be able to control the varied understanding and interpretation of administrative documents by target persons or</p> | <p>1. Difficulty on the part of the State carrying out effective oversight owing to deficiencies in the current regulations.</p> <p>3. The inability to provide up to date Aeronautical Search and Rescue services regulations can stifle the growth of the aviation sector, affecting economic development and regional</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                    | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                          |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | <p>sector, affecting economic development and regional connectivity.</p> <p>3. The State may lose its standing as a major aviation hub to other upcoming markets with more robust regulatory frameworks.</p> | <p>organizations.</p> <p>3. The process of developing administrative documents may not normally involve the same level of stakeholder consultation as formal regulatory development, potentially resulting in overlooked stakeholder concerns or needs which may negatively affect the State's credibility.</p> <p>4. Administrative documents may not impose clear accountability measures, making it difficult for the State to hold persons responsible for non-compliance.</p> <p>5. Relying on administrative documents may lead to a fragmented approach to regulation, with varying practices that hinder safety and efficiency across the aviation sector.</p> | <p>connectivity.</p> <p>4. The State may lose its standing as a major aviation hub to other upcoming markets with more robust regulatory frameworks.</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                                                                                                                                                                                        | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <p>6. Stakeholders may resist adopting administrative documents that lack the authority and clarity of formal regulations, resulting in a lack of commitment to compliance.</p> <p>7. Regulation and oversight using administrative documents is nearly impossible.</p>                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| The Authority   | <p>1. The Authority may lose credibility and trust among stakeholders for initiating the amendment of regulations and bringing them to effect in a timely manner.</p> <p>2. The Authority may struggle to effectively oversee safety practices, leading to potential increase in accidents and incidents within the aviation sector.</p> <p>3. A lack of robust regulations can deter investment in the aviation sector, stunting growth and</p> | <p>1. Administrative documents typically do not carry the same legal weight as formal regulations, making enforcement difficult and leading to uncertainty among stakeholders about compliance requirements.</p> <p>2. Without formal Regulations, there may be inconsistencies in how the administrative documents are interpreted and applied across different aeronautical search and rescue service providers.</p> <p>3. The process of developing administrative documents may not involve comprehensive consultations with all relevant stakeholders,</p> | <p>1. Promulgation of these Regulations will establish and enhance safety standards, reducing the risk of accidents and incidents related to Aeronautical Search and Rescue service provision.</p> <p>2. These Regulations will carry legal weight, allowing the CAA to enforce compliance and hold persons accountable for non-compliance, thereby improving overall industry adherence to safety practices.</p> <p>3. The New regulations promote uniformity across the</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Option two: Administrative measures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 | <p>economic development in the country and the region.</p> <p>4. The authority may face increased legal challenges and liabilities if accidents occur due to outdated or inadequate aeronautical search and rescue services regulations.</p> <p>The authority may experience challenges in coordinating with other national and international regulatory bodies owing to different levels of compliance with international standards thereby complicating collaborative efforts to enhance aviation safety and security.</p> | <p>potentially missing important input from industry experts, operators and consumers of search and rescue services.</p> <p>4. Administrative documents can sometimes lack the specificity and clarity needed to guide organizations effectively, leading to confusion about applicable standards and recommended practices.</p> <p>5. It may be challenging to hold persons accountable for non-compliance if the guidelines are not formally codified into regulation, which can lead to a lack of adherence to safety standards.</p> <p>6. Relying on administrative documents can lead to a fragmented regulatory framework, where different persons may adopt varying practices that compromise overall safety and operational efficiency.</p> <p>7. Administrative documents may not cover all necessary aspects of aeronautical search and rescue services provision, leaving potential gaps that</p> | <p>aviation sector, ensuring that all Aeronautical Search and Rescue services providers adhere to the same standards, which enhances safety and operational efficiency.</p> <p>4. Well-defined regulations provide clear guidance for aeronautical search and rescue services providers, helping them understand their responsibilities and the requirements they must meet for compliance.</p> <p>The CAA can conduct more effective oversight and monitoring of Aeronautical Search and Rescue service providers, facilitating better risk management and safety assurance.</p> <p>6. The Civil Aviation (Aeronautical Search and Rescue) regulations will enhance confidence among stakeholders by demonstrating a commitment to safety and regulatory compliance.</p> |

| Aviation Sector | Option one: Maintenance of the Status Quo | Option two: Administrative measures                                                                                                                                                                                         | Option three: Promulgating the Civil Aviation (Aeronautical Search and Rescue) Regulations 2024                                                                                                                                                                                                                                                             |
|-----------------|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                 |                                           | <p>could jeopardize safety.</p> <p>8. Stakeholders may be less likely to adhere to administrative guidelines that lack the authority of formal regulations, reducing the effectiveness of the intended safety measures.</p> | <p>7. Updated regulations will address new technologies, practices, and safety concerns, ensuring that the regulatory framework remains relevant and effective.</p> <p>8. A robust regulatory framework can promote a safer and more efficient aviation environment, which can contribute to the growth of the aviation sector and the broader economy.</p> |

#### 6.4 Preferred Option

Based on the above analysis, it is clear that the benefits of promulgating the proposed regulations outweigh the costs and therefore the Kenya Civil Aviation Authority prefers option three over the other two.

## **CHAPTER SEVEN: COMPLIANCE AND IMPLEMENTATION**

As different aspects of the proposed Regulations are evaluated and analyzed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the Regulator to assess the adequacy of the institutional framework and other incentives through which the Regulations will take effect, and design responsive implementation strategies that make the best use of them.

In an ideal situation an institution responsible for enforcement of the Regulations should have the capacity of co-ordination of institutional frameworks from a whole-of-government perspective, independent and sufficient authority, political support at a high political level, and integration into a broad concept of reform. KCAA has been implementing the current Regulations for over 6 years now and has demonstrated capacity to implement the proposed Regulations and has indeed put in place a plan as outlined in the Strategic Plan 2023/24-2027/28 of strengthening its institutional capacity to enable it enforce full compliance with the proposed Regulations.

## CHAPTER EIGHT: CONCLUSIONS & RECOMMENDATIONS

### 8.1 Conclusion

Based on the above analysis, the following conclusions are drawn in respect of the draft Civil Aviation (Aeronautical Search and Rescue) Regulations, 2024:

- (a) **Regulations making mandate:** Article 94 (6) of the Constitution gives parliament the power to delegate its legislative authority to a State organ, State officer or person to make provision having the force of law in Kenya. Subsequently, Section 82 of the Civil Aviation Act empowers the Cabinet Secretary in Consultation to give effect to and for the better carrying out of the objects and purposes of this Act, to provide generally for regulating air navigation, air transport, air accident investigation and carrying out and giving effect to any convention.
- (b) **Provisions of the Statutory Instruments Act:** Section 5 requires that a regulation making authority to conduct public consultations and drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. Sections 6 and 7 require that a RIA be prepared where a statutory instrument is likely to impose significant costs on the community. This RIA thus contains certain the following key elements:
  - (i) a statement of the objectives of the proposed legislation and the reasons.
  - (ii) a statement explaining the effect of the proposed legislation.
  - (iii) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options.
  - (iv) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
  - (v) the reasons why the other means are not appropriate.

The RIA structure and content requirements established in the Statutory Instruments Act requirements have been fully met. Additionally, public consultation requirements in respect of the Civil Aviation (Aeronautical Search and Rescue) Regulations have been fully adhered to.

- (c) **Other legal frameworks:** The draft Civil Aviation (Aeronautical Search and Rescue) Regulations 2024 proposes to publish regulations in harmony with other civil aviation regulations to effectively govern the civil aviation system in Kenya.
- (d) **The draft:** The draft Civil Aviation (Aeronautical Search and Rescue) Regulations 2024 as drafted are clear, consistent, comprehensible, and comprehensive enough to cover all matters and meet the established drafting standards.

## 8.2 Recommendations

In view of the above conclusions, it is recommended that the draft Civil Aviation (Aeronautical Search and Rescue) Regulations 2024 be adopted.

## ANNEXURES

The Draft Civil Aviation (Aeronautical Search and Rescue) Regulations 2024

Matrix for stakeholder consultations