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THE MARITIME SEARCH AND RESCUE BILL, 2011

**A Legislation Drafting Project submitted in partial
fulfillment of the requirements for the award of the Degree
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1. INTRODUCTION

1.1 History

The rendering of assistance to persons in distress is of long standing and recognized in international law. Regulation V/33.1 of the International Convention for the Safety of Life at Sea (SOLAS), 1974 as amended,¹ provides that the “master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so”. SOLAS further imposes responsibility on contracting State Governments to “ensure that the necessary arrangements are made for distress communication and co-ordination in their area of responsibility and for the rescue of persons in distress at sea around its coasts. These arrangements should include the establishment, operation and maintenance of such search and rescue facilities as are deemed practicable and necessary [...]”²

The United Nations Convention on the Law of the Sea, 1982 (UNCLOS)³ provides that every “State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew, or the passengers [...] to render assistance to any person found at sea in danger of being lost [...]”⁴ UNCLOS also imposes obligations on States to “promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding the safety on and over the sea [...]”⁵ and to “[...] promote the establishment, operation and maintenance of an adequate and effective

search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.”⁶

¹ London, 1 November 1974.

² Chapter V, Regulation 7 of SOLAS.

³ Montego Bay, 10 December 1982.

⁴ Article 98 (1) (a) of UNCLOS.

⁵ Article 98 (2) of UNCLOS.

⁶ Art 98 (2) of UNCLOS.

The obligation to render assistance is deeply rooted in international law. However, before 1979, there was no international instrument regulating international search and rescue. This situation led to haphazard development in this area and more importantly to lack of co-ordination in search and rescue activities. It was, therefore, necessary to create a convention that would deal with this aspect.

In its technical sense the phrase, “search and rescue”, is defined as “the performance of distress monitoring, communication, co-ordination and search and rescue functions, including provision for medical advice, initial medical assistance, or medical evacuation through the use of public and private resources including co-operating aircraft, vessels and other installations.”⁷

1.2 International Convention on Maritime Search and Rescue

International Convention on Maritime Search and Rescue, 1979 (as amended) (the SAR Convention) was adopted in April 1979 and as its title implies the SAR Convention is designed to improve existing arrangements and provide a framework for charting out search and rescue operations following accidents at sea. The IMO reports on its website that the “SAR Convention, adopted at a Conference in Hamburg, was aimed at developing an international search and rescue plan, so that, no matter where an accident occurs, the rescue of persons in distress at sea will be co-ordinated by a search and rescue organization and, when necessary, by co-operation between neighbouring search and rescue organizations.”⁸

It may be noted that although there existed an obligation for ships to go

to the assistance of vessels in distress, as noted in, for example, SOLAS and UNCLOS, there did not exist

⁷ See paragraph 1.3.3 of the Annex to the International Convention on Search and Rescue.

⁸ International Maritime Organization, International Convention on Maritime Search and Rescue (SAR) <[http://www.imo.org/About/Conventions/ListOfConventions/P.s/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/P.s/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)> 27 December 2010.

an international system that dealt with search and rescue.⁹ Indeed, there appeared to be areas where there was a well established mechanism for search and rescue organization while in others there was a very poorly developed system or none at all.¹⁰

The SAR Convention itself does not contain any substantive or technical provisions and the technical requirements of the SAR Convention are contained in an Annex (the Annex), which was divided into five Chapters. The Annex is made a part of the SAR Convention and the Parties to the SAR Convention are expected to have adequate search and rescue services, and to enter into search and rescue agreements with neighbouring States to establish search and rescue regions and establishment of common regions. The SAR Convention also provides that Parties should take measures to expedite entry into its territorial waters in the event of an incident.

The SAR Convention proceeds to establish preparatory measures which should be taken, including the establishment of rescue co-ordination centres and sub-centres.¹¹ It outlines operating procedures to be followed in the event of emergencies or alerts and during search and rescue operations. This includes the designation of an on-scene commander and his duties.¹²

The SAR Convention obliges State Parties to “...ensure that assistance be provided to any person in distress at sea...regardless of the nationality or status of such a person or the circumstances in which that person is found”¹³ and to “[...] provide for their initial medical or other needs, and deliver them to a place of safety.”¹⁴

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Chapter 2.1.10 of the Annex to the SAR Convention.

¹⁴ Chapter 1.3.2 of the Annex to the SAR Convention.

1.3 IMO search and rescue areas

The IMO has actively implemented the SAR Convention by dividing the world's oceans into designated search and rescue areas. This division was done through the IMO's Maritime Safety Committee and in each of these search and rescue areas the countries concerned have delimited search and rescue regions for which they are responsible.¹⁵

Provisional search and rescue plans for all of these areas were completed when plans for the Indian Ocean were finalized at a conference held in Fremantle, Western Australia in September 1998.¹⁶

1.4 Revision of SAR Convention

The SAR Convention faced an important challenge to its implementation. The SAR Convention placed heavy obligations on the Parties and this made it unacceptable to most coastal States resulting in slow ratification of the SAR Convention. According to the IMO "[t]he SAR Convention imposed considerable obligations on Parties - such as setting up the shore installations required - and as a result the SAR Convention was not being ratified by as many countries as some other treaties. Equally important, many of the world's coastal States had not accepted the SAR Convention and the obligations it imposed. It was generally agreed that one reason for the small number of acceptances and the slow pace of implementation was due to problems with the SAR Convention itself and that these could best be overcome by amending the SAR Convention."¹⁷

In May 1988, the IMO thus adopted a revised Annex to the SAR Convention which entered into force in January 2000.

¹⁵ International Maritime Organization, International Convention on Maritime Search and Rescue (SAR) <[http://www.imo.org/About/Conventions/ListOfConventions/P.s/International-Convention-on-Maritime-Search-and-Rescue-\(SAR\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/P.s/International-Convention-on-Maritime-Search-and-Rescue-(SAR).aspx)> 27th December, 2010.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

The revised Annex makes the responsibilities of Governments clearer and places greater emphasis on the regional approach and the co-ordination with aeronautical search and rescue operations.

The revised Annex includes five chapters dealing respectively with terms and conditions, organization and co-ordination, co-operation between States, operating procedures and ship reporting systems.

1.5 IAMSAR Manual

Concurrently with the revision of the SAR Convention, the IMO and the International Civil Aviation Organization (ICAO) jointly developed and published the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual, published in three volumes covering Organization and Management; Mission Co-ordination; and Mobile Facilities.¹⁸ The Primary purpose of the three volumes of the manual is to assist States in meeting their own search and rescue needs and the obligations they accepted under the Convention on International Civil Aviation,¹⁹ the SAR Convention and SOLAS.²⁰ These volumes provide guidelines for a common aviation and maritime approach to organizing and providing search and rescue services. States are encouraged to develop and improve their search and rescue services, co-operate with neighbouring States, and to consider their search and rescue services to be part of a global search and rescue system.²¹

1.6 The 2004 amendments - persons in distress at sea

The amendments were adopted in May 2004 and entered into force on the 1 of July 2006. The amendments to the Annex to the SAR Convention include:

¹⁸ *Ibid.*

¹⁹ Chicago, 7 December 1944; Kenya acceded to this convention.

²⁰ IAMSAR Manual, Foreword, p. iii <http://aviadocs.net/icaodocs/Docs/9731_vol2_en.pdf> 27 March, 2011.

²¹ *Ibid.*

- addition of a new paragraph in chapter 2 (Organization and co-ordination) relating to definition of persons in distress;²²
- new paragraphs in chapter 3 (Co-operation between States) relating to assistance to the master in delivering persons rescued at sea to a place of safety;²³ and
- a new paragraph in chapter 4 (Operating procedures) relating to rescue co-ordination centres initiating the process of identifying the most appropriate places for disembarking persons found in distress at sea.²⁴

2 SEARCH AND RESCUE IN KENYA

2.1 Existing Legal provisions in Kenya

Kenya acceded to the SAR Convention on 14 January 1993. Thus Kenya did not ratify the treaty. The significance of this statement will be borne out shortly.

Kenya's law covering search and rescue is not adequate. The only provision in Kenya's law dealing with maritime search and rescue is section 5 of the Kenya Maritime Authority Act, 2006²⁵ (KMA Act) which describes the functions of the Kenya Maritime Authority (the Authority). The section reads as follows where relevant:

The functions of the Authority are to carry out such functions as may be necessary to give effect to the objects of [the KMA Act] and without prejudice to the generality of the foregoing, the Authority shall have the duty to [...] deal with matters pertaining to maritime search and rescue and co-ordinate the activities of the Kenya Ports Authority [(KPA)], the Kenya Navy and any other body engaged during search and rescue operations.

²² International Maritime Organization, International Convention on Maritime Search and Rescue (SAR) <<http://www.imo.org/About/Conventions/ListOfConventions/P.s/International-Convention-on-Maritime->

Search-and-Rescue-(SAR).aspx> 27th December, 2010.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Act No. 5 of 2006.

Kenya has also enacted the Civil Aviation Act (Cap 394). Cap 394, according to its long title, is “an Act of Parliament to make [p]rovision for the control, regulation and orderly development of civil aviation in Kenya and for matters incidental thereto or connected therewith”. Cap 394 creates the Kenya Civil Aviation Authority (the Civil Aviation Authority) and gives the Civil Aviation Authority several functions. Section 3B (1) (f) of Cap 394 provides that the “[Civil Aviation] Authority shall be responsible for the coordination and direction of search and rescue services.” Of course, search and rescue in the context of Cap 394 is aeronautical search and rescue because the long title of Cap 394 makes it clear that its focus is the “orderly development of civil aviation”. However, it is important to consider the provisions of Cap 394 because of what is stated at part 3 of this explanatory note.

2.2 The Value of search and rescue in Kenya

The importance of search and rescue to the Kenyan scenario cannot be over-stated. Kenya’s coastline with the Indian Ocean is more than 600 kilometres and Kenya shares Lake Victoria with Uganda and the United Republic of Tanzania. Lake Victoria is the second largest fresh-water lake in the world. In addition Kenya has a number of inland lakes and rivers. All these water bodies are very highly navigable and are in fact used extensively for navigational purposes. The port of Mombasa is the largest port in East Africa and is referred to as the gateway to East Africa.

There is a sizeable international presence in Kenya and the International Maritime Organization (IMO) has a regional office located in Nairobi, Kenya’s capital based on a memorandum of understanding signed between Kenya and the IMO. The IMO presence

in Kenya, as with other parts of Africa is geared towards giving the relevant technical assistance to African countries.

One of the matters the IMO has overseen is the establishment of five regional Maritime Rescue Centres including the Maritime Rescue Centre located in Mombasa. The IMO reports as follows on its website:

The process of implementation of the recommendations in Annex 1 to Resolution 1 of the IMO Conference on Search and Rescue (SAR) and the Global Maritime Distress and Safety System (GMDSS), held in Florence, Italy in October 2000, which proposed the establishment of five Regional Maritime Rescue Centres (RMRCCs) and 26 Maritime Rescue Sub- Centres (MRSCs) in total for the African countries bordering the Atlantic and Indian Oceans is progressing very well. During the last four biennia, IMO Secretariat conducted an analysis of the financial implications of establishing regional MRCCs and MRSCs and launched a programme to that effect. Since 2006, the following search and rescue facilities have been commissioned and are operational:

- Mombasa RMRCC (Kenya), May 2006
- Cape Town RMRCC (South Africa), January 2007
- Walvis Bay MRSC (Namibia), March 2007
- Lagos RMRCC (Nigeria), May 2008
- Dar es Salaam MRSC (Tanzania), March 2009
- Victoria MRSC (Seychelles), March 2009
- Monrovia RMRCC (Liberia), April 2009²⁶

2.3 Mombasa RMRCC and the inland waters in Kenya

As part of its core mandate the Authority is in charge of the Mombasa RMRCC, which, as stated earlier, is the result of co-operation between the Government of Kenya and the IMO. The RMRCC covers the regions of Kenya, Tanzania, Seychelles and Somalia. The Authority co-ordinates the activities of the KPA, the Kenya Navy and other organizations, when engaged in search and rescue both at the coast and inland waters. The Authority is also responsible for the establishment and implementation of the National search and rescue Plan.

²⁶ International Maritime Organization, Africa Region.

<<http://www.imo.org/OurWork/TechnicalCooperation/GeographicalCoverage/Africa/P.s/Default.aspx>> 27
December 2010.

The region lies between latitude 12 degrees, North and approximately 10 degrees, South with fairly predictable weather patterns characterized by the South East Monsoons from May to September and the North East Monsoons from November to March.

It lies within the load line zone of summer tropical translating to a relatively calm sea most of the year.

The region is transited by the so-called SOLAS ships and the non-SOLAS ships as defined by SOLAS. It is estimated that there could be roughly 100 ships transiting the sea route to the Cape of Good Hope with a big percentage being tankers en route from the gulf region to the American continent.

A water craft survey commissioned by the Authority revealed approximately 3,000 watercraft along the Kenyan coast and 15,000 in Lake Victoria alone. Thus, in these circumstances, the need for a good search and rescue plan is of utmost importance and the legislation will provide for a legal basis for such a plan.

3 THE NEED FOR NEW LEGISLATION

The paramount need for a new legislation can be explained on the basis of the possible confusion arising from the promulgation of the new Constitution of Kenya on the 27 August, 2010, bringing with it what would appear to be a principle of monism. Further there is also a need for legislation to guide judicial officers, co-ordination between maritime and aeronautical services, insufficiency of the existing legislation and the fact that it is always difficult to introduce substantive new amendments to existing legislation.

3.1 The Constitution of Kenya

Prior to 27 August, 2010 the former Constitution of Kenya was silent on the role of international law within the municipal law system of Kenya. However, section 30 of the former Constitution did provide quite unequivocally that the legislative authority of the

Republic of Kenya would vest in the Parliament of the said Republic. In this context, therefore, Parliament was the only body that could validly enact a rule having the force of law in Kenya. Parliament on its part enacted the Judicature Act (Cap 8), which provides in section 3 (1) (c) for the application of the common law as a source of law in Kenya, subject to the Constitution or written law and in cases where the said Constitution or written law do not apply. The effect of these laws was that, as far as the Republic of Kenya was concerned, with regard to the applicability of international law rules to the Kenyan domestic scene, the position obtaining under English common law was that obtaining in Kenya, subject of course to the provisions of the Constitution or any written law. This attitude of the Kenyan legal system was hardly surprising given that Kenya was a former colony of the United Kingdom and, as such, much of the common law principles were inherited from the United Kingdom.

This, therefore, calls for a brief examination on what the law in England is, as regards the applicability of international law. In the United Kingdom various theories have been put forward. One expression of the positivist-dualist position has been the doctrine of *transformation*.²⁷ This is based upon the perception of two quite distinct systems of law, operating separately and maintains that before any rule or principle of international law can have effect within the domestic jurisdiction it must have been expressly „transformed“ into municipal law by use of the appropriate legal machinery such as an Act of Parliament.²⁸ This doctrine grew from the procedure whereby international agreements are rendered operative in municipal law by the device of the ratification of the sovereign and the idea has developed from this that any rule of international law must be

transformed, or specifically adopted to be valid within the internal legal order.²⁹ “In England, and also it seems in most Commonwealth countries,” says Ian Brownlie, “the conclusion and ratification of treaties is the prerogative of the Crown (or its equivalent)

²⁷ Shaw, Malcolm; *International Law*, Fourth Edition, Cambridge University Press, Cambridge, 1998, p. 105.

²⁸ *Ibid.*

²⁹ *Ibid.*

and if a transformation doctrine were not applied, the Crown would legislate for the subject without Parliamentary consent.”³⁰

Another approach, known as the doctrine of *incorporation*, holds that international law is part of the municipal law automatically without the necessity for the interposition of a constitutional ratification procedure.³¹ In the UK, this doctrine refers only to customary international law.

As such, under the common law, for a treaty to form part of the law of the United Kingdom, it must have been expressly transformed into municipal law by use of appropriate legislation. An important case illustrating this principle was the case of the *Parlement Belge*.³² The case concerned a collision between the *Parlement Belge* and a British tug, and the claim for damages brought by the said British tug before the Probate, Divorce and Admiralty division of the United Kingdom High Court. The *Parlement Belge* belonged to the King of the Belgians and was used as a cargo boat. During the case, the Attorney-General intervened to state that the Court had no jurisdiction over the vessel as it was the property of the Belgian monarch and that further, by a political agreement of 1876 between Britain and Belgium, the immunity from foreign legal process as applied to warships should apply to this packet boat. In discussing the case, the Court concluded that only public ships of war were entitled to such immunity and that such immunity could not be extended to other categories by a treaty without Parliamentary consent. The court stated that this would be „a use of the treaty making prerogative of the Crown [...] without precedent, and in principle contrary to the law of the constitution.

Another important and relevant principle from the common law is that

it is the Crown, which, in the UK, that possesses the constitutional authority to enter into treaties and this

³⁰ Brownlie, Ian; *Principles of Public International Law*, Seventh Edition, Oxford University Press, Oxford, 2008, p. 45.

³¹ *Ibid.*; p. 45.

³² Shaw, Malcolm; *op. cit.*, P. 111.

prerogative power cannot be impugned by the courts.³³ However this power may be affected by legislation.³⁴

These principles, as stated before had, before 27 August 2010, by and large, been adopted in Kenya, i.e. in Kenya a treaty, whether ratified or acceded to, would only form part of the law of Kenya once it was transformed, or in Kenyan parlance, “domesticated” by an Act of Parliament. The second important principle that existed in Kenya was that it was only the executive (Kenya’s equivalent to the Crown) who could ratify any treaty.

However, on 27 August 2010, Kenya promulgated a new constitutional order. Thus, for the purposes of Kenya’s Constitution, 27 of August 2010 is the effective date for the commencement of the Constitution. Noteworthy in this new constitutional order are the provisions regarding international law. The relevant provisions of Article 2 of the new Constitution of Kenya provide:

The general rules of international law shall form part of the law of Kenya.

Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution³⁵

On the face of it, it would seem that Kenya has, by the enactment of the new Constitution, converted from a dualist country to a monist country, i.e. a country where international law automatically becomes law when the said country has accepted to be bound by a treaty. This would, in fact, be the correct position in Kenya where a treaty has been *ratified* by Kenya. The Court of Appeal in *David Njoroge Macharia vs. the Republic*³⁶ has cautiously suggested, *obiter*, that though, traditionally,

Kenya has been a dualist country “the position *may* have changed after the coming into force of [the] new Constitution.” However, the Constitution does not mention the word “*accede*” and it is submitted that the loose use of the word “ratified” in article 2 of the Constitution may give rise to some problems of interpretation. On the one hand, it is possible to argue that

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Articles 2 (5) and 2 (6), respectively, of the Constitution of the Republic of Kenya.

³⁶ Unreported (CA No. 497 of 2007) delivered on the 18th of March 2011.

article 2 (2) of the Vienna Convention of the Law of Treaties, 1969 gives the State the right to define what the word “ratify” means, and as such the courts will construe the word “ratified” as used in the Constitution to also include a treaty “acceded to” while the on the other hand, it is equally possible to argue that since the Constitution does not define the word “ratify” then the word as used in the Constitution must be given a restricted meaning and a treaty “acceded to” does not fall within the category of conventions contemplated by article 2 (6) of the Constitution.

This explanatory note is not, however, the place to resolve this issue but it is proposed to be practical with respect to the draft legislation and adopt a strategy that will prevent possible future legal disputes on the point. The Constitution does provide, quite unequivocally, in Article 94 that “[t]he legislative authority of the Republic of Kenya vests in the Parliament.” As stated earlier section 3 (1) (c) of the Judicature Act, subject to what is stated in section 3 of the Judicature Act, provides for the application of the common law as a source of law in Kenya. The effect of these laws, it is submitted, is that, as far as the applicability in Kenya of an international convention *acceded* to by Kenya is concerned, the position obtaining under common law may still be relevant in Kenya, subject, of course, to the provisions of the Constitution or any written law. Indeed, a useful rule of interpretation, in all common law countries, is the presumption that written law does not alter the common law unless such alteration manifests expressly or by necessary implication. Further, because of the provisions of paragraph 7 of the 6th Schedule of the Constitution, the SAR Convention which was a treaty *acceded* to, was not a law in force before the effective date.

Thus, it is submitted, an approach would have to be adopted that would not invite judicial scrutiny arising from a legal challenge. In this context therefore, and for the purposes of this drafting project, Parliament, it is submitted, is probably the only body that can validly enact a rule implementing a convention that has been *acceded to* by Kenya, such as the SAR Convention.

3.2 Need for legislation to guide judicial and other officers as well as the public

In the event that the analysis on Article 2 of the Constitution is incorrect, and it turns out that an accession to the SAR Convention is, for the purposes of the Constitution, the same thing as a ratification, it is still necessary to draft legislation that will guide the courts, government officers and the public, especially having regard to Kenya's special circumstances. The SAR Convention was drafted as an international agreement whose principles the States are supposed to adhere to. However, in drafting the SAR Convention, the particular special interests of the States were naturally not taken into consideration this being an international agreement. There are provisions in the SAR Convention that cannot be implemented without localizing the same. Thus the particular nuances that would make the SAR Convention applicable in Kenya must be taken into consideration by Parliament. Indeed a lot of the provisions are not self-executing e.g. the designation of a competent authority.

A further reason why the proposed legislation should be drafted is to guide the public, judicial and other officers who may not have immediate access to the SAR Convention. It may be noted that in many traditional monist countries, where an international convention is regarded as law when the said country agrees to be bound thereby, the convention that as been ratified or acceded to often still has to go through a process of legislation so that the provisions are accessible to the public, persons implementing the law and the judicial officers and to give effect to non self-executing provisions.

3.3 Co-ordination with aeronautical services

The Annex provides that “Parties shall ensure the closest practicable co-ordination between maritime and aeronautical services...”³⁷ Since, as stated in part 2.1 of this explanatory note, aeronautical search and rescue is performed by the Civil Aviation Authority and maritime search and rescue is performed by the Authority, there will be need for an Act of Parliament to implement the requirements of the SAR Convention so

³⁷ Paragraph 2.4 of the Annex.

as to achieve co-ordination between the maritime and aeronautical services. Since the Civil Aviation Authority, just like the Authority, is a body corporate under Kenya's Minister for Transport (who shall, because of the provisions of the new Constitution, hereinafter be referred to as "the Cabinet Secretary"), the approach taken in the draft is to confer power on the Cabinet Secretary to do what is necessary to co-ordinate the maritime and aeronautical search and rescue services. The reason for this is that since both the Authority and the Civil Aviation Authority are created by separate Acts of Parliament, it would not be proper to impose on one authority the task of co-ordinating both services and as such the Cabinet Secretary who is the overall authority in Kenya in matters of transport should be the one to co-ordinate these matters.

3.4 Insufficiency of the existing legislation

The existing legislation provides only that the Authority will "co-ordinate search and rescue activities." The provision does not provide for much of the matter contemplated by the SAR Convention. It is true that the Cabinet Secretary has been given the powers to make regulations under section 26 of the Kenya Maritime Authority Act "for the better carrying into effect the provision of [the Act]." However the power of the Cabinet Secretary to make regulations must be in conformity with the statute and the Cabinet Secretary cannot provide for matters that were not contemplated by the legislature. Section 31 (b) of Interpretation and General Provisions Act (Cap 2) ³⁸ provides that "no subsidiary legislation shall be inconsistent with an Act." Thus where, as in the Kenya Maritime Authority Act, Parliament has only given to the Authority the power to co-ordinate search and rescue services, it would probably be *ultra vires* the Kenya Maritime Authority

Act for the Cabinet Secretary to make regulations implementing the SAR Convention, as the same is very detailed and some of its provisions, such as co-ordination with foreign governments, would appear to require more than regulations.

³⁸ Act No 38 of 1956.

3.5 Difficulty in introducing substantive amendments to existing legislation

The SAR Convention brings with it substantive provisions of law. The said provisions are discussed elsewhere in this explanatory note.³⁹ The said provisions, being substantive, would, if that option were adopted require a comprehensive amendment of the Kenya Maritime Authority Act. The Kenya Maritime Authority Act, as has been stated previously, is not sufficient as far as the SAR Convention is concerned. However, it is never advisable to make substantive amendments to an Act of Parliament for the following reasons:

- Substantive amendments would interfere with the scheme of the existing Act and could invite further unintended amendments by Parliament.
- The political will with regard to substantive amendment to an Act may be lacking thus causing delay where there shouldn't be any delay. It is therefore better to bring in the new provisions by a new legislation.

4 EXPLANATION OF THE DRAFT TEXT

4.1 Objective of the draft

The objective of the draft is therefore, in accordance with the SAR Convention to prepare an adequate legislative framework for the implementation of the SAR Convention. This is especially important considering what has already been stated previously. It is also important in that in case of any disputes arising with regard to search and rescue, the courts in Kenya should be able to deal adequately and in a legal manner with the same. As it is now, there is a danger that. in the event of a dispute of any kind arising within the context of search and rescue, the courts will be handicapped as there is no proper legal regime to deal

with the same.

³⁹ See part 4.2 of this explanatory note.

4.2 The scheme of the draft

It is therefore necessary for Parliament to enact a statute by which the SAR Convention would become applicable in Kenya. Parliament has already given some recognition to search and rescue under the Kenya Maritime Authority Act by providing as one of the functions of the Authority the function of dealing “with matters pertaining to maritime search and rescue and co-ordinate the activities of the [KPA], the Kenya Navy and any other body engaged during search and rescue operations”.⁴⁰ However, in order to properly implement the provisions of the SAR Convention it is necessary to enact legislation to this effect.

The proposed Act will provide the necessary legislative framework that will enable the courts to validly consider the provisions of the SAR Convention if and when the time arises to do so.

The draft Bill is structured in the same manner as the Annex and is written, with a few necessary exceptions, in the same legislative style as the SAR Convention and Annex. This is to ensure that as much as possible, that Kenya’s implementation of the same is in conformity with IMO standards.

The draft Bill is divided into five parts and twenty-five sections in all. Part I of the draft Act deals with preliminary matters such as the short title and commencement of the Act and the definitions of words used in the Act. With regard to definitions it is important to note that in Kenya, the Cap 2 provides generally for definitions of words and phrases used in all legislation in Kenya. The definitions in Cap 2 are of course subject to anything contrary provided in any other specific legislation. The definitions, in keeping with Kenya’s legislative drafting tradition and in

a departure from what has been adopted by the IMO in the Annex, have been set in alphabetical order. The meanings ascribed to the words have been retained in the form provided by the Annex. Further, there are some definitions which are naturally not a part of the Annex, such as Authority and Cabinet

⁴⁰ Section 5 (h) of the Kenya Maritime Authority Act, 2006.

Secretary, but have been included in the draft bill obviously because they are very useful terms for the envisaged law.

Organization is dealt with under Part II of the draft Bill. The Part is divided into five sections covering the following matters, i.e. arrangements for provision and co-ordination of search and rescue services, development of national search and rescue services, establishment of rescue co-ordination centres and rescue sub-centres, co-ordination with aeronautical services, designation of search and rescue facilities and equipment of search and rescue units.

The very important aspect of co-operation between States is dealt with under Part III of the draft. The part consists of section 9 dealing with co-operation between States. The section provides that the Authority shall “co-ordinate search and rescue organizations and may whenever appropriate co-ordinate search and rescue operations with those of the appropriate Authority of neighbouring States”. The section makes it clear that it is the duty of the Cabinet Secretary to authorize entry into Kenya for the purpose of “searching the position of maritime casualties and rescuing the survivors of such casualties”.

The operating procedures are dealt with under Part IV of the draft. The part is divided into nine sections dealing respectively with the following, i.e. the relevant preparatory measures, the information concerning emergencies, the initial action, the emergency phases, the procedures to be followed by rescue co-ordination centres and rescue sub-centres during emergency phases, the passing information to persons, vessels, or other craft for which an emergency phase has been declared, the co-ordination when two or more States are involved, the on-scene co-ordination of search and rescue, and the termination and suspension of

search and rescue operations.

Part V covers ship reporting systems. The Part is divided into four sections dealing with the following i.e. general, operational requirements, types of reports and use of systems.

Finally, Part VI deals with miscellaneous matters and is divided into three sections dealing with the following matters, i.e. relief from prosecution, prohibition of publication or disclosure of information to unauthorised persons and provisions regarding regulations.

5 CONCLUSION

The proposed Act will be a great boon to search and rescue activities in Kenya. The Act will provide the legal basis for the carrying out of search and rescue activities in Kenya. The broad purpose of introducing the SAR Convention in the first place was so that there would be uniform development in the area of search and rescue throughout the world and most importantly, to provide for co-ordination of search and rescue services. The enactment of the Bill is a demonstration of Kenya's desire to implement the SAR Convention which it acceded to in 1993. By creating this legal basis the country will have gone a long way in attaining the ambition of the various international instruments that have covered this issue. Further, there will be an element of certainty as to what the law is which would make it easier for the persons charged with search and rescue operations to deal with the matters and in case of disputes of any kind, whatsoever, to guide the judiciary in the applicable law.

No ...of 2011

Date of Assent:

Date of Commencement: By Notice

Section

PART I-PRELIMINARY

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**THE MARITIME SEARCH AND
RESCUE ACT**

No ...of 2011

An Act of Parliament to make provision for maritime search and rescue services, to incorporate the provisions of the International Convention on Maritime Search and Rescue 1979, as amended, and for all other matters connected therewith and incidental thereto.

ENACTED by the Parliament of the Republic of Kenya as follows-

PART I-PRELIMINARY

Short title and commencement

1. This Act may be cited as the Maritime Search and Rescue Act, 2011 and shall come into operation on such date as the Cabinet Secretary may, by notice in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires-

"Alert phase" means a situation wherein apprehension exists as to the safety of a person, a vessel or other craft;

"Alerting post" means any facility intended to serve as an intermediary between a person reporting an emergency and a rescue co-ordination centre or rescue sub-centre;

“appropriate authorities of other States” means an

authority of another State charged with the responsibility of search and rescue in that State.

No. 5 of 2006

“Authority” means the Kenya Maritime Authority established under the Kenya Maritime Authority Act, 2006;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to transport;

"Distress phase" means a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance;

"Emergency phase" means, as the case may be, uncertainty phase, alert phase or distress phase;

"On-scene co-ordinator" means a person designated to coordinate search and rescue operations within a specified area;

“Organization” means the International Maritime Organization;

"Rescue" means an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety;

"Rescue co-ordination centre" means a unit

responsible for promoting efficient organization of search and rescue services and for co-ordinating the conduct of search and rescue operations within a search and rescue region;

"Rescue sub-centre" means a unit subordinate to a rescue co-ordination centre established to complement the latter according to the provisions of this Act;

"SAR Convention" means the International Convention on Maritime Search and Rescue done at Hamburg on 27th of April, 1979, as amended.

"Search" means an operation, normally co-ordinated by a rescue co-ordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress;

"Search and rescue facility" means any mobile resource, including designated search and rescue units, used to conduct search and rescue operations;

"Search and rescue service" means the performance of distress monitoring,

communication, co- ordination and search and rescue functions, including provision of medical advice, initial medical assistance, or medical evacuation, through the use of public and private resources including cooperating aircraft, vessels and other craft and installations;

"Search and rescue region" means an area of defined dimensions associated with a rescue co-ordination centre within which search and rescue services are provided;

"Search and rescue unit" means a unit composed of trained personnel and provided with equipment suitable for the expeditious conduct of search and rescue operations;

"Secretary" means the Secretary-General of the Organization; and

"Uncertainty phase" means a situation wherein uncertainty exists as to the safety of a person, a vessel or other craft;

PART II-ORGANIZATION

Arrangements for provision and co-ordination of search and rescue services
No. 5 of 2006

3. (1) The Authority shall, without prejudice to the provisions of this Act, deal with matters pertaining to maritime search and rescue in the manner provided by section 5 (h) of the Kenya Maritime Authority Act, 2006 and for the purposes of the SAR Convention shall be the responsible authority

(2) The Authority shall, in the manner provided in paragraph 2.1.1 of the Annex to the SAR Convention, participate in the development of search and rescue services to ensure that assistance is rendered to any person in distress at sea or inland

waters.

(3) On receiving information that any person is, or appears to be, in distress at sea, the Authority shall take urgent steps to ensure that the necessary assistance is provided.

(4) The Authority shall establish the following basic elements of a search and rescue service:

- (a) regulatory framework
- (b) organisation of available resources;
- (c) communication facilities;
- (d) co-ordination and operational functions;
and
- (e) processes to improve the service including planning, domestic and international cooperative relationships and training.

Provided the Authority shall, as far as practicable, follow relevant minimum standards and guidelines developed by the Organization.

(5) To help ensure the provision of adequate shore-based communication infrastructure, efficient distress alert routing, and proper operational co-ordination to effectively support search and rescue

services, the Authority shall ensure that sufficient search and rescue regions are established within each sea area in accordance with sub-section (6). Such regions should be contiguous and, as far as practicable, not overlap.

(6) Each search and rescue region shall be established in the manner provided for by paragraph 2.1.4, 2.1.5 and 2.1.6 of the Annex to the SAR Convention.

(7) The delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between Kenya and any other State.

(8) The Authority shall seek to promote consistency, where applicable, between Kenya's maritime and aeronautical search and rescue services while considering the establishment of maritime search and rescue regions which shall be established by agreement in accordance with sub-section (6).

(9) The Authority shall use search and rescue units and other available facilities for providing assistance to a person who is, or appears to be, in distress at sea.

(10) The Authority shall ensure that assistance be provided to any person in distress at sea and it shall

do so regardless of the nationality or status of such a person or the circumstances in which that person is found.

(11) The Cabinet Secretary shall forward to the Secretary-General information on Kenya's search and rescue service, including the:

- (a) national authority responsible for the maritime search and rescue services;
- (b) location of the established rescue co-ordination centres or other centres providing search and rescue co-ordination, for the search and rescue region or regions and communications therein;
- (c) limits of Kenya's search and rescue region or regions and the coverage provided by Kenya's shore based distress and safety communication facilities; and
- (d) principle types of available search and rescue units.

Provided, the Cabinet Secretary shall with priority, update the information provided with respect to any alterations of importance.

Development of national search

4. (1) The Authority shall establish appropriate procedures for overall development, co-ordination,

and rescue services

and improvement of search and rescue services.

(2) To support efficient search and rescue operations, the Authority shall:

(a) ensure the co-ordinated use of available facilities; and

(b) establish close co-operation between services and organizations which may contribute to improve the search and rescue service in areas such as operations, planning, training, exercises and research and development.

Establishment of rescue co-ordination centres and rescue sub-centres

5. (1) To meet the requirements of section 4, the Authority shall establish rescue co-ordination centres for its search and rescue services and such rescue sub-centres as it considers appropriate.

(2) Each rescue co-ordination centre and rescue sub-centre, established in accordance with subsection (1), shall arrange for the receipt of distress alerts originating from within its search and rescue region. Every such centre shall also arrange for communications with persons in distress, with search and rescue facilities, and with other rescue co-ordination centres or rescue sub-centres.

(3) Each rescue co-ordination centre shall be

operational on a 24-hour basis and be constantly staffed by trained personnel having a working knowledge of the English language.

Co-ordination
with aeronautical
services

6. (1) The Cabinet Secretary shall ensure the closest practicable co-ordination between maritime and aeronautical services so as to provide for the most effective and efficient search and rescue services in and over their search and rescue regions.

(2) Whenever practicable, the Cabinet Secretary may establish joint rescue co-ordination centres and rescue sub-centres to serve both maritime and aeronautical purposes.

(3) Whenever separate maritime and aeronautical rescue co-ordination centres or rescue sub-centres are established to serve the same area, the Cabinet Secretary shall ensure the closest practicable co-ordination between the centres or sub-centres.

(4) The Cabinet Secretary shall ensure, as far as is possible, the use of common procedures by search and rescue units established for maritime purposes and those established for aeronautical purposes.

Designation of
search and rescue
facilities

7. The Authority shall identify all facilities able to participate in search and rescue operations, and may designate suitable facilities as search and rescue units.

Equipment of
search and rescue
units

8. (1) Each search and rescue unit shall be provided with equipment appropriate to its task.

(2) Containers and packages containing survival equipment for dropping to survivors should have the general nature of their contents indicated by markings in accordance with standards adopted by the Organization.

PART III-CO-OPERATION BETWEEN STATES

Co-operation
between States

9. (1) The Authority shall co-ordinate search and rescue organizations and may, whenever necessary, co-ordinate search and rescue operations with those of the appropriate authorities of neighbouring States.

(2) The Cabinet Secretary may, subject to any written law, authorize immediate entry into or over Kenya's territorial sea solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties. In such cases, search and rescue operations shall, as far as practicable, be co-ordinated by the Authority.

(3) Unless otherwise agreed between the Authority and the appropriate authority of any other State, the authorities of a State which wishes its rescue units to enter into or over the territorial sea or territory of Kenya solely for the purpose of searching for the position of maritime casualties and rescuing the

survivors of such casualties, shall transmit a request, giving full details of the projected mission and the need for it, to the Authority.

(4) The Authority shall:

(a) immediately acknowledge the receipt of such a request;

(b) promptly, and at all events, within 24 hours after receipt of such request, inform the Cabinet Secretary of such request: and

(c) as soon as possible, indicate the conditions, if any, under which the projected mission may be undertaken.

(5) The Authority may, subject to any other written law, enter into agreements with the appropriate authorities of neighbouring States setting forth the conditions for entry of each other's search and rescue units into or over their respective territorial sea or territory.

(6) The Authority may, with the approval of the Cabinet Secretary, authorize its rescue co-ordination centres:

(a) to request from other rescue co-ordination centres such assistance, including vessels, aircraft, personnel or equipment, as may be

needed;

(b) to grant any necessary permission for the entry of such vessels, aircraft, personnel or equipment into or over Kenya's territorial sea or territory; and

(c) to make the necessary arrangements with the appropriate customs, immigration, health or other authorities with a view to expediting such entry.

(7) The Authority shall ensure that its rescue co-ordination centres provide, when requested, assistance to other rescue co-ordination centres, including assistance in the form of vessels, aircraft, personnel or equipment.

(8) The Authority may, with the approval of the Cabinet Secretary, enter into agreements with the appropriate authorities of other States, where appropriate, to strengthen search and rescue co-operation and co-ordination. The Authority may make operational plans and arrangements for search and rescue co-operation and co-ordination with responsible authorities of other States.

PART IV- OPERATING PROCEDURES

Preparatory
measures

10. (1) Each rescue co-ordination centre and rescue sub-centre shall have available up-to-date

information especially concerning search and rescue facilities and available communications relevant to search and rescue operations in its area.

(2) Each rescue co-ordination centre and rescue sub-centre should have ready access to information regarding the position, course and speed of vessels within its area which may be able to provide assistance to persons, vessels or other craft in distress at sea, and regarding how to contact them. This information shall be kept in the rescue co-ordination centre.

(3) Each rescue co-ordination centre and rescue sub-centre shall have detailed plans of operation for the conduct of search and rescue operations. Where appropriate, these plans shall be developed jointly with the representatives of those who may assist in providing, or who may benefit from, the search and rescue services.

(4) Rescue co-ordination centres or sub-centres shall be kept informed of the state of preparedness of search and rescue units.

Information concerning emergencies

11. (1) The Authority shall ensure that it is capable on a 24-hour basis of promptly and reliably receiving distress alerts from equipment used for this purpose within its search and rescue regions. Any alerting post receiving a distress alert shall:

(a) immediately relay the alert to the appropriate rescue co-ordination centre or sub-centre, and then assist with search and rescue communications as appropriate; and

(b) if practicable, acknowledge the alert.

(2) The Authority shall, where appropriate, ensure that effective arrangements are in place for the registration of communication equipment and for responding to emergencies, to enable any rescue co-ordination centre or sub-centre to access pertinent registration information quickly.

(3) Any authority or element of the search and rescue service having reason to believe that a person, a vessel or other craft is in a state of emergency shall forward as soon as possible all available information to the rescue co-ordination centre or rescue sub-centre concerned.

(4) Rescue co-ordination centres and rescue sub-centres shall, immediately upon receipt of information concerning a person, a vessel, or other craft in a state of emergency, evaluate such information and determine the phase of emergency in accordance with section 13, and the extent of operations required.

Initial action

12. Any search and rescue unit receiving information of a distress incident shall initially take

immediate action if in the position to assist and shall, in any case without delay, notify the rescue co-ordination centre or rescue sub-centre in whose area the incident has occurred.

Emergency phases **13.** To assist in determining the appropriate operating procedures, the following emergency phases shall be distinguished by the rescue co-ordination centre or sub-centre concerned:

(a) Uncertainty phase:

- (i) when a person has been reported as missing, or a vessel or other craft is overdue; or
- (ii) when a person, a vessel or other craft has failed to make an expected position or safety report.

(b) Alert phase:

- (i) when, following the uncertainty phase, attempts to establish contact with a person, a vessel or other craft have failed and inquiries addressed to other appropriate sources have been unsuccessful; or
- (ii) when information has been received indicating that the operating efficiency

of a vessel or other craft is impaired, but not to the extent that a distress situation is likely.

(c) Distress phase:

- (i) when positive information is received that a person, a vessel or other craft is in danger and in need of immediate assistance; or
- (ii) when, following the alert phase, further unsuccessful attempts to establish contact with a person, a vessel or other craft and more widespread unsuccessful inquiries point to the probability that a distress situation exists; or
- (iii) when information is received which indicates that the operating efficiency of a vessel or other craft has been impaired to the extent that a distress situation is likely.

Procedures to be followed by rescue co-ordination centres and rescue sub-centres during emergency phases

14. (1) Upon the declaration of the uncertainty phase, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall initiate inquiries to determine the safety of a person, a vessel or other craft, or shall declare the alert phase.

(2) Upon the declaration of the alert phase, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall extend inquiries for the missing

person, vessel or other craft, alert appropriate search and rescue services and initiate such action, as is necessary in the light of the circumstances of the particular case.

(3) Upon the declaration of the distress phase, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall proceed as prescribed in its plans of operation, as required by section 10.

(4) Initiation of search and rescue operations when the position of the search object is unknown.

In the event of an emergency phase being declared for a search object whose position is unknown, the following shall apply:

(a) when an emergency phase exists, a rescue co-ordination centre or rescue sub-centre shall, unless it is aware that other centres are taking action, assume responsibility for initiating suitable action and confer with other centres with the objective of designating one centre to assume responsibility;

(b) unless otherwise decided by agreement between the centres concerned, the centre to be designated shall be the centre responsible for the area in which the search object was according to its last

(c) after the declaration of the distress phase, the centre co-ordinating the search and rescue operations shall, as appropriate, inform other centres of all the circumstances of the emergency and of all subsequent developments.

Passing information to persons, vessels, or other craft for which an emergency phase has been declared.

15. Whenever possible, the rescue co-ordination centre or rescue sub-centre responsible for search and rescue operations shall forward to the person, a vessel or other craft for which an emergency phase has been declared, information on the search and rescue operations it has initiated

Co-ordination when two or more States are involved

16. For search and rescue operations involving Kenya and any other State, the Authority shall take appropriate action in accordance with the plans of operation referred to in section 10 when so requested by the rescue co-ordination centre of the region.

On-scene co-ordination of search and rescue activities

17. (1) The activities of search and rescue units and other facilities engaged in search and rescue operations shall be co-ordinated on-scene to ensure the most effective results.

(2) When multiple facilities are about to engage in search and rescue operations, and the rescue co-ordination centre or rescue sub-centre considers it

necessary, the most capable person should be designated as on-scene co-ordinator as early as practicable and preferably before the facilities arrive within the specified area of operation. Specific responsibilities shall be assigned to the on-scene co-ordinator taking into account the apparent capabilities of the on-scene co-ordinator and operational requirements.

(3) If there is no responsible rescue co-ordination centre or, by any reason, the responsible rescue co-ordination centre is unable to coordinate the search and rescue mission, the facilities involved should designate an on-scene co-ordinator by mutual agreement.

Termination and suspension of search and rescue operations

18. (1) Search and rescue operations shall continue, when practicable, until all reasonable hope of rescuing survivors has passed.

(2) The responsible rescue coordination centre or rescue sub-centre concerned shall normally decide when to discontinue search and rescue operations. If no such centre is involved in coordinating the operations, the on-scene coordinator may take this decision.

(3) When a rescue co-ordination centre or rescue sub-centre considers, on the basis of reliable information that a search and rescue operation has been successful, or that the emergency no longer

exists, it shall terminate the search and rescue operation and promptly so inform any authority, facility or service which has been activated or notified.

(4) If a search and rescue operation on-scene becomes impracticable and the rescue coordination centre or rescue sub-centre concludes that survivors might still be alive, the centre may temporarily suspend the on-scene activities pending further developments, and shall promptly so inform any authority, facility or service which has been activated or notified. Information subsequently received shall be evaluated and search and rescue operations resumed when justified on the basis of such information.

PART V- SHIP REPORTING SYSTEMS

General

19. (1) Ship reporting systems may be established either individually by the Authority or in co-operation with other States, where the Authority considers it necessary, to facilitate search and rescue operations.

(2) The Authority shall, when contemplating the institution of a ship reporting system, take account of the relevant recommendations of the Organization. The Authority may also consider whether existing reporting systems or other sources of ship position data can provide adequate

information for the region, and seek to minimize unnecessary additional reports by ships, or the need for rescue coordination centres to check with multiple reporting systems to determine availability of ships to assist with search and rescue operations.

(3) The ship reporting system should provide up-to-date information on the movements of vessels in order, in the event of a distress incident, to:

- (a) reduce the interval between the loss of contact with a vessel and the initiation of search and rescue operations in cases where no distress signal has been received;
- (b) permit rapid identification of vessels which may be called upon to provide assistance;
- (c) permit delineation of a search area of limited size in case the position of a person, a vessel or other craft in distress is unknown or uncertain; and
- (d) facilitate the provision of urgent medical assistance or advice.

Operational
requirements

20. Ship reporting systems shall satisfy the following requirements:

- (a) provision of information, including sailing plans and position reports, which would make it possible to determine the current and future positions of participating vessels;
- (b) maintenance of a shipping plot;
- (c) receipt of reports at appropriate intervals from participating vessels;
- (d) simplicity in system design and operation; and
- (e) use of internationally agreed standard ship reporting format and procedures.

Types of reports

21. A ship reporting system may incorporate the following types of ship reports in accordance with the recommendations of the Organization:

- (a) Sailing plan;
- (b) Position report; and
- (c) Final report.

Use of systems

22. (1) All vessels shall report to the Authority their position when travelling in areas where arrangements have been made to collect information on positions for search and rescue

purposes.

(2) The Authority after recording information on the position of vessels may disseminate, so far as practicable, such information to other States when so requested for search and rescue purposes.

PART VI- MISCELLANEOUS

Relief from prosecution

23. No action shall lie against the Authority or any of its officers or other persons appointed or authorised to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority, or duty conferred or imposed on him under this Act.

Prohibition of publication or disclosure of information to unauthorised persons

24. (1) No person shall, without the consent in writing given by or on behalf of the Authority, publish or disclose to any person other than in the course of his duties, or when lawfully required to do so by any court or under any law, the contents of any document, communication or information whatsoever, which relates to, and which has come to his knowledge in the course of his duties under this Act.

(2) Any person who knowingly contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding fifty thousand shillings or to

imprisonment for a term not exceeding five years or to both.

(3) Where any person having information which to his knowledge has been published or disclosed in contravention of subsection (1) unlawfully publishes or communicates any such information to any other person, he shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding five years or to both.

(4) The consent of the Authority under subsection (1), shall not be unreasonably withheld.

Regulations

25. The Cabinet Secretary may make regulations for prescribing anything under this Act and generally for the better carrying into effect the provisions of this Act.