

**MEMORANDUM ON**

THE DRAFT INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY BILL of JUNE  
2024

**Submitted to:**

ICT Authority

Submitted via email to [ictabill@icta.go.ke](mailto:ictabill@icta.go.ke) & [legal@moict.go.ke](mailto:legal@moict.go.ke)

**By:**

Kenya ICT Action Network (KICTANet)

**15 July 2024**

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15 July 2024,

ICTA Authority,

Submitted via email to [ictabill@icta.go.ke](mailto:ictabill@icta.go.ke) & [legal@moict.go.ke](mailto:legal@moict.go.ke)

Dear Sirs,

#### **RE: Memorandum on the draft Information and Communications Technology Authority Bill, June 2024**

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Greetings from KICTANet.

KICTANet is a multistakeholder think tank for ICT policy and regulation. Its guiding philosophy encourages synergies for ICT policy-related activities and initiatives. KICTANet's overall mission is to promote an enabling environment in the ICT sector that is robust, open, accessible, and rights-based. Its strategic objectives during 2022 - 2024 are effective multistakeholder participation; promoting an enabling environment; building capacities and empowered communities; and institutional strengthening.

We submit this memorandum in response to the call for input on the draft Information and Communications Technology Authority Bill, June 2024. We have included herein a matrix presentation that captures our concerns, and highlights our proposals on relevant provisions of each of the Regulations for your review and consideration. We would be glad to provide further input and perspectives on the Regulations, as and when required.

We look forward to your response.

Regards,

**Grace Githaiga**

*Kenya ICT Action Network (KICTANet)*

[info@kictanet.or.ke](mailto:info@kictanet.or.ke)

15 July 2024.

Responses on the the draft Bill.

S/No	Section of Bill	Proposal	Justification
5	(1)There is established the Information and Communications Technology Authority.	Rename the existing Information and Communications Technology Authority to " Digital Transformation Authority (DTA)	<p>Rename the existing Information and Communications Technology Authority to " Digital Transformation Authority (DTA)". Ten years since formation of ICTA, we need to show growth of mindset and have a name that emphasizes a broader and more futuristic scope of responsibilities. The term "Digital Transformation" suggests a proactive and comprehensive approach to leveraging digital technologies for systemic change, innovation, and modernization across various sectors. This contrasts with "Information and Communications Technology," which primarily focuses on the infrastructure and systems related to ICT.</p> <p>The draft Information and Communications Technology Authority Bill, 2024, outlines the establishment and functions of the Authority, which include promoting secure, efficient, and effective ICT resources and services, integrating ICT in public service delivery, and fostering innovation and digital literacy. The proposed name, DTA, aligns with these objectives but also highlights the transformative impact of digital technologies on society and the economy, suggesting a forward-thinking and holistic approach to digital governance and development.</p>
8	1(a) the chairperson appointed by the President	The Chairperson to be recruited competitively	Historically, political appointees have not always had the best interest of the organsiation, or the beneficiaries they serve.
8	(4) A person shall not be qualified for appointment as the chairperson or as a member if the person—	Delete this provision	Chapter 6 of the constitution has sufficiently addressed issues of governance and ethics.
	(10) The members of the Board shall be appointed in a manner to ensure at different dates so that the respective expiry dates of their terms of office shall fall on different dates.	More clarity is needed	How will this rotation of the board be achived if all members of the Board are starting at same period when the new act comes into force?
15	2(a) holds a masters degree from a recognized university in	Delete masters degree	Minimum qualification should be a Bachalors degree. In some instances, some candidates with Bachelors degree can be more suited for the role, and this suggestion also accommodates those with Masters degrees.

	engineering and information and communications technology field		
16	(2) A person shall be qualified to be appointed as the Corporation Secretary if that person— (a) holds at least a masters degree in law from a recognized university; and	Delete masters degree	Minimum qualification should be a Bachelors degree. In some instances, some candidates with Bachelors degree can be more suited for the role, and this suggestion also accommodates those with Masters degrees.
Provision of allowance for ICT Infrastructure			
24.	(1) A person who constructs any infrastructure requiring ICT installations shall—	Delete clause 24	This whole clause belongs to the critical infrastructure bill which should be handled by multiple agencies both in public and private sector.
25.	(1)The Authority shall develop ICT codes, which shall—	Delete clause 25	Too broad. Code of conducts should be developed through a multistakeholder model where all players both public and private are consulted and aligned with the mission.  While ICT codes aim to enhance compliance, they can also create additional regulatory hurdles that are more challenging for startups to navigate compared to well-established firms with dedicated compliance teams.
26.	(1)Compliance with ICT codes.	Delete clause 26	Too broad. Code of conducts should be developed through a multistakeholder model where all players both public and private are consulted and aligned with the mission.
27.	(1)Accreditation of service providers	Delete clause 27	The ICTA has assigned itself the role of both a regulator and a service provider. This dual role creates a conflict of interest because the Authority may favor its own services over those of private sector competitors. This can undermine fair competition and lead to biased decision-making in the accreditation process.  The accreditation process requires service providers to meet specific technical qualifications, experience, and resource criteria. Startups, which may lack extensive experience or resources, could find it difficult to meet these requirements compared to established multinationals and foreign organizations with more substantial resources and track records.  Accreditation must be renewed annually, which will pose a financial and administrative burden on smaller, newer companies. This frequent renewal process might be easier for larger companies to manage, thereby disadvantaging startups.  Multinationals and foreign organizations often have more significant financial and technical resources, making it easier for them to comply with the accreditation requirements. This can lead to a market dominated by these larger entities, pushing out smaller local startups

			The requirement for necessary experience in the category of service applied for can inherently favor established companies with a long history in the industry. Startups, by their nature, lack this extensive experience, putting them at a disadvantage
28	(1)Accreditation status	Delete clause 28	Refer to above; but also add, The Authority has the power to suspend or revoke accreditation if service providers fail to comply with conditions or directions. This power, if not exercised transparently and fairly, could be used to stifle competition and favor certain providers over others
29	(1)Suspension of Accreditation	Delete clause 29	Refer to comments for 27 and 28
30	(1)The Authority may revoke a certificate of an ICT service provider, where the service provider	Delete clause 30	Refer to comments for 27 and 28. ICTA cannot be a regulator and a service provider at the same time
31	(2)b levying of fees, costs, levies and any other charges	Delete clause 31	<p>There are too many levies being collected by multiple agents, authorities, regulators, national government, and counties. <b>A national levies framework should be developed to standardise levy collection.</b></p> <p>The ICTA's dual role as both a regulator and a service provider creates a significant conflict of interest. As a service provider, ICTA competes with private sector companies in the ICT market. If ICTA is also responsible for issuing levies, it gains the power to impose financial burdens on its competitors, potentially skewing the competitive landscape in its favor. This can undermine the principles of fair competition and market neutrality, leading to a monopolistic environment where the ICTA has undue advantage over private entities.</p> <p>Startups and smaller ICT companies are particularly vulnerable to the financial and administrative burdens imposed by levies. These companies often operate with limited resources and may struggle to comply with the financial demands of multiple levies. In contrast, larger multinationals and foreign organizations typically have more substantial financial reserves and can more easily absorb these costs. This disparity can stifle innovation and entrepreneurship, as startups may be discouraged from entering the market or may be forced out of business due to the high cost of compliance.</p> <p>The current system involves numerous agents, authorities, regulators, national government entities, and counties collecting various levies. This fragmented approach leads to inefficiencies, redundancy, and increased administrative costs for businesses. A standardized national levies framework would streamline the process, reduce duplication, and ensure a more transparent and predictable regulatory environment. Under such a framework, a single entity, separate from service provision, should be responsible for levy collection to avoid conflicts of interest and ensure impartiality.</p>
32	(1)c unlawfully removes, destroys, alters or damages any data or electronic record or ICT infrastructure,	Delete clause 32	This clause Should be in the Critical Infrastructure bill.

	systems or equipment;		
	(d) provides ICT services without requisite accreditation commits an offence and shall be liable on conviction to imprisonment of a term not exceeding five years or fine not exceeding five million shillings or both.	Delete clause	Refer to comments for 27 and 28
	(2)Where a person is convicted of an offence under subsection (1) (c), the Court may in addition to the penalty, order the person to pay to the Authority a sum equal to the cost of repairing any damage so caused.	Delete clause	This clause Should be in the Critical Infrastructure bill.
34.	The State Corporations (The Information and Communications Technology Authority) Order, 2013 is revoked.	This order expired unless it was renewed.	ICTA Authority as it stands, unless a clarification is issued by the Ministry is operating illegally since <i>Legal Notice No. 183 of August 16, 2013</i> expired in August 2023.

Signed,

A coalition of The Bloggers Association of Kenya (BAKE), KICTANet, Internet Without Borders (IWB), Tribeless Youth, Mzalendo Trust, and Watoto Watch Network and Internews Kenya under Kenya Safe and Inclusive Digital Space (KenSafeSpace) project with the aim of promoting and safeguarding a democratic, safe, and inclusive digital space.