

REPUBLIC OF KENYA

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

REGULATORY IMPACT STATEMENT ON THE

PROPOSED CLIMATE CHANGE (CARBON MARKETS) REGULATIONS, 2025

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Proposed Climate Change (Carbon Trading) Regulations, 2025

Regulatory Impact Statement

Prepared by the Ministry of Environment, Climate Change and Forestry (MECC&F)

This Regulatory Impact Statement (RIS) has been prepared in compliance with the Statutory
Instruments Act, 2013 (Cap 2A Laws of Kenya) requirement for Regulatory Impact Statement on the
proposed Climate Change (Carbon Trading) Regulations, 2025.

The purpose of the Regulatory Impact Statement is to enable the Cabinet Secretary, Members of Parliament, and the
Public to be informed of the environmental, social and economic implications of the implementation of these proposed regulations.

Public comments from stakeholders and submissions were invited on the first draft of the proposed regulations, with an updated version annexed to this Regulatory Impact Statement.

TABLE OF CONTENTS

TABLE OF CONTENTS II

1 INTRODUCTION 1

1.1 Regulatory-Making Authority and Legal Mandate 1

1.2 Requirements of the Statutory Instruments Act 1

1.3 Significance of a Regulatory Impact Statement 1

2 OVERVIEW OF THE DRAFT REGULATIONS 2

3 THE PURPOSE AND OBJECT OF THE DRAFT REGULATIONS 3

3.1 Scope of the Draft Regulations 3

3.2 Objectives of the Draft Regulations and the Reasons for them 4

3.3 Effect of the Draft Regulations 4

3.4 Comparative Analysis 5

4 LEGAL REQUIREMENTS AND METHODOLGOY FOR PUBLIC CONSULTATIONS 6

5 COSTS AND BENEFITS OF THE REGULATIONS 7

5.1 Costs of the Regulation 7

5.2 Benefits of the Regulation 8

5.2.1 Environmental Benefits 8

5.2.2 Administrative and Compliance Benefits 9

5.2.3 Economic Benefits 9

5.2.4 Social benefits 10

5.2.5 Human Rights benefits 10

6 REGULATORY ALTERNATIVES 10

6.1 Option one: Do nothing option 10

6.2 Option two: Self-regulation 11

6.3 Option three: adopt the regulations 12

6.4 Impact Analysis of the Options 12

6.5 Preferred Option 13

7 COMPLIANCE AND IMPLEMENTATION 13
7.1 Implementation 13
7.2 Compliance 13
8 CONCLUSION AND RECOMMENDATIONS 14

1. INTRODUCTION

1.1 Regulatory-Making Authority and Legal Mandate

The Draft Regulations are made by the Cabinet Secretary pursuant Sections 36(1) and 36 (2) (bb) of the Climate Change Act, Cap 387A of the Laws of Kenya. Under these provisions, the Cabinet Secretary has power to make regulations for the better carrying into effect of the provisions of this Act, including for the regulation of carbon trading. The Cabinet Secretary therefore has the required legislative powers to develop the Draft Regulations, which are an important statutory instrument that seeks to provide clarity on critical aspects of carbon trading, and to enhance Kenya's participation in carbon markets.

1.2 Requirements of the Statutory Instruments Act

The Statutory Instruments Act (Cap 2A Laws of Kenya) is the legal framework governing the making of statutory instruments. The Cabinet Secretary prepares this Regulatory Impact Statement (RIS) in compliance with requirements of the Statutory Instruments Act. Sections 6 and 7 of this law 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 an RIS about the instrument. This RIS is therefore a prerequisite. The Draft Regulations propose additional measures to govern carbon trading and propose clarifications to provisions of the Climate Change (Carbon Markets) Regulations 2024 in certain respects. These changes required to be assessed to determine whether they are likely to impose significant costs to stakeholders involved, or likely to be involved in carbon trading. To enable the undertaking of regulatory impact assessments, the Statutory Instruments Act sets out the key elements that must be contained in the RIS. These are:

a) a statement of the objectives of the proposed legislation and the reasons.
b) a statement explaining the effect of the proposed legislation.
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
e) practicable means of achieving the same objectives.
f) the reasons why the other means are not appropriate.
g) any other matters specified in the guidelines, and
h) a draft copy of the proposed statutory rule.

1.3 Significance of a Regulatory Impact Statement

A Regulatory Impact Statement (RIS) is a vital tool to ensure that regulatory interventions are designed and implemented in an evidence-based, and outcomes-oriented manner. The RIS supports policy and lawmakers through analysis that provides comprehensive and relevant knowledge prior to decision making on any formal regulatory action.

Under the Statutory Instruments Act, the RIS process has establishes a structured and transparent framework that enables evaluation of the anticipated benefits, and the

potential costs of the proposed regulations. This is an approach that facilitates the assessment of any viable alternatives and helps decision-makers to identify alternatives that will enable achievement of the best economic, social and environmental outcomes for Kenya. Thus, with this RIS, the Cabinet Secretary and Members of Parliament are empowered and can make informed choices while balancing any competing interests, and the public good. This therefore enhances regulatory quality by anchoring decisions in objective assessments.

By applying a RIS, decision-makers are empowered to make informed choices that balance competing interests and serve the public good. It enhances regulatory quality by anchoring decisions in empirical analysis and projecting the likely implications of different regulatory pathways.

In the context of the Draft Climate Change (Carbon Trading) Regulations, 2025, this RIS plays a key role in assessing whether the regulatory approach will effectively advance Kenya's climate objectives, This includes whether the proposed rules will support attainment of emission reduction targets, and enhance investor confidence, and equitable participation in carbon markets.

In essence therefore, this RIS aims to promote good governance by strengthening accountability and institutional efficiency. This is evident through its publication, as required by law for public review and feedback, which will include the text of the draft regulations.

2 OVERVIEW OF THE DRAFT REGULATIONS

The Draft Climate Change (Carbon Trading) Regulations, 2025 are made under sections 36(1) and 36(2) (bb) of the Climate Change Act (Cap. 387A) and provide a comprehensive legal framework to facilitate carbon trading in Kenya. The Regulations are intended to apply to both voluntary and compliance carbon markets and are structured into four main Parts:

Part I – Preliminary

This Part sets out the title, definitions, and the scope of the Regulations. It introduces key concepts such as carbon budgets, carbon credits, carbon exchange, and provides the necessary definitions in regulation 2. distinguishes between voluntary and compliance carbon markets. The Regulations apply to entities participating in either the voluntary or compliance markets within Kenya's jurisdiction.

Part II – Institutional Framework

This Part sets out the institutional responsibilities for oversight and coordination of carbon trading in Kenya. In line with provisions of the Climate Change Act, the Cabinet Secretary for the time being responsible for Climate Change is designated as the lead authority in implementation of the regulations; and supported by the Climate Change Directorate and the Designated National Authority (DNA). Provision is made for the establishment of a National Carbon Budget Committee by the Carbon Secretary upon the recommendation of the Directorate. The Committee will serve as a technical advisory body to support

budgeting and emissions target-setting and will comprise sector experts and government officers.

Part III – Carbon Trading

This Part outlines substantive provisions for carbon trading. It operationalizes the provisions of the Climate Change Act on determination of the carbon budget for trading. It therefore empowers the National Climate Change Council, upon the advice of the Cabinet Secretary, to approve the national carbon budget for trading. The advice of the Cabinet Secretary will be based on technical input from the Directorate and National Carbon Committee. The carbon budget for trading will be aligned with Kenya's Nationally Determined Contribution (NDC) targets and can be revised periodically and is an important element for clarity and predictability of carbon trading.

The Part further provides additional provisions to inform the negotiation and authorization of bilateral or multilateral trading agreements under Article 6.2 of the Paris Agreement. This comes with clear safeguards for transparency, human rights, sustainable development, and dispute resolution. In order to align with the mandatory requirements for registration, the Part provides that all carbon trading transactions must be recorded in the National Carbon Registry, with the details for this expected to be provided under the Climate Change (Carbon Registry) Regulations, that are being developed simultaneously.

The provisions recognize that carbon credits may also be traded through a regulated carbon exchange licensed under the Capital Markets Act, with oversight over custody, settlement, and registry notification processes. Under these regulations, provisions are made to link the depositary process to the National Carbon Registry to ensure that transactions are settled properly and changes effected in this registry.

The Directorate is required to guide the percentage of mitigation outcomes retained to meet Kenya's NDCs in the case of authorized international transfers. In order to perform this function objectively and predictably, the Directorate is required to develop, publish and periodically develop criteria that will guide its advice to the Cabinet Secretary.

Part IV – Fiscal and Non-Fiscal Incentives

In order to enhance Kenya's attractiveness as a carbon market destination, this Part provides for the issuance of both fiscal and non-fiscal incentives. With respect to fiscal incentives, the regulation aligns with provisions of section 26 of the Climate Change Act that already sets out the procedure through which such incentives maybe provided. The regulations propose non-fiscal incentives which may include streamlined registration procedures, public recognition schemes for high-performing projects, and support for partnerships. The non-fiscal incentives aim to catalyze investment, promote innovation, and ensure sustainable development outcomes.

3 THE PURPOSE AND OBJECT OF THE DRAFT REGULATIONS

3.1 Scope of the Draft Regulations

These regulations are intended to apply to all activities falling within the scope of carbon trading, defined as, a market-based system in which certified emission reductions and/or

removals, in the form of carbon credits, are bought and sold with the goal of limiting carbon dioxide or other greenhouse gases emissions, including those requiring authorization by the government with the goal of gradually reducing overall emissions. In order to provide regulatory oversight for these, the draft regulations set out the legal and institution framework including the roles of Cabinet Secretary, the Directorate, and proposes a National Carbon Budget Committee to support in development of the carbon budget and the carbon budget for trading. The provisions including a framework for international cooperation through bilateral and multilateral agreements that underpin international transfer of mitigation outcomes. The regulations further govern carbon budgeting, including the carbon budget for trading and associated incentives.

3.2 Objectives of the Draft Regulations and the Reasons for them

The primary objective of the Draft Regulationsis to provide a framework for the undertaking of carbon trading and related matters. This is achieved through provisions that establish a clear, transparent, and accountable framework for carbon trading in Kenya. This has been done in a manner to ensure compliance with the Climate Change Act and Kenya's international obligations under the Paris Agreement.

Specifically, the provisions put in place to achieve the objectives aim to enable Kenya to effectively participate in both voluntary and compliance carbon markets, promote sustainable development, attract climate finance, and support the achievement of the country's Nationally Determined Contributions (NDCs). These Regulations are therefore necessary to provide legal certainty, enhance investor confidence, and ensure that carbon trading contributes meaningfully to national climate goals while safeguarding social and environmental interests.

3.3 Effect of the Draft Regulations

The Draft Regulations aim to provide legal clarity for carbon trading in Kenya, supporting implementation of the Climate Change Act and the Paris Agreement. They are expected to enhance the national carbon markets framework by linking specific provisions to key regulatory outcomes:

(a) Through establishment of the national carbon budget for trading (regulation 2,7) and setting the procedure for its development, approval and review (regulations 6,7).

(b) Setting out clear institutional roles assigned to the Cabinet Secretary, Directorate and National Carbon Budget Committee (regulations 5,6) to improve coordination and oversight.

(c) Requirements for bilateral and multilateral cooperation agreements (regulation 8) that ensure environmental integrity, prevent double counting, and promote sustainable development.

(d) Provision for establishment of a regulated Carbon Exchange (regulation 9); ensuring that the mandatory registration requirements for carbon credits regulated under the Climate Change Act (section 23G), and Part III of the Climate Change (Carbon Markets) Regulations, 2024 are linked with the functions of a depositary (under the Central Depositories Act, Cap 485C, and

the establishment and operation of an Exchange under the Capital Markets Act. This is aimed at offering clarity and enhancing investor confidence.

(e) Provision of addition procedures to clarify regulation 23 of the Climate Change (Carbon Markets) Regulations, 2024 through –

a. Regulation 10 requires the Directorate to provide a pre-established criteria to guide the Cabinet Secretary's decision on the percentage of mitigation outcomes that maybe retained to support the NDC prior to approval of international transfer, the regulation introduces transparency and integrity for Kenya's engagement in international carbon markets. The process also embeds due process and fairness in decision making and supporting accountability in authorization of international transfers of mitigation outcomes.
b. Regulation 11 requires the Cabinet Secretary to issue a decision within 90 days of a project proponent's request, and introduces a clear timeline aimed at integrating fairness, improving predictability and reducing regulatory delays. This seeks to enhance procedural fairness, legal certainty and investor confidence in the international transfer of mitigation outcomes, and therefore reiterates the right set out in section 23H of the Climate Change Act, on the right of the project proponent to submit a dispute to alternative dispute resolution, and further to the National Environment Tribunal.

3.4 Comparative Analysis

Different developing countries, comparable to Kenya have adopted different approaches to regulating carbon trading. Below is a sample of three countries that are utilizing legislation and/regulations for this purpose:

In Ghana, through the Environmental Protection Act 2025 (Act 1125) has established a Carbon Markets Committee under the Environmental Protection Authority (EPA) with membership drawn from government, industry and civil society. This Committee acts as a central authority overseeing carbon market activities, with rules including;

developing rules and eligibility criteria for mitigation projects, authorizing international credit transfers (ITMOs), ensuring monitoring and verification, handling grievances, and managing disbursements from the Mitigation Fund. In contrast, Kenya's Draft Carbon Market Regulations (2023) establish the National Carbon Budget Committee primarily to oversee the development, review, and approval of Kenya's national carbon budget, advise on sectoral emissions limits, and coordinate implementation of Kenya's mitigation contribution. While Ghana's committee is focused on operationalizing market transactions and international compliance, Kenya's committee is oriented toward macro-level emissions planning and domestic mitigation alignment.

Under Ghana's *Environmental Protection Act, 2025* (Act 1124), Section 152 establishes the Carbon Market Committee as the central authority responsible for overseeing carbon market activities. In contrast, Kenya's Draft regulations establish a National Carbon Budget Committee whose mandate is macro-level, focused on development, review, and approval of a national carbon budget, advice on sectoral emissions limits, and coordination of mitigation planning aligned with Kenya's NDC. Kenya's committee is

therefore strategic, focused on manage national emissions trajectories and support domestic mitigation efforts and carbon trading.

In Bahamas, no person shall carry on the business of carbon trading in, or from within The Bahamas, unless that person has been registered by the Securities Commission in accordance with section 8 of the Carbon Credit Trading Act, 2022. This Act requires registration of carbon trading businesses by the Commission, and defines these to include carbon exchange, carbon registry, or carbon credit verification body. Any person who contravenes the provisions of paragraph (1) commits an offence and is liable to a fine of one hundred thousand dollars or to six months imprisonment or to both such fine and imprisonment. Every carbon trading business is required to open an account at the Carbon Registry for the trading, delivery, receipt and transfer of title to tradeable credits. The Bahamas Carbon Credit Trading Act is a comprehensive as it, for instance, includes all enabling provisions for establish and operation of a Carbon Exchange. The approach to establish a carbon registry under the draft regulations recognizes that the principal law, the Climate Change, is only applicable with respect to the National Carbon Registry Mandate. Therefore, this alignment is important, because traditionally, settlement of trades in an exchange licensed by the Capital Markets Act in Kenya is undertaken a concluded by a licensed depository.

Zimbabwe, in line with the Carbon Trading (General) Regulations, 2025 creates a single authority**,** the Zimbabwe Carbon Market Authority (ZiCMA)**,** with broad powers to regulate all carbon trading activities. ZiCMA is responsible for domesticating international rules on Article 6 of the Paris Agreement and approving participation in cooperative approaches. ZiCMA is charged with, among other functions, maintaining a central record of all carbon credit transactions**,** including ownership transfers and credit use; promoting and raising public awareness on carbon trading**,** positioning itself as both a regulator and public educator; and requiring all participants in the carbon market to register with ZiCMA**;** there is no role for the financial sector or capital markets regulation. Under the Draft Regulations, Kenya does not have a centralized system as authority is shared and dispersed across multiple institutions (the Council, Cabinet Secretary, Directorate, NEMA – as the DNA, Carbon Budget Committee, etc.) with complementarity in terms of oversight and technical support.

Carbon trading maybe carried out in voluntary and compliance markets, using contracts and other arrangements and the draft regulations introduce regulatory room for creation of a regulated carbon exchange, but under the Capital markets system. It is the Cabinet Secretary who leads the negotiation of bilateral and multilateral trading (cooperative) agreements.

4 LEGAL REQUIREMENTS AND METHODOLGOY FOR PUBLIC CONSULTATIONS

Public Participation is a key cornerstone to legislation making in Kenya recognized under article 10 of the Constitution as a mandatory national value and principle of governance that binds all state organs, state officers, public officers and all persons when enacting, applying or interpreting any law. Section 24(1) of the Climate Change Act provides details on the conduct of public participation on climate change governance matters and requires

public entities at each level of government at all times, when developing strategies, laws and policies relating to climate change, to undertake public awareness and conduct public consultations. Further, Section 24(2) qualifies that the public consultations shall be undertaken in a manner that ensures the public contribution makes an impact on the threshold of decision making.

Regulation 4(2) of the Climate Change (Public Participation and Access to Climate Change Information) Regulations, 2023 clarifies that public consultation shall be considered to impact on the threshold of decision making on climate change where:

> (a) all relevant stakeholders directly affected by proposed action and the public are adequately consulted,
> (b) the responsible authority can demonstrate that sufficient amount of feedback is drawn from the public consultation; and
> (c) there is evidence that the feedback received from the public consultation has been considered in developing the proposed action and in the decision made pursuant to the proposed action.

Section 5 of the Statutory Instruments Act also requires a regulation-making authority 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. Section 5(3) of the Act provides that, without limiting the form that consultations might take, it is important that consultations prior to development of regulations shall do the following: (i) involve notification, either directly or by advertisement, of bodies that, and organizations representing persons who are likely to be affected by the proposed regulations; or (ii) invite submissions to be made by a specified date, or (iii) invite participation in public hearings to be held concerning the proposed instrument.

Having invited public feedback and held a virtual public consultation workshop for the Draft Regulations, the MECC&F has opted to issue a notification by advertisement inviting the public to provide submissions by a date to be defined. As explained above, this process of stakeholder consultations in preparation of the Draft Regulations is in line with the Constitution of Kenya, the Climate Change Act and the Statutory Instruments Act.

5 COSTS AND BENEFITS OF THE REGULATIONS

5.1 Costs of the Regulation

(a) Direct and indirect costs

The implementation of the Draft Regulations is expected to require both direct and indirect costs to the public and private sectors. First, there will be direct administrative costs resulting from establishment of the National Carbon Budget Committee (Regulation 6), although limited to inter-agency coordination as membership is drawn from those already serving in the national government public service.

In the event of a dispute resulting from the procedure for authorizing international transfer of mitigation outcomes, the parties are likely to incur costs relating to alternative dispute resolution procedures (e.g. arbitration, mediation etc.), or through legal representation at the National Environment Tribunal.

(b) Capacity costs

The Directorate will require periodic and continuous capacity enhancement to perform key functions proposed under the regulations such as development of the carbon budget for trading, operationalizing of the National Carbon Budget Committee, and compliance with provisions for concluding bilateral and multilateral agreements for international cooperation. With establishment of a ninety (90) day timeline for conclusion of procedures for authorization of the international transfer of mitigation outcomes, the Designated National Authority (DNA) will require enhancement of staffing establishment and capacity to ensure ability to meet the timelines. Similar capacity enhancement will be required through training for the Directorate, DNA and investors on the linkage between the National Carbon Registry and trading at the carbon exchange.

(c) Compliance costs

The entities engaging in trading through the Carbon Exchange will face transaction-related costs governed by the Capital Markets Act and the Central Depositories Act including custody fees, registration fees and exchange listing fees.

5.2 Benefits of the Regulation

5.2.1 Environmental Benefits

(i) Achievement of the nationally determined contribution

The draft regulations are expected to enhance Kenya's ability to achieve the nationally determined contribution (NDC) through structured carbon budgeting, and by have a pre-determined criteria for ensuring a portion of mitigation outcomes are retained domestically.

(ii) Development of the carbon budget and carbon budget for trading

The draft regulations provide for the setting of the carbon budget emission reduction targets aligned with Kenya's nationally determined contribution and the national greenhouse gas inventory. They also provide development, allocation, and oversight of the national carbon budget**,** including determining and managing the carbon budget available for trading for the and the carbon budget for trading. Procedures for this are set out in regulations 6 and 7. This supports alignment with the NDC commitments under the Paris Agreement and requires Kenya to follow a science-based approach to emissions management.

(iii) Environmental integrity requirements for bilateral and multilateral cooperation agreements

The regulations have a mandatory requirement for bilateral and multilateral cooperation agreements (regulation 8) to comply with the environmental and social requirements required by the Constitution, the Climate Change Act (section 20) and the Environmental Management and Coordination Act (EMCA), (section 57A, 58). This will ensure that that, all internationally traded mitigation outcomes resulting from these agreements will have upheld environmental integrity and avoid harm to natural ecosystems.

5.2.2 Administrative and Compliance Benefits

(iv) Enhancing transparency and fairness in approving international transfer of mitigation outcomes

The procedure clarifying the maximum period of time (90 days) within which the Cabinet Secretary must make a decision on approval of the international transfer of mitigation outcomes enhances predictability, transparency and fairness. It assures an investor that a decision will be made within a defined period, and that written reasons will be given should approval be denied, and further, affirms the right to a clearly set out dispute resolution mechanism.

(v) Institutional clarity

The regulations affirm the role of the Council, Cabinet Secretary and Directorate under the Climate Change Act, and provide further details for their implementation to enhance coordination and improve regulatory efficiency. The role of the Directorate in providing technical support to the Cabinet Secretary is refined with respect to carbon budget, carbon budget for trading and approval of international transfer of mitigation outcomes. The role of the Directorate is augmented by establishment of the National Carbon Budget Committee with clear mandates.

5.2.3 Economic Benefits

(vi) Incentives

The draft regulations affirm the provisions of section 26 of the Climate Change on provision of fiscal incentives to support the development and enhancement of carbon projects and enhance flow of climate finance into the country. The identification of specific fiscal incentives is subject to the consultation procedure between the Cabinet Secretary responsible for Climate Change, and National Treasury. The provisions set out specific (non-exhaustive) non-fiscal incentives to support the enhancement of carbon projects and trading and sustainable development benefits to Kenya. These include action to continuously review and simplify the registration process for carbon credits; issuing official certifications and awards to recognize entities or carbon projects that make significant contributions to the generation and trading of carbon credits.

(vii) Additional pathway for climate finance

Economically, the establishment of a regulated carbon exchange (Regulation 9) is likely to attract domestic and international investment, provide market access for carbon project developers, and enable revenue generation from the sale of verified carbon credits. The framework also promotes investor confidence through procedural clarity, defined timelines, and dispute resolution mechanisms.

5.2.4 Social benefits

The draft regulations promote transparency and accountability in carbon trading (regulations 5,6,7,8,9,10,11). These clauses are important for building and enhancing public trust and ensuring that carbon trading continues to sustainable development outcomes, including benefit sharing already provided for under the Climate Change (Carbon Markets) Regulations, 2024.

Through embedding due process and grievance redress mechanisms (regulations 9, 10), the draft regulations

By embedding due process, grievance mechanisms (regulations 10,11) and public consultation requirements (regulations 7), the draft regulations enhance procedural justice for investors affected by the Cabinet Secretary's decision making. Public consultations will ensure the voice of the Kenyan people and stakeholders is taken into account during the process of developing the carbon budget for trading.

5.2.5 Human Rights benefits

The regulations require that bilateral and multilateral cooperation agreements (regulation 8) to comply with the environmental and social requirements required by the Constitution, the Climate Change Act (section 20) and the Environmental Management and Coordination Act (EMCA), (section 57A, 58); as well as human rights requirements under the Constitution. This affirms Kenya's commitment to ensure that the binding provisions of the Constitution and the law are complied with at all times.

6 REGULATORY ALTERNATIVES

In assessing the regulatory impacts of this proposed regulations, three possible alternatives are examined:

6.1 Option one: Do nothing option

A do-nothing option would mean that regulation of carbon trading continues under the Climate Change Act, and the Climate Change (Carbon Trading) Regulations 2024. In this scenario, important provisions needed to fully bring carbon trading into effect would be missing. These include:

(a) Provisions setting the procedure for development of the carbon budget for trading by the Cabinet Secretary.
(b) The role of the National Carbon Budget Committee in setting Kenya's carbon budgets and emissions targets; and in development, allocation and oversight of the national carbon budget, including the carbon budget for trading.

(c) Requirement for objective criteria to be developed and published to get the Cabinet Secretary on the percentage of mitigation outcomes that may be made available for Kenya's NDC for each authorization for international transfer of mitigation outcomes sought.
(d) The procedure for concluding bilateral or multilateral trading agreements, including requirements for compliance with environmental integrity and human rights under the Constitution of Kenya.
(e) Additional procedures introducing due process, transparency and dispute resolution through a process of decision making by the Cabinet Secretary whenever authorization for the international transfer of mitigation options is sought.

6.2 Option two: Self-regulation

Carbon trading in Kenya is a regulated sector under the Climate Change Act. Section 6(fa) requires the National Climate Change Council to provide guidance and policy direction on carbon markets to the national and county governments, the public and other stakeholders. PART IVA provides for the *regulation of carbon markets,* and through section 23A(2) requires the Cabinet Secretary to *prescribe additional requirements on the regulation of carbon markets.* It is in this context that section 36(2) (bb) of the Climate Change Act empowers the Cabinet Secretary to make regulations, for the regulation of carbon trading.

From the foregoing assessment, it is clear that self-regulation is not intended for purposes of carbon trading under the Climate Change Act. The functions, actions and outcomes set out and anticipated by the Draft Regulations are also of a regulatory nature, intended to be performed by public authorities including the:

(a) National Climate Change Council - approval of carbon budget for trading).
(b) Cabinet Secretary (submission of carbon budget for trading to council for consideration and approval; review of the carbon budget for trading; concluding bilateral or multilateral trading agreements; authorizing international transfer of mitigation outcomes; decision on the percentage of mitigation outcomes achieved that may be made available to support Kenya's nationally determined contribution for each authorization for international transfer of mitigation outcomes, etc)
(c) Directorate – provision of technical advice to Cabinet Secretary in various functions under the regulations; constituting and oversight over the Carbon Budget Committee; development of objective criteria to guide the Cabinet Secretary's decision on the percentage of mitigation outcomes achieved that may be made available to support Kenya's nationally determined contribution for each authorization for international transfer of mitigation outcomes.
(d) National Carbon Budget Committee - Committee shall provide strategic and technical support to the Directorate in the setting of carbon budgets and emission reduction targets aligned with Kenya's nationally determined contribution and the national greenhouse gas inventory; and the development, allocation, and oversight of the national carbon budget, including determining and managing the carbon budget available for trading in support of the Cabinet Secretary

(e) National Registrar – recording of any carbon trading transactions in the National Carbon Registry, including trades settled at the Carbon Exchange to enable recording in the National Carbon Registry.

6.3 Option three: adopt the regulations

Adopting the draft regulations will augment and enhance the regulatory framework required to fully operationalize carbon trading in Kenya, and improve the transparence, coordination and accountability mechanisms. These regulations will give full effect to the carbon trading provision of the Climate Change Act as they introduce procedures and structures to ensure environmental integrity, compliance with human rights, alignment with Kenya's national climate goals and enhance investor confidence. The key benefits of this option include:

- Establishment of a clear process and institutional arrangements for setting the carbon budget and the carbon budget for trading and defines the roles of the Cabinet Secretary, Directorate and the National Carbon Budget Committee (Regulations 6 and 7).
- Introduces clear procedures for concluding bilateral or multilateral trading agreements, including safeguards for environmental and human rights, and provisions to avoid double counting of mitigation outcomes (Regulation 8).
- Clarifies the procedures for the authorization procedures for international transfers of mitigation outcomes with introduction of objective criteria to justify retention of mitigation outcomes for Kenya's NDC; as well as defined timelines for the decision by the Cabinet Secretary, and dispute resolution mechanisms in the event it is necessary. (Regulations 10 and 11).
- Provision for the establishment of a regulated carbon exchange (by the Capital Markets Authority) to facilitate transparent and secure carbon trading in both voluntary and compliance markets, supported by integration with the National Carbon Registry (Regulation 9), whose recording of carbon trading transaction is mandatory.
- Provision of clear non-fiscal incentives to support the development of carbon projects and enhance Kenya's competitiveness in global carbon markets (Regulation 13).

Option 3, through adoption of the draft regulations will put Kenya on a regulatory path that coherence, procedural fairness, and robust governance for carbon trading. It will further support the country's climate ambition and enabling climate finance investments.

6.4 Impact Analysis of the Options

The analysis of the three regulatory alternatives, set out above, affirms that only Option 3: Adoption of the Regulation, will enable realization of the full range of the environmental, administrative, economic, social, and human rights benefits set out in Section 6.

Adoption of option one (do-nothing) would result in continued legal and procedural gaps, particularly in carbon budgeting (regulations 6 and 7) the transparency and timelines for authorizing international transfers of mitigation outcomes (regulations 10 and 11), and procedure and requirements for bilateral and multilateral trading agreements including

maintenance of a public register of concluded agreement by the Cabinet Secretary, environmental integrity and public disclosure of such trading agreements. (regulation 8). Therefore, adoption of this option would undermine investor predictability and confidence, climate finance access, and the countries credibility in global carbon markets. The benefits set out in Section 6.2 would remain largely unrealized.

The second option (self-regulation) is inconsistent with the public mandate required to operationalize carbon markets under the Climate Change Act. The functions set out in the Draft Regulations, including the development and approval of carbon budgets, and carbon budgets for trading, oversight of the carbon exchange, approval of requests for authorizations for the international transfer of mitigation outcomes are inherently public, and therefore governmental.

The adoption of option three (adopt the regulations) addresses these shortcomings. This is because the regulations would enable the application of a clear carbon budget system, create predictable timelines for regulatory approvals, facilitates operationalization of the carbon exchange. While there are costs (see section 6.1) related to adopting this option, they are proportionate, manageable, and justified by the net public benefit, and the climate change legal framework already in place.

6.5 Preferred Option

Based on the cost-benefit assessment and the foregoing regulatory impact analysis, the preferred option is *Option Three: Adopt the Regulations.*

This is the option that provides the legal certainty and institutional clarity that necessary for the effective regulation of carbon trading in Kenya. It secures the benefits outlined in Section 6 of this report, including achievement of national climate targets, procedural transparency, investor confidence, increased climate finance flows, and protection of public interest, all while minimizing regulatory gaps and governance risks associated with the regulatory alternatives.

7 COMPLIANCE AND IMPLEMENTATION

7.1 Implementation

The Draft Regulations will require technical and human resource capacity building to implement. They do create a new institution, the National Carbon Budget Committee. This is a committee to support the Cabinet Secretary to perform regulatory functions and comprises of experts already in the service of the national government, and therefore require no additional remuneration, save for reasonable operating costs as maybe required from time to time. Consequently, there will be no significant cost implications on the exchequer and any budgetary requirements for reasonable operating costs will be captured in the normal budgeting cycle. The draft regulations do not impose an additional charge on project proponents in terms of administrative fees or costs.

7.2 Compliance

This Regulatory Impact Statement for the Draft Climate Change (Carbon Trading) Regulations conforms with all key legal requirements, particularly:

(a) The Regulation Making Authority and the legal mandate: Sections 36(1), and 36(2) (bb) of the Climate Change Act, Cap 387A which empower the Cabinet Secretary to make the Draft Regulations.
(b) The requirements of the Statutory Instruments Act, specifically sections 5 which requires consultation before making statutory instruments and Section 6 and 7 which require that a RIS containing the requisite elements be prepared where a statutory instrument is likely to impose significant costs on the community.

8 CONCLUSION AND RECOMMENDATIONS

This Regulatory Impact Statement has analysed three regulatory options in line with section 7 of the Statutory Instruments Act. These are: Do Nothing, Self-Regulation, and Adopting the Draft Regulations. Based on the foregoing analysis in section 7, and the conclusion in section 7.5, the third option – adopting the regulations is recommended to fully align with the Climate Change Act. While there are some costs as explained in section 8.1, the overall benefit of the Draft Regulations to Kenya outweighs these costs.