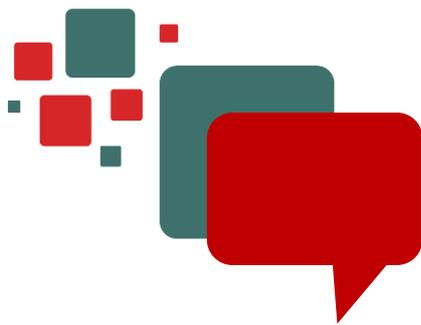# 'Talk to the Senate':
PRIORITIES 2017-2022

A REPORT ON KICTANET ENGAGEMENT WITH THE SENATE INFORMATION COMMUNICATION AND TECHNOLOGY (ICT) COMMITTEE

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ACKNOWLEDGEMENT

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INTRODUCTION

The Parliament of Kenya is made up of the National Assembly and the Senate. The Senate represents the counties and serves to protect their interests. It does this by considering bills concerning counties.

Further, the Senate determines the allocation of national revenue among counties and thereafter exercises oversight over how the county governments utilise this allocation.

The Kenya ICT Action Network (KICTANet) is a multi-stakeholder platform for people and institutions interested and involved in ICT policy and regulation. KICTANet has in its membership representatives from academia, technology experts, private sector, civil society, government officials and internet users. The network aims to act as a catalyst for reform in the ICT sector in support of the national aim of ICT enabled growth and development.

The term of the twelfth Parliament runs from August 2017 to 2022. The Senate Committee on Information, Communication and Technology (ICT) is currently constituting its agenda for 2017-2022. The Committee invited contributions from KICTANet on what business the Senate should consider and prioritise during the life of the twelfth Parliament.

Toward this, KICTANet held a three-day discussion on its mailing list, and crowd-sourcedopinions on what should form the Senate's agenda. On Day 1, the community discussed the ICT challenges, risks and opportunities in the counties. Day 2 focused on the legislative role of the Senate.On this one, the community made proposals on what laws ought to be passed or amended by the twelfth Parliament to foster ICT in particularin the counties. And on Day 3, the community gave contributions on what amounts to effective public participation.

This report is prepared from the submissions made on the KICTANet mailing list and constitutes KICTANet's proposals on Senate's agenda for 2017 to 2022.

The Community is ready and willing to engage with the Senate on this report and on further discussions through the mailing list as well as at a face to face meeting. Feedback on which of the community submissions will form the Senate's agenda is welcome.

The report is divided into three parts mirroring the discussion held on each day.

1. ICT CHALLENGES, RISKS AND OPPORTUNITIES IN THE SCOUNTIES

1.1. CHALLENGES

- Internet access
- Inter-governmental Co-operation

Internet access was flagged as one of the key concerns in the counties.

Some counties experience intermittent internet connectivity. Worse still, remote areas have limited or no access to mobile voice coverage, let alone to the internet. Access is further impeded by unavailability of electricity in some of the far-flung counties. This is due to lack of infrastructure as well as the high cost of electricity.

There were concerns that Universal Access Fund was not being employed to its proper purpose.

The Universal Access Fund was expected to ensure inclusivity by ensuring access to the counties with connectivity challenges. There were concerns however that this Fund was not being employed to its proper purpose and that its use was not being monitored. Information on how the Fund is applied is not readily available to the public

Where internet infrastructure has been deployed, it was noted that it is underutilized.

For instance, less than fifty percent of the National Optic Fibre Backbone Infrastructure (NOFBI)[*]is currently being utilized despite NOFBI being in its second phase. This utilisation deficit may be attributed to the discriminatory pricing of NOFBI; where the cost of internet in Nairobi is much lower than in those Counties located far from Nairobi. This difference in pricing is discriminatory seeing as NOFBI is a government project.

There is poor coordination between the national government and the county governments on implementation of projects. This is characterized by marked disorganization in the deployment of infrastructure by both levels of government.

This disjointedness is further amplified by the failure to clearly define the role of county governments in ICT. In addition, the Fourth Schedule to the Constitution is silent on the role of counties, as is the ICT Policy prepared by the Ministry of ICT.

Telecommunications is designated as a national government function under the Fourth Schedule to the Constitution. However, implementation of telecommunication projects has to be conceptualized in the context of county governments.

Further, within the counties themselves, harmonization lacks between and among the departments that utilise ICT. This may be attributed to lack of capacity in the ICT departments and failure by county governments to designate ICT officers in other departments like health and revenue collection that already rely on ICT. Regrettably, counties do not adequately provide for ICT in their budgets.

1.2 RISKS

(a) Misuse of the USF

The mystery surrounding the Universal Access Fund makes the Fund prone to misuse. Already, there are concerns that this Fund will be diverted to the police service to fight cybercrime before ensuring last mile connectivity.

(b) Cybersecurity and Data Protection

National and county government officials demonstrate a low appreciation of cybersecurity and data protection. The lack of a legal framework in these two areas worsens the vulnerability of government infrastructure and citizen information.

(c) Negative Attitudes

In the counties, the internet is viewed as an enabler of negative habits such as publication of hate speech and gambling. This could impede penetration levels.

1.3 OPPORTUNITIES FOR INTERVENTION BY THE SENATE

(a) Connectivity

The connectivity debate is often rife with misrepresentations. The Senate, as the institution charged with representing the interests of the counties, ought to conduct an independent study to verify internet access levels in the counties. The findings of this study would then form the basis of Senate's advocacy for access.

The Senate has inquisitorial powers under Article 125 of the Constitution to call for evidence from the Ministry of the ICT and the Board of the Universal Access Fund on the amounts collected by the Fund, and its utilisation towards its intended purpose; which is to improve access. Since the USF was created to benefit the counties, it is also recommended that the Fund be devolved so as to cater adequately for the interests of the counties.

As part of its oversight function, the Senate ought to encourage counties to roll out projects that will connect to the NOFBI.

Internet access also ought to be included as the basis for allocation of revenue among the counties, noting that counties with low connectivity need provision for supplemental expenditure to ensure reliable internet access. The Senate may consider this inclusion during the ongoing review of the allocation of revenue formula championed by the Commission of Revenue Allocation.

Low connectivity also presents an opportunity for counties to invest in metro fibre networks. The unused cores could be leased out to internet service providers, raising revenue for the county governments. There is a further opportunity for collaboration between and among counties. Here, several counties could invest in an interlink of the fibre networks further ensuring even the most remote villages are covered.

It is essential that all public institutions in the counties be connected to broadband internet connection. To achieve this however, the Senate ought to advocate for the completion of the second phase of the NOFBI. Further, that the discriminatory pricing in access to NOFBI be done away with to give all counties a fair chance at access. The infrastructure ought to be availed to all players, public and private if uptake is to increase in the counties.

(b) Access to Government Services

As the government transfers most of its services to online portals, it is important that counties are not short-changed in the process. Access to services such as e-citizen is directly impacted by internet penetration levels.

Government portals, such as e-citizen platform ought to be revamped to ensure full accessibility even for those with limited connectivity. Further, these services should be available via Unstructured Supplementary Service Data (USSD) to cater for areas with no connection. Fully fledged Huduma Centres should be opened in all counties.

These platforms hold a lot of sensitive information. It is imperative therefore that their integrity be secured. This calls for a data protection legal framework and transparency from the national government as to the third parties contracted to operate these platforms. The Senate ought to look into this.

(c) Inter-Agency Co-operation

The Senate must advocate for synchronization of efforts by all devolution stakeholders. This calls for sharing of best practices on systems and solutions to get the best value and reduce duplication. Universities and research institutions have a wealth of information that could benefit counties.

Where appropriate, some national government functions should be transferred to the counties. For instance, the proposed national addressing system should be spearheaded by counties as opposed to the county government. This will ensure that secluded wards are not left off the grid and that local colloquialism is taken into consideration.

(d) Leveraging on ICT

Presently, counties have adopted ICT as an aid for county operations. A paradigm shift is necessary. Counties ought to see ICT as a driver for county development. County focus should be on programs that provide the private and public sector with new opportunities whilst giving the youth meaningful work.

Counties should look for local solutions to county problems from start-ups, businesses and youth. Subsidization, uptake and marketing of these solutions will motivate others to innovate. For standardization purposes, the national government will be required to provide certification of solutions and applications as proper for use in the public sector.

Counties should also take advantage of county polytechnics for transfer of knowledge. This should be accompanied by county campaigns to change negative attitudes towards ICT and encourage adoption even at the village level.

With a data protection framework in place, counties can participate more in the data economy. There is also an opportunity for counties to invest in mini bureaus of statistics and information dissemination offices.

2. NECESSARY LEGISLATIVE INTERVENTIONS

The community made the following observations on existing legislative gaps.

2.1. Data Protection

Data is being collected at both national and county levels. The solutions offered by the private sector often come with a data collection trade off. A legal framework on data protection is therefore necessary to ensure that the data collected is processed and stored in a manner that honours the privacy of individuals and that this data is used for the intended and lawful purposes only.

With a data protection framework in place, counties can participate more in the data economy. Counties collect a lot of data which can be monetized, albeit within legal boundaries. There is also an opportunity for counties to invest in mini bureaus of statistics and information dissemination offices.

2.2. Cybersecurity

Some offences such as hacking of computer systems, online grooming of children and cyber harassment are not addressed in the penal code. There is need for legislation prescribing such offences and online investigation procedures. The Computer and Cybercrimes Bill, 2017 is currently under consideration by the National Assembly. It was opined that this Bill should also be considered by the Senate as it is a bill setting standards that will be applied in the counties, hence a Bill concerning counties.

To supplement the penal approach, counties must also take up preventative measures. It is proposed that counties be required by legislation to set up county committees to identify assets in cyberspace and assess security threats. These committees would also act as incidence reporting stations and would lead the efforts in implementation of cybersecurity guidelines.

2.3. ICT Infrastructure

Roads legislation at the national and county level must provide for telecommunication infrastructure. It should be required of counties that their road plans must make adequate provision for telecommunications infrastructure e.g. the laying of ample trunking for future leasing to any telecommunication company that would wish to utilise fibre optic cables. Improper planning will expose infrastructure owners to relocation which disincentives investment.

2.4. Critical Infrastructure

Telecommunication infrastructure is expensive yet crucial. This necessitates a legal framework to safeguard the infrastructure. The fundamental nature of this infrastructure also calls for responsible investment including proof of service continuity plans in the event assets are destroyed.

2.5. Public Participation

Internet governance requires balancing of interests from various stakeholders. It is imperative that both the national and county levels of government employ an effective public participation framework to ensure that all stakeholders equally participate in decision making. Furthermore, the Constitution requires that the public be consulted when decisions affecting them are made. The best approach would be to have guiding national legislation that mandates the various ICT actors, in both levels of government, to conduct public participation in the prescribed manner.

2.6. ICT Policy

The revised ICT Policy (currently in draft form) is silent on the role of the county governments in ICT. This exclusion explains the duplication of efforts between the national and county governments and the failure by counties to make budgetary considerations for ICT. The Policy needs to be amended to on-board county governments.

ICT is an ever evolving field. Research is therefore imperative. The policy ought to also consider the establishment of a technology research fund at the county level to motivate research that is directed at solving local problems.

2.7. The Universal Access Fund (USF)

The purpose of the USF was to ensure access throughout the country. It is opined that the Fund would better serve this purpose if it was devolved to the county governments. This is because county governments have a better appreciation of the connectivity needs within their borders. Further, this would absolve the Fund from misappropriation.

2.8.   ICT Procurement in the Counties

Counties must embrace technology positively. However, as Counties continue to adopt ICT, it is essential that any ICT procurement done adheres to internationally acceptable standards for valuation and data protection.

To ensure adherence to these standards, it is recommended that counties be required by law to designate County Information Officers (CIOs) and County Data Officer (CDOs). Their qualifications ought to be set out by law.

2.9.   County Audit Committees

It ought to be a legal requirement that county audit committees have in their membership ICT professionals. These professionals will appraise the uptake of ICT in county offices, advice on vulnerability of systems and opportunities for improvement.

2.10. Revision of taxes

Access to the internet is further hampered by the cost of hardware. Revising taxes on smartphones downwards for instance could see more residents in the counties accessing the internet.

2.11. Avoiding Laws that may hinder growth in ICT

Strict regulation is bound to strangle ICT. Laws restricting entry into the industry may be appropriate in traditional careers such as law and medicine. However, adopting this approach in ICT stunts growth and discourages young people from converting talent to careers. The Information Communication Technology (ICT) Practitioners Bill is one such Bill that could spell doom for the industry.

As it is, there are qualifications in the ICT industry that serve the purpose of this Bill. In addition, simple competition in employment and service provision acts as motivation for industry players to better their craft and improve standards. Furthermore, ICT is boundless; restricting its practice in Kenya only disadvantages the country. This does not stop practitioners from elsewhere from providing services remotely.

3. EFFECTIVE PUBLIC PARTICIPATION

The Community proposed a framework for effective public participation for the executive and the legislatures at the national and county levels.

3.1. Public Awareness

Public consultation ought to begin with thorough public awareness. The public must be notified that a specific issue is being considered by a specific government entity. At an early stage, it is important that the government entity discloses the intended outcome. For instance, a ministry should state whether the process will culminate in the making of regulations or enacting a new law.

If there are current drafts being considered, these drafts should be released to the public in their raw state. Every subsequent draft should be availed to the public as well. The entity seeking public comment must ensure both local and online access to these drafts. In the counties, the key parts of the policy or legislative document may be translated to Swahili or mother tongue. Language should not be a barrier to participation.

Public hearings should be advertised far and wide; beyond the traditional notion of newspapers adverts. Government entities are likely to reach a wider audience if they also advertise on radio stations and social media platforms. Ample notice should be given before the hearings so that those who intend to participate can plan their schedules accordingly.

3.2. The Stage at Which Consultation Should Be Done

Government entities must consult the public at the beginning of the process, before a zero draft is developed. The comments given at this stage should then inform what goes into the zero draft. This is because once government officials have spent a considerable amount of time researching and preparing an initial draft, they develop unconscious bias on the subject in question, negating the purpose of public consultation later on.

Once the initial draft is developed, it should be circulated for further consultation. If the views of the public differ greatly from those in the draft, the government entity should be willing to redraft and convene another consultation forum.

3.3. Public Participation as a Process Not as an Event

Currently, when government entities advertise for public participation, they issue a deadline, usually seven to fourteen days, within which the public must submit their memoranda or be locked out of the process. This is hardly adequate since more often than not prior access to the document under discussion is not allowed. The public ought to be involved at every step of the way. There should be no hard deadlines for public participation. The focus ought to be on consensus building as opposed to moving the document forward.

3.4. Utilising ICT for Effective Public Participation

Government entities can adopt Customer Relationship Management (CRM) software to manage the public consultation process.

Electronic and social media platforms are ideal for public participation. Government entities are able to get instant feedback and benefit from features such as crowd-sourcing.

The community gave examples of such initiatives already in use. They include the 'Fix My Ward' platform utilised by South C Ward residents to collate views and submit them to their ward representatives. This platform is accessible at www.FixMyWard.org. Another example is the Jadili platform by the Centre for Intellectual Property and Information Technology Law (CIPIT) accessible at www.jadili.ictpolicy.org. Jadili allows for live tracking of comments and voting on Clauses.

There should be no hard deadlines for public participation. The focus ought to be on consensus building as opposed to moving the document forward.

3.5. Transparency and Feedback

Having a specific officer in charge of the document for which public comment is sought is useful.

Public participation reports must be published and disseminated online and physically. The report should include an addendum of all the submissions made to the government entity together with a matrix indicating the submissions that were incorporated into the final document. There should be an explanation for each submission that was not adopted to the final document. This motivates the public to participate in subsequent consultation exercises.

KICTANet has been consistent in advocating for a public participation framework that entrenches multistakeholderism. A framework that maps out how views and ideas suggested are reflected in an outcome document of a policy process. Further, this framework should provide the reasons why views of some stakeholders are not taken on board to avoid suspicion.

4. SUMMARY OF EMERGING ISSUES
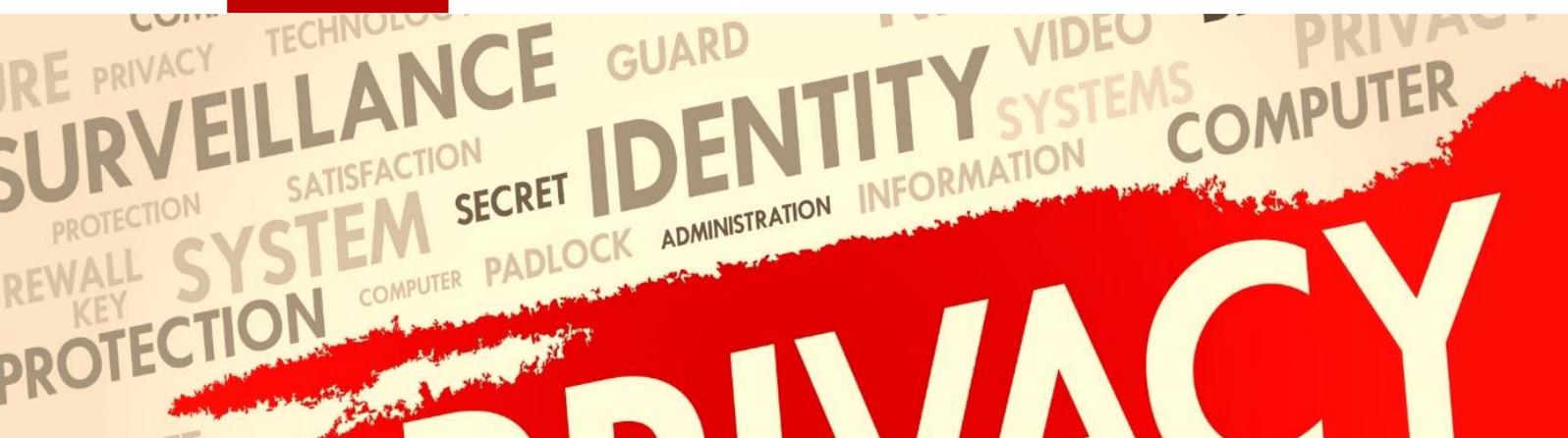
4.1 ICT CHALLENGES, RISKS AND OPPORTUNITIES IN THE COUNTIES

CHALLENGES

• Poor coordination with the central government and between departments in counties.	• Role of the counties in ICT is not clearly set out in the ICT policy.
• Limited capacity in ICT departments in the counties and also amongst other departments that use ICT.	• Electricity is not affordable across the board.
• The Universal Access Fund is not properly utilised neither is its use monitored.	• Poor and disjointed infrastructure deployment.
• Expanding the focus of ICT in counties from something that supports the county operations (i.e. internal) to something that drives county development (i.e. external).	• Taxation on equipment affects the retail price of internet.
	• Management of the spectrum is not efficient.
• Less than 50% of the NOFBI is currently utilised yet phase 2 is almost complete- this is a utilisation deficit.	• Low uptake of local content in broadcasting.
	• System interoperability is lacking
• Prices on the National Optic Fibre Backbone Infrastructure (NOFBI) are discriminatory; cost in far flung counties is much higher than in Nairobi yet this is government funded infrastructure.	• Counties do not make adequate provision for ICT in their budgets.

RISKS

- Misuse of the Universal Access Fund
- Low awareness of cybersecurity amongst county staff and citizens.
- Poor use of internet- the internet is used is only used to drive negative habits such as hate speech and betting.

OPPORTUNITIES

- Connectivity, The Universal Access Fund, Huduma Centres and eCitizen, Inter-Agency Co-operation, Cybersecurity, Leveraging on ICT, County Information Officers (CIOs) and County Data Officer (CDOs), Data Economy in the Counties, Making Tech Less Elitist and Accessible to 'Wanjiku'

Connectivity
•Using the Universal Access Fund to ensure one hundred percent connectivity in the counties.
•The Senate ought to conduct a feasibility study aimed at bridging the digital divide across the counties.
•Counties should prioritise where there are gaps in connectivity and roll out projects connected to the National Optic Fibre Backbone Infrastructure (NOFBI).
•Coming up with County ICT Centres of Excellence to train both the young and the old at a subsidized cost.
•Counties to include telecommunications infrastructure in their road plans e.g. laying ample trunking for future leasing to any telecommunication company that would wish to run fibre optic cables.
•Counties to run their own metro fibre networks and lease the unused cores to the internet service providers.
•Co-operation between counties to inter-link the said metro fibre networks to ensure all regions are covered.
•Ensuring that all public institutions (health, education and police) have broadband.
•National Optic Fibre Backbone Infrastructure (NOFBI) to be made more accessible to all players, small and large.

The Universal Access Fund

- The Fund should be devolved since its centralisation has failed to achieve the intended goal.

Huduma Centres and eCitizen

- Strengthening, improving and further innovating Huduma Centres.
- Rolling out Huduma Centres to all the counties.
- Revamping the eCitizen platform to ensure full accessibility even with limited connectivity.

Inter-Agency Co-operation

- Devolution stakeholders to synergise effort instead of pulling in different directions and duplicating efforts.
- Sharing of best practices and systems/solutions to get best value and reduce duplication.
- Involve the academia (universities and research institutions) and utilise their research to inform policy.
- Setting up of a tech research fund at the national and county level to motivate people to take up tech research.

Cybersecurity

- Setting up county committees to identify assets in the cyberspace, assess security threats, county incidence reporting and implement cybersecurity guidelines.

Leveraging on ICT

- Using ICT to drive and measure a better culture amongst county government staff focused on efficiencies and impact.
- Programs that provide the private and public sector with new ideas whilst giving the youth meaningful work e.g. the Presidential Digital Talent Programme.
- Open innovation from local start-ups, businesses and youth to find solutions to county problems.
- Subsidization of county-centred solutions.
- Marketing and uptake of locally developed solutions
- Certification of certain solutions and applications to be used in the public sector.
- Youth polytechnics that are under county governments should be included in big ICT projects for transfer of knowledge.
- Counties to play a key role in the national addressing system.

County Information Officers (CIOs) and County Data Officer (CDOs)

- To run county systems and ensure compliance
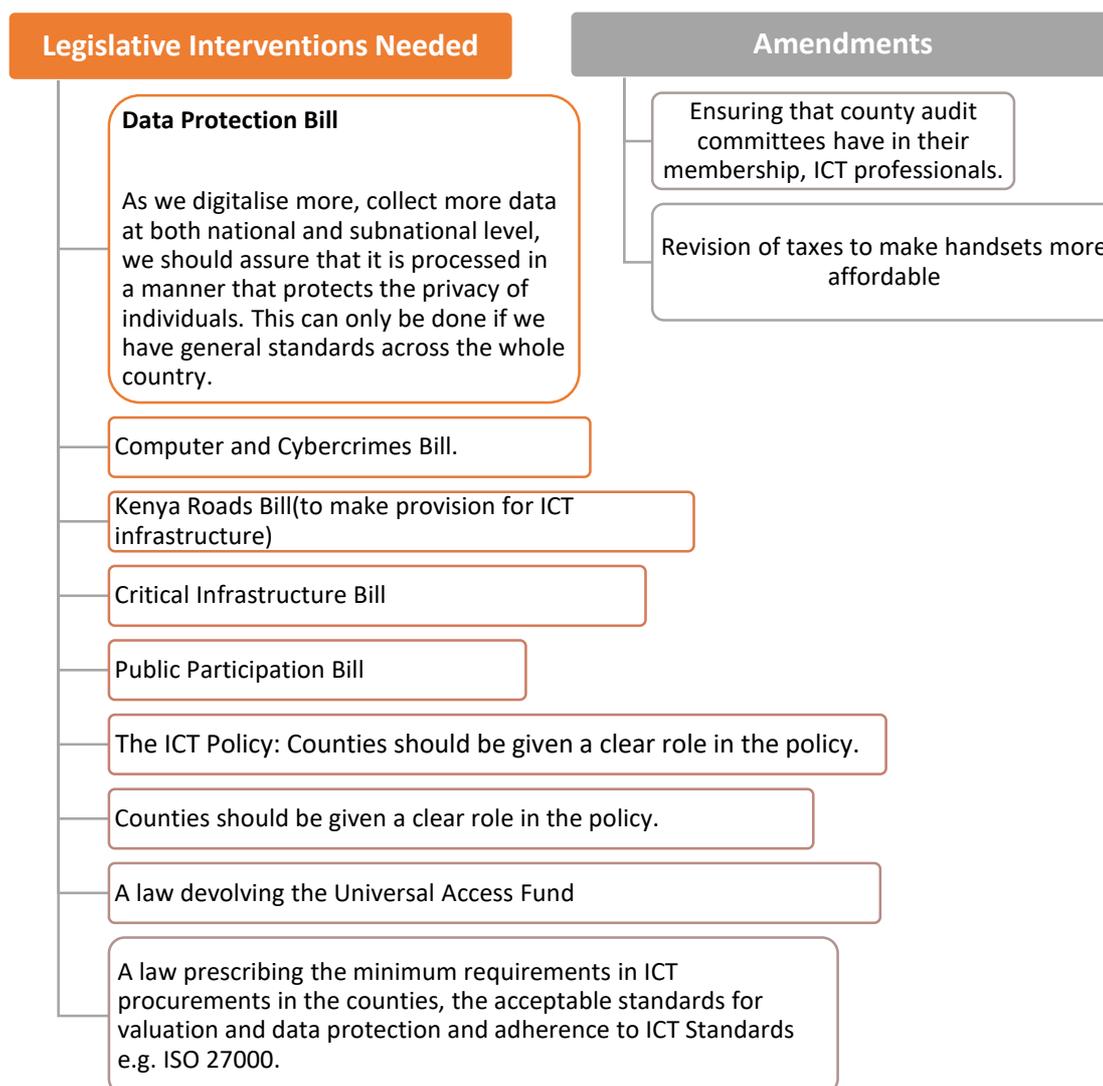
Data Economy in the Counties

- Counties ought to embrace tech positively e.g. invest in data collection and monetize this data within legislative boundaries.
- Counties to invest in mini bureaus of statistics and information dissemination offices.

Making Tech Less Elitist and Accessible to 'Wanjiku'

- Invest in changing attitudes and encourage adoption in villages.

4.2 POSSIBLE LEGISLATIVE AND OVERSIGHT INTERVENTIONS BY THE SENATE

Legislative Interventions Needed	Amendments
Data Protection Bill As we digitalise more, collect more data at both national and subnational level, we should assure that it is processed in a manner that protects the privacy of individuals. This can only be done if we have general standards across the whole country.	Ensuring that county audit committees have in their membership, ICT professionals.
Computer and Cybercrimes Bill.	Revision of taxes to make handsets more affordable
Kenya Roads Bill(to make provision for ICT infrastructure)	
Critical Infrastructure Bill	
Public Participation Bill	
The ICT Policy: Counties should be given a clear role in the policy.	
Counties should be given a clear role in the policy.	
A law devolving the Universal Access Fund	
A law prescribing the minimum requirements in ICT procurements in the counties, the acceptable standards for valuation and data protection and adherence to ICT Standards e.g. ISO 27000.	

Bills that are injurious to the industry

The Information Communication Technology (ICT) Practitioners Bill

There are already existing qualifications that can serve the purpose of this Bill as well as simple competition in both employment positions and service provision (as contractors/providers of ICT services to customers) which can be expressed not only through existing qualifications but also through experience, references etc. as per other marketplaces.

Areas that require Oversight Intervention

The Universal Access Fund

How the Fund is being utilised and what it has achieved so far.

How the Fund is aiding connectivity.
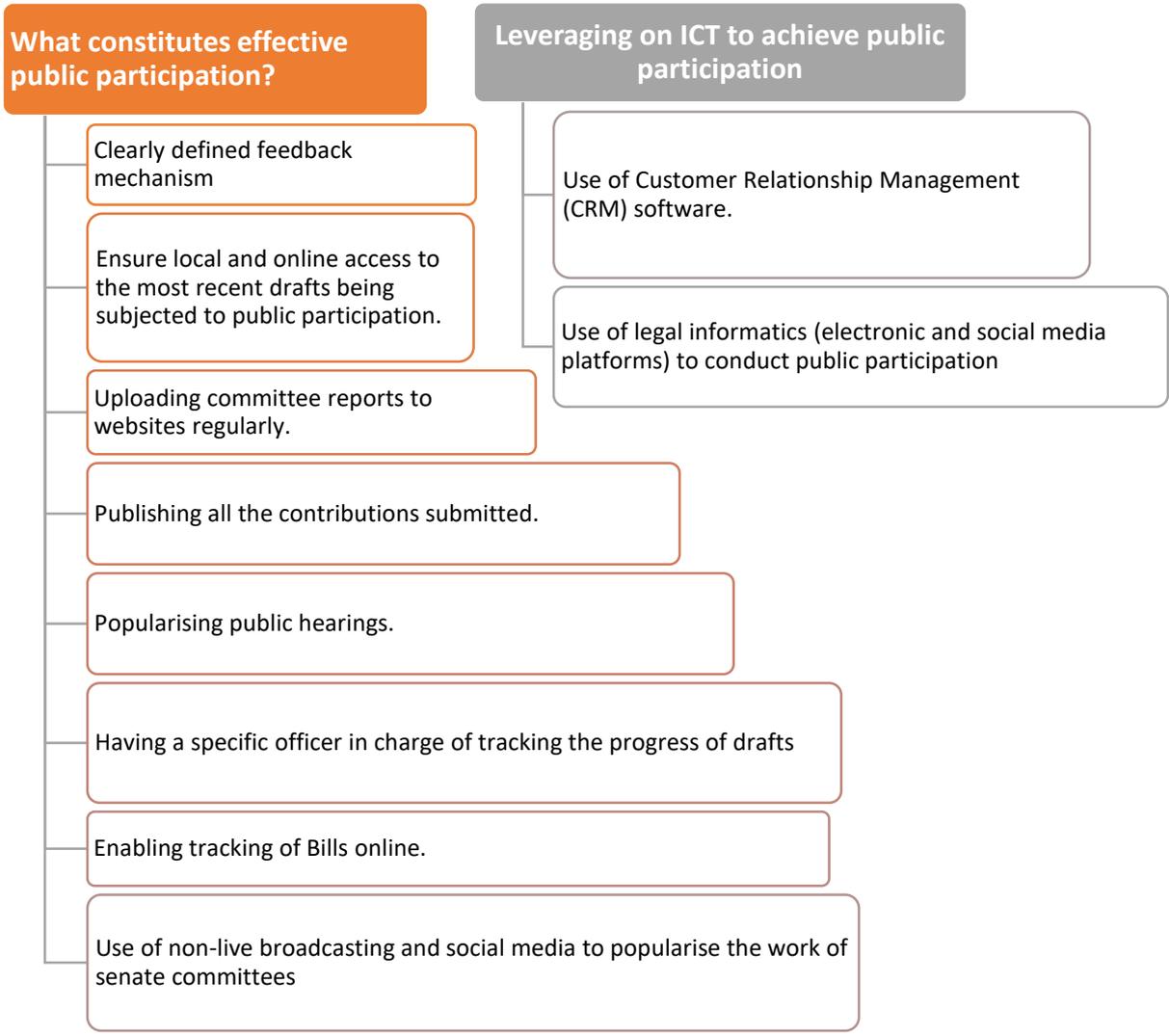
What is the scope of this Fund?

E-Citizen

Where does the convenience fee collected on e-citizen go? How are these fund utilised?

How come the service is always down?

Connectivity in rural areas and in public institutions: Schools that now have electricity should have fibre run over the electric cables.

Use of the NOFBI: How are the hospitals connected to NOFBI using the fibre they have?

ICT connectivity as a basis for calculating the Division of Revenue Formula Areas with low connectivity ought to get a greater allocation to cater for the deficiency.

What constitutes effective public participation?	Leveraging on ICT to achieve public participation
Clearly defined feedback mechanism	Use of Customer Relationship Management (CRM) software.
Ensure local and online access to the most recent drafts being subjected to public participation.	Use of legal informatics (electronic and social media platforms) to conduct public participation
Uploading committee reports to websites regularly.	
Publishing all the contributions submitted.	
Popularising public hearings.	
Having a specific officer in charge of tracking the progress of drafts	
Enabling tracking of Bills online.	
Use of non-live broadcasting and social media to popularise the work of senate committees	

Working examples

1.1. www.FixMyWard.org

1.2. http://jadili.ictpolicy.org/docs/the-computer-and-cybercrimes-bill,-2017