KICTANet The Power of Communities

KICTANet Working Groups Recommendations on Policy, Legislative & Regulatory Reforms in the ICT Sector.

Submitted to the Ministry of Information, Communications, and the Digital Economy's (MoICDE) Sector Working Group and ICT Taskforce.

March 20, 2024

Table of Contents

1. Introduction

On 8th September 2023, the Cabinet Secretary for ICT, Mr. Eliud Owalo inaugurated the [Working Group on 'ICT Sectoral Reforms in Legal and Policy Framework'](#) ; ICT Taskforce recognizing the paramount importance of fostering growth and innovation in the Information, Communications, and Digital Economy sector, the Cabinet Secretary for Information, Communications, and Digital Economy appointed the Sectoral Working Group on Policy, Legislative & Regulatory Reforms in the ICT Sector. This pivotal initiative sought to harness the collective wisdom and expertise of diverse stakeholders, paving the way for a transformative journey towards a more robust and inclusive digital landscape. With a clear mandate to chart a course toward adaptable frameworks that align with the government's digitalization goals. Tasked with evaluating the efficacy, stability, and structure of the ICT and digital economy sector, the Sectoral Working Groups (SWG) undertook the responsibility of proposing measures to foster agility, innovation, and value creation.

Kenya ICT Action Network (*KICTANet)*, as a stalwart advocate for progressive ICT policies and regulations, rallied diverse stakeholders and luminaries passionate about driving positive change from civil society, academia, and the private sector to form seven thematic technology working groups. These groups, each led by an expert in their respective fields, sought to offer comprehensive feedback and analysis on the SWG's Draft Report developed by the Ministry of Information, Communications, and the Digital Economy's (MoICDE) Sector Working Group on critical policy, legislative, and regulatory reforms within the Kenyan ICT sector. The clarion call was heeded by 130 expert enthusiastic individuals within the network, representing a spectrum of perspectives and insights, each committed to shaping the future of our nation's ICT sector.

Spanning across seven thematic areas, namely:
- **Digital Infrastructure, telecommunications and services.**
- **Software and Software Services**
- **Data Governance and Emerging Technologies**
- **Cybersecurity**
- **Innovation, Enterprises, Digital Talent, and Jobs.**
- **Postal, Courier, and E-commerce**
- **Media, Broadcasting, PR, and Communications.**

1.1 Background of the Report

The KICTANet Working Groups embarked on a comprehensive exploration of the challenges and opportunities that define our digital landscape. The collective enthusiasm and commitment to excellence were palpable as stakeholders delved into nuanced discussions, offering invaluable contributions and critique on draft recommendations. Their tireless efforts epitomize a shared vision for an ICT ecosystem that not only fosters innovation and growth but also champions inclusivity and equity.

As we stand at the precipice of unprecedented technological advancements, the recommendations put forth by the Working Group serve as a beacon guiding our trajectory towards a future defined by prosperity and progress. The recommendations hereby were presented to the esteemed ICT Task Force on March 13, 2024, fueled by a shared sense of purpose and determination, we are confident in our collective ability to effect meaningful change.

In this report, we encapsulate the essence of our deliberations, presenting a roadmap towards a vibrant and inclusive digital ecosystem. It is our fervent hope that these recommendations will serve as a catalyst for transformative action, ensuring that the policies and regulations governing our ICT sector resonate with the needs and aspirations of all stakeholders.

Together, let us embark on this journey towards a future where innovation knows no bounds, and the benefits of the digital revolution are shared by all.

Thematic Working Groups and Leads

- **Digital Infrastructure, Telecommunications and Services:** Mr Twahir Hussein Kassim (Dunia Moja Community Network); Mr. Barrack Otieno (Team Lead)
- **Software and Software Services:** Mr Kelvin Kariuki Mwangi (Multimedia University of Kenya);
- **Data Governance and Emerging Technologies:** Ms Grace Mutung'u (Data Privacy and Governance Society of Kenya);
- **Cybersecurity:** Mr Njoroge Kinyanjui (Kenya Cyber Security and Forensics Association)
- **Innovation, Enterprises, Digital Talent and Jobs:** Dr. Ehud Gachugu (Kenya Private Sector Alliance);
- **Postal, Courier and E-commerce:** Mr Daniel Maingi (Kenya Food Alliance) and Josephine Towett (Team Lead)
- **Media, Broadcasting, PR and Communications:** Dr. Wambui Wamunyu (Daystar University).

KICTANet believes these working groups will foster robust and inclusive dialogue between stakeholders and the government, ultimately leading to a more robust, future-proof ICT ecosystem in Kenya.

2. Digital Infrastructure, Telecommunications and Services.

2.1 Introduction

The digital infrastructure sector plays a pivotal role in shaping Kenya's technological landscape, serving as the backbone for connectivity, innovation, and socio-economic development. This collection of recommendations aims to address key challenges and opportunities within the sector. These include enhancing the efficacy of the Universal Service Fund (USF) in terms of its operations and governance, resolving infrastructure access issues, standardizing rates and wayleaves, promoting community empowerment, bolstering institutional capacities within regulatory bodies and initiatives for bridging the digital divide. By focusing on these critical areas, Kenya can strengthen its digital infrastructure, promote inclusivity, and foster sustainable growth in the digital age.

2.2. KICTANet Submissions and Recommendations:

1. Establish an independent USF Authority separate from the Communications Authority (CA) to enhance its efficiency and effectiveness. This may require legislative action through the Kenya Information and Communications Act (KICA).

2. Formulate a dedicated body, such as the Kenya Rural Broadband agency, to oversee the deployment of digital infrastructure in rural areas, aligning with the objectives outlined in the Broadband Strategy.

3. Advocate for the devolution of USF operations to counties to ensure better connectivity in underserved areas like Laikipia. County-level presence can facilitate tailored solutions and address local connectivity challenges.

4. Avoid unnecessary organizational changes, such as renaming ICT and CA authorities, and instead focus on optimizing their operations to streamline regulatory functions.

5. Transfer the mandate of the Kenya Film Classification Board (KFCB) to the CA rather than the Media Council of Kenya to ensure coherence in regulatory oversight.

6. Address regulatory ambiguities and overlaps among CA, ICT Authority (ICTA), and Kenya Bureau of Standards to establish clear ICT standards and avoid duplicative regulations.

7. Foster collaboration between Kenya Bureau of Standards (KEBS) and ICTA without imposing hierarchical guidance to ensure mutually beneficial standardization efforts.

8. Reevaluate the mandatory provision of Wi-Fi in buildings, as it may impede infrastructure

deployment speed, and explore alternative strategies to promote connectivity.

9. Consider amendments to the Public Procurement Act to facilitate procurement processes related to digital infrastructure projects.

10. Prioritize initiatives aimed at reducing the digital divide to ensure equitable access to digital resources and opportunities.

11. Establish digital centers at the grassroots level to facilitate access to digital infrastructure and services, promoting inclusivity and community engagement.

12. Develop a comprehensive data privacy framework beyond fiber infrastructure deployment to address evolving digital needs and challenges.

13. Integrate digital literacy and curriculum development into educational frameworks to prepare the workforce for the digital age.

14. Mandate human rights impact assessments in statutory instruments to safeguard digital rights and freedoms.

15. Promote the establishment of open data platforms, co-working spaces, and incubators to foster innovation and collaboration in emerging technologies such as AI.

16. Harmonize data protection policies to balance regulatory compliance with innovation facilitation, ensuring a conducive environment for technological advancements.

2.3: **Responses/ Concerns:**

- Address the challenges of cloud infrastructure adoption in Kenya, including cost and sustainability issues, to position the country as a competitive cloud destination.

- Provide subsidies and incentives for data center development, such as those in Konza and near geothermal plants, to attract investment and promote infrastructure growth.

- Diversify power sources for data centers to mitigate reliance on Kenya Power and enhance resilience against infrastructure disruptions.

- Address bureaucratic hurdles, policy constraints, and taxation issues to foster a more conducive environment for tech investment and innovation.

- Implement clear governance structures and safeguards to protect the independence and effectiveness of the USF from political interference.

- Support Communication Authority devolved functions to provide tailored support to specific counties and ensure efficient utilization of USF funds to meet their intended objectives.

ITEM/ NO	LEGAL REFORM PROPOSAL	JUSTIFICATION	OTHER AFFECTED LAWS	OTHER COMMENTS
1	Create an independent Universal Service Fund Authority	The current USF suffers from the following limitations: • The advisory council operates under the directions of CA and lacks independence. • There is need to expand the scope of projects being funded to include xxxx and xxxx; • There is need to expand the source of money for the fund to include income from providers of private postal services etc	Make amendments to the KICA to create the Authority	An Independent USF may expense funds for the underserved communities' faster
2	Establishment of Kenya Rural Broadband Planning and Deployment Authority (KERBPDA)	The digital divide between Urban and rural areas is four times the gender divide according to WB and there is need to develop a specific body that create both short- and long-term strategic action plan towards the deployment of digital infrastructure or any other to the rural areas by also creating a conducive environment for investment and managing fair competition.	Broadband strategy	It will focus on the underserved and unserved regions towards achieving a digitally inclusive communities through availability of internet infrastructure. This will open up rural areas for businesses, exploration and investment schemes. "We can't be in Nairobi talking 5G network deployment when somewhere in Turkana is having less than 3G connectivity"
3.	Devolving of	The current USF lacks presence in the	USF should be	Alternatively all USF

ITEM/NO	LEGAL REFORM PROPOSAL	JUSTIFICATION	OTHER AFFECTED LAWS	OTHER COMMENTS
	Universal service funds to counties - counties are focal points of country development	counties and have been unable to address challenges of telecommunication connectivity in the county. For example for the last three years in laikipia county we have wrote dozens of emails and call asking for connectivity to some parts of laikipia north to no avail. If usf was devolved to counties, we would have solved the issues of mobile connectivity long time ago	authority with officers and offices in the county	funds should be channeled to counties to address last mile connectivity
4.	Establishment and enactment Digital Equity Act	Objective: Support the closure of the digital divide & promote equity and digital inclusion, so that "individuals and communities possess the information technology capacity that is needed for full participation in the society and economy of Kenya."		This will supplement the Digital Equity Plans by creating a pool of resources to be funded. Currently USA has Digital Equity Act of 2021 with an allocation of 2.75 Billion dollars annually. 22-01-20 NTIA IIJA - Digital Equity overview - Final Presentation.pdf
5.	KEBS should not have to guide ICTA on ICT standards but the two may collaborate.	*For (2), ()3, (4), the issue may be a need for clarification through awareness and capacity building efforts, such as the ICT and telecommunications regulations offered at AFRALTI.*		There are global software standards such as ISO, and IEEE. If we develop national standards, we might end up limiting the usage of software within the country only, limiting the potential of innovators to export their products.

3. Software and Software Services.

3.1. Introduction.

The Software and Software Services Working Group stands at the forefront of Kenya's digital transformation journey. In today's increasingly interconnected world, the importance of software development and services cannot be overstated. This sector serves as a catalyst for economic growth, innovation, and global competitiveness. This working group recognizes the multifaceted benefits that a thriving software industry can bring to Kenya's economy, ranging from job creation and foreign exchange earnings to enhanced technological infrastructure and increased tax revenue.

As technology continues to evolve rapidly, the ICT Taskforce has identified strategic imperatives to leverage Kenya's potential in software and software services. These include establishing a conducive regulatory environment, fostering innovation ecosystems, and promoting digital talent development. Through a comprehensive set of recommendations and suggestions, the Working Group aims to position Kenya as a hub for software innovation and entrepreneurship in Africa.

3.2 Importance:

- **Job Creation:** Software development and services contribute to employment opportunities across various sectors.
- **Foreign Exchange:** Export of software products and services generates foreign exchange earnings for the country.
- **Innovation:** Software innovation fosters technological advancement and societal progress.
- **Increased Tax Revenue:** Thriving software industry leads to higher tax revenues for government coffers.
- **Global Competitiveness:** Developing high-quality software enhances Kenya's competitiveness on the global stage.
- **Technological Infrastructure:** A robust software ecosystem supports the development of technological infrastructure.

3.3. Government Sector Working Group Submissions:

Institutional Changes:

- Rename ICT Authority to Digital Innovation and Technology Authority (DITA) to reflect its focus on innovation.
- Rename Communications Authority (CA) to ICT Regulatory Authority (ICTRA) or Digital Communications Regulatory Authority (DCRA) for clarity.
- Establish a center of excellence and research and development (R&D) facility at Konza to drive innovation.
- Develop a code of practice and Consumer Act to ensure ethical software development and consumer protection.

Procurement Laws:

- Advocate for clearer procurement laws that prioritize local companies for software outsourcing.

Research and Innovation:

- Launch programs to support research and innovation in software products to advance industry.

Center of Excellence:

- Establish a center of excellence to adopt best digital technologies and practices, and develop high-quality software products.

3.4. KICTANet Recommendations:

- Promote a software-oriented society to foster a culture of innovation and entrepreneurship.
- Aim to position Kenya as Africa's Software Product and Services Hub.
- Create a software product development fund to support startups and innovation.
- Develop a policy on open-source software usage inspired by successful models like South Africa's.
- Organize annual software innovation challenges and provide grants to winning startups.
- Address the gender gap in the software development field through targeted initiatives and programs.
- Ensure digital accessibility to promote equality and inclusion in the software industry.
- Address language barriers in software development skills through language-focused training

programs.

- Provide tax breaks and subsidies for software company startups to encourage growth and innovation.

- Offer subsidies for government cloud services to promote digital transformation in the public sector.

- Advocate for the establishment of a Software and Software Services Policy/Act, overseen by the Office of the Software and Software Services Commissioner, to regulate and promote the software industry effectively.

3.5. Conclusion.

In conclusion, the Software and Software Services Working Group, presents a compelling vision for Kenya's digital future. By recognizing the pivotal role of software in driving economic growth and societal progress, the group has outlined actionable recommendations to harness Kenya's software potential effectively. From institutional reforms to fostering innovation ecosystems and promoting digital inclusion, the Working Group's proposals offer a comprehensive roadmap for unleashing Kenya's software prowess.

As Kenya continues its journey towards becoming a digital powerhouse, it is imperative to prioritize the development of a vibrant and sustainable software ecosystem. By implementing the recommendations put forth by Mr. Kariuki's group, Kenya can unlock new opportunities for job creation, innovation, and global competitiveness in the dynamic landscape of software and software services. With concerted efforts and strategic investments, Kenya is poised to emerge as a leading destination for software innovation and entrepreneurship in Africa and beyond.

4. Postal, Courier and E-commerce

4.1. Introduction

The Postal Corporation of Kenya stands at a pivotal juncture, poised for significant reform to adapt to the digital age, enhance service efficiency, and ensure financial sustainability. Proposals spanning various facets of the corporation's operations have been presented, each aiming to address specific challenges and capitalize on opportunities. These proposals encompass mandates for government entities, legislative amendments, debt restructuring, and initiatives to expedite the implementation of a National Addressing System. As Kenya navigates the complexities of modernizing its postal services, careful consideration of these proposals and their accompanying recommendations is imperative to chart a path forward that fosters innovation, inclusivity, and robust service delivery.

4.2. Government Sector Working Group Submissions:

1. Proposal 1:
    a. Mandate all Ministries, Departments, and Agencies (MDAs) to use Postal Corporation of Kenya for delivery, offering benefits like centralized service, cost savings, streamlined processes, national coverage, and enhanced security.
    b. Drawbacks include limited options for MDAs, concerns about service quality, and risks of dependency on a single provider.
2. Proposal 5:
    a. Amend the Postal Corporation of Kenya Act to align with digital transformation and the 2010 Constitution.
    b. Recommendations include incorporating provisions for digital services, universal access, governance improvements, and data privacy measures.
3. Proposal 6:
    a. Clear the corporation's debts but emphasize accompanying reforms for long-term positive impacts and fiscal responsibility.
4. Proposal 9:
    a. Expedite implementation of a National Addressing System in Kenya through technology investment, stakeholder collaboration, public awareness campaigns, legislative frameworks, and workforce development initiatives.

4.3. KICTANet Recommendations:

- Overhaul laws governing the Postal Corporation of Kenya to accommodate modern postal services and broader mandates.

- Collaborate with 'boda boda' operators for last-mile delivery.

- Enhance institutional frameworks within the Ministry of Information, Communications, and the Digital Economy.

- Establish commercial subsidiaries via joint ventures.

- Reform the Universal Service Obligation (USO) to include digital services, compensation mechanisms, and adjustments to delivery standards and post office accessibility.

- Implement regulatory reforms addressing undeliverable postal items, online tariff displays, sector-specific interconnection regulations, postal safety and security standards, and quality of service (QoS) metrics for parcel delivery.

ITEM NO.	LEGAL REFORM PROPOSAL	JUSTIFICATION	OTHER AFFECTED LAWS	OTHER COMMENTS
	b) Review USO: Provide for compensation of USO in the legal framework. Use USF to fund USO. Determine the cost of USO to Posta.	The reserved area is no longer a viable compensation mechanism for the USO. This has led to the closure of offices especially in remote areas. thus, compromising universality and inclusion.	KICA Section 84K	E-substitution, competition from both licensed and unlicensed players, the decline in mail volumes and changes in customer needs make the reserved area unprofitable and the USO unsustainable.
2	**Review the Reserved area** Consider the following options: a) Remove the exclusivity of Posta to handle items up to 350grams and give Posta pricing flexibility for items under this category b) Phase out to 100gms c)Remove the 5 times rule requirement for the private operators who handle items in	Give Posta flexibility in pricing that takes into consideration cost and market conditions. Opening up for competition in line with the National ICT guidelines.	KICA,1998 and amended.	Enforcement of the 5 times rule has remained a challenge to the regulator. Posta faces undue competition in this market segment where the pricing is regulated

	the exclusive area. d)Retain exclusivity for letter boxes and stamps.			hence the need to also give them flexibility in pricing for items in this market segment.
3	**Review Quality of Service conditions** for the USO:	1)With the decline in Mail volumes, the standard for a number of deliveries per week can be lowered from the current 6 days delivery per week to 4 days (for Head post offices) and for standard mail items to ease the financial burden on Posta. 2) Review the delivery standard from 65% of the mail within the stipulated timelines to 80% of the mail.	License conditions for Basic Postal services	The standard of 65% has been in force for the last 25 years and does not take into account the improvements in the road network. The Public postal licensee reports always surpassing the standard hence the need to review upwards.
4	**USO-specify the number of post offices** per location/sublocation. A franchising /partnership business model would be key.	Increase accessibility of services to all citizens in line with the current National ICT policy. Necessary to deliver inclusion and grow rural e-commerce and deliver other government services.	KICA,1998 and as amended.	A key action in this regard is to stop further closure of post offices especially in far-flung areas deemed unviable by invoking USF use to keep them open, Strategize how to make them relevant in rural areas. Enhance regulatory oversight in this regard.
5	**Review regulations on undeliverable postal and courier** items from 3 months to 1	Improved communications with clients now make	KICA (Postal and Courier Services) Regulations, 2010.	This will lower the cost of doing

		delivery easier, limited space and lengthy periods are a costly burden to operators, given the growth of parcels and e-commerce items making it hard for operators to keep items for long.		business.
6	Review regulations on displaying tariffs and other customer information to include on company websites in addition to the premises.	Ease of access to information By consumers. Monitoring	CA (Postal and Courier Services) Regulations, 2010.	Consumers are more likely to look for information online. hence the need to provide all related information online.

4.4. Conclusion.

The proposals outlined present a comprehensive framework for revitalizing the Postal Corporation of Kenya and positioning it as a key player in the digital era. By embracing mandates for government entities, legislative amendments, debt restructuring, and initiatives to expedite the implementation of a National Addressing System, Kenya can modernize its postal services to meet the evolving needs of its citizens and businesses. However, the success of these reforms hinges on robust stakeholder engagement, legislative action, and a commitment to innovation and inclusivity. Through concerted efforts, Kenya can ensure that its postal services remain relevant, efficient, and accessible in an increasingly digitized world.

5. Data Governance and Emerging Technologies.

5.1. Introduction:

In the face of rapidly evolving technology and data landscapes, the Sector Working Group has meticulously crafted a series of proposals aimed at reshaping institutional structures, regulatory frameworks, and approaches to emerging technologies. These proposals represent a concerted effort to address the intricate challenges posed by data governance and technological advancements, with a firm commitment to upholding principles of independence, inclusivity, and accountability.

5.2. Government Sector Working Group Submission:

1. *Institutional Structure:* The proposals underscore the imperative of safeguarding the independence of the Office of the Data Protection Commissioner (ODPC) while cautioning against the excessive centralization of data governance within the executive branch. Recognizing the vital role of the ODPC in ensuring data privacy and protection, efforts are directed towards preserving its autonomy while maintaining a balance with governmental oversight.

2. *Regulators:* Rooted in principles of human rights and intersectional feminism, the regulatory frameworks advocated by the working group prioritize decentralized approaches to digitization and digital equity. By grounding regulations in these principles, the group aims to foster inclusive and equitable technological development while guarding against potential biases and disparities.

3. *Opening up Data Economy and Emerging Tech:* Central to the proposals is the democratization of data, alongside investments in training and upskilling initiatives to equip individuals with the necessary skills for participation in the digital economy. Furthermore, recommendations include allocating funding for research and incubation at both national and local levels to spur innovation and address emerging technological challenges.

5.3. KICTANet Recommendations:

- To ensure the independence of the ODPC, structural changes such as the establishment of a board are proposed, alongside measures to empower the Data Protection Act. By fortifying the legal framework surrounding data protection, the group aims to secure the autonomy of

regulatory bodies and uphold fundamental rights.

- Beyond the exclusive focus on artificial intelligence (AI), the recommendations call for a comprehensive approach to regulating emerging technologies, encompassing diverse innovations such as the Internet of Things. This includes the establishment of appropriate oversight bodies tailored to the specific expertise and authority required for effective regulation.

- Drawing from international best practices, particularly those outlined in the EU framework, amendments to the Data Protection Act are proposed to provide comprehensive protection for vulnerable groups, including children and individuals undergoing criminal proceedings. By incorporating insights from established frameworks, the group seeks to enhance the efficacy of data governance and address emerging challenges in a rapidly evolving technological landscape.

ITEM / NO	LEGAL REFORM PROPOSALS IN DRAFT DOC or PROPOSED BY WG	PROPOSAL	JUSTIFICATION	OTHER AFFECTED LAWS	OTHER COMMENTS
a)	Establish a Data Governance Council to sit at the Office of the President with representation from across several sectors (public, private, civil society, academia, research institutions, etc)	Our proposals in this section are delineated into two aspects: 1. There is no need to create an additional office; instead we can leverage existing regulatory bodies. For instance, the framework for data governance may be integrated into the jurisdiction of the office of the data protection commissioner (the **ODPC**), potentially	The suggested roles of the Council seem geared towards the restructuring of public policy entities to capitalise on data utilisation. Our proposals aim to prevent redundancy with the current office of the ODPC which will strengthen the ODPC. Our proposals also seek to ensure a more efficient allocation of resources while fostering coherence in the management of both personal and non-personal data. Further, all branches of	Data Protection Act, 2019 (the **DPA**) The Constitution of Kenya, 2010 - constitutional provisions on governance e.g. Art. 10 and Bill of Rights	

		appointing additional commissioners to oversee governance pertaining to non-personal data. 2. If the establishment of the Council becomes imperative, then the aforementioned office must undergo restructuring and be founded in law. Some of our proposals include: • position the Council within the Ministry of ICT to facilitate the cultivation of extensive partnerships; • enhance the diversity of the Council's composition to include voices from underrepresented demographics such as public interest technologists and social scientists; OR • entrust the Council with the responsibility of supervising data sharing and utilisation for a stipulated 5-year duration, allowing for the identification of regulatory focal	government require individuals proficient in handling data, thus prioritising a digital and data literacy program for civil servants represents a more judicious allocation of resources. Independence of the ODPC has a direct impact on Kenya's positioning as a global partner in digital trade. This is usually anchored on the attainment of an adequacy decision showing that Kenya's data protection regulatory framework is equal to its partners for example the European Union. The failure to maintain the current state of independence of the ODPC shall mean that Kenya shall fail the adequacy threshold. Using the EU as an example, adequacy decisions lead to an increase in digital trade by 6-14% through permitting personal data to flow freely to and from the EU. Kenya stands to gain in terms of foreign investments by positioning itself as a trusted regional data hub if the independence of the ODPC is maintained.		

		points during this period.			
b)	Establish the Office of Chief Data Officer to sit at the Ministry of Information, Communications and the Digital Economy	As set out in our proposal above on the Data Governance Council, there is no need to create an additional office. Instead we can leverage existing regulatory bodies such as the ODPC or expand the mandate of an existing body eg Communications Authority to deal with non personal data.	Our proposals are anchored on avoiding overlap with the existing ODPC, ensuring the efficient allocation and use of national resources; and fostering a unified governance of both personal and non-personal data.	DPA Kenya Information Communications Act, 1998 (**KICA**)	
c)	Develop a National Data Strategy to provision for the streamlined use, and re-use of data in the country for better development impacts	This proposal is supported with suggested principles for consideration.	A comprehensive National Data Strategy should include the following key components: • **Vision and Objectives:** Clearly articulate goals for data governance to drive development	DPA Data Governance Framework by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives.	

			outcomes. The vision and objectives should align with existing Data Governance Frameworks such as the Framework put in place by the Ministry of Agriculture, Livestock, Fisheries and Cooperatives. • **Governance Framework**: Put in place a legal framework to govern data collection, storage, sharing, and analysis in order to ensure compliance with set legal standards. If applicable, the establishment of any offices related to data governance should be founded on this Strategy rather than a separate Executive Order. • **Infrastructure and Interoperability**: Develop reliable data infrastructure allowing seamless exchange across		

			agencies and sectors.		
			• **Quality and Standards:** Implement mechanisms ensuring data consistency, accuracy, and reliability.		
			• **Access and Sharing:** Design policies promoting open data access while safeguarding privacy, confidentiality and intellectual property.		
			• **Capacity Building**: Invest in enhancing data literacy among stakeholders for informed decision-making. This could include upskilling existing workers or replacing them if they cannot be upskilled.		
			• **Innovation and Collaboration:** Encourage innovation and collaboration to address development challenges.		
			• **Monitoring and Evaluation**: Establish		

			mechanisms to monitor implementation and gather feedback for continuous improvement.		
			• **Ethical and Legal Framework:** Develop guidelines to ensure responsible data use and protect privacy rights. This is especially crucial where the Strategy will include personal data and therefore will also apply to sensitive personal data such as health data and data relating to children.		
			• **Public Awareness**: Promote awareness to foster trust and encourage citizen engagement in data initiatives.		
			• **African centric values**: Inculcate African perspectives such as shared prosperity into the digital economy.		

d)	Develop a National Artificial Intelligence (AI) Strategy to help formalize the safe commercial and societal use of AI.	Proposal supported with a call to study emerging regulatory trends in governance of AI eg voluntary/self regulation, light touch regulation, risk-based approach and use of old law approaches such as torts law. Approach multiple stakeholders with diversity of views.	Considering Kenya's objective to use AI for human development, a mix of approaches is recommended for a 5-10 year period then a review.		

5.4 Conclusion:

In summary, the proposals put forth by the Sector Working Group represent a holistic approach to addressing the multifaceted issues surrounding data governance and emerging technologies. By prioritizing principles of independence, inclusivity, and accountability, these recommendations seek to navigate the complexities of technological advancement while safeguarding fundamental rights and promoting equitable access to opportunities. As society continues to grapple with the transformative impacts of technology, these proposals offer a roadmap for adaptive governance structures and regulatory frameworks that are responsive to evolving needs and challenges.

6. Cyber-Security.

6.1 Introduction:

As the digital landscape evolves, the importance of cybersecurity cannot be overstated. In this era of rapid technological advancement, the Cybersecurity Working Group played a pivotal role in shaping policies and strategies to safeguard businesses and individuals against cyber threats. The cybersecurity group raised concerns over recent developments, such as the expansive inspection rights granted by CMCA regulations, and the potential oversight of regional and global harmonization, underscoring the need for a comprehensive reassessment of current approaches. This delves into key submissions, recommendations, and insights aimed at enhancing the effectiveness and inclusivity of cybersecurity initiatives, ensuring they align with both international standards and local priorities.

6.2 Government Sector Working Group Submissions:

1. The necessity to demilitarize cybersecurity monitoring and reporting, emphasizing the importance of fostering an environment conducive to reporting without fear.
2. Advocating for the continued role of the CA in monitoring, advising, and escalating incidence reports to NC4, ensuring a streamlined process.
3. Recognizing the exponential growth of social media and its impact, suggesting management within existing frameworks like CMCA.
4. Highlighting the potential abuse of policies and frameworks, stressing the need for vigilance and oversight.
5. Proposing the certification and promotion of cybersecurity through established educational frameworks in universities and TVET institutions.
6. Advocating for the localization of international standards and laws, tailored to meet the specific needs of the local context.
7. Suggesting incentivization schemes, funding, and protection measures to nurture cybersecurity entrepreneurship within the sector.
8. Urging for clarity within the Consumer Protection Act regarding the liability of service providers in cases of breaches or compromises.
9. Recommending the devolution of certain operations of NC4 to the county level, recognizing the specificity of cybersecurity issues in various counties.

6.3 KICTANet Recommendations:

- Addressing overlaps among government agencies to streamline efforts and avoid redundancy.

- Strengthening the Consumer Protection Act to ensure adequate protection for consumers, especially concerning cyber threats faced by local consumers.

- Tackling misinformation and disinformation within cybersecurity discourse through comprehensive strategies.

- Ensuring a multi-stakeholder approach in institutions to harness diverse expertise and perspectives.

- Reconsidering proposals to regulate social media within constitutional boundaries, respecting freedom of expression.

- Aligning cybersecurity policies and laws with international standards such as ISO to uphold global best practices.

KICTANet CYBERSECURITY WORKING GROUP FEEDBACK AND RECOMMENDATIONS

Feedback and Recommendations

#	SECTOR	MINISTRY/ACT	POLICY REFORMS	COMMENTS AND RECOMMENDATION
1	Policy Reforms	Ministry of Information, Communications and the Digital Economy	Develop the Social Media Management Policy	The growth and impact of social media should be managed through existing frameworks. Regulations and Policy has the potential to be abused to undermine freedom of expression and bottleneck innovation around the space.
2	Policy Reforms	Ministry of Information, Communications and the Digital Economy	Propose that the renamed CA (now ICTRA) enforce standards developed by KEBS through policy directives.	The proposed mandate can be actualized without a name change of the communication authority. More efforts should be put towards establishing synergy between CA and other stakeholders.
3	Policy Reforms	Ministry of Information, Communications and the Digital Economy	Assign CA the role of Cybersecurity Monitoring in ICT and telecommunication sectors through a policy intervention.	There lacks clarity on the nature of monitoring being referenced. We presume it is this in the context of monitoring and evaluation point specifically monitoring

			of security events and alerts.
			Monitoring (events and alerts) of the ICT and telecommunication sectors is very broad (in this context). Specifics need to be elaborated to get a clear scope.
			The ICT and Telecommunication sectors already have organizational SOCs which are supported by the Sector CERTS. The mentioned sectors are regulated and are required to report incidents to the regulators. Efforts will be better utilized to improve the existing frameworks and processes
			Assigning the monitoring role to CA may not add any value and might introduce operational complexities that might lead to security risks.
			Additionally, CA and NC4 will not have the capacity to effectively do the monitoring. The KE-CIRT via the CA should continue with its mandate of being POCs and regulators.
4	Policy Reforms	Ministry of Interior & National Administration and MOICDE	Develop a National Cybersecurity Policy	The policy should be based on and built upon the existing cybersecurity strategy. Review the National Cybersecurity Strategy.
5	Policy Reforms	Ministry of Interior & National Administration and MOICDE	Establish a National Cybersecurity Agency and a National Cybersecurity Operations Centre	This requires more interrogation to ensure there is a good separation of responsibilities. We currently have NC4, KE-CIRT, and other sectoral CERTs. How will the proposed National Cybersecurity Agency and NCSOC be different? At the bare minimum, the timelines for this should be long-term and not immediate
6	Policy Reforms	Ministry of Interior & National Administration and MOICDE	Establish and capacitate specialized cybercrimes unit to investigate cyber crimes for prosecution of cyber criminals	The DCI already has the Cyber Crime Unit—investigations under the Serious Crime Unit. A better recommendation will be to capacitate the specialized unit and have a liaison from either NC4 or CA seconded

				to the DCI units.
7	Policy Reforms	Ministry of Investments, Trade and Industry & MOICDE	Empower Kenya Bureau of Standards (KEBS) to guide the ICT sector in developing software standards through policy initiatives.	The proposed guidelines should include baseline cybersecurity standards around key areas that can exploited resulting in a national-level impact on e.g cryptography, OEM support, standards similar to FedRamp, FISMA, etc
8	Policy Reforms	Ministry of Youth Affairs, Creative Economy and Sports (KENIA) & MOICDE	Finalize and approve the existing draft innovation policy	Structure the innovation policy to fund and promote innovation and research in the cybersecurity sector. National innovation contests should be held in collaboration with stakeholders to cultivate an innovation mindset and spirit.
9	Legislative and Regulatory Ref	Kenya Information and Communications Act	Reconsider the name of CA to encompass its expanded mandate. Suggested names given as ICTRA (Information Communication and Technology Regulation Authority) or Digital Communications Regulatory Agency (DCRA)	The proposed mandate can be actualized without a name change of the two entities. In 2014 CA underwent a name change from CCK.
10	Legislative and Regulatory Ref	Kenya Information and Communications Act	Integrate cybersecurity roles within the CA	The CA already houses the national CIRT which has a cybersecurity mandate. Clear roles and responsibilities should be achieved between the CA, NC4 and Interior, and better synergy should be achieved.
11	Legislative and Regulatory Ref	Kenya Information and Communications Act	Empower CA to punish entities operating without the requisite licenses.	CA already has mechanisms to punish entities via license revocation and fines. The prosecutorial mandate should remain the responsibility of the ODPP
12	Legislative and Regulatory Ref	Kenya Information and Communications Act	Develop a legislative framework for data centers and cloud services, allowing the CA to penalize entities operating without proper licenses.	CA already has mechanisms to punish entities via license revocation and fines. The prosecutorial mandate should remain the responsibility of the ODPP

13	Legislative and Regulatory Ref	Kenya Information and Communications Act	Enhance CA's role as the ICT and Telecommunications Sector Cybersecurity Operations Centre	CA should maintain its regulatory and oversight role, and support the establishment of more sector CIRTS e.g. CII while at the same time supporting the maturity of existing sector CIRTS e.g. KENET, ICT Authority. This is better handled by sector CIRT where applicable e.g. TESPOK, KBA etc.
14	Legislative and Regulatory Ref	Kenya Information and Communications Act	Amend KICA to align with the evolving dynamics of the software industry. These proposed changes encompass regulations for Software and Software Services, intending to establish a thorough legal framework for the sector.	This alignment should factor in the integral role cybersecurity plays in the digital era in the facilitation, transfer of information and communication. Emerging trends like disinformation, malinformation and misinformation should be factored in.
15	Legislative and Regulatory Ref	Kenya Information and Communications Act	Create a regulatory framework for datacenters and cloud services *	The framework should be purely regulatory. The regulations by KEBS and CA around cybersecurity should be factored in.
16	Legislative and Regulatory Ref	Computer Misuse and Cybercrimes Act (CMCA) 2018	Amend the CMCA 2018 to establish a National Cyber Security Agency and Cybersecurity Operations Centre (National, Sector and CII organisations)	The CMCA 2018 should not be amended yet. The value of renaming NC4 to NCSA has not been outlined NC4 already has the mandate to establish CSOC and similar establishments as part of its roles and service delivery. We recommend that NC4 devolve some of its operations to the county level for efficient operations. This can include the formation of county specific cyber security councils
20	Legislative and Regulatory Ref	Consumer Protection Act	Amend the Act to extend quality of service obligations to infrastructure providers to ensure reliability and affordability of digital services.	The extension should include the secure provision of services to consumers. Secure in this context will require provider to show proactive steps and measures to protect their users from cybersecurity threats
21	Legislative and Regulatory	Consumer Protection Act	Amend the Act to facilitate seamless e-commerce and to protect consumers who use e-	The extension should include the secure provision of services to consumers. Secure in this context will require providers to show proactive steps and

Ref		commerce *	measures to protect their users from cybersecurity threats.

6.4. Conclusion:

The proposals presented underscore the imperative for proactive measures to enhance cybersecurity while safeguarding privacy and promoting innovation. By embracing a multi-stakeholder approach, addressing gaps, leveraging existing frameworks, and fostering collaboration, the proposals by the cybersecurity working group aims to significantly fortify the nation's cybersecurity landscape in line with international standards and local needs.

7. Innovations, Enterprises, Digital Talent and Jobs.

7.1. Introduction:

The Innovations, Enterprises, Digital Talent, and Jobs Working Group meticulously crafted a comprehensive set of recommendations in response to the imperatives identified by the ICT Taskforce. These recommendations are designed to address critical facets of Kenya's digital landscape, aiming to propel innovation, cultivate entrepreneurial endeavors, nurture digital talent, and foster job creation. Through a thorough examination of existing challenges and opportunities within the digital domain, the working group has formulated a strategic roadmap to navigate the complexities of the evolving digital economy.

7.2. Government Sector Working Group Submissions:

Review of Legislation:

- Conduct a comprehensive review of the Employment Act and SEZ regulations to ensure alignment with the evolving digital landscape.

Digital Workers Strategic Plan:

- Develop a strategic plan to optimize the utilization of digital talent and resources, addressing skill gaps and fostering workforce development.

Amendment of KICA for Board Diversity:

- Propose amendments to the Kenya Information and Communications Act (KICA) to enhance board diversity within the digital sector, promoting inclusivity and representation.

Revision of ICT Device Taxation:

- Revisit taxation policies concerning ICT devices to alleviate financial burdens on digital entrepreneurs and facilitate accessibility to essential tools.

Startup and BPO Tax Incentives:

- Introduce tax incentives aimed at incentivizing startups and business process outsourcing (BPO) initiatives, fostering growth and innovation within the digital ecosystem.

Digital Nomads Strategy:

- Develop a comprehensive strategy to accommodate digital nomads, recognizing their unique contributions to the digital economy and fostering an enabling environment for their participation.

Specialized Cyber Courts:

- Establish specialized cyber courts to address legal issues specific to the digital domain, ensuring expedited resolution of cyber-related disputes and enhancing regulatory compliance.

Data Protection Impact Assessments:

- Implement data protection impact assessments to evaluate and mitigate potential risks associated with the processing of personal data, ensuring compliance with data protection regulations.

7.3 KICTANet Recommendations:

Policy and Legislative Reforms:

- Advocate for the enactment of policy and legislative reforms as foundational elements of the proposed framework, creating a regulatory environment conducive to innovation, job creation, and consumer protection.

Regulatory Environment Design:

- Design regulatory frameworks that support innovation and job creation while safeguarding consumer interests, ensuring a balanced approach to digital development.

Strategic Collaborations and Partnerships:

- Foster strategic collaborations and partnerships to facilitate human capital development, particularly through initiatives aimed at enhancing the accessibility and affordability of digital resources.

Labour Dispute Resolution Mechanisms:

- Establish mechanisms, such as a digital workers wages council, to resolve disputes related to wages and working conditions in the digital sector, ensuring fair and equitable treatment of digital workers.

Public Sector Digitization Initiatives:

- Implement a Public Digital Work Initiative sandbox, integrating digitally enabled work outsourcing into public sector digitization efforts to catalyze job creation, particularly among Kenya's youth demographic.

Digital Skills Baseline Survey and Strategy:

- Conduct a digital skills baseline survey to assess skill gaps and formulate a digital

innovation skill strategy, addressing the evolving demands of the digital economy and fostering skill development initiatives.

Cost Reduction of Devices and Gadgets:

- Advocate for the reduction or elimination of taxes on digital devices, particularly in rural areas, to enhance accessibility and affordability, thereby facilitating broader participation in online jobs and digital entrepreneurship.

Special Economic Zones Flexibility:

- Review special economic zones to enhance flexibility and streamline processes, such as issuing EPZ licensing per piece and shortening licensing periods, to attract investment and stimulate growth within the digital sector.

7.4. Conclusion:

The recommendations put forth by the Innovations, Enterprises, Digital Talent, and Jobs Working Group signify a concerted effort to navigate the intricate dynamics of Kenya's digital economy. By addressing pivotal issues such as labor disputes, public sector digitization, skill development, and device affordability, these proposals aim to lay the groundwork for a more inclusive, dynamic, and sustainable digital ecosystem. However, it is imperative to acknowledge and address feedback and concerns raised during the consultation process, particularly regarding industry-specific regulations and diversity promotion, to ensure the efficacy and inclusivity of the proposed initiatives.

8. Media, Broadcasting, PR and Communications.

8.1. Introduction.

The Communications Sector Working Group meticulously outlined a comprehensive set of proposals aimed at transforming the landscape of communication infrastructure, content distribution, and intellectual property rights within Kenya. With a keen eye on equitable access, bridging digital divides, and protecting intellectual property, these proposals delve into various areas of consideration critical for the evolution of the communications sector.

8.2. Submissions:

1. Infrastructure:
   a. Ensure equitable access to communication technologies.
   b. Address digital divides across gender, geography, and socio-economic status.
2. Content:
   a. Define roles of producers, consumers, and distributors.
   b. Determine presentation platforms for content.
3. Intellectual Property and Copyright:
   a. Safeguard creators' rights in the digital realm.

8.3. KICTANet Recommendations:

1. Transform KBC into a public broadcaster for enhanced accountability.
2. Oppose renaming CA, advocating against unnecessary change.
3. Merge agencies like Kenya News Agency to streamline operations.
4. Establish transparent spectrum allocation processes.
5. Create an independent Council of the Future.
6. Develop a comprehensive media policy and strategy under Media Council of Kenya purview.

8.4. Proposed Guiding Principles:

- Expand definition of 'media' across legislation and policy.
- Expand government role to include facilitation beyond regulation.
- Ensure independence of media and communications state-related agencies.
- Anticipate development and use of emerging technologies.

ITEM/ NO	LEGAL REFORM PROPOSAL	JUSTIFICATION	OTHER AFFECTED LAWS	OTHER COMMENTS
1.	Overhaul and update the Books and Newspapers Act (CAP 111)	It still refers to 'the Colony'; Needs updated guidance on the deposit and archiving of various forms of media; Should include digital media for the purposes of cultural heritage; Should restrain State power in the seizure, control and punishment of production and distribution of traditional, digital and emerging media	Public Archives and Documentation Services Act Copyright Act of Kenya	1. Update the names and mandates of publicly owned media entities to reflect current political, socio-economic and technological realities 2. Recognize 'media' as a broad term incorporating traditional, digital and emerging forms (e.g. print (books, newspapers, magazines), broadcast (TV, radio, digital (mobile, social), video games, etc), and extend those definitions to legislative/policy documents.

2.	Adopt a policy/guideli nes to complement Children Act, 2022.	Children Act, 2022 is futuristic but needs further expounding.	Basic Education Act, Computer Misuse and Cyber Crimes Act and any related legislation	1. develop a policy and guideline on media regulation of children data by regulating certain aspects such as sharenting.
		The cabinet secretary is obligated to develop relevant policies, laws and programs. The CS needs to develop a digital rights and empowerment policy guidelines that covers all aspects of education of children concerning digital and emerging technologies.		
				2. inculcate adaptive technologies legislations to not only cover children but also other special interest groups such as Persons with Disabilities (PwDs), for instance to ensure that AI benefits all persons with various disabilities.
		It talks about the rights of the child and elevates the best interest of the child as the primary consideration.		
		The Children Act recognises that children are susceptible to online abuse including cyber bullying and cyber		

14

		stalking. It narrowly talks of the electronic devices they may be abused from. It is prudent for the expansion of this provision to broadly define types of electronic devices, information technology as well as include media. children are not only consumers but also producers that need to be recognised and their rights protected as such.		
3.	Review the Media Council of Kenya Act beyond separating it from the Media Complaints Commission	- The body focuses on a definition of 'media' as relates to journalism. This leaves out the digital and emerging forms of media that are being used in varied ways to communicate, provide information, etc - Additionally, the emphasis in MCK is regulation and the proposal is for government entities to expand their roles to include facilitation, protection and empowerment of the citizenry		Rather than have multiple entities concerned with the oversight of different media, having one entity that broadly recognizes different media would contribute towards greater government efficiency and more prudent use of resources.

Table No.	Proposed recommendation	Committee response

1.	Develop a media policy and strategy to consolidate content regulation under MCK, guide the content and media sector development into the future, encourage media organisations to prioritise local content while protecting intellectual property rights, and establish a content creator's agency through policy initiatives.	Content regulation is best left at CA with KFCB being moved to CA. There were differing views on the role MCK should play, one being that it focuses on monitoring and enforcing media and journalistic standards while another proposes a more expanded view of the council to incorporate different kinds of media and to go beyond providing guidance to the news media. This will likely overburden the regulator and suffer from lack of resources and personnel; matters of content regulation can be better handled by another agency while MCK retains their current role.
2.	Propose that the renamed CA (now ICTRA) enforce standards developed by KEBS through policy directives.	not necessary, no value add The agency should also be clearly
3.	Kenya Information and Communication Act - Reconsider the name of CA to encompass its expanded mandate. Suggested names given as ICTRA (Information Communication and Technology Regulation Authority) or Digital Communications Regulatory Agency (DCRA)	The suggested name changes (ICTR or DCRA) place emphasis on CA as a regulator. Yet CA also plays other roles including infrastructural facilitation, consumer protection, etc. Suggestion: The name CA is retained. Questions to consider: does including 'regulatory' in the name emphasize regulation as the overriding role of the agency? Should that be its overriding role?
4.	Data Protection Act - the act should incorporate guidelines for the responsible sharing of public data for research purposes, thereby promoting innovation while upholding data privacy.	Additionally, amend the act to: - require all government entities to: have secure public platforms such as websites; - guarantee the safe use and storage of data including

|		citizens' private information
		- have an officer per government department/agency responsible for the safety, protection and ethical use of citizen data
		- have and enforce severe penalties for the misuse, misappropriation, mishandling of citizen data.

8.5. Conclusion

In conclusion, these proposals offer a forward-looking framework for the advancement of Kenya's communications sector. By prioritizing equity, transparency, and innovation, they lay the groundwork for a more inclusive and resilient digital ecosystem. Moreover, the recommendations underscore the need for proactive governance, harmonization of regulations, and continual adaptation to emerging technologies. Embracing these proposals would not only address current challenges but also position Kenya at the forefront of communication innovation and development.

9. Summary Conclusion of the Report.

The culmination of efforts by the Sectoral Working Group on Policy, Legislative & Regulatory Reforms in the ICT Sector, alongside the dedicated thematic technology working groups led by Kenya ICT Action Network (KICTANet), marks a significant milestone in Kenya's journey towards a vibrant digital ecosystem. Initiated under the visionary leadership of the Cabinet Secretary for ICT, Mr. Eliud Owalo, and guided by a mandate to foster growth and innovation, these collaborative endeavors have showcased the power of collective wisdom and expertise in shaping adaptable frameworks aligned with the nation's digitalization goals.

Through rigorous exploration of challenges and opportunities within the digital landscape, stakeholders from diverse backgrounds have contributed invaluable insights and recommendations. These recommendations, presented to the esteemed ICT Task Force, represent a shared vision for an ICT ecosystem that champions inclusivity, equity, and prosperity. As we stand on the threshold of unprecedented technological advancements, the roadmap outlined in this report serves as a beacon guiding Kenya towards a future where innovation knows no bounds and the benefits of the digital revolution are shared by all. With a commitment to transformative action and a shared sense of purpose, stakeholders are poised to effect meaningful change in the policies and regulations governing the ICT sector.

The collaboration fostered by the thematic working groups, under the leadership of esteemed experts, underscores a commitment to robust and inclusive dialogue between stakeholders and the government. It is through this dialogue that we will continue to shape a future-proof ICT ecosystem, ensuring that Kenya remains at the forefront of digital innovation and progress. Together, let us embark on this journey towards a future where the transformative power of technology uplifts communities, drives economic growth, and fosters a more inclusive society. The recommendations presented in this report serve as a rallying call for action, inspiring us to forge ahead with determination and resolve.
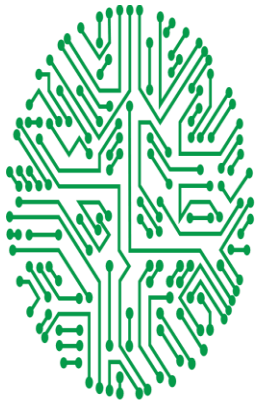
Website: www.kictanet.or.ke
Twitter:www.twitter.com/kictanet
Instagram:
www.instagram.com/kictanet
Facebook:
https://web.facebook.com/KICTANet/
LinkedIn:
https://linkedin.com/company/kictanet