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 <b>THE NATIONAL ASSEMBLY</b> PARLIAMENT BUILDINGS NAIROBI		 <b>HARAMBEE</b>
<b>DATE:</b> 19 AUG 2021		<b>DAY:</b> THURSDAY
<b>TABLED BY:</b>	HON. GRASTUS NZIOKA MEMBER OF COMMITTEE	
<b>CLERK-AT THE TABLE:</b>	MRS. F. TWELFTH PARLIAMENT – FIFTH SESSION	

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**DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND INNOVATION**

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**REPORT ON-**

**THE CONSIDERATION OF THE INFORMATION COMMUNICATION  
TECHNOLOGY PRACTITIONERS BILL, 2020 (NATIONAL ASSEMBLY BILLS NO. 38  
OF 2020)**

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**DIRECTORATE OF DEPARTMENTAL COMMITTEES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI**

**AUGUST, 2021**

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

ACM	Association for Computing Machinery
ASIS&T	American Society for Information Science and Technology
AWC	Association for Women in Computing
CA	Communications Authority
CCNA	Cisco Certified Network Associate
CMCA	Computer Misuse and Cybercrimes Act
CompTIA	Computing Technology Industry Association
DPA	Data Protection Act
ICT	Information, Communication and Technology
ICTAK	Information Communication Technology Association of Kenya
ICTAU	Uganda ICT Association
IITPSA	Institute of Information Technology Professionals
ISACA	Information Systems Audit and Control Association
IT	Information Technology
ITAA	Information Technology Association of America
ITPA	Australian Information Technology Professionals Association
KASNEB	Kenya Accountants and Secretaries National Examinations Board
KICA	Kenya Information and Communications Act
MCSA	Microsoft Certified Solutions Associate
NCS	National Communications Secretariat
ODPC	Office of the Data Protection Commissioner
TESPOK	Technology Service Providers Association of Kenya

## **ANNEXURES**

Annexure 1	Copy of the report adoption list of Members
Annexure 2	Copies of minutes on proceedings
Annexure 3	Copy of public participation advertisement in local dailies
Annexure 4	Copies of written Memoranda



## **CHAIRPERSON'S FOREWORD**

The Information Communication Technology Practitioners Bill, 2020 (*National Assembly Bill No 38 of 2020*), sponsored by the Hon. Godfrey Osotsi, M.P. was published on 17<sup>th</sup> November 2020, read for the first time on 22<sup>nd</sup> December 2020 and subsequently referred to the Departmental Committee on Communication, Information and Innovation for review and report to the House.

The principal object of the Bill is to establish a legal framework for the training, registration, licensing, practice and standards of Information Communication Technology (ICT) professionals in Kenya. The Committee held several meetings considering the Bill, analysing submissions from stakeholders and finalizing this report.

In line with Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee sought public views and received memoranda from seven stakeholders namely; the Communications Authority of Kenya, Anjarwalla and Khana Advocates, the Lawyers Hub, the Technical Committee 94 – Software & System Engineering, IT Governance, Service Management & Artificial Intelligence at Kenya Bureau of Standards (KEBS TC94), the Technology Service Providers Association of Kenya (TESPOK); Kenya Accountants and Secretaries National Examinations Board (KASNEB); LSK Nairobi Branch; and Ms. Lavynne Ayisi.

On behalf of the Departmental Committee on Communication and Innovation and pursuant to the provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the report of the Committee on the Information Communication Technology Practitioners Bill, 2020 (*National Assembly Bill No 38 of 2020*).

The Committee is grateful to the offices of the Speaker and Clerk of the National Assembly for the leadership, logistical and technical support accorded to it during its review of the Bill. The Committee further wishes to thank all stakeholders who made representations on the Bill. Finally, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat whose resilience and devotion to duty made consideration of the Bill and production of this report successful.

It is my pleasure to report that the Committee has considered the Information Communication Technology Practitioners Bill, 2020 and has the honour to report back to the House with the recommendation that the Bill should be proceeded with recommendations as proposed under Chapter 4 of this report.

**Hon. William Kisang M.P**

**Chairperson, Departmental Committee on Communication, Information and Innovation**

## CHAPTER ONE

### 1.0 PREFACE

#### 1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Communications, Information and Innovation is established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is as follows-
  - a. *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
  - b. *Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;*
  - c. *Study and review all legislation referred to it;*
  - d. *Study, assess and analyse the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - e. *Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - f. *Vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
  - (fa) *examine treaties, agreements and conventions;*
  - g. *make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
  - h. *consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - i. *Examine any questions raised by Members on a matter within its mandate*

#### 1.2 MANDATE OF THE COMMITTEE

2. In accordance with Second Schedule of the Standing Orders, the Committee is mandated to oversee Communication, Information, media and broadcasting (except for broadcast of parliamentary proceedings), Information Communications Technology (ICT) development and advancement of technology and modernization of production strategies.
3. In executing its mandate, the Committee oversights the following Departments;
  - a. State Department of Broadcasting and Telecommunications
  - b. State Department of ICT & Innovation



### 1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Communication, Information and Innovation was constituted by the House in December 2017 and comprises of the following Members-

**Chairperson**

Hon. Kisang William Kipkemai, M.P  
Marakwet West Constituency

**Jubilee Party**

**Vice-Chairperson**

Hon. Jane Wanjiku Njiru  
Embu County

**Jubilee Party**

Hon. George Theuri, MP  
Embakasi West Constituency  
**Jubilee Party**

Hon. Alfah O. Miruka, MP  
Bomachoge Chache Constituency  
**Kenya National Congress**

Hon. Annie Wanjiku Kibeh, MP  
Gatundu North Constituency  
**Jubilee Party**

Hon. Joshua Kimilu, Kivinda, MP  
Kaiti Constituency  
**Wiper Democratic Party**

Hon. Marwa Kitayama Maisori, MP  
Kuria East Constituency  
**Jubilee Party**

Hon. Mwambu Mabongah, MP  
Bumula Constituency  
**Independent**

Hon. Maritim Sylvanus, MP  
Ainamoi Constituency  
**Jubilee Party**

Hon. Mwangaza Kawira, MP  
Meru County  
**Independent**

Hon. Jonah Mburu, MP  
Lari Constituency

Hon. Gertrude Mbeyu , MP  
Kilifi County  
**Orange Democratic Party**

Hon. Anthony Kiai, MP  
Mukurweini Constituency  
**Jubilee Party**

Hon. (Eng.) Mark Nyamita Ogola, MP  
Constituency  
**Orange Democratic Party**

Hon. Victor Munyaka, MP  
Machakos Town Constituency  
**Jubilee Party**

Hon. Erastus Nzioka Kivasu, M.P.  
Mbooni  
**New Democrats Party**

Hon. Innocent Momanyi Obiri, MP  
Bobasi Constituency  
**People's Democratic Party**

Hon. Godfrey Osotsi Atieno, MP  
Nominated  
**African National Congress**

Hon. Anthony, Tom Oluoch, MP  
Mathare Constituency  
**Orange Democratic Party**

**Jubilee Party**

**1.4 COMMITTEE SECRETARIAT**

5. The Committee secretariat comprises -

**Head of the Secretariat**  
Ms. Hellen Kina  
**Clerk Assistant II**

Ms. Ella Kendi  
**Clerk Assistant II**

Dr. Donald Manyala, PhD  
**Research Officer II**

Mr. Salem Lorot  
**Legal Counsel II**

Mr. Thomas Ogwel  
**Fiscal Analyst II**



## CHAPTER TWO

### 2.0 OVERVIEW OF THE INFORMATION COMMUNICATION TECHNOLOGY PRACTITIONERS BILL, 2020

#### 2.1 Salient features of The Information Communication Technology Practitioners Bill, 2020

6. The Information Communication Technology Practitioners Bill, 2020 (National Assembly Bills No. 38 of 2020), sponsored by the nominated member, the Hon. Godfrey Osotsi, MP, was published on 17<sup>th</sup> November, 2020 and read for the First Time on 22<sup>nd</sup> December 2020.
7. The principal object of the Bill is to establish a legal framework for the training, registration, licensing, practice and standards of Information Communication Technology (ICT) professionals in Kenya.
8. **Part I** contains preliminary provisions.
9. **Part II** provides for the establishment of the Information Communication Technology Practitioners Institute, its composition, powers, and functions. It further provides for a Council as the governing organ of the Institute.
10. **Part III** contains provisions relating to the registration of ICT Practitioners. It among other things, stipulates the requirements for such registration, the keeping of a register containing particulars of registered persons and the manner in which alterations may be made to that register.
11. **Part IV** contains provisions relating to the licensing of ICT Practitioners. It provides for the issuance of practising licences and the duration of those licences.
12. **Part V** contains enforcement provisions. It among other things defines what constitutes professional misconduct and provides for disciplinary proceedings by the Council against an errant practitioner. It further provides for the removal, suspension, or cancellation of a member from the register, and the effect thereof. It also provides for various offences relating to various matters under the Bill.
13. **Part VI** contains the financial provisions and among others, defines sources of fund of the Institute, the annual estimates of the Institute and auditing of accounts of the Institute.
14. **Part VII** contains miscellaneous provisions.
15. **Clause 4** of the Bill provides for the establishment of the ICT Practitioners Institute which shall be a body corporate. It further provides that the Institute shall be governed by a Council to be known as the Council of the Institute.
16. **Clause 5** of the Bill provides that the Council shall consist of 9 members:
  - a) the principal secretary in the Ministry for the time being responsible for matters relating to information communications technology;
  - b) the principal secretary in the Ministry for the time being responsible for matters relating to the national treasury;
  - c) a representative of the ICT Authority established under the State Corporation Act;

- d) one person appointed by the Cabinet Secretary to represent training institutions in Kenya which have power to grant a qualification which is recognized under this Act;
- e) one person appointed by the Cabinet Secretary to represent examination bodies as established in law;
- f) four persons of good professional standing nominated by—
  - i. the Information Communication Technology Association of Kenya;
  - ii. the Computer Society of Kenya;
  - iii. the Telecommunication Service Providers; and
  - iv. the chairperson of the Institute elected under section 8;

17. **Clauses 7 and 8** provide for the members and Chairperson of the Institute respectively.

18. **Clause 9** provides for the fees and subscriptions to be paid by the members of the Institute.

19. **Clause 10** provides for the functions of the Institute as to:

- (a) establish standards of professional competence and practice amongst members of the Institute;
- (b) protect, assist and educate the public in Kenya in all matters touching, ancillary or incidental to the profession of ICT;
- (c) represent, protect and assist members of the profession of ICT in Kenya in respect of conditions of practice and otherwise;
- (d) approve courses for purposes of registration of ICT Practitioners under this Act;
- (e) administer such examinations as may be necessary to determine whether persons are qualified for registration under this Act;
- (f) register and licence ICT practitioners for the purposes of this Act upon payment of the prescribed fees;
- (g) collaborate with training institutions, professional associations and other relevant bodies in matters relating to training and professional development of ICT practitioners;
- (h) determine the fees to be charged by ICT practitioners and firms for professional services rendered from time to time;
- (i) upon request, to act as an arbitrator in any disputes between a licensed ICT Practitioner and a client;
- (j) formulate policies and programs governing the profession of Information Communication Technology Practitioners;
- (k) approve institutions offering training and professional development courses for Information Communications Technology practitioners;
- (l) supervise the professional conduct and practice of ICT practitioners and to take the necessary disciplinary measures in cases of violations of professional conduct and discipline;
- (m) plan, arrange, co-ordinate and oversee continuing professional training and development of ICT practitioners.
- (n) promote the international recognition of the Institute;



- (o) carry out any other functions prescribed for it under any of the other provisions of this Act or under any other written law.

20. **Clause 11** provides for the powers of the Council.

21. **Clause 12** provides for the remuneration of Council members.

22. **Clause 13** provides for the chief executive officer. It provides for the qualification requirements as follows:

*13. (4) A person shall not be appointed as a chief executive officer unless such person is registered as an ICT practitioner under this Act and—*

*(a) has a degree in information communication technology from a university recognized in Kenya;*

*(b) has knowledge and relevant experience of not less than five years post qualification;*

*(c) has a master's degree from a university recognized in Kenya;*

*(d) has knowledge and experience in policy formulation, administration and management;*

*(e) meets the requirements of Chapter Six of the Constitution.*

23. **Clause 14** provides for the staff of the Council.

24. **Clause 16** provides for the Committees of the Council. It provides that the Council may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

25. **Clause 17** provides for protection from personal liability of any member of the Council or any officer, employee, agent or servant of the Council.

26. **Clause 18** provides for the common seal.

27. **Clause 19** provides for qualifications for registration as an ICT practitioner as follows—

a) Holder of at least a bachelor's degree in ICT related field including computer science, information technology, telecommunication, computer engineering from a recognized university;

b) Holder of at least a bachelor's degree in electrical and electronics engineering, mathematics or physics and has at least one year post qualification experience in ICT field;

c) Holder of a diploma in ICT related field including computer science, information technology, telecommunication or computer engineering and has at least three years post qualification experience in ICT field;

d) Holder of at least a bachelor's degree from a recognized university and has at least three years post qualification experience in ICT field; or

e) Demonstrated expertise, innovation or competence in ICT as may be determined by the Council.

28. **Clause 20** provides for the registration process for persons eligible for registration as ICT practitioners.

29. **Clause 21** provides for the register of ICT professionals.

30. **Clause 22** provides for the alteration of the register.

31. **Clause 23** provides that the Council shall publish in the Gazette as soon as may be practicable after registration, the name of every ICT practitioner registered under the Act.
32. **Clause 24** provides for the licensing of an ICT practitioner. It provides that a person shall not practise as an ICT practitioner unless such person has complied with the requirements for continuing education and supervision, and has been issued with a valid practice license by the Council, in accordance with regulations made under this Act.
33. **Clause 24** also provides that a person shall not operate an ICT firm unless—
- a) the firm has a certificate of registration of a business name or certificate of incorporation;
  - b) the firm has at least one partner or principal shareholder who is registered as an ICT practitioner and who has a valid practicing licence; and
  - c) the firm fulfills any other condition as may be stipulated by the Council.
34. **Clause 25** provides for a period of validity of licences of one calendar year.
35. **Clause 26** provides that the issue and the cancellation, revocation or withdrawal of a licence shall be published in the Gazette. Further, the Council shall, once in every year, as soon as convenient after 1st January, but not later than 31st March, publish in the Gazette a list containing the names, qualifications and registered addresses of all licensed ICT practitioners.
36. **Clause 27** provides that a person shall not be entitled to recover a fee for ICT services, unless such person is licensed under the Act.
37. **Clause 28** provides for the offence of false registration or licensing. The penalty is a fine not exceeding 500,000 shillings or imprisonment for a term not exceeding 2 years, or both.
38. **Clause 29** provides for various acts of professional misconduct. They are:
- a) deliberately failing to follow the laid down standards of conduct and practice of the profession of ICT as may be laid down by the Council;
  - b) committing gross negligence in the conduct of professional duties,
  - c) allowing another person to practise in their name, where such person—
    - i. is not a holder of a practising certificate issued under this Act; and
    - ii. is not in partnership with the ICT practitioner;
  - d) taking advantage of clients by abusing a position of trust, expertise, or authority;
  - e) being insensitive to clients through a lack of regard or concern for clients' needs, feelings, rights, or welfare of others;
  - f) showing incompetence or inability to render services, for reasons ranging from inadequate training or inexperience, to personal unfitness, such as a character defect or an emotional disturbance;
  - g) evidencing irresponsibility including lack of reliable or dependable execution of professional duties, attempts to blame others for one's mistakes, shoddy or superficial professional work, or excessive delays in delivering necessary feedback, assessments, reports, or services; or
  - h) being guilty of abandonment through failure to follow through with their duties or responsibilities, thereby causing clients to become vulnerable or incur unnecessary expenditure.

39. **Clause 30** provides for disciplinary proceedings by the Council.
40. **Clause 31** provides for the effects of suspension, cancellation or revocation of membership in the Council.
41. **Clause 32** provides for appeals to the High Court.
42. **Clause 33** provides for the offences by unregistered or unlicensed persons.
43. **Clause 34** provides for various offences relating to a training institution. These are:
- a) Admitting to the institution under their charge any person for the purpose of training in the profession of ICT;
  - b) purporting to be conducting a course of training or examining persons seeking registration under this Act or regulations made thereunder;
  - c) issuing any document, statement, certificate or seal implying that the holder thereof has undergone a course of instruction or has passed an examination prescribed by the Council; and
  - d) issuing any document, statement, certificate or seal implying that the institution under his or her charge is approved by the Council as an institution for training of persons seeking registration under this Act.
44. The penalty under **clause 34** is a fine not exceeding one million shillings or imprisonment for a term not exceeding 3 years, or both.
45. **Clause 35** provides for the offence of obstruction. The penalty for the offence is a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding two years, or both.
46. **Part VI** of the Bill provides for financial provisions.



## CHAPTER THREE

### 3.1 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

47. Pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), which provide that the Parliament shall facilitate public participation, the Committee placed an advert in the local dailies on Friday 19<sup>th</sup> February, 2021 inviting the public to submit their views to the Clerk of the National Assembly on or before Friday 26<sup>th</sup> February, 2021.
48. The Committee received seven (7) memoranda from the Communications Authority of Kenya and a Joint memorandum from Anjarwalla and Khana; the Lawyers Hub; the Technical Committee 94 – Software & System Engineering, IT Governance, Service Management & Artificial Intelligence at Kenya Bureau of Standards (KEBS TC94); the Technology Service Providers Association of Kenya (TESPOK); KASNEB; LSK Nairobi Branch; and Ms. Lavynne Ayisi.
49. In processing the Bill, the Committee took into account the memoranda received from the public and its deliberations.

#### 3.1.1 SPECIFIC AMENDMENTS

##### Clause 2

50. **The Lawyers Hub** submitted that Clause 2 of the Bill defines an ICT Practitioner as a person who is registered and licensed under the Act as an ICT Practitioner. There is concern that the definition is vague and ambiguous. It does not account for the ever-changing dynamics of the industry and the evolving needs of the multi-sector partners involved. The definition is thus bound to leave out key players in the ICT sector who would otherwise qualify to be regarded as ICT Practitioners as technology teams tend to be too broad to fit into one definition.
51. **The Law Society of Kenya Nairobi Branch** submitted on the challenges of the definition of an ICT Practitioner and the limitations arising with regard to the practicality of registering and licensing of a person. They indicated that there are young techno savvy Kenyans who are under the age of 18 years and who lack access to the ICT related gadgets, but have the capacity to offer ICT services and be paid in kind for example a teenager repairing his parent's phone or computer or installing a mobile application.
52. **KASNEB** submitted that the definition "practicum" should be amended to include professional qualifications in addition to the degree and diploma. Therefore, the definition should read:

*"practicum" means an ongoing supervised and organized practical experience or internship prescribed as part of the qualification for the award of any degree, professional qualification or diploma and obtained in an integrated training program recognized by the Council;*



53. KASNEB's justification for the proposed amendment was to recognize professional qualifications in ICT offered by various examinational bodies both nationally and globally, such as the Certified Information Technologists and Certified Information Systems Solutions Expert (CISSE) offered by KASNEB.
54. **Ms. Lavynne Ayisi** submitted that the definition of ICT Practitioner was overly broad. With the Council of the Institute tasked to train, register and license ICT Practitioners under the Bill, she expressed her concern of how much capacity will be required for the Council to enforce and cover the already huge scope of ICT Practitioners. She further submitted that the ICT sector is very wide and it is not clear who or what the Bill specifically targets and what problem the Bill intends to solve.

#### **Committee Observations and Recommendations**

55. The Committee made the following observations:

- (a) The definition "ICT practitioner (ICTP)" has been defined to mean a person registered under the Act as an ICT practitioner who is also licensed under section 19 to practice as such;
- (b) The definition makes a cross-reference to clause 19 of the Bill which provides for the qualifications for registration of a person as an ICT practitioner;
- (c) The Committee agreed to the proposed amendment to definition "practicum" to include professional qualifications in addition to the degree and diploma.
- (d) In order to address the concerns by the stakeholders, the Committee will be proposing amendments to clause 19 and other clauses; consequently, there will be no need to amend the definition as provided in the Bill.

#### **Clause 4**

56. **The Law Society of Kenya Nairobi Branch** submitted that under clause 4, there seems to be a mismatch and there could be occasion for duplicity between the functions of the Council (Governing Body) and the functions or powers of the envisaged Practitioners Institute.

#### **Committee Observations and Recommendations**

57. The Committee observed that clause 4(1) of the Bill provides for the establishment of the ICT Practitioners Institute whereas clause 4 (3) provides that the Institute shall be governed by a Council to be known as the Council of the Institute. The Committee noted that the two provisions are not duplicitous.

#### **Clause 5**

58. **Anjarwalla and Khanna** submitted that the Bill should be amended to replace subclause 5(1) (f) with 'Telecommunications Service Providers of Kenya (TESPOK)' or alternatively, refrain altogether from listing particular associations given that their long-term existence is not guaranteed. It may be better to state the criteria to be used to determine the associations which are to nominate persons i.e. 'an association representing telecommunications service providers.' Where there are multiple entities, the regulator could coordinate their efforts to nominate.

59. In their justification, they averred that subclause 1(f) provides that the Council shall comprise of a person nominated by the 'Telecommunications Service Providers'. It is unclear how practically this would work as currently there is no such entity or association as the 'Telecommunications Service Providers' which would be responsible for nominating a representative on behalf of the telecommunications service providers in Kenya.
60. **The Law Society of Kenya Nairobi Branch** submitted that the composition of the Council Members was very technical in outlook and had not factored the upcoming incubation resources of young persons. They stated that the Bill had not appreciated the fact that ICT and the targeted audience for the Bill was expansive and covered all regions of the country, backgrounds, populations, among others.
61. **KASNEB** submitted that clause 5(1) should be amended by replacing paragraph (f) (iv) with a nominee from an association of holders of professional qualifications in ICT, such as the Association of Certified Information Communication Technologists, an Association registered under the Societies Act and comprising holders of the KASNEB CICT professional qualification.
62. KASNEB's justification was that that would recognise the role of holders of professional ICT qualifications in policy formulation on ICT at Council level. Further, it would give the chairperson of the Council power to nominate a Council member, noting that Council members also evaluate the Chairman and monitor his performance, is against good governance practices and is also open to subjectivity.

### **Committee Observations and Recommendations**

63. The Committee made the following observations:

- (a) Clause 5 of the Bill provides for the composition of the Council and there was a need for it to be more inclusive;
- (b) Clause 5(1) should be amended by deleting paragraph (f) (iii) and replacing it with one providing for Telecommunications Service Providers of Kenya;
- (c) Since some stakeholders had indicated that the Bill locks out the youth, clause 5(6) should be amended to insert "age" as one of the things that the Cabinet Secretary will consider in appointing members to the Council;

### **Clause 7**

64. On Clause 7, **Anjarwalla and Khanna** submitted that it would be more effective for the Bill to capitalize on existing bodies and industry associations by collaborating with these entities and encouraging ICT Practitioners to join. These bodies would serve as a useful avenue through which the institute can disseminate industry standards and incentivise compliance.
65. The justification of their proposal was that the rigidity of registration and licensing is likely to slow down innovation and exclude potential entrants to this sector. The proposed format in the Bill of stipulating prerequisites to registration and continuous licensing conditions is not ideal for the following reasons:
- a. Rigid structures which are hierarchical can serve to exclude large groups of individuals who may not be able to meet the specific conditions in the Bill but are qualified to offer ICT services;

- b. Industry associations/ representative groups already exist, therefore the creation of an additional body is potentially superfluous; and
- c. The wide scope of applicability of the Bill (i.e. ICT Practitioners), means that this provision would be logistically difficult to operationalise.

66. **The Law Society of Kenya Nairobi Branch** submitted that with regard to members of the Institute and its composition, this should be pegged on competitive bidding based on criteria built by the membership with relevant riders on gender and minority representations, among others. They pointed out that this would resolve the question of attaining consensus if by any chance all ICT Practitioners as envisaged in the Bill get registered.

### **Committee Observations and Recommendations**

67. The Committee made the following observations:

- (a) The Committee agreed to the proposal by the stakeholders that there was a need to provide for collaboration with existing associations and clause 10(g) provides for this;
- (b) The Committee observed that with regard to the members of the Institute, there was no need for competitive bidding since the Committee recommends that membership be voluntary.

### **Clause 9**

68. On Clause 9, **Anjarwalla and Khanna** submitted that where a fee is necessary for regulators to ensure any compliance, be it with laws or standards, the prescribed fee ought to be nominal given that it is applicable to a large group of individuals, and not just large companies. The justification was that depending on the amount, the requirement on members of the Institute to pay fees is likely to exclude small time operators and entrench competitive disadvantages.

### **Committee Observations and Recommendations**

69. The Committee observed that the provides that the members of the Institute shall pay such fees and subscriptions as the Council may in consultation with the Institute prescribe. The Committee noted that since the fees and subscriptions will form sources of funds of the Institute to run its operations, the provision was an important one. The Committee noted that the amount to be paid is an administrative matter.

### **Clause 10**

70. **Lawyers Hub** submitted that Clause 10 gives a great array of power to one body. It also creates overlapping roles and a lack of clear structure in the manner processes are being conducted. The Institute is therefore prone to being overwhelmed and to mismanagement. The power to set the curriculum, administer examinations, and issue practising licenses should not be the sole mandate of one body. This degrades the standard of quality the Bill is striving to achieve and further, may limit participation by other stakeholders in the sector.

71. On Clause 10(a), **Anjarwalla and Khanna** submitted that the Bill should specify the status of the standards issued under this section vis-à-vis existing standards previously issued for example by the ICT Authority to avoid a duplication or inconsistency. Further, that the Bill



should also create a framework where the Institute can collaborate with other regulators like the CBK.

72. In their justification, they averred that the Institute joins a number of existing regulators with mandates touching on ICT i.e. the CA, Office of Data Protection Commissioner (ODPC), ICT Authority and the National Communications Secretariat. Some of these entities, such as the ICT Authority have issued standards for certain ICT Practitioners like those in the public sector. The Bill does not stipulate whether these standards would be complementary or whether the ones issued by the Institute would take precedence. Furthermore, some ICT Practitioners operate in industries which require specialised knowledge like finance. The Bill does not permit a framework for collaboration with other sector regulators.
73. On Clause 10(c) **Anjarwalla and Khanna** submitted that the sub clause should be amended to clarify the specific role of the Institute with respect to the working conditions of ICT Practitioners to avoid usurping the role of already existing entities. They justified by stating that this subclause seems to obviate the work already done by existing representative bodies and associations.
74. On Clause 10(d) **Anjarwalla and Khanna** submitted that the approval of courses should not result in a condition that ICT practitioners must have completed said courses in order to be registered. This sub-section should de-link the approval of courses to registration. Nigeria has taken such an approach by allowing even those who did not specifically train in ICT to be registered as ICT professionals in Nigeria.
75. In their justification they asserted that requiring the completion of approved courses prior to registration as an ICT Practitioner is likely to create barriers to entry for self-taught ICT experts and those who have learned the necessary skills through informal means.
76. On Clause 10(f) **Anjarwalla and Khanna** submitted that the requirement to register as an ICT Practitioner should be omitted altogether. This is especially considering that the scope of an ICT Practitioner is wide and would include a number of individuals incapable of complying with registration costs and conditions.
77. In their justification they asserted that registration of ICT practitioners under this Bill would result in the erection of barriers to economic activity and innovation, contrary to Kenya's stated policy aims. The ends sought through registration like quality control can be achieved through less rigid and restrictive means. The payment of a registration fee compounds this concern.
78. **Anjarwalla and Khanna** submitted that Clause 10(h) should either be omitted, or alternatively, amended to include a consultation mechanism with representative groups of industry players, and provided a justification that the Institute regulating the pricing of ICT services is likely to negatively impact the market for ICT services. This is due to the fact that the Institute may not fully comprehend the nuances of the services at hand and how they contextually differ in the various sectors in which ICT experts operate.
79. **Anjarwalla and Khanna** submitted that on subclause 10(i), the Bill should state the specific conduct would apply to given that existing legislation such as the CMCA, and KICA provide for offences relating to ICT. The Bill should also clarify the applicability of codes of conduct developed by private industry bodies.



80. In their justification they stated that empowering the institution to monitor the conduct of ICT Practitioners and penalise them where found to be in breach of professional conduct guidelines is duplicative of existing legislation.

#### **Committee Observations and Recommendations**

81. The Committee made the following observations:

- (a) Clause 10 provides for the functions of the ICT Practitioners Institute;
- (b) The functions of the Institute in relation to approval of courses and administering examinations is for the purposes of registration of an ICT practitioner and is not an expansive role;
- (c) Clause 10(a) provides that the Institute shall establish standard of professional competence and practice amongst members of the Institute and clause 41 (2) (d) provides that the regulations will provide further details on the standards and conditions of professional practice of persons registered or licensed under the Act;
- (d) Since the Committee recommends voluntary registration as an ICT practitioner, the functions provided for the Institute will apply to those members and would therefore not be a barrier to those seeking to be ICT practitioners;
- (e) The Stakeholders have not specified particular sections of legislations that the Bill will contravene; further, the Bill does not duplicate existing legislations since it is meant to apply to ICT practitioners.

#### **Clause 11**

82. **The Law Society of Kenya Nairobi Branch** submitted that under clause 11(f) of the Bill providing for the powers of the Council, the paragraph was ripe for abuse and overreach in its mandate. They stated that the words “any activity necessary” was unclear with regard to undertaking or fulfilling the Council’s mandate.

#### **Committee Observations and Recommendations**

83. The Committee made the following observations:

- (a) Clause 11(f) provides that the Council shall have power to undertake any activity necessary for the fulfillment of any of its functions;
- (b) The power is necessary in order to enable the Council fulfill its functions and this power is not open-ended but one that falls within the parameters of the Council fulfilling its functions.

#### **Clause 13**

84. On Clause 13(2)(d) **Anjarwalla and Khanna** submitted that the Bill should clearly indicate the specific functions of the CEO, justifying that the Bill provides that the CEO of the Council is to, among other things, perform duties which are prescribed within the Bill.

85. **KASNEB** proposed that clause 13(4) should be amended to include professional qualifications in ICT (such as ICT) as equivalent to a first degree. In their justification, they stated that professional qualifications have been equated to a degree by the Kenya National

Qualifications Authority. The Framework is available on the Kenya National qualifications Authority website.

### **Committee Observations and Recommendations**

86. The Committee made the following observations:

- (a) The Committee agreed to the proposed deletion of clause 13(2) (d);
- (b) The Committee was of the view that clause 4(a) as it is in the Bill should be retained and that the equation to a degree should not be provided for in the Bill since it a function of the Kenya National Qualifications Authority.

### **Clause 16**

87. On Clause 16 **Anjarwalla and Khanna** submitted that where the mandate of these committees is to be determined through regulations at a later date, it should be clearly stated in the Bill. The specific provisions which the committees are to operationalise (i.e., those relating to professional misconduct for the Disciplinary Committee) should be clearly stated.
88. While offering a justification, they stated that the Bill provides for the establishment of various committees to perform functions prescribed within the Bill. We note that aside from the mention of the provision of the power to make regulations in clause 41 and the list of committees in the Second Schedule, there is not much detail given on the mandate of these committees.

### **Committee Observations and Recommendations**

89. The Committee was of the view that clause 16 of the Bill should be retained as it was since it gives a general power to the Council to establish committees and this was the practice in other legislations. The Committee noted that further details on the Committees were to be dealt with administratively and through regulations.

### **Clause 17**

90. **The Law Society of Kenya Nairobi Branch** submitted that clause 17(1) was at cross purposes with Chapter Six of the Constitution. They stated that the element of good faith should not be a factor as the framing of the clause deals with occasions of negligence by a vested officer.

### **Committee Observations and Recommendations**

91. The Committee observed that clause 17 as drafted was proper and that it does not contravene Chapter Six of the Constitution.

### **Clause 19**

92. **Lawyers Hub** submitted that for a person to be registered as an ICT Practitioner, clause 19 of the Bill requires they have either a Bachelor's degree in ICT related field or, have a Bachelor's degree in electrical and electronics engineering, mathematics or physics and an additional one year post qualification experience in ICT field, or have a diploma in ICT related

field and at least three years' post qualification experience or the person has demonstrated expertise, innovation or competence in ICT as the Council may determine.

93. They stated that the requirement for Bachelor's or Diploma qualifications locks out persons with skills and ability developed as a result of continuous practice, apprenticeship or self-teaching. Practitioners will also be unable to gain the stipulated experience threshold if they are barred from practising without a license, which license needs registration. It is also important to note that while the option to demonstrate expertise in the sector may seem to be broadening the requirements, giving the Council the sole power to determine if a person is innovative or demonstrates competence and expertise is undesirable. In addition, a person shall be required to pay the prescribed fees to be registered and be issued with a certificate of registration which adds to the burden imposed on the practitioner.
94. On Clause 19, **Anjarwalla and Khanna** submitted that in the event that Parliament opts to include an obligation to register, the prerequisites for such registration ought to clearly state how one can be able to satisfy the Institute that they possess the expertise. This could be through an exam. However, they proposed that there should not be an obligation to register as an ICT Practitioner for the following reasons:
- a. Registration based on these qualifications would be highly exclusionary;
  - b. The number of people in the industry who have undergone formal training may not be as high, given the self-teaching culture; and
  - c. Formal education does not necessarily guarantee that the applicants would meet the required professional standards i.e. it may end up being a false equivalence.
95. They submitted that the scope of registrable people will also be considerably large. As opposed to registration and licensing, the Bill could provide for the Institute's role in developing voluntary industry standards in collaboration with industry stakeholders. Compliance with these standards can then be incentivised through the Institute's endorsement of compliant ICT Practitioners and training institutions.
96. While offering a justification, Anjarwalla and Khanna stated that, the applicable conditions for registration as an ICT Practitioner are highly restrictive. By placing formal education as the primary method of qualifying applicants, the Bill excludes a large number of self-taught ICT Practitioners who are currently engaged in highly valuable work. Further, it excludes people who may have opted to take up a career in ICT later in life and may have a different education background. While section 19(e) provides leeway for individuals to demonstrate experience, the fact that the decision is ultimately with the Council means that there is some uncertainty.
97. **The Law Society of Kenya Nairobi Branch** submitted that clause 19 provides for the qualifications for one to be registered as an ICT Practitioner. They stated that under paragraph (e) provides that one can be registered if they have demonstrated expertise, innovation or competence in ICT as may be determined by the Council. They pointed out that the issue with the clause comes in where the parameters of this innovation are left at the discretion of the Council. They wondered about what happens in a case where the Council fails to understand the innovation brought forward. They proposed that the decision should be left to the members of the ICT community in general. This is due to the rapid manner in which technology is ever changing in the field.



98. The Law Society of Kenya Nairobi Branch further submitted that countries such as Iceland which was among the top ranked countries in ICT development by the World Bank in 2020 focus more on registration more for service providers than they do for individuals. The mismatch therefore must be thoroughly addressed to cater for those who pick ICT skills practically and not through formal education.
99. **KASNEB** submitted that clause 19 should be amended to include holders of professional qualifications for membership. In their justification, they stated that most professions, including ICT, accounting, finance, and management have three tiers of qualifications, that is diploma, professional and degree. Professional ICT qualifications include the CICT and CISSE offered by KASNEB. Omitting this group from eligibility for membership may be considered as discriminatory yet some of the professional programmes are more intense in depth of coverage than some degree programmes.
100. **Ms. Lavynne Ayisi** submitted that by requiring registration and licensing of individuals in ICT sector, the Bill was basically restricting entry into the ICT industry at an era when there's huge demand for ICT talent. It potentially locks people out of the ICT industry due to the license requirements and the annual licence fee factor.
101. She further submitted that there was still no justification of why a graduate in the ICT related field would require further licensing and registration to practice. The Bill further limits innovation by restricting those who are self-taught. She pointed out that there was need to appreciate that some people ventured into the ICT industry through alternative means other than formal education and that the ICT industry is hugely driven by talent. There are people who are hugely talented in the ICT industry but have no background education in any ICT related field. Regulating talent massively damages innovation and will limit growth. There is also the risk of job losses for the many talented young people in the ICT sector if the Bill is passed.

### **Committee Observations and Recommendations**

102. The Committee made the following observations:
- (a) Most of the stakeholders had expressed their concerns on clause 19 and the Committee took note of them by recommending amendments to the clause to accommodate their reservations;
  - (b) The Committee recommended that clause 19 be amended in paragraph (b) by deleting the words "and has at least one year post qualification experience in ICT field"; and in paragraph (c) by deleting the word "three" appearing immediately after the words "has at least" and substituting therefor the word "two". The justification for the proposed amendments is that it addresses the concerns raised by some stakeholders that the experience requirements will lock out ICT practitioners. The amendments lower the requirement by removing it in paragraph (b) and reducing it in paragraph (c).
  - (c) The Committee further recommended that clause 19 should be amended to provide that membership to the Institute shall be voluntary. The justification for the proposed amendment was that it effectively addresses the comments raised by several stakeholders who did not support the Bill. By making the registration with the Institute voluntary, an ICT practitioner will be free to register with the Institute.



## **Clause 20**

103. On Clause 20 **Anjarwalla and Khanna** submitted that in the event that the requirement to register is adopted once the Bill is enacted, the prescribed fee for ICT Practitioners ought to be nominal so as to prevent small scale ICT Practitioners from being excluded. This is because prescribing a fee for registration further raises the barriers to entry for ICT experts to subscribe as ICT Practitioners.

### **Committee Observations and Recommendations**

104. The Committee observed that the amount of fees to be paid will be addressed administratively and in regulations.

## **Clause 21**

105. On Clause 21, **Anjarwalla and Khanna** submitted that in the event that the requirement to register is adopted once the Bill is enacted, the Bill should provide that the Institute will develop a data privacy policy in line with the Data Protection Act, 2019, to regulate its collection and sharing of ICT Practitioner's personal data. This can be done through clause 41(2) (a) which provides that regulations may be issued with respect to the maintenance of registers.
106. While offering a justification, they averred that the maintenance of a register containing details of ICT Practitioners raises data privacy concerns. The Bill provides that the names and registered address of an ICT Practitioner would be listed in the register. Given that there exists the potential of multiple ICT Practitioners having the similar names, there is a likelihood that further identifiers will be used to enable the public to make a distinction. There needs to be a data privacy policy guiding this data collection and dissemination process.

### **Committee Observations and Recommendations**

107. The Committee noted the concerns of the stakeholder but was of the view that the provisions of the Data Protection Act, 2019 apply and that there was no need to make a cross-reference to it in the Bill.

## **Clause 22**

108. **The Law Society of Kenya Nairobi Branch** proposed that clause 22(3)(ii) should be amended by deleting "all avenues of appeal have been exhausted". The justification for the proposed deletion is that the provision raises the question that where one doesn't appeal, whether they are allowed to remain on the register. Furthermore, the provision creates the impression that all convicted should then appeal even when there may not be a need to do so as to fulfil the requirements.

### **Committee Observations and Recommendations**

109. The Committee agreed to the proposed amendment.

## Clause 24

110. On Clause 24, **Anjarwalla and Khanna** submitted that there should be no requirement to obtain and maintain a register under the Bill. In order to ensure quality control, the use of standards may be more effective. Through collaboration with industry stakeholders, the Institute can nurture a practice where ICT Practitioners who are compliant with the standards receive a wider range of employment and business opportunities. This incentive-based approach is preferable to compelling a large group of individuals to register and obtain a licence. The Bill could still provide for trainings by the Institute, though this should not be a prerequisite to any licensing.
111. In their justification they stated that the requirement on ICT Practitioners to obtain practising licenses would have an exclusionary effect and hinder innovation. The compliance process attaching to licenses provided (i.e. continuous education) is rigid and incompatible with the fluid nature of progress in the ICT sector.
112. **Ms. Lavynne Ayisi** submitted that by requiring registration and licensing of individuals in ICT sector, the Bill was basically restricting entry into the ICT industry at an era when there's huge demand for ICT talent. It potentially locks people out of the ICT industry due to the license requirements and the annual licence fee factor.
113. She further submitted that there was still no justification of why a graduate in the ICT related field would require further licensing and registration to practice. The Bill further limits innovation by restricting those who are self-taught. She pointed out that there was need to appreciate that some people ventured into the ICT industry through alternative means other than formal education and that the ICT industry is hugely driven by talent. There are people who are hugely talented in the ICT industry but have no background education in any ICT related field. Regulating talent massively damages innovation and will limit growth. There is also the risk of job losses for the many talented young people in the ICT sector if the Bill is passed.

## Committee Observations and Recommendations

114. The Committee noted the concerns raised by the stakeholders and observed that in order to address them, it had recommended that clause 19 of the Bill be amended to provide for voluntary registration of ICT practitioners.

## Clause 25

115. **The Law Society of Kenya Nairobi Branch** submitted that clause 25(3) fails to provide the grounds under which the Council's decision to issue or refuse to renew the licence and therefore leaving it to the Council to make a decision without any parameters could be dangerous in practice.
116. **Ms. Lavynne Ayisi** submitted that by requiring registration and licensing of individuals in ICT sector, the Bill was basically restricting entry into the ICT industry at an era when there's huge demand for ICT talent. It potentially locks people out of the ICT industry due to the license requirements and the annual licence fee factor.

117. She further submitted that there was still no justification of why a graduate in the ICT related field would require further licensing and registration to practice. The Bill further limits innovation by restricting those who are self-taught. She pointed out that there was need to appreciate that some people ventured into the ICT industry through alternative means other than formal education and that the ICT industry is hugely driven by talent. There are people who are hugely talented in the ICT industry but have no background education in any ICT related field. Regulating talent massively damages innovation and will limit growth. There is also the risk of job losses for the many talented young people in the ICT sector if the Bill is passed.

118. Under clause 25(3), Ms. Lavynne submitted that the Council has the power to refuse to issue or renew a licence. There are no grounds under which such a decision shall be made. This gives the Council undue powers to decide whether or not to issue a licence which can also be based on unfair and discriminatory motives.

#### **Committee Observations and Recommendations**

119. The Committee agreed with the Stakeholders for an amendment of clause 25(3) to provide that the Council may refuse to issue or to renew a licence if satisfied that the ICT practitioner is guilty of professional misconduct or is in breach of any provisions of the Act.

#### **Clause 27**

120. Under Clause 27 **Anjarwalla and Khanna** submitted that there should not be any requirement that only licensed ICT Practitioners can derive income from their services. This is because limiting the opportunities to derive income from ICT services to licensed ICT Practitioners places an onerous burden on ICT Practitioners. This provision would effectively compel all persons seeking to offer such services to register or exit the market.

121. **The Law Society of Kenya Nairobi Branch** submitted that clause 27 was ambiguous due to the fact that it fails to indicate the consequence of recovering ICT fees without being licensed. Secondly, it fails to represent the current situation in the country where majority of freelance ICT providers who again may not meet the qualifications created under clause 19 but are still able to provide good quality work.

#### **Committee Observations and Recommendations**

122. The Committee agreed with the Stakeholders and recommended that clause 27 be deleted. Since the Committee had recommended that clause 19 be amended to provide for voluntary registration of ICT practitioners, clause 27 required to be deleted.

#### **Clause 28**

123. **The Law Society of Kenya Nairobi Branch** proposed that clause 28 should be amended by inserting a new subclause (3) to provide that a person convicted under clause 28(2) should not be registered (even if he or she subsequently meets the qualifications) until after the lapse of two to three years. The justification for the proposed amendment was so that the provision could act as a further deterrent in addition to other penalties.

#### **Committee Observations and Recommendations**



124. The Committee agreed to the proposed amendment.

#### **Clause 29**

125. **Lawyers Hub** on Clause 29 observed that one of the conditions given under the Bill that amounts to misconduct by a licensed ICT Practitioner is being insensitive to clients through a lack of regard or concern to their needs, feelings, rights or welfare. Additionally, the Bill has vague provisions on commencement of disciplinary proceedings where a person has been convicted of a criminal offence.

126. **The Law Society of Kenya Nairobi Branch** proposed that clause 29 be amended by deleting paragraph (e). The justification for the proposed deletion is that it appears to be difficult to prove or enforce insensitivity towards clients and further clause 29(f) appears to have captured well the intention of clause 29(e).

127. On Clause 29(a) **Anjarwalla and Khanna** observed that the Bill should recognise and address the status of private industry codes of conduct and perhaps specify how they relate to the Institute's own standards. In furtherance of the approach proposed in our comments (i.e., using guidelines/standards), it may be suitable for the Institute to define high level codes of conduct which can be adopted by existing entities as opposed to directly regulating conduct. The regulations providing the standards of conduct should take into account the above approach.

128. In their justification they stated that the Bill provides that the relevant code of conduct shall be the one laid down by the Council. The Bill does not recognise already existing private codes of conduct which guide members of various representative groups such as the Computer Society of Kenya. This creates a situation where ICT Practitioners will have to be conversant with a number of rules and regulations in order to be compliant. These standards under the Bill are yet to be issued.

129. **Anjarwalla and Khanna** further observed that the Bill should delve into specifics with respect to what constitutes professional misconduct i.e. stipulate the applicable rules and clearly define instances where violation of such rules would amount to misconduct. In addition to this, the Bill should take into account conduct which amounts to an offence under other existing laws such as the KICA and the CMCA.

130. In their justification they stated that the Bill lists a number of grounds which are considered to be professional misconduct such as 'emotional disturbance' or 'character defect'. These grounds are quite vague and subjective. In addition to this, there is no clear description of the conflict resolution mechanism through which the Council will handle cases of misconduct. There are no clear thresholds for the offences, making it difficult for ICT Practitioners to foresee liability and for customers of such practitioners to bring claims.

#### **Committee Observations and Recommendations**

131. The Committee made the following observations:

- (a) Clause 29(e) should be deleted since the professional misconduct envisaged will use a subjective test instead of an objective one;



- (b) Clause 29(f) should be amended by deleting the words “such as a character defect or an emotional disturbance” which are ambiguous and subjective;
- (c) The criminal offences provided for in various statutes are adequate and rightly placed in those statutes and should not be brought within the ambit of professional misconduct under clause 29.

### **Clause 31**

132. **The Law Society of Kenya Nairobi Branch** proposed that clause 31(1) should be amended by addition of a statement to the effect that in the absence of a registered mail, the Council may inform the person whose name is to be removed from the register through that person’s mobile number or any other avenue as indicated against that person’s name in the Register. The justification for the proposed amendment was that the proposed addition is to broaden the avenues in which a person can be informed of his/her removal from the Register.

### **Committee Observations and Recommendations**

133. The Committee agreed to the proposed amendment.

## **FIRST SCHEDULE**

134. On paragraph (1) of the First Schedule, **Anjarwalla and Khanna** observed that clarity should be provided on how reappointment to the Council will work. This is not clear in this paragraph which generally provides for reappointment but does not state the length of tenure of the re-appointment and if reappointment can take place as many times as possible. We propose that for purposes of creating opportunities for others to occupy positions of the Council, re-appointment should be limited to at most, a further term of three years.
135. While offering a justification, they averred that the tenure of office for the chairperson, the vice chairperson or other member of the Council has been provided as three (3) years, subject to re-appointment. There is no clarity as to whether the office bearer will be eligible for appointment in perpetuity or if they will be subject for reappointment for one other term.

### **Committee Observations and Recommendations**

136. The Committee agreed to the proposed amendment to provide for reappointment for a further term of three years.

## **SECOND SCHEDULE**

137. **KASNEB** submitted that there was a need to enhance the Second Schedule with regard to committees, including their functions, quorum, qualifications for Chairman of the Disciplinary Committee (most institutes established under an Act require the Chairman of the Disciplinary Committee to have a strong legal background) and whether some experts may be co-opted on a need basis.

138. Their justification was that the current Second Schedule just lists the committees without further guidance. There was a need to compare with other Acts such as the Accountants Act, No. 15 of 2008 whose schedules on committees are very detailed and clear.

#### **Committee Observation and Recommendation**

139. The Committee noted that clause 41(2)(n) provides that the regulations will prescribe the functions and roles of the committees of the Council. Therefore, there was no need to provide for all the details in the Second Schedule.

### **3.1.2 GENERAL COMMENTS**

#### **A. LAWYERS HUB**

Their general comments centred on the following:

140. **On the effect of the Bill on Innovation:** The Bill will restrict entry into a field that is currently under-crowded and with a huge unsatisfied demand in the market. Having the Council admit specified persons locks out talented innovators who do not have academic qualifications or meet the requirements and bars them from participating in the industry.

The restrictions are counterproductive as the industry is so set up to be ubiquitous and cross border to allow for exchange of ideas, skills and knowledge. The restricting requirements will be disadvantageous to the local innovators as it limits entry of technologists from around the world from entering the Kenyan market which consequently hinders the growth of the local innovators as opposed to creating opportunities for testing, piloting and growing their innovations.

141. **On privacy concerns:** The Bill seeks to have the Institute collect sensitive personal data. Further, it provides that details of the practitioners registered and licensed shall be published in the Gazette. The Bill does not offer any privacy safeguards neither does it recognize the application of the Data Protection Act as the principal legislation that will offer safeguards for the personal data collected.

142. **On the effect of the Bill on the freedom of labour:** The rising concern is that the Bill limits the freedom of labour that allows individuals to work freely without unnecessary restrictions. The provisions to lock out individuals who do not possess academic qualifications from practising limits on the right of individuals to make a decent and meaningful income as expected by provisions of the Constitution of Kenya and various labour laws.

143. **On impact on foreign investments and partnerships:** Kenya is considered a leading innovation Hub in Africa which has multiple foreign investors and partners coming in to set up and participate in the industry. According to the 2019 African VC Ecosystem Report there was a 300% increase in investment volume for start-ups in the year. The World Bank Report also noted a 23% annual expansion in the ICT sector over the past decade.

144. The growth and versatility currently witnessed in the sector will be impeded by this bill as it requires the fulfilment of registration and licensing requirements for any ICT Practitioner

seeking to practice in the industry. It is likely that investors will be discouraged to enter and participate in our markets due to the additional burden and consequently additional costs imposed in upholding these legal provisions.

145. **On double regulation concerns:** Many players in the ICT sector are already regulated, examples including Engineers and Architects. The Engineers are required to register by the Engineers Board of Kenya whereas the Architects are registered by the Board of Registration of Architects and Quantity Surveyors of Kenya. Requiring such players in the ICT Sector to register under the Bill will cause double registration and regulation and make it costly for them to carry on in their practice.
146. **On discussion outcomes:** The move to regulate ICT Practitioners is impractical and counterproductive. It lacks a specified problem that it is looking to solve and negates to the goals and vision of the National ICT Policy. The provisions given in the Bill expose Practitioners to exorbitant fees, potential lock out from participating in the industry and limits growth in creativity and innovation of the actors who will be able to penetrate the abovementioned barriers.
147. This structure of regulation is not common in many a country which should be a point of reference for Kenya. Countries such as Australia, Canada and South Africa have instead adopted a self-regulatory mechanism where the ICT Practitioners come together to share skills, innovative ideas and determine the standards to uphold within the profession. While this system is fraught with its own challenges, it gives free and consensual entrance and leaving of the industry by all stakeholders, it requires less qualification requirements and a broader definition of who qualifies as an ICT Practitioner. It is also better placed to safeguard the interests of the multiple players in the sector and promotes quality standards in the activities conducted within the profession. This is especially because there is a higher sense of belonging and ownership of the sector amongst its players.

## **B. LAW SOCIETY OF KENYA NAIROBI BRANCH**

148. The Law Society of Kenya Nairobi Branch supported the Bill and indicated that it strongly believed that the Bill has the potential to improve the lives of all Kenyans. They recommended that the Committee and relevant offices take necessary steps and actions in ensuring that the management of ICT practice and practitioners will adopt the globally accepted standards.

## **C. ANJARWALLA AND KHANNA**

149. Anjarwalla and Khanna submitted that in the recent past, there have been attempts to introduce legislation to regulate the ICT Industry in Kenya. In 2016, the first version of the current ICT bill was introduced. Following its publication, that bill was challenged on the basis that it was duplicating already existing legislation. In 2018, a second bill re-emerged but only for a short period. The Bill recently resurfaced last year and is the subject of these comments.
150. Although not provided for in legislation, Kenya has associations for ICT professionals that have been created with a particular focus to provide for the needs of the ICT professionals who subscribe to their membership. These associations provide guidance for its members and



already attempt to control the quality of services offered by its members as well as provide training for its members. Some of these associations include the following: The Information Communication Technology Association of Kenya (ICTAK); The Computer Society of Kenya; The Information Systems Audit and Control Association (ISACA) Kenya; and Data Analytics Kenya.

151. Anjarwalla and Khanna further submitted that when attempting to legislate for ICT professionals, it is important to consider the varied areas of practice in which these professionals engage. The move to create associations for ICT professionals in Kenya is evidence that even within the ICT industry, ICT professionals vary when it comes to their interests and daily occupation.
152. They noted that given the fluidity of ICT, new professions continue to emerge with niche focuses such as data analytics and artificial intelligence (AI) professionals, who would have a specialised understanding of these areas as opposed to a more general ICT understanding, which they believe is what legislation would provide a prime focus on. Additionally, a key consideration is the co-existence of the Bill, if passed into law, with the myriad of other existing laws such as the Kenya Information and Communications Act (1998) (the KICA), the Computer Misuse and Cybercrimes Act (the CMCA) (2018), the Data Protection Act (the DPA) (2019), and the existence of regulators such as the Communications Authority (CA), the Office of the Data Protection Commissioner (ODPC), the National Communications Secretariat (NCS), and the ICT Authority.
153. They warned that the Bill, if passed into law, runs the risk of creating duplication in legislation and bureaucracy in the regulatory regime in the ICT Sector in Kenya. For example the ICT Authority registers ICT Practitioners for purposes of accreditation.
154. They advised that other countries across the world have taken a varied approach in the regulation of ICT practitioners, ICT professionals and ICT experts. Where registration with a government entity is adopted as a regulatory mechanism, it is often voluntary such as in the case of ICT Technicians in the UK. Based on their findings, it is not common for countries to mandate the registration and licensing of ICT Practitioners given that the type of work these people do is fast-paced and fluid.
155. Anjarwalla and Khanna submitted that the trend across an overwhelming number of countries points to self-regulation by privately formed associations and representative groups. These associations provide up-to-date standards of conduct to their members seeing as they are administered by practitioners as opposed to government officials.
156. They further submitted that to date, Kenya has not had a regulation in place that provides for ICT practitioners. Despite this absence of regulation, innovation through ICT has been considerably positive in Kenya. In an article in the Harvard Business Review on 18 February 2021, Kenya was acclaimed to be a hotbed in innovation in areas such as financial technologies.
157. In The Harvard Business Review article, Kenyan innovators were considered to take innovative and inexpensive approaches to mobilise consumers by keeping up with their needs and ensuring their solutions are accessible. The receptiveness of the market to these solutions

has been fuelled by factors such as the mobile penetration in Kenya which, according to a statistics report by the Communications Authority of Kenya (the CA) in 2020, stood at approximately 125.8%. This has laid a firm foundation for Kenya's ICT solutions penetration and notably linked to the success of technologies such as M-Pesa, a mobile phone-based money transfer service, payments and micro-financing service.

158. Technologies such as Equitel as well, for example, have transformed how banking services are offered in Kenya. In attempting to regulate ICT practitioners in Kenya, Anjarwalla and Khanna advised that Parliament should consider the needs of Kenyans, the credentials currently held by innovators and ICT experts, and – on a wider spectrum – the nature of the ICT industry and what would be instrumental to its continued growth.
159. They further advised that the decision to recognise and treat ICT practice as a profession ought to be an informed one, considering the rigidity posed by such an approach. While it is laudable to introduce legislation given the harm that can be perpetrated through ICT i.e., cyberattacks, unlawful interception, and disinformation to name a few, a balance should be struck; based on Kenya's National ICT Policy 2019 and Digital Economy Blueprint, 2019, the nurturing of innovation is a high priority for Kenya.
160. Anjarwalla and Khanna submitted that imposing a blanket obligation on individuals to register under this Bill poses the risk of inhibiting innovation. The decision on how best to ensure a measure of quality control in ICT practice ought to take into account other non-legislative means available to existing regulators and rule-making bodies. For example, the use of guidelines/standards can be explored in order to capitalise on the fast-paced and fluid nature of the ICT industry. The benefit of using this approach is mainly flexibility. Given that technology is iterative, maintaining the ability to update the requirements with respect to quality of service is crucial. Furthermore, the fact that this approach is voluntary and would not involve licensing means that the rate of innovation will not necessarily be slowed down.
161. They further submitted that should Kenya elect to adopt the guidelines/standards as its preferred regulatory mechanism, regulators can adopt incentives such as issuing endorsements upon proof of compliance by ICT Practitioners and institutions which train these ICT practitioners so as to ensure compliance with what would effectively be non-binding standards. These endorsements can be used in practice to bolster the credibility of practitioners and institutions. Further, these standards could be trickled down to practitioners through existing associations and representative bodies. The practice of using industry wide standards is not novel; the ICT Authority, in 2019, issued the ICT Human Capital & Workforce Development Standard for ICT Practitioners in public service. This approach may perhaps be more appropriate given the rigidity that may result in legislating for ICT professionals. This approach can also easily plug into the existing framework in Kenya where ICT Practitioners are part of private associations. These associations can easily and effectively act as a forum for Parliament to trickle down industry wide standards in a collaborative and voluntary way. It is also compatible with the numerous representations made by stakeholders in the ICT industry with respect to this Bill and its impact on the industry.
162. Anjarwalla and Khanna finally submitted on the approaches that have been taken in various countries in Africa, in Australia and in the United States of America (US) in relation to the ICT Sector.



163. They indicated that South Africa has in place the Institute of Information Technology Professionals (IITPSA). The IITPSA is not a statutory body; the government appears to have decided to leave ICT professionals to self-regulate through this private body.
164. They further submitted that IITPSA members are found in almost every province in South Africa, with the main concentrations being found in Gauteng, the Western Cape, the Eastern Cape and KwaZulu Natal. In each of these main areas, the IITPSA has a Chapter (or Branch), run by an elected Chapter Chair and his / her elected Committee members. The Chapter Chair is an *ex officio* member of the IITPSA Members' Council, which reports to the Board of Directors and forms a part of the Governing Body of the Institute. In the last two decades, IITPSA has played an active role in the formation of the South Africa ICT Sector Education & Training Authority, the development of ICT Unit Standards, the compilation of the ICT Charter and the promotion of ICT industry programmes.
165. In Uganda, they submitted that the country has taken a similar approach to South Africa. It has in place the Uganda ICT Association (ICTAU) which was formed by private individuals from Uganda, with the vision of providing professional guidance to individuals and organisations in the private sector, as well as offering advisory services to government on policy-based issues.
166. They further submitted that although not provided for in Ugandan legislation, ICTAU has made great strides to ensure quality control for ICT professionals in Uganda. This has been possible through partnerships with leading education institutions such as Makerere University's College of Computing and Information Sciences, among other ICT related institutions. Further, ICTAU seeks to become the foremost and largest forum for ICT practitioners, managers, researchers and policy makers to share their knowledge and experience on the technology, adoption, localisation, management and policy of development ICT practice in Uganda.
167. Anjarwalla and Khanna submitted that Australia has taken a similar approach to South Africa and Uganda. It has in place the Australian Information Technology Professionals Association (ITPA). This is a not-for-profit organisation established to advance the understanding of ICT matters within the community, private sector and government sectors in Australia. In Australia, one becomes a member of ITPA by subscribing for membership with ITPA. Its members are professionals within the IT Industry in Australia and abroad who aim to advance the practice of ICT as a profession. The vision of ITPA is to deliver outcomes which enhance and enrich society through the understanding and application of ICT.
168. Anjarwalla and Khanna further submitted that the US has in place various ICT associations that provide for ICT professionals. This is not provided for in legislation and takes a similar approach to South Africa, Uganda and Australia. These associations include:
- (a) The American Society for Information Science and Technology (ASIS&T);
  - (b) Association for Computing Machinery (ACM);
  - (c) Association for Women in Computing (AWC);
  - (d) The Computing Technology Industry Association (CompTIA); and
  - (e) Information Technology Association of America (ITAA).



### **C. TECHNICAL COMMITTEE 94 – SOFTWARE & SYSTEM ENGINEERING, IT GOVERNANCE, SERVICE MANAGEMENT & ARTIFICIAL INTELLIGENCE AT KENYA BUREAU OF STANDARDS (KEBS TC94)**

169. The Technical Committee 94 gave a general comment that Kenya has the potential of building competent local capacity and a professional workforce to serve both local and international markets. The vital issue would be how to ensure that any applied mechanisms do not lead to greater inequalities and increased unemployment, but rather to increased motivation and sustainable acceptance by all stakeholders to adhere to the resultant framework for professional ethics and standards.
170. They averred that there was need to develop a standard that gives clarity, and a competence framework that provides a means of inclusion, all of which need to be in line with international schemes, and would be glad to present as a means of assisting the operationalization of any law or regulation regarding skills locally. They recommended that:
- Recognition of standards by the legislation (through the established national standards body and the respective Technical Committee 94)
  - Promotion of the use of standards within the market, which may also be voluntarily taken up
  - Regulation review mechanism of the standards and definitions by the committee
  - Clear communication of the ICT leadership agenda around opportunities for the local workforce, covering training, registration & development, practice requirements, etc.
171. In conclusion, they applauded the introduction of the bill and looked forward to its enactment in order to streamline the professionalism of ICT in Kenya.

### **D. THE TECHNOLOGY SERVICE PROVIDERS ASSOCIATION OF KENYA (TESPOK)**

172. The Technology Service Providers Association of Kenya (TESPOK) established in 1999, brings together the interests of the various ICT service providers.
173. TESPOK submitted that private sector firms that are TESPOK Members are already licensed to operate under the Communications Act. They warned that there was a risk of losing substantial investment in the ICT and killing the innovation subsector if specific input on specific areas cannot be accommodated. The loss will deny Kenya the opportunity to be the regional ICT hub. They observed that societal ills cannot be remedied by a punitive law. ICT projects and installations are governed by business contracts that have to be considered carefully. Ethical issues cannot be addressed in one direction only.
174. They further submitted that the Bill fundamentally contradicts other existing laws including constitutional rights to knowledge and information.

### **E. LAVYNNE AYISI**

175. Ms. Lavynne Ayisi submitted that focus should be on the ICT products and not regulation of talent. She observed that there is already in place regulations governing what the ICT industry produces for instance the Data Protection Act, Copyright Act, the Computer Misuse and Cybercrimes Act, among others, and this is where regulation should focus.
176. She further submitted that Article 33 of the Constitution provides for the freedom of expression which includes freedom to seek, receive or impart information or ideas and freedom of artistic creativity. She stated that the Bill violates constitutional rights by restricting and limiting the freedom of expression in the ICT industry.
177. She indicated that the Bill was retrogressive as it will suppress innovation.

## PRESENTATION BY THE SPONSOR OF THE BILL, HON. GODFREY OSOTSI, MP

179. The Sponsor of the Bill, Hon. Godfrey Osotsi, submitted before the Committee as follows—

### Introduction

180. The Information Communication Technology Practitioners Bill, 2020 (National Assembly Bill No 38 of 2020, is a Bill that I have sponsored. It was published on 17th November 2020, read for the first time on 22nd December 2020 and was then referred to this Committee for consideration.
181. The principal object of the Bill is to establish a legal framework for the training, registration, licensing, practice and standards of Information Communication Technology (ICT) professionals in Kenya. As it is now, we don't have a legislation that regulates the ICT professionals in Kenya and this Bill is long overdue.

### Other Legislations on Professions

182. Parliament has enacted legislation governing other professionals and as we speak, a number of Bills providing for the regulation of such professionals is under consideration. Some of the Acts of Parliament include:

- (i) *the Human Resource Management Professionals Act (No. 52 of 2012)* which provides for the establishment of the Institute of Human Resource Management and the Human Resource Management Professionals Board and examination, registration and regulation of the standards and practice of human resource management professionals
- (ii) *the Veterinary Surgeons and Veterinary Para-professionals (No. 29 of 2011)* which provides for the training, registration and licensing of veterinary surgeons and veterinary para-professionals; and matters relating to animal health services and welfare
- (iii) *the Occupational Therapists (Training, Registration and Licensing) Act (No. 31 of 2017)* which makes provision for the training, registration and licensing of occupational therapists; regulates their practice; and provide s for the establishment, powers and functions of the Occupational Therapy Council of Kenya
- (iv) *the Physiotherapists Act (No. 20 of 2014)* which makes provision for the training, registration and licensing of physiotherapists, regulate their practice, and provides for the establishment, powers and functions of the Physiotherapy Council of Kenya
- (v) *the Public Health Officers (Training, Registration and Licensing) Act (No. 12 of 2013)* which provides for the training, registration and licensing of public health officers and public health technicians; regulates their practice, and provides for the establishment, powers and functions of the Public Health Officers and Public Health Technicians Council



(vi) *the Clinical Officers (Training, Registration and Licensing) Act (No. 20 of 2017)* which provides for the training, registration and licensing of clinical officers; regulate their practice; and provide for the establishment, powers and functions of the Clinical Officers Council of Kenya

(vii) *the Certified Public Secretaries of Kenya Act (Cap. 534)* which provides for the establishment of an Institute to be known as the Institute of Certified Public Secretaries of Kenya and a Registration Board to be known as the Registration of Certified Public Secretaries Board; the Act regulates Certified Public Secretaries

(viii) *Brokers Act (Cap. 527)* which provides for the licensing and control of the businesses of brokers, money-changers and goldsmiths and silversmiths

183. Some of the Bills under consideration by the National Assembly include the Insurance Professionals Registration Bill, 2020 (National Assembly Bills No. 25 of 2020) which provides for the establishment of the Insurance of Kenya, and the Insurance Professionals Examinations Board, provide for examination, registration and regulation of standards and practice of insurance professionals.

184. Others include the Certified Managers Bill, 2021 (National Assembly Bills No. 26 of 2021) which provides for the establishment of the Institute of Certified Managers, provides for the registration and regulation of the standards and practice of the certified managers. There is also the Institute of Social Work Professionals Bill, 2020 (National Assembly Bills No. 31 of 2020) and the Community Health Workers Bill, 2020 (National Assembly Bills No. 30 of 2020), among others.

### **Comparative outlook**

185. In Nigeria, the Computer Professionals Registration Council of Nigeria (CPN) was established by Decree No. 49 of 1993.

186. The Council controls and supervises computing profession in the country. Its duties include:

(i) to determine what standards of knowledge and skills are to be attained by persons seeking to become members of the computing profession and improving those standards from time to time as circumstances may permit.

(ii) to secure, in accordance with the provision of the Decree, the establishment and maintenance of a register of persons seeking to be registered under the Decree to practise the computing profession, and the publication from time to time, of the list of these persons.

(iii) to perform any other functions as bestowed on it by the provisions of the decree.

187. Further, the Council screens individuals seeking to be registered as computer professionals, screens corporate bodies seeking to be registered to engage in the sale or use of computing facilities and/or the provision of professional services in computing in the country, ensuring high computing professional ethics and professionalism, determining academic standards in computing, accreditation of institutions, courses and programmes and the evaluation of certificates in computing.

## Importance of the Bill

188. The Bill is important in the following respects—

- a) *It will promote professionalism and ethical conduct in the ICT profession:* Other professions are governed through their professional bodies. Those professional bodies provide standards for the conduct of its members. This thereby injects professionalism and ethical conduct into the profession. The Bill seeks to achieve similar ends in the ICT profession.
- b) *The Bill will assist in the implementation of laws in the ICT sector:* This Bill should not be looked in isolation. The range of laws in the ICT sector would be effectively implemented through such a Bill which will ensure that ICT practitioners are governed through a statute. Three examples will suffice:
  - (i) The provisions of *the Computer Misuse and Cybercrimes Act* and the offences provided there will be observed well with the enactment of this law. This Bill provides a complementary legal framework within the existing
  - (ii) *the Data Protection Act (No. 24 of 2019)* gives effect to Article 31(c) and (d) of the Constitution, provides for the establishment of the Office of the Data Protection Commissioner; makes provision for the regulation of the processing of personal data; provides for the rights of data subjects and obligations of data controllers and processors. All these will be effectively implemented within a well-regulated ICT practitioner framework which the Bill seeks to achieve.
  - (iii) *The Kenya Information and Communications Act (Act No. 2 of 1998)* provides for the establishment of the Communications Authority of Kenya, facilitates the development of the information and communications sector (including broadcasting, multimedia, telecommunications and postal services) and electronic commerce, among others. The objects of the Act would be effectively implemented through a robust legislation on ICT practitioners.
- c) *The Bill implements the Digital Economy Blueprint, 2019:* The Digital Economy Blueprint: Powering Kenya's Transformation, 2019 contains five pillars as foundations for the growth of a digital economy. The pillars are: Digital Government; Digital Business; Infrastructure, Innovation-Driven Entrepreneurship and Digital Skills and Values. The Blueprint also highlights the cross-cutting issues that need to be considered for the success for the success of a digital economy. Specifically, Chapter 7 of the Blueprint provides for digital skills and values. I respectfully submit that this Bill will help achieve this pillar.
- d) *The Bill will drive down the cost of computer services:* In a regulated environment, ICT professionals and firms will provide their services in an environment that promotes professionals. This will reduce or eliminate quacks in the profession who masquerade offering their service to the unsuspecting members of the public and institutions. This will in turn ensure that quality service is offered by professionals and this will have the ripple effect of cutting down cost of services offered by ICT practitioners.

- e) *Can we have self-regulation of the ICT profession in developing countries?* From the claims of some of the stakeholders, they indicate that self-regulation through professional associations that are not statutory bodies offers the best alternative in regulating the ICT practitioners. I respectfully submit that self-regulation in developing countries poses a challenge. From the examples cited, South Africa has a professional association whereas in Nigeria (which is a good example to follow) has established a statutory body to govern its ICT professionals. This is within the modern context of a globalized ICT sector rife with computer misuse and cybercrimes that requires professional conduct from the ICT practitioners.

The Bill combines both self-regulation and government regulation of the ICT professionals which offers a good balance. In regard to this, I propose to the Committee that the membership of the ICT practitioner to the ICT Practitioners Institute be voluntary.

- f) *Committee consideration of the petition by computer forensics experts:* When the Committee considered the petition by computer forensics experts who sought to have their own professional body established by statute, the Committee rightly recommended that there was no need to have different statutes for different ICT practitioners. This Bill therefore is aligned to the Committee's recommendation since computer forensics and various professionals within the sector will be catered for.
- g) *Does the Bill create barriers to entry for ICT practitioners?* Some of the stakeholders have indicated that the Bill places obstacles to ICT practitioners and is a barrier to their entry. I wish to state that clause 19(e) of the Bill provides that a person shall be eligible for registration as an ICT practitioner if the person "*has demonstrated expertise, innovation or competence in ICT as may be determined by the Council*". This paragraph is inclusive and does not lock out ICT practitioners. Further, there will be amendments to clause 19 to make the membership voluntary and to reduce the years and make the requirements accommodative.

## **Conclusion**

189. In conclusion, the Sponsor of the Bill urged the Committee to support the Bill welcomed amendments to the Bill that will enrich the Bill in order to have a proper legal framework for ICT practitioners.



## CHAPTER FOUR

### 4.0 COMMITTEE RECOMMENDATION

The Committee, having considered the Information Communication Technology Practitioners Bill, 2020 (National Assembly Bills No. 38 of 2020), recommends that the House **approves the Bill with amendments** as proposed in the schedule below.

### 5.0 SCHEDULE OF PROPOSED AMENDMENTS

The Committee proposes the following amendments to be considered by the House in the Committee stage:

#### CLAUSE 2

**THAT**, Clause 2 of the Bill be amended—

- (a) in the definition “practicum” by inserting the words “professional qualification” immediately after the words “any degree”;
- (b) by inserting the following new definition in proper alphabetical sequence—

“association” means an association duly established under the prevailing law consisting of persons with the objective of addressing interests and concerns of a particular subject or field in ICT;

#### Justification:

recognize professional qualifications in ICT offered by various examinational bodies both nationally and globally, such as the Certified Information Technologists and Certified Information Systems Solutions Expert (CISSE) offered by KASNEB. Further, since there is a proposed amendment providing for association, the definition “association” should be defined.

#### CLAUSE 3

**THAT**, Clause 3 of the Bill be amended by deleting paragraph (e).

#### Justification:

The Committee has recommended that clause 33 be deleted since it has recommended that registration of an ICT practitioner should be voluntary.

#### CLAUSE 5

**THAT**, Clause 5 of the Bill be amended —

- (a) in subclause (1)—

- (i) In paragraph (f) by deleting subparagraph (iii) and substituting therefor the following new subparagraph—

“(iii) the Telecommunications Service Providers of Kenya;”

(b) in subclause (6) by inserting the word “age” immediately after the word “gender,”.

**Justification:**

**Clause 5(f)(iii) provides for a non-existent body. Instead, the right body should be the Telecommunications Service Providers of Kenya.**

**CLAUSE 13**

**THAT**, Clause 13 of the Bill be amended in subclause (2) (d).

**Justification:**

**The paragraph provides for additional functions to the chief executive officer which are not prescribed in the Bill.**

**CLAUSE 19**

**THAT**, Clause 19 of the Bill be amended—

- (a) in paragraph (b) by deleting the words “and has at least one year post qualification experience in ICT field”;
- (b) in paragraph (c) by deleting the word “three” appearing immediately after the words “has at least” and substituting therefor the word “two”.
- (c) by renumbering the existing provision as subclause (1);
- (d) by inserting the following new subclause immediately after subclause (2)—

“(2) Despite the provisions of subsection (1), a person may elect not to be registered as an ICT practitioner.

**Justification:**

**The justification for the proposed amendments is that it addresses the concerns raised by some stakeholders that the qualification and experience requirements will lock out ICT practitioners. The amendments lower the requirement and further provides for voluntary registration as an ICT practitioner.**

**CLAUSE 22**

**THAT**, Clause 22 of the Bill be amended in subclause (3) (ii) by deleting the words “and all avenues of appeal have been exhausted”.

**Justification:**

The provision raises the question that where one doesn't appeal, whether they are allowed to remain on the register. Furthermore, the provision creates the impression that a convicted person should then appeal even when there may not be a need to do that in order to fulfil the requirements.

#### **CLAUSE 25**

**THAT**, Clause 25 of the Bill be amended in subclause (3) by inserting the words "if satisfied that the ICT practitioner is guilty of professional misconduct or is in breach of any provisions of the Act" at the end of the subclause.

#### **Justification:**

Clause 25(3) fails to provide the grounds under which the Council's decision to issue or refuse to renew the licence and therefore leaving it to the Council to make a decision without any parameters. This could lead to abuse.

#### **CLAUSE 27**

**THAT**, Clause 27 of the Bill be deleted.

#### **Justification:**

The Committee has recommended that clause 19 be amended to provide for voluntary registration of ICT practitioners.

#### **CLAUSE 28**

**THAT**, Clause 28 be amended by inserting the following new subclause immediately after subclause (2)—

"(3) A person convicted under subclause (2) shall not be registered until after the lapse of two years.

#### **Justification:**

The provision would act as a further deterrent in addition to other penalties.

#### **CLAUSE 29**

**THAT**, Clause 29 of the Bill be amended—

- (a) by deleting paragraph (e);
- (b) in paragraph (f) by deleting the words "such as a character defect or an emotional disturbance" which are ambiguous and subjective;

#### **Justification:**



Paragraph (e) is recommended to be deleted because the paragraph is subjective and not objective as required. Further, it is recommended that paragraph (f) be amended to delete the words “such as a character defect or an emotional disturbance” which are ambiguous and subjective.

#### CLAUSE 31

**THAT**, Clause 31 of the Bill be amended by inserting the following new subclause immediately after subclause (1)—

“(1A) Despite subsection (1), the Council may notify a member through other means indicated in the register where a person does not have a registered mail.

#### Justification:

The proposed addition is to broaden the avenues in which a person can be informed of his/her removal from the Register.

#### FIRST SCHEDULE

**THAT**, the First Schedule to the Bill be amended in paragraph (1) by inserting the words “for a further term of three years” at the end of the paragraph.

#### Justification:

The paragraph does not state the length of tenure of the re-appointment and if reappointment can take place. The amendment clarifies this.

SIGNED ..... *William Kisang* ..... DATE *18/08/2021* .....

HON. WILLIAM KISANG, M.P.  
CHAIRPERSON  
DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND  
INNOVATION

THE NATIONAL ASSEMBLY	
DATE: 19 AUG 2021	
TABLED BY:	
CLERK-AT THE TABLE:	

# **ANNEXURE 1**

## **ADOPTION LIST**





**DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND  
INNOVATION**

**12<sup>TH</sup> PARLIAMENT – FIFTH SESSION (2021)**

**ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE ICT  
PRACTITIONERS BILL, 2020**

17/08/2024  
We, the undersigned, hereby affix our signatures to this Report to affirm our approval

	HON. MEMBER	SIGNATURE
1.	Hon. Kisang, William MP (Chairperson)	Present
2.	Hon. Jane Wanjuki Njiru, MP (Vice Chairperson)	Present
3.	Hon. George Theuri , M.P.	Present
4.	Hon. Alfah, O. Miruka, M.P.	Present
5.	Hon. Annie Wanjiku Kibeh, M.P.	Present
6.	Hon. Joshua Kimilu, Kivinda, M.P.	Present
7.	Hon. Marwa Kitayama Maisori, M.P.	Present
8.	Hon. Mwambu Mabongah, M.P.	Present
9.	Hon. Maritim Sylvanus, M.P.	Present
10.	Hon. Mwangaza Kawira, M.P.	Present
11.	Hon. Jonah Mburu, M.P.	Present
12.	Hon. Gertrude Mbeyu Mwanyanje, M.P.	Present
13.	Hon. Victor Munyaka , M.P.	Present
14.	Hon. (Eng). Mark Nyamita Ogola, M.P.	
15.	Hon. Anthony Githiaka Kiai , M.P.	Present
16.	Hon. Erastus Nzioka Kivasu, M.P.	Present
17.	Hon. Godfrey Osotsi, Atieno , M.P.	Present
18.	Hon. Innocent Momanyi, Obiri, M.P.	
19.	Hon. Anthony, Tom Oluoch, M.P.	Present



# **ANNEXURE 2**

## **COMMITTEE MINUTES**





**MINUTES OF THE 32<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
COMMUNICATION, INFORMATION & INNOVATION HELD VIRTUALLY ON  
TUESDAY 17<sup>TH</sup> AUGUST, 2021 AT 10.00AM**

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**PRESENT**

- |                                       |                    |
|---------------------------------------|--------------------|
| 1. Hon. William Kisang Kipkemai, M.P. | - Chairperson      |
| 2. Hon. Jane Wanjuki Njiru, M.P.      | -Vice- Chairperson |
| 3. Hon. Godfrey Osotsi Atieno, M.P    |                    |
| 4. Hon. Gertrude Mbeyu Mwanyanje, M.P |                    |
| 5. Hon. Anthony Githiaka Kiai, M.P    |                    |
| 6. Hon. Anthony Oluoch, M.P.          |                    |
| 7. Hon. Mwangaza Kawira, M.P          |                    |
| 8. Hon. Erastus Nzioka Kivasu, M.P    |                    |
| 9. Hon. Annie Wanjiku Kibeh, M.P      |                    |
| 10. Hon. Jonah Mburu, M.P             |                    |
| 11. Hon. Mwambu Mabongah, M.P         |                    |
| 12. Hon. George Theuri, M.P           |                    |
| 13. Hon. Victor Munyaka, MP           |                    |
| 14. Hon. Maritim Sylvanus, MP         |                    |
| 15. Hon. Joshua Kimilu Kivinda, M.P   |                    |
| 16. Hon. Marwa Kitayama Maisori, M.P  |                    |
| 17. Hon. Alfah O. Miruka, M.P         |                    |

**ABSENT WITH APOLOGY**

1. Hon. (Eng.). Mark Nyamita, M.P
2. Hon. Innocent Momanyi Obiri, M.P

**THE SECRETARIAT**

- |                         |   |                    |
|-------------------------|---|--------------------|
| 1. Ms. Hellen Kina      | - | Clerk Assistant II |
| 2. Ms. Ella Kendi       | - | Clerk Assistant II |
| 3. Mr. Salem Lorot      | - | Legal Counsel      |
| 4. Ms. Winnie Kulei     | - | Research Officer   |
| 5. Mr. Thomas Ogwel     | - | Fiscal Analyst I   |
| 6. Ms. Cynthia Chemiryo | - | ICT Officer        |

**AGENDA**

1. Preliminaries
2. Confirmation of the Minutes
3. Consideration and adoption of the draft report on consideration of the ICT Practitioners Bill, 2020
4. Adjournment / Date of the Next Meeting

**MIN.NO/NA/CII/2021/135: PRELIMINARIES**

The Chairperson called the meeting to order at fifteen minutes past ten o'clock followed by a word of prayer.

**MIN.NO/NA/CII/2021/136: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING**

The agenda was deferred to the next sitting agenda was deferred.

**MIN.NO/NA/CII/2021/137: CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON ICT PRACTITIONERS BILL, 2020**

The Committee considered the draft report and adopted it with the following amendments having been proposed by Hon. Godfrey Ososti, MP and seconded by Hon. Erastus Kivasu, MP.

That the Committee proposes the following amendments to be considered by the House in the Committee stage:

**CLAUSE 2**

**THAT**, Clause 2 of the Bill be amended—

- (a) in the definition “practicum” by inserting the words “professional qualification” immediately after the words “any degree”;
- (b) by inserting the following new definition in proper alphabetical sequence—

“association” means an association duly established under the prevailing law consisting of persons with the objective of addressing interests and concerns of a particular subject or field in ICT;

**Justification:**

**recognize professional qualifications in ICT offered by various examinational bodies both nationally and globally, such as the Certified Information Technologists and Certified Information Systems Solutions Expert (CISSE) offered by KASNEB. Further, since there is a proposed amendment providing for association, the definition “association” should be defined.**

**CLAUSE 3**

**THAT**, Clause 3 of the Bill be amended by deleting paragraph (e).



**Justification:**

**The Committee has recommended that clause 33 be deleted since it has recommended that registration of an ICT practitioner should be voluntary.**

**CLAUSE 5**

**THAT, Clause 5 of the Bill be amended —**

(a) in subclause (1)—

(i) In paragraph (f) by deleting subparagraph (iii) and substituting therefor the following new subparagraph—

“(iii) the Telecommunications Service Providers of Kenya;”

(b) in subclause (6) by inserting the word “age” immediately after the word “gender,”.

**Justification:**

**Clause 5(f)(iii) provides for a non-existent body. Instead, the right body should be the Telecommunications Service Providers of Kenya.**

**CLAUSE 13**

**THAT, Clause 13 of the Bill be amended in subclause (2) (d).**

**Justification:**

**The paragraph provides for additional functions to the chief executive officer which are not prescribed in the Bill.**

**CLAUSE 19**

**THAT, Clause 19 of the Bill be amended—**

(a) in paragraph (b) by deleting the words “and has at least one year post qualification experience in ICT field”;

- (b) in paragraph (c) by deleting the word “three” appearing immediately after the words “has at least” and substituting therefor the word “two”.
- (c) by renumbering the existing provision as subclause (1);
- (d) by inserting the following new subclause immediately after subclause (2)—

“(2) Despite the provisions of subsection (1), a person may elect not to be registered as an ICT practitioner.

**Justification:**

**The justification for the proposed amendments is that it addresses the concerns raised by some stakeholders that the qualification and experience requirements will lock out ICT practitioners. The amendments lower the requirement and further provides for voluntary registration as an ICT practitioner.**

**CLAUSE 22**

**THAT**, Clause 22 of the Bill be amended in subclause (3) (ii) by deleting the words “and all avenues of appeal have been exhausted”.

**Justification:**

**The provision raises the question that where one doesn’t appeal, whether they are allowed to remain on the register. Furthermore, the provision creates the impression that a convicted person should then appeal even when there may not be a need to do that in order to fulfil the requirements.**

**CLAUSE 25**

**THAT**, Clause 25 of the Bill be amended in subclause (3) by inserting the words “if satisfied that the ICT practitioner is guilty of professional misconduct or is in breach of any provisions of the Act” at the end of the subclause.

**Justification:**

**Clause 25(3) fails to provide the grounds under which the Council’s decision to issue or refuse to renew the licence and therefore leaving it to the Council to make a decision without any parameters. This could lead to abuse.**

## **CLAUSE 27**

**THAT, Clause 27 of the Bill be deleted.**

### **Justification:**

**The Committee has recommended that clause 19 be amended to provide for voluntary registration of ICT practitioners.**

## **CLAUSE 28**

**THAT, Clause 28 be amended by inserting the following new subclause immediately after subclause (2)—**

**“(3)A person convicted under subclause (2) shall not be registered until after the lapse of two years.**

### **Justification:**

**The provision would act as a further deterrent in addition to other penalties.**

## **CLAUSE 29**

**THAT, Clause 29 of the Bill be amended—**

**(a) by deleting paragraph (e);**

**(b) in paragraph (f) by deleting the words “such as a character defect or an emotional disturbance” which are ambiguous and subjective;**

### **Justification:**

**Paragraph (e) is recommended to be deleted because the paragraph is subjective and not objective as required. Further, it is recommended that paragraph (f) be amended to delete the words “such as a character defect or an emotional disturbance” which are ambiguous and subjective.**



## **CLAUSE 31**

**THAT**, Clause 31 of the Bill be amended by inserting the following new subclause immediately after subclause (1)—

“(1A) Despite subsection (1), the Council may notify a member through other means indicated in the register where a person does not have a registered mail.

### **Justification:**

**The proposed addition is to broaden the avenues in which a person can be informed of his/her removal from the Register.**

## **FIRST SCHEDULE**

**THAT**, the First Schedule to the Bill be amended in paragraph (1) by inserting the words “for a further term of three years” at the end of the paragraph.

### **Justification:**

**The paragraph does not state the length of tenure of the re-appointment and if reappointment can take place. The amendment clarifies this.**

## **MIN.NO/NA/CI/2021/138: ADJOURNEMENT AND THE DATE OF THE NEXT MEETING**

There being no other business, the meeting was adjourned at twenty minutes past eleven o'clock. Date of the next meeting will be communicated on notice.

SIGNED..... DATE.....

HON.WILLIAM KISANG, MP - CHAIRPERSON

# **ANNEXURE 3**

## **COPY OF THE ADVERTISEMENT**





# THE NATIONAL ASSEMBLY

## TWELFTH PARLIAMENT - FOURTH SESSION

### INVITATION FOR PUBLIC PARTICIPATION & SUBMISSION OF MEMORANDA (Article 118 (1) (b) of the Constitution and Standing Order 127(3) of the National Assembly Standing Orders)

In the Matter of consideration by the National Assembly: -  
The Information Communication Technology Practitioners Bill, 2020  
(National Assembly Bill No. 38 of 2020)

### SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127 provides that "the Departmental Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its report to the House"

The Information Communication Technology Practitioners Bill, 2020 (National Assembly Bill No. 38 of 2020) introduced by Hon. Godfrey Otsosi, MP, seeks to establish a legal framework for the training, registration, licensing practice and standards of Information Communication Technology (ICT) professionals in Kenya.

The Bill has undergone First Reading pursuant to Standing Order 127(3) and stand committed to the Departmental Committee on Communication, Information and Innovation for consideration and thereafter report to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee invites interested members of public to submit any representations that they may have on the said Bill. The Bill can be accessed from the Parliamentary website at [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills).

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke); to be received not later than Friday 26th February 2021 at 5:00pm.

MICHAEL R. SIALAI, CBS  
CLERK OF THE NATIONAL ASSEMBLY





# **ANNEXURE 4**

## **COPIES OF THE MEMORANDA**



## **SUBMISSION ON THE ICT PRACTITIONERS BILL 2020**

### **About the Lawyers Hub Kenya**

The Lawyers Hub is a Legal-Tech organization incorporated within the Republic of Kenya serving the global south. It exists to provide innovative and technology-driven solutions to policy, legal practice and access to justice with a particular focus on technology-driven enterprises and policy alternatives. In the year 2020 alone, the Lawyers Hub has convened policy makers, academia and legal-tech organizations from 20+ countries within the African Continent, curated rapid tech solutions under the Global Legal Hackathon and developed key policy briefs for the African Continent on Artificial Intelligence, Data Privacy & Digital Identity, Tech and Migration, and Taxing the Digital Economy. In this regard, we offer our submissions on the proposed regulations.



## **1. Introduction**

The ICT Practitioners Bill debuted in 2016 but was struck off by CS Joe Mucheru on the basis of duplication of existing legislation. It reappeared in 2018 and then went silent and in November 2020 the Bill made its way to the Kenya Gazette as the ICT Bill, 2020.

The Bill seeks to introduce training, registration, licensing, practice, and standards for ICT Practitioners. To this end, on the 22nd of February 2021 the Lawyers Hub in collaboration with KEPSA held a discussion on the ICT Practitioners Bill, 2020. The over 230 attendees, who included persons from the ICT sector, legal professionals (lawyers, practitioners, in-house counsel and academia), civil society organizations and members of the public contributed heavily to the matters raised in the Bill and the Lawyers Hub proceeded to capture and document these comments as seen below.



## **2. Issues**

### **Lack of Problem Statement**

The Bill does not state the existing problem it seeks to address. It has also not highlighted any engagements with sector players on any problems arising or potential recourse mechanisms that were adopted and deemed unsatisfactory that led to the drafting of the Bill.

### **The Definition of an ICT Practitioner**

Section 2 of the Bill defines an ICT Practitioner as a person who is registered and licensed under the Act as an ICT Practitioner. There is concern that the definition is vague and ambiguous. It does not account for the ever-changing dynamics of the industry and the evolving needs of the multi-sector partners involved. The definition is thus bound to leave out key players in the ICT sector who would otherwise qualify to be regarded as ICT Practitioners as technology teams tend to be too broad to fit into one definition.

### **Registration Qualification Needs to Practice as an ICT Practitioner**

For a person to be registered as an ICT Practitioner, Section 19 of the Bill requires they have either; a Bachelor's degree in ICT related field or, have a Bachelor's degree in electrical and electronics engineering, mathematics or physics and an additional one year post qualification experience in ICT field, or have a diploma in ICT related field and at least three years' post qualification experience or the person has demonstrated expertise, innovation or competence in ICT as the Council may determine.

The requirement for Bachelor's or Diploma qualifications locks out persons with skills and ability developed as a result of continuous practice, apprenticeship or self-teaching. Practitioners will also be unable to gain the stipulated experience threshold if they are barred from practicing without a license, which license needs registration. It is also important to note that while the option to demonstrate expertise in the sector may seem to be broadening the requirements, giving the Council the sole power to determine if a person is innovative or demonstrates competence and expertise is undesirable.

In addition, a person shall be required to pay the prescribed fees to be registered and be issued with a certificate of registration which adds to the burden imposed on the practitioner.



## **The Functions of the ICT Institute**

The Bill mandates the Institute to; prescribe standards of practice, assist members in respect of conditions of practice, approve courses to be undertaken for purposes of registration as ICT Practitioner, administer examinations to determine qualifications of individuals who wish to be ICT Practitioners, collaborate with institutions for CPD for ICT practitioners, prescribe fee to be charged by ICT Practitioners, approve institutions to offer ICT courses and supervise professional conduct of ICT Practitioners.

This provision gives a great array of power to one body. It also creates overlapping roles and a lack of clear structure in the manner processes are being conducted. The Institute is therefore prone to being overwhelmed and to mismanagement. The power to set the curriculum, administer examinations, and issue practicing licenses should not be the sole mandate of one body. This degrades the standard of quality the Bill is striving to achieve and further, may limit participation by other stakeholders in the sector.

## **Professional Misconduct and Disciplinary**

One of the conditions given under the Bill that amounts to misconduct by a licensed ICT Practitioner is being insensitive to clients through a lack of regard or concern to their needs' feelings, rights or welfare.

Additionally, the Bill has vague provisions on commencement of disciplinary proceedings where a person has been convicted of a criminal offence.

## **The Effect of the Bill on Innovation**

The Bill will restrict entry into a field that is currently under crowded and with a huge unsatisfied demand in the market. Having the Council admit specified persons locks out talented innovators who do not have academic qualifications or meet the requirements and bars them from participating in the industry.

The restrictions are counterproductive as the industry is so set up to be ubiquitous and cross border to allow for exchange of ideas, skills and knowledge. The restricting requirements will be disadvantageous to the local innovators as it limits entry of technologists from around the world from entering the Kenyan market which consequently hinders the growth of the local innovators as opposed to creating opportunities for testing, piloting and growing their innovations.



## **Privacy Concerns**

The Bill seeks to have the Institute collect sensitive personal data. Further, it provides that details of the practitioners registered and licensed shall be published in the gazette. The Bill does not offer any privacy safeguards neither does it recognize the application of the Data Protection Act as the principal legislation that will offer safeguards for the personal data collected.

## **The Effect of the Bill on the Freedom of Labour**

The rising concern is that the Bill limits the freedom of labour that allows individuals to work freely without unnecessary restrictions. The provisions to lock out individuals who do not possess academic qualifications from practising limits on the right of individuals to make a decent and meaningful income as expected by provisions of the Constitution of Kenya and various labour laws.

## **Impact on Foreign Investments and Partnerships**

Kenya is considered a leading innovation Hub in Africa which has multiple foreign investors and partners coming in to set up and participate in the industry. According to the 2019 African VC Ecosystem Report there was a 300% increase in investment volume for start-ups in the year. The World Bank Report also noted a 23% annual expansion in the ICT sector over the past decade.

The growth and versatility currently witnessed in the sector will be impeded by this Bill as it requires the fulfilment of registration and licensing requirements for any ICT Practitioner seeking to practice in the industry. It is likely that investors will be discouraged to enter and participate in our markets due to the additional burden and consequently additional costs imposed in upholding these legal provisions

## **Double Regulation Concerns**

Many players in the ICT sector are already regulated, examples including Engineers and Architects. The Engineers are required to register by the Engineers Board of Kenya whereas the Architects are registered by the Board of Registration of Architects and Quantity Surveyors of Kenya. Requiring such players in the ICT Sector to register under the Bill will cause double registration and regulation and make it very costly for them to carry on in their practice.



### **3. Discussion outcomes**

The move to regulate ICT Practitioners is impractical and counterproductive. It lacks a specified problem that it is looking to solve and negates to the goals and vision of the National ICT Policy. The provisions given in the Bill exposes Practitioners to exorbitant fees, potential lock out from participating in the industry and limits growth in creativity and innovation of the actors who will be able to penetrate the abovementioned barriers.

This structure of regulation is not common in many a country which should be a point of reference for Kenya. Countries such as Australia, Canada and South Africa have instead adopted a self-regulatory mechanism where the ICT Practitioners come together to share skills, innovative ideas and determine the standards to uphold within the profession. While this system is fraught with its own challenges, it gives free and consensual entrance and leaving of the industry by all stakeholders, it requires less qualification requirements and a broader definition of who qualifies as an ICT Practitioner. It is also better placed to safeguard the interests of the multiple players in the sector and promotes quality standards in the activities conducted within the profession. This is especially because there is a higher sense of belonging and ownership of the sector amongst its players.

### **4. Recommendations**

#### **Consultative Engagement with Stakeholders**

The provisions of the Bill directly impact the operations of various stakeholders found within the industry. As such, all persons and entities in the sector ought to be consulted and their input regarded highly as they are best suited to clarify the needs of the ICT sector.

#### **Adopting a Problem Statement**

The Bill should be guided by a problem statement to demonstrate the specific issues arising that it is striving to address and to solve. It should further highlight any engagements with sector players on the problems and any potential recourse mechanisms that were adopted and deemed unsatisfactory leading to the drafting of the Bill.



### **Provisions on Licensing**

The licensing provisions should be scrapped to remove the added burden for fee payment to practice in the ICT sector and further to ensure a practitioner is not hindered from earning a decent living. The provisions should instead seek to provide incentives for the ICT Sector to encourage creativity and innovation amongst the practitioners.

### **Provisions on Registration Qualifications**

The provisions to register as an ICT Practitioner which is subject to meeting certain educational qualifications locks out all self-taught professionals and those who have gained skills from practicing in the sector. This provision should thus be scrapped off to ensure inclusivity and open access to practice in the sector. Practitioners should be allowed to choose whether to be members of the Institute as opposed to being compelled.

### **All-rounded Composition of the Council**

The Council should feature all key players in the ICT Sector. The sector has multiple stakeholders such as startups, ICT Professionals, Government agencies and the civil societies in ICT. These parties should all find adequate representation in the Council to ensure that all their interests are safeguarded.

## **5. Conclusion**

The ICT Practitioners Bill 2020 the Bill should be struck out in its entirety. It has shortcomings that make it bad law for the ICT Sector in Kenya. It does not adhere to policy by design principals required for a bill to regulate the ICT Practitioners. The International Telecommunication Authority establishes nine key principles that should act as a checklist when initiating a regulation for the ICT Sector which being: Holistic, Inclusive & Open, forward looking and in line with a digital strategy, adheres to the SDG goals, provides incentives for the players in the sector, is evidence based requiring on the need for impact assessment and is technology neutral. None of these are reflective in the ICT Practitioners Bill and as such it will only create bottlenecks in an industry that is promising and growing faster than any other industry.



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**COMMENTS AND PROPOSALS ON ICT PRACTITIONERS BILL**

	SECTION	PROPOSAL/CONCERN
1.	<b>ICT Practitioner definition</b>	<p>The definition of ICTP is overly broad. With the Council of Institute tasked to train, register and license ICTPs under the bill, there is the concern of just how much capacity will be required for the council to enforce and cover the already huge scope of ICTPs.</p> <p>The ICT sector is very wide and it's not clear who or what the bill specifically targets and what problem the bill intends to solve.</p>
2.	<b>Clauses 19, 24, 25</b>	<p>By requiring registration and licensing of individuals in ICT sector, the Bill is basically restricting entry into the ICT industry at an era when there's huge demand for ICT talent. It potentially locks people out of the ICT industry due to the license requirements and the annual license fee factor. There is still no justification of why a graduate in the ICT related field would require further licensing and registration to practice.</p> <p>Bill further Limits innovation by restricting those who are self-taught. Need to appreciate that some people ventured into the ICT industry through alternative means other than formal education. And the ICT industry is hugely driven by talent. There are people who are hugely talented in the ICT industry but have no background education in any ICT related field.</p> <p>Regulating talent massively damages innovation and will limit growth. There is also the risk of job losses for the many talented young people in the ICT sector if the bill is passed.</p>
3	<b>Clause 25 (3)</b>	<p>The council has the power to refuse to issue or renew a license. There are no grounds under which such a decision shall be made. This gives the council undue powers to decide whether or not to issue a license which can also be based on unfair and</p>

		discriminatory motives.
4.	<b>Constitutional violation of the freedom of expression</b>	Article 33 of the constitution provides for the freedom of expression which includes freedom to seek, receive or impart information or ideas and freedom of artistic creativity.

		The Bill violates constitutional rights by restricting and limiting the freedom of expression in the ICT industry.
5	<b>Proposal</b>	<p>Focus should be on the ICT products and not regulation of talent. There is already in place regulations governing what the ICT industry produces eg the Data protection Act, Copyright Act, the Computer and cybercrime Act etc and this is where regulation should focus.</p> <p>The bill is retrogressive as it will suppress innovation.</p>

Mr. Chemweno  
Please deal:  
Enli  
01/03/21



## Information Communication Technology Association of Kenya

IMPROVING LIVES THROUGH ICT

P.O. Box 17429-00100 Nairobi; 0721 754 218; 0731 786 644; [secretarygeneral@ictak.or.ke](mailto:secretarygeneral@ictak.or.ke); [www.ictak.or.ke](http://www.ictak.or.ke)

25<sup>th</sup> February 2021

The Clerk of the National Assembly,  
Republic of Kenya,

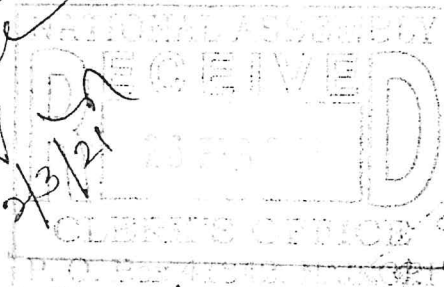
Main Parliament Buildings,

P.O. Box 41842-00100,

Nairobi.

E-Mail: [clerk@parliament.go.ke](mailto:clerk@parliament.go.ke)

*Heller newyot  
pls deal  
2/3/21*



*Honorable Clerk of the Assembly,*

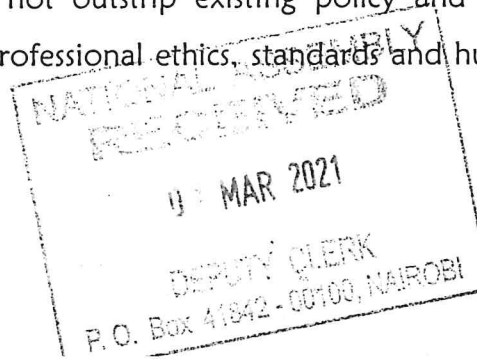
### **MEMORANDUM IN SUPPORT OF THE ICT PRACTITIONERS BILL, 2020**

#### **1. INTRODUCTION**

Receive warmest compliments from the ICT Association of Kenya. We acknowledge with profound gratitude, the phenomenal transformation across the ICT sector triggered by the legislative foresight of the National Assembly. In response to the call for representations on the ICT Practitioners Bill published on 20<sup>th</sup> November 2020, may it please the August House, to consider this brief memorandum which summarizes the position of the ICT Association in respect to the aforesaid Bill.

#### **2. POLICY GROUNDING OF THE ICT PRACTITIONERS BILL**

The Government of Kenya has recognized ICT as a key enabler of development. As dependence on ICT continues to rise, it is critical to ensure that the rate at which technology evolves does not outstrip existing policy and legal frameworks. There is therefore need to foster professional ethics, standards and human resource development ideals.





To date, ICT professionals have not yet managed to formulate a credible and legally recognized statutory body to nurture and regulate the profession, as well as to set standards and code of ethics for its members. Indeed, there is currently no clear legal framework for the conduct of ICT professional affairs in Kenya. Self-evidently, the ICT Practitioners Bill, 2020 perfectly responds to the various practical and institutional gaps that have been occasioned by the dynamics of technological revolution.

In our perspective, the ICT Practitioners Bill, 2020 is anchored on the guiding principles enunciated in the National ICT Policy Guidelines, 2020 notably; skills development, innovation, public service delivery and appropriate policy and regulatory framework. Further, it takes into consideration the objectives of Vision 2030 whose aim is principally to transform Kenya into a formidable ICT hub and a globally competitive digital economy.

### **3. FOUNDATIONAL JUSTIFICATION THE ICT PRACTITIONERS BILL**

Foremost, the Bill provides a comprehensive framework for the training, registration, licensing and standards of practice of ICT in Kenya. Once enacted, the various provisions enlisted will go a long way, not only to elevate the standards of ICT practice in Kenya, but to also avail a blueprint that will help counter multiple challenges that accompany emergent technologies. ICT capacity building and workforce development will fundamentally nurture quality ICT human resources, a known pre-requisite for the development of a viable ICT sector.

By creating a registration framework, the Bill injects professionalism and introduces a culture of accountability within the industry as the country gears towards an ICT driven economy. The Bill will bring order into the ICT sector and create an organized profession along the ranks of other professions like law, media, counseling, human resource management and accountancy among others that enjoy statutory recognition. Registration and licensing will further avail the needed data for sectoral planning and also reveal gaps for positive intervention.

With the stipulation of standards of professional competence, ICT practitioners will be appropriately recognized and remunerated. To safeguard the interests of young innovators, the Bill creates a framework to protect members of the ICT profession from exploitation by setting up of criteria for determining the minimum fees to be charged for specified professional services.

Due to existing legal loopholes, unscrupulous service providers have cultivated a legendary culture of offering substandard services and supplying faulty devices among other failed systems. Sadly, clients and consumers of ICT services have no recourse in the event of negligent or substandard service from ICT practitioners. This situation has been addressed by the Bill which will see the public in Kenya educated and safeguarded on all ICT related matters.

In what will reduce the scale of litigation in the ICT sector, the Bill provides for arbitration of ICT related disputes. By providing for disciplinary measures in cases of violations of professional conduct and requiring practitioners to subscribe to a code of conduct, service delivery in the industry will be bolstered. The Institute established under this bill will also augment government ICT strategy by advising the government on appropriate policies and programs for the profession of ICT in Kenya.

As properly demarcated at clause 2, the Bill does not seek in any way, to rope in private or personal day to day ICT transactions. It is strictly confined to commercial ICT activities undertaken as a matter of business routine. The Bill is clearly modeled along global best practices and upon similar principles to those applied to accord statutory recognition to other professions such as:

- Accountants Act (No. 15 of 2008)
- Medical Laboratory Technicians and Technologists Act (No. 10 of 1999)
- Nutritionists and Dieticians Act
- Human Resource Management Professionals Act, 2012
- Counsellors and Psychologists Act, 2014
- Medical Practitioners and Dentists Act
- Law Society of Kenya Act
- Engineers Registration Act

Doubtlessly, the current global mood is towards organized professions and industries. Even the formerly chaotic *matatu* and *boda-boda* sectors have now adjusted to some discernible standards and operational code of practice. The ICT sector has no excuse be left behind.

#### **4. BILL DEVELOPMENT PROCESS**

A multi-stakeholder approach was employed towards development of this Bill. A lot of consultative effort and resources were expended towards this end. Several conferences and consultative forums with topnotch legal minds and practitioners within diverse professions were conducted over an extensive period. Throughout the Bill development process, the sponsor of the Bill, Hon Osotsi held numerous consultative meetings with varied stakeholders. The ICT Association of Kenya among other key players provided feedback from the ICT fraternity and the wider public issues that required review in order to ensure that unnecessary restrictions do not arise and that the Bill's objective to advance the fortunes of the ICT sector is not curtailed. Since all the valid issues raised by ICT professionals and the public have been satisfactorily addressed in the current version of the Bill, we consider it legitimate to endorse the Bill without reservations.

#### **5. MISCELLANEOUS MATTERS REGARDING THE ICT BILL, 2020**

Upon the publication of this Bill, various issues have arisen from different quarters. Most of the issues raised especially on social media are anchored on inaccuracies, deliberate misinterpretation and outright falsehood to achieve nefarious objectives. Some of the peddlers of propaganda have not hesitated to openly declare that they are under instruction by "well paying" multinational organizations and other masters, to taint the Bill in every way and possibly to delay its enactment. They have gone ahead to state that they will fight the Practitioner's Bill with the same vigor with which they fought the Data Protection Act, 2019 and the Computer Misuse and Cybercrimes Act, 2018 among others. Parliament must never allow its legislative mandate to be derailed or curtailed by self-serving interests of multinational corporations and other unpatriotic organizations.

Contrary to propaganda, the Bill takes a futuristic perspective of the ICT industry and profession. It will foster clarity and order within the ICT sector and illuminate further opportunities thus escalating fortunes for the sector. An organized ICT sector would



definitely inspire confidence thus broaden the scale of use of ICT products and services leading to greater investor prospects.

Through an inclusive approach, the Bill provides for a wide range of qualifications and criteria for professional recognition. The qualification criteria is emphatic on proficiency and competence. The Bill also leaves room for further inclusion of deserving persons by empowering the Council to recognize all fit and proper persons including those with industry exposure, innovative talent or relevant certifications.

Contrary to the humongous imaginary figures circulating in social media, the Bill has not prescribed any registration or licensing fees. That mandate is committed to the Council of the Institute which will consultatively ensure that any fees charged are affordable, proportionate, realistic and within a range similar to those levied by other statutory bodies. The nominal contributions in the form of registration and licensing fees will be utilized to sustain the Institute's operations since it is not expected that taxpayer funds be expended to finance the operations of the institute.

## **6. CONCLUSION**

Kenya legitimately prides itself as being at the cutting edge in matters technology. The ICT Practitioners Bill, 2020 fundamentally sets the stage for excellence in professional standards. Accordingly, ICTAK supports the expeditious enactment of the Bill. Confident of Parliament's unwavering commitment to legislate for posterity, we assure you of our highest regards and look forward to your continued partnership in fostering the growth of our ICT sector.

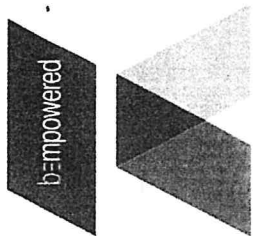
Yours Sincerely,



Adrian Kamotho Njenga, Advocate &  
Secretary General,

**ICT Association of Kenya (ICTAK)**





**kasneb**

*Mr. Chemweno*  
*Please deal*  
*01/03/21*

Kasneb Towers, Hospital Road, Upper Hill, P. O. Box 41362 - 00100 Nairobi, Kenya  
Telephone: +254 020 4923000 Cellphone: +254 722201214 / +254 734600624  
Fax: +254 020 2712915 E-mail: [info@kasneb.or.ke](mailto:info@kasneb.or.ke) Website: [www.kasneb.or.ke](http://www.kasneb.or.ke)

**Reference Number: 53/BM/XXXV/40**

**Date: 25 February 2021**

The Clerk of the National Assembly  
Parliament Buildings  
P O Box 41842 - 00100  
**NAIROBI**

Dear Sir

**SUBMISSION OF MEMORANDA – THE INFORMATION COMMUNICATION TECHNOLOGY PRACTITIONERS BILL, 2020 (NATIONAL ASSEMBLY BILL NO. 38 OF 2020)**

We refer to the notice on **Invitation for Public Participation and Submission of Memoranda** which appeared in the Daily Nation newspaper on Saturday, 20 February 2021 inviting submissions on the above mentioned Bill.

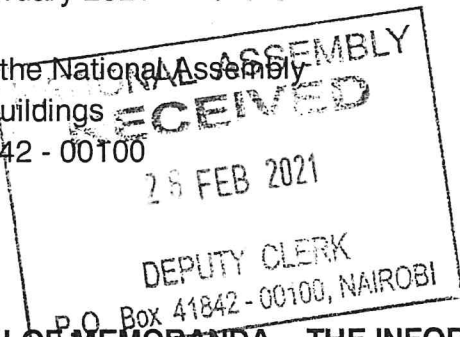
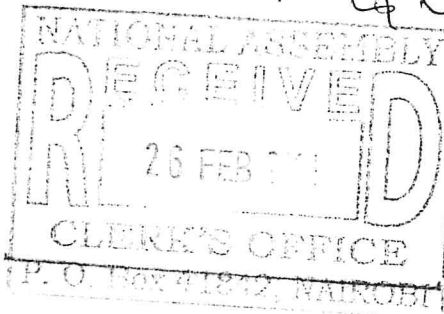
We wish to first introduce Kasneb as a state corporation established under the National Treasury and Planning by the Government of Kenya on 24<sup>th</sup> July 1969. The establishment and operations of Kasneb are governed by the following main Acts, among others:

- (a) The Accountants Act, No. 15 of 2008 which repealed and replaced the Accountants Act, Cap 531 of 1977.
- (b) The Certified Public Secretaries of Kenya Act, Cap 534 of 1988.
- (c) The Investment and Financial Analysts Act, No. 13 of 2015.

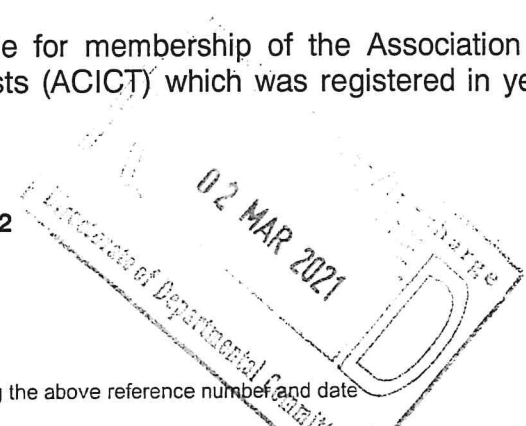
The mandate of Kasneb is the development of syllabuses; conduct of professional, diploma and technician examinations, and certification of candidates in accountancy, finance, credit, governance and management, information technology and related disciplines; promotion of its qualifications nationally, regionally and internationally and the accreditation of relevant training institutions in liaison with the ministry in charge of education.

With regard to information communication technology (ICT), Kasneb currently administers the Diploma in Information Communication Technology (DICT) and a professional level qualification, the Certified Information Communication Technologists (CICT). The two qualifications will be replaced from 1 July 2021 with the Diploma in Information Systems Solutions (DISS) and Certified Information Systems Solutions Expert (CISSE) respectively.

Holders of Kasneb ICT qualifications are eligible for membership of the Association of Certified Information Communication Technologists (ACICT) which was registered in year 2020 under the Societies Act.



*Hellen masiyoi*  
*pls deal*  
*2/3/21*





We have studied the Draft Bill and are broadly in support of the Bill in regulating the ICT profession and enhancing industry standards. However, we have noted a few areas of concern the details of which are enclosed herewith. Notably, the professional qualifications in ICT offered by examination bodies such as Kasneb have not been recognized in their entirety in the Bill, which is in our consideration a major loophole as the professional qualifications supplement the diploma and degree qualifications and are in a number of cases, even more detailed in coverage.

As noted above, we have enclosed our detailed submissions for your attention. In addition, we have enclosed for your reference the current syllabuses for DICT and CICT examinations, and a copy of the registration certificate for the ACICT.

We are grateful for the opportunity to make these submissions, and look forward to a positive consideration and incorporation of our proposed amendments.

Thank you.

Your faithfully

PP  
**Dr Nicholas K. Letting', PhD**  
**SECRETARY/CHIEF EXECUTIVE OFFICER**

Encl.



kasneb

## DRAFT SUBMISSIONS BY kasneb ON THE ICT PRACTITIONERS BILL 2020

PART/SCHEDULE	CURRENT PROVISION	PROPOSED AMENDMENTS/ADDITIONS	JUSTIFICATION
<b>PART I – PRELIMINARY</b>	Definition of terms:  “Practicum” has been prescribed as part of the qualifications for the award of any <b>degree</b> or <b>diploma</b> ....	Need to include professional qualifications in addition to the degree and diploma.  The section to read: “Practicum means an ongoing, supervised and organised practical experience or internship prescribed as part of the qualification for the award of any degree, <b>professional qualification</b> or diploma and obtained in an integrated training program recognised by the Council”.	Recognise professional qualifications in ICT offered by various examination bodies both nationally and globally, such as the Certified Information Communication Technologists and Certified Information Systems Solutions Expert (CISSE) offered by Kasneb.
<b>PART II – ESTABLISHMENT OF THE ICT PRACTITIONERS INSTITUTE</b>	5 – 1 Composition of the Council	Replace f(iv) with a nominee from an association of holders of professional qualifications in	(a) Recognise the role of holders of professional ICT qualifications in

	<p>There is a provision under f (iv) for the Chairman of the Institute to nominate a Council member</p>	<p>ICT, such as the Association of Certified Information Communication Technologists, an Association registered under the Societies Act and comprising holders of the Kasneb CICT professional qualification</p>	<p>policy formulation on ICT at Council level.</p> <p>(b) Giving the Chairman of the Council power to nominate a Council member, noting that Council members also evaluate the Chairman and monitor his performance, is against good governance practices and is also open to subjectivity.</p>
	<p>13-4 Qualifications of the CEO</p> <p>A person shall not be appointed as a Chief Executive Officer unless such a person is registered as an ICT Practitioner under this Act and:</p> <p>(a) Has a degree in ICT</p> <p>(b) Has a masters degree</p>	<p>Include professional qualifications in ICT (such as ICT) as equivalent to a first degree</p>	<p>Professional qualifications have been equated to a degree by the Kenya National Qualifications Authority. The Framework is available on the KNQA website and a copy of the extract is attached.</p>
<p><b>PART III – REGISTRATION OF ICT PRACTITIONERS</b></p>	<p>19. -A person shall be eligible for registration under this Act as an ICT practitioner if the person:</p> <p>(a) Is the holder of at least a bachelor's degree in ICT.....</p> <p>(b) Is the holder of at least a bachelor's degree in electrical</p>	<p>Include holders of professional qualifications for membership.</p>	<p>Most professions, including ICT, accounting, finance, management have three tiers of qualifications, that is diploma, professional and degree. Professional ICT qualifications include the CICT and CISSE offered by Kasneb.</p>



	and electronics engineering..... © Is the holder of a diploma in ICT .....		Omitting this group from eligibility for membership may be considered as discriminatory yet some of the professional programmes are more intense in depth of coverage than some degree programmes. A detailed syllabus for CICT qualification is attached for your further reference.
<b>SECOND SCHEDULE</b>	<b>COMMITTEES OF THE COUNCIL</b>	- Need to enhance the schedule with regard to committees, including their functions, quorum, qualifications for Chairman of the Disciplinary Committee (most Institutes established under an Act require the Chairman of the Disciplinary Committee to have a strong legal background) and whether some experts may be co-opted on a need basis.	The current Schedule just lists the Committees without further guidance. Need to compare with other Acts such as the Accountants Act, No. 15 of 2008 whose schedules on Committees are very detailed and clear.



REPUBLIC OF KENYA



THE SOCIETIES RULES, 1968

(Rule 4)

CERTIFICATE OF REGISTRATION R. 52326

I, **JOANNE OGOLLA,****ASSISTANT**

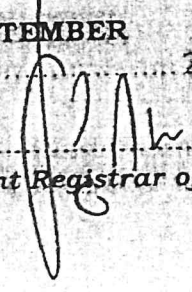
Registrar of Societies, hereby certify

**ASSOCIATION OF CERTIFIED INFORMATION**

that I have this day registered the

**COMMUNICATION TECHNOLOGISTS.**

under section 10 of the Societies Act.

Dated at **NAIROBI** this **25<sup>TH</sup>** day of **SEPTEMBER** **20** **19**  
Assistant Registrar of Societies

KENYA ACCOUNTANTS AND SECRETARIES  
NATIONAL EXAMINATIONS BOARD  
P.O. BOX 41362 - 00100  
NAIROBI





*Mr. Chemeno*

*Please deal*

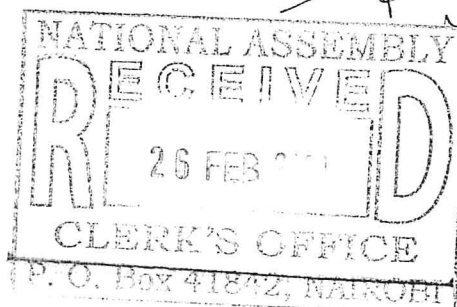
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*01/03/21*

OUR REF: TESPOK 002/02

26<sup>th</sup> February 2021

THE CLERK  
KENYA NATIONAL ASSEMBLY  
PARLIAMENT BUILDING  
NAIROBI



*Hellen Masiyol*  
*pls deal*  
*03/21*

Dear Sir,

**REF: SUBMISSION OF MEMORUNDUM ON STAKEHOLDER INPUT FOR THE ICT PRACTITIONERS BILL 2020**

The Technology Service Providers Association of Kenya (TESPOK) established in 1999, brings together the interests of the various ICT service providers. TESPOK as a key industry body and has gathered the views of its membership in the attached memorandum with specific responses to the Information Communication Technology Practitioners Bill 2020.

Private sector firms that are TESPOK Members are already licensed to operate under the Kenya Communications Act, there is a risk of losing substantial investment in the ICT and killing the innovation sub-sector if specific input on specific areas cannot be accommodated. The loss would take us back several years and deny Kenya the opportunity to be the regional ICT hub. We ask that the committee be cognizant of the fact that our societal ills cannot be remedied by a punitive law. ICT projects and installations are governed by business contracts that have to be considered carefully. It takes two to tango and ethical issues cannot be addressed in one direction only.

The current bill is fundamentally contradicting other existing laws including constitutional rights to knowledge and information. As the industry body representing the corporate investor, we are appealing for the opportunity to elaborate our position further even as we attach our memorandum.

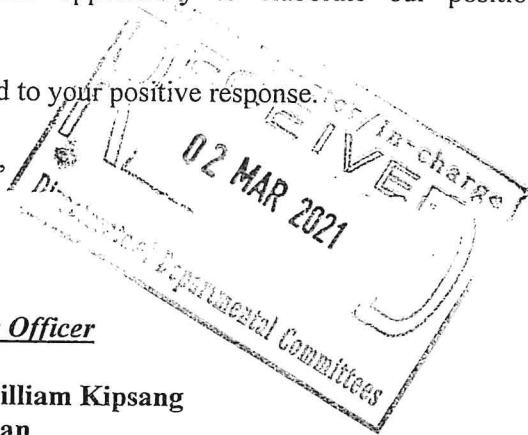
We look forward to your positive response.

Yours Sincerely,



**Fiona Asonga**  
**Chief Executive Officer**

Cc: **Hon. William Kipsang**  
**Chairman**  
**Departmental Committee on Communications, Information and Innovation**









Below are the responses from TESPOK Members on the Information, Communication and Technology Practitioners Bill 2020

Section clause	What is in the bill	Recommendation	Justification
PART I			
	Defination of ICT in the Bill "Information Communication Technology (ICT) means technologies employed in collecting, storing, processing, using or sending out information and include those involving the use of computers, mobile apparatus or any telecommunication system."	No recommendation and not supported	The provided defination of ICT works well for corporates and not individual and the approach to ICT definations in our lawws has been so far corporate based for the purpose of supporting business and economic growth and not individual based. This defination enables the bill to covers just about every aspect of technology used in modern daily life. It is too broad and makes it difficult to define who is making income out of the presented defination of ICT. Basically — if you charge services for dealing in anything under that definition, you need a license under this, which you must pay for on a periodic basis, yet to be established. Wanjiku in the village is using her mobile phone to revieve payments for her milk supply to the dairy and storing the money on her mobile wallet unde rthis defination she qualifies to be a ICT practitioner who should be licensed under this bill.
2	The expressions "legally qualified ICT practitioner" and "duly qualified ICT practitioner" or any words importing a person recognized by law as an ICT practitioner or a member of the profession of ICT, when used in a written law with reference to that person, shall be construed to mean a person registered as an ICT practitioner under this Act or, where the context so admits, a person who is registered by the Institute under section 19.	Change the defination of ICT and we have no recommendation yet.	The space is so dynamic making it difficult to lock down the human rôle in it's delivery. The current defination provided of ICT provides a very ambiguous; when added to the defination of ICT oractitioners as explained in clause 2 it will incorporate anyone who uses any form of Information Communicatio Technology. In the feild of medicine that is part of everyday lives one who's sustainance is on medicine to perform in their respective feild is not considered an medical practitioner despite their heavy dependance on medical science.



3	The object and purpose of this Act is to –		
	(a) provide for the training, registration and licensing of ICT practitioners;	To provide registration	ICT is so broad and dynamic that no one institution globally has been able to achieve offering training to certify the various ICT sectors. Software and Infrastructure vendors have very specific product based training that is continuously improved based on their respective products (Microsoft, Cisco, IBM, Juniper, Arista, Huawei, Samsung, Oppo, Nokia, Bigiron, etc) as a result we have skillsets specialised in the specific vendor products. How will the institute provide training for areas of products and services that are protected by global IP rights?
	(b) prescribe standards, practitioners, for practice of ICT	No recommendation and not supported	ICT standard are developed at the global level and cascade downwards to respective regions and countries by bodies such as IETF, IEEE, ICANN, IWF. The documents are available in the public domain and therefore this function becomes redundant
	(c) establish an ICT Practitioners Institute which shall be responsible for establishing standards of professional competence and practice	No recommendation and not supported	ICT standard are developed at the global level and cascade downwards to respective regions and countries by bodies such as IETF, IEEE, ICANN, IWF. The documents are available in the public domain and therefore this function becomes redundant
	(d) establish a Council of the Institute which is the governing organ of the Institute;	No recommendation and not supported	Establishment of such an institute will be adding additional red tape to a highly dynamic industry. There will be need to make amendments to the functions of the institute every 3-6 months just for the institute to align to all global discussions taking place on training and deployment standards on a continuous monthly basis. For the institutions to function this law will have to be a continuous working and implementation document
	(e) prescribe offences for non-compliance with the requirements of registration and licensing as set out in the Act; and (1) provide for the funds of the Institute.	Institute can only register	ICT is so broad and dynamic that no one institution globally has been able to achieve offering training to certify the various ICT sectors. Software and Infrastructure vendors have very specific product based training that is continuously improved based on their respective products (Microsoft, Cisco, IBM, Juniper, Arista, Huawei, Samsung, Oppo, Nokia, Bigiron, etc) as a result we have skillsets specialised in the specific vendor products. How will the institute provide training for areas of products and services that are protected by global IP rights?





PART II		
4	<p>(1) There is established an Institute to be known Establishment of as the ICT Practitioners Institute.</p> <p>(2) The Institute is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-</p> <p>(a) suing and being sued;</p> <p>(b) acquiring, holding, charging and disposing of</p> <p>(c) borrowing and lending money; and</p> <p>(d) doing or performing all such other things or acts as may legally be done or performed by a body corporate for the proper discharge of its functions under the Act.</p>	<p>No recommendation and not supported</p> <p>ICT sector cannot be governed in the same way as other sectors since it is not a static sector and very broad. It would be good to know of the existence of the Water practitioners institute since ICT has become as virtual as water. Yet we still find that though there is water running through the taps the quality of the water is a lot of the times unsatisfactory.</p>
7	<p>(1) The Members of the Institute shall consist of Members of the each person registered as an ICT practitioner under section 19 and may be categorized into fellows, associate members and such other class as the Council may by regulations made under section 41 prescribe.</p>	<p>No recommendation and not supported</p> <p>ICT is so broad and dynamic that no one institution globally has been able to achieve offering training to certify the various ICT sectors. Software and Infrastructure vendors have very specific product based training that is continuously improved based on their respective products (Microsoft, Cisco, IBM, Juniper, Arista, Huawei, Samsung, Oppo, Nokia, Bigiron, etc) as a result we have skillsets specialised in the specific vendor products. How will the institute provide training for areas of products and services that are protected by global IP rights?</p>
	<p>(2) The Council shall prescribe the types of membership, admission into any class of membership, grounds for termination of membership, and the rights that accrue to each class of membership</p>	<p>Delete</p>





8	(1) There shall be a chairperson of the Institute Chairperson of the and such other officials who shall be elected by members of the Institute.	The Chairperson should be elected by the council member if there has to be an institution	Election by member is a characteristic of a union. There is a high likelihood of the institutes established by law but operating like an ICT Union
	(9) The members of the Institute shall determine the rules and procedures for conducting the business and affairs of the Institute.	The rules and procedures should be established by the council in consultation with the members	The powers to govern are given to the Council and then moved to the members which will create conflict between the two entities
10. Functions of the Institute			
	(a) Establish standards of professional competence and practice amongst members of the Institute;	Modify: (a) Promote standards of professional competence and practice	its covered in extensively in the KICA 411 that mandates Communication Authority of Kenya to develop and enforce standards of Telecommunications, Broadcasting, Content, Electronic Transactions and Postal systems. Some aspects of the quality of workmanship are a mandate of the Kenya Bureau of Standards The mandate is already with the Communications Authority. There are 28 citations of clauses dealing with standards as follows: KICA 411 - : 46H. (1) ; 47. (1)c, (2)f; 56; 83E. The standards adhered to by the Communications Authority and KEBS are in line with already internationally accepted standards through global collaborative engagement frameworks already in place and supported by international treaties.
	(b) Protect, assist and educate the public in Kenya in all matters touching, ancillary or incidental to the profession of ICT	Modify: Assist and educate the public in Kenya in all matters touching, ancillary or incidental to the profession of ICT	The mandate is already covered under several other acts dealing with Consumer Protection



(c) Represent, protect and assist members of the profession of ICT in respect of conditions of practice and otherwise;	Delete: Since industry are already represented by various member based associations such as KEPSA, TESPOK, KITOS, KICTANET, BAKE	There are other associations other than ICT Association of Kenya that are legally registered with a mandate to represent, protect and assist members of the ICT profession. Each Association has its modalities of dealing with issues of standards and professionalism depending on who their constituents are, however, a general review indicates that they all align to international best practice. There is an ethical challenge of a society that want short cuts and kickback and expects exceptional results. Issues raised to justify the bill have been contractual issues that arise because of poor business practices between both the customer and service provider yet the proposed law is only addressing one side. This one-sided approach does not empower the customer, who takes a short cut that is unethical and creates more problems.
(d) Approve courses for purposes of registration of ICT Practitioners under this Act;	Delete: Role of the Commission of higher learning	
(e) Administer such examinations as may be necessary to determine whether persons are qualified for registration under this Act;	Delete: Role of the Commission of higher learning	
(f) register and licence ICT practitioners upon payment of the prescribed fees	Modify: Register ICT practitioners for purposes of this Act.	It is covered in extensively in the KICA 411 that mandates Communication Authority of Kenya to license networks and content with regards Telecommunications, Broadcasting, and Postal systems and oversee quality of service concerns under clause 5 on objects and purpose of the Communications Authority of Kenya
(g) collaborate with training institutions, professional associations and other relevant bodies in matters relating to professional development of industry players	Delete	It is covered under KICA 38(i)
(h) determine the fees to be charged by ICT practitioners and firms for professional services rendered from time to time	Delete	The mandate is already with the Communication Authority. These fees paid by firms and personnel who are already licensed by the Communications Authority of Kenya are determined by the commission





(i) formulate policies and programs governing the profession of Information Communication Technology Practitioners;	Delete	This is a function of the Communications Tribunal clause 102 of KICA 411
(k) approve institutions offering training and development Communications professional Information courses for Technology practitioners	Delete	Education and capacity building issues with regards to institutional ability should be left to the Ministry of Education
(1) supervise the professional conduct and practice of ICT practitioners and to take the necessary disciplinary measures in cases of violations of professional conduct and discipline	Delete	The mandate is already with the Communications Authority, its covered in extensively in the KICA 411 that mandates Communication Authority of Kenya to license networks and content with regards Telecommunications, Broadcasting, and Postal systems and oversee quality of service concerns under clause 5 on objects and purpose of the Communications Authority of Kenya
(l) plan, arrange, co-ordinate and oversee continuing professional training and development of ICT practitioners	to be achieved through (g)	
PART III_REGISTRATION OF ICT PRACTITIONERS		



	<p>A person shall be eligible for registration under this Act as an ICT practitioner if the person- (a) is the holder of at least a bachelor's degree in an ICT related field from a recognized university; (b) is the holder of at least a bachelor's degree from a recognized university and has relevant ICT experience of at least three years;</p>	<p>No recommendation and not supported</p>	<p>i.) Many innovative ICT solutions have been developed by individuals who did not hold any ICT certificates or degrees but were interested self taught and passionate enough to try out an innovative way of getting something done. If only register persons can practise then we have stifled the innovative abilities of the entire Kenyan population. This makes the need for all ICT Practitioners to be registered by the Professional Body Institution of ICT Practitioners; and that one of the key requirements for registration was a University Degree from a reputable University not well thought through and restrictive.</p> <p>ii.) The Bill is not representative and would hinder innovation rather than encourage it contrary to the ICT policy and government development agenda. It beats the purpose of the government investing in the Digital Learning Program.</p> <p>iii.) In the ICT field, skill has been more important than papers and qualifications. If we require software developers to have a degree in a related field while we have so many people without degrees who are excellent software developers, then we are shooting ourselves not on the foot, but on the head.</p> <p>iv.) By forcing people into a certification system that fails to recognise existing global certifications, you are effectively nullifying technologies for which there are no certifications and technologies that are not developed locally. You cannot get certified today in Golang, or Segment Routing, or a multitude of other technologies. A specialist in these areas has no need of a fancy degree, and those employing him for those skills, want the skills not papers. Either the connection will work or it will not work.</p> <p>v.) It has a direct impact on the Cybersecurity side of the industry as the</p>
<p>20</p>	<p>(1) Every person eligible to be registered as an ICT practitioner may apply in the prescribed form to the Registrar for registration in the register, and every such application shall be accompanied by the prescribed fee.</p>	<p>No recommendation and not supported</p>	<p>If the purpose of the bill is to know who the ICT practitioners are then one off registration is sufficient. Unless an individual is deregistered due to gross failure to adhere to professionalism and ethics there is no need to keep paying an annual fee. With the level of growth and adoption of ICT across various economic sectors soon all sector practitioners dealing with anything ICT going back to the presented definition will be registered (Medical, Agriculture, Education Public Relations, Human Resource etc)</p>





24	(1) A person shall not practise as an ICT practitioner unless such person has complied with the requirements for continuing education and supervision, and has been issued with a valid practice license by the Council, in accordance with regulations made under this Act.	No recommendation and not supported	Everytime a technology owner globally develops a new update to their system, hardware or application; they also develop training material to assist their experts. It is good business practise for corporates to have performance reviews that also assess skills development. This makes the role of the institute redundant and if it has to function a red tape for sector progression to both the corporates and individuals.
30	(1) A person may, being dissatisfied with any services offered by an ICT practitioner or alleging breach of the standards of conduct as may be specified by the Council from time to time, make a written complaint to the Council in the prescribed manner.	This is extensively covered in KICA under the establishment of the Information, Communications and Technology Tribunal	The Council will be taking over an arbitration role that already exists and is very effective for addressing issues within the industry.



To: Hon. Godfrey Osotsi, MP

CC: Michael R. Sialai, CBS

From: Technical Committee 94 – Software & System Engineering, IT Governance, Service Management & Artificial Intelligence at Kenya Bureau of Standards (KEBS TC94)

Through: Alloys Siaya (Committee Chair)

Date: 25 Feb 2021

**RE: THE KENYA ICT PRACTITIONERS BILL, 2020 - KEBS TC 94 Submissions**

**Summary:**

Over the past several decades, software systems have become critical components of most aspects of life. At the same time, these systems have become increasingly complex. One response to this situation has been the recognition and codification of effective practices for systems and software development processes and products, as well as skills and competencies.

Recognizing this need, our Technical Committee embarked over the last 2 years to put in place standards and frameworks that can be used to enhance efficiency of delivery of ICT projects within the market as well as protect consumers of ICT. Our belief and guidance has been based on the following key items, which we believe the bill shall also need to address in its operationalization.

1. Establishing clear working definitions in line with global standards
2. Re-thinking the excluded workforce by introducing and defining alternative competencies clearly
3. Establishing an overall competence framework and standards which will be necessary to anchor any policy, legislation or regulations necessary for effective implementation.

**Background:**

The KEBS TC 94 was established in 2013 and has since produced over 40 standards for the ICT sector locally through their consensus process of adopting or adapting international standards as well as developing new ones based on local demand.

The Technical Committee is constituted of a Chairperson and workgroups with members drawn from the ICT industry.

**Problem Analysis:**

The increasing globalization of the industry implies that a software or systems engineer is likely to work in different countries over the course of a career. Currently individuals



around the world are working in these domains and they possess varying levels of knowledge and skill. However, there is no single certification. It is therefore imperative for the local client/consumer to have a mechanism of conforming certifications to meet their requirements to get work done accurately and effectively. A mechanism is also needed to improve the recognition and acceptance of certifications and competencies in countries and jurisdictions around the world. This increased acceptance and recognition in turn can enhance the mobility of the professionals holding a conforming certification.

Kenyan certified professionals need to be able to work anywhere globally. This has also been made a reality by the gig economy, a component of the 4<sup>th</sup> industrial revolution, driving a digital revolution. Many Kenyan youth need to be recognized as competent practitioners who are able to attract online jobs and gigs.

The Kenya government often employs international consultants whose competence is often difficult to establish. This has led the government to rely on the brand equity of said consultancies, exposing many projects to risk and unnecessary expense, especially when such skills can often be obtained cheaper and quicker from the local professional pool. This also applies to local companies and clients. There is need to encourage the engagement of recognized skill from international companies offering services to the local market.

#### **Recommendations:**

Kenya has the potential of building competent local capacity and a professional workforce to serve both local and international markets. The vital issue would be how to ensure that any applied mechanisms do not lead to greater inequalities and increased unemployment, but rather to increased motivation and sustainable acceptance by all stakeholders to adhere to the resultant framework for professional ethics and standards. There is need to develop a standard that gives clarity, and a competence framework that provides a means of inclusion, all of which need to be in line with international schemes. This is what our TC has been ardently working on for the last 2 years and would be glad to present as a means of assisting the operationalization of any law or regulation regarding skills locally. We therefore recommend:

1. Recognition of standards by the legislation (through the established national standards body and the respective Technical Committee 94)
2. Promotion of the use of standards within the market, which may also be voluntarily taken up
3. Regulation review mechanism of the standards and definitions by the committee
4. Clear communication of the ICT leadership agenda around opportunities for the local workforce, covering training, registration & development, practice requirements, etc.

In conclusion, we applaud the introduction of the bill and look forward to its enactment in order to streamline the professionalism of ICT in Kenya.



**Our Ref** AK/MK/10213338  
**Your Ref** TBA  
**Date** 26 February 2021

Clerk of the National Assembly  
Office of the Clerk  
Main Parliament Buildings  
P.O. Box 41842-00100  
Nairobi, Kenya

**By Email**

Attention: Michael Sialai (clerk@parliament.go.ke)

Dear Sirs,

### **Call For Public Participation - Information Communication Technology Practitioners Bill**

We refer to your public notice (the **Public Notice**) inviting the public to submit their comments on the Information Communication Technology Practitioners Bill, 2020 (National Assembly Bill No. 38 of 2020) the **Bill**). The Bill seeks to establish a legal framework for the training, registration, licensing practice and standards of Information Communication Technology (ICT) practitioners in Kenya.

Anjarwalla & Khanna LLP (the **Firm**) has a policy to contribute to the development of legislation in Kenya and to encourage the strengthening of the rule of law in the country. It is on this basis that the Firm has undertaken an internal review of the Bill and have set out our detailed comments below for your kind consideration.

#### **Introduction**

1. In the recent past, there have been attempts to introduce legislation to regulate the ICT Industry in Kenya. In 2016, the first version of the current ICT bill was introduced. Following its publication, that bill was challenged on the basis that it was duplicating already existing legislation. In 2018, a second bill re-emerged but only for a short period. The Bill recently resurfaced last year and is the subject of these comments.

Although not provided for in legislation, Kenya has associations for ICT professionals that have been created with a particular focus to provide for the needs of the ICT professionals who subscribe to their membership. These associations provide guidance for its members and already attempt to control the quality of services offered by its members as well as provide training for its members. Some of these associations include the following:

- 1.1.1 The Information Communication Technology Association of Kenya (ICTAK);





	<p>1.1.2 The Computer Society of Kenya;</p> <p>1.1.3 The Information Systems Audit and Control Association (ISACA) Kenya; and</p> <p>1.1.4 Data Analytics Kenya,</p> <p>When attempting to legislate for ICT professionals, it is important to consider the varied areas of practice in which these professionals engage. The move to create associations for ICT professionals in Kenya is evidence that even within the ICT industry, ICT professionals vary when it comes to their interests and daily occupation. We note that given the fluidity of ICT, new professions continue to emerge with niche focuses such as data analytics and artificial intelligence (AI) professionals, who would have a specialised understanding of this areas as opposed to a more general ICT understanding, which we believe is what legislation would provide a prime focus on.</p> <p>Additionally, a key consideration is the co-existence of the Bill, if passed into law, with the myriad of other existing laws such as the Kenya Information and Communications Act (1998) (the KICA), the Computer Misuse and Cybercrimes Act (the CMCA) (2018), the Data Protection Act (the DPA) (2019), and the existence of regulators such as the Communications Authority (CA), the Office of the Data Protection Commissioner (ODPC), the National Communications Secretariat (NCS), and the ICT Authority. The Bill, if passed into law, runs the risk of creating duplication in legislation and bureaucracy in the regulatory regime in the ICT Sector in Kenya. For example the ICT Authority registers ICT Practitioners for purposes of accreditation.</p> <p>Other countries across the world have taken a varied approach in the regulation of ICT practitioners, ICT professionals and ICT experts. Where registration with a government entity is adopted as a regulatory mechanism, it is often voluntary such as in the case of ICT Technicians in the UK. Based on our findings, it is not common for countries to mandate the registration and licensing of ICT Practitioners given that the type of work these people do is fast-paced and fluid. The trend across an overwhelming number of countries points to self-regulation by privately formed associations and representative groups. These associations provide up-to-date standards of conduct to their members seeing as they are administered by practitioners as opposed to government officials. We have set out a detailed comparison of the different approaches below.</p>
<b>Key Considerations</b>	
2.	<p>To date, Kenya has not had a regulation in place that provides for ICT practitioners. Despite this absence of regulation, innovation through ICT has been considerably positive in Kenya. In <a href="#">an article in the Harvard Business Review on 18 February 2021</a>, Kenya was acclaimed to be a hotbed in innovation in areas such as financial technologies. The Harvard Business Review article, Kenyan innovators were considered to take innovative and inexpensive approaches to mobilise consumers by keeping up with their needs and ensuring their solutions are accessible. The receptiveness of the market to these solutions has been fuelled by factors such as the mobile penetration in Kenya which, according to <a href="#">a statistics report by the Communications Authority of Kenya (the CA)</a> in 2020, stood at approximately 125.8%. This has laid a firm foundation for Kenya's ICT solutions penetration and notably linked to the success of technologies such as M-Pesa, a mobile phone-based money transfer service, payments and</p>



micro-financing service. Technologies such as Equitel as well, for example, have transformed how banking services are offered in Kenya.

In attempting to regulate ICT practitioners in Kenya, parliament should consider the needs of Kenyans, the credentials currently held by innovators and ICT experts, and – on a wider spectrum – the nature of the ICT industry and what would be instrumental to its continued growth. The decision to recognise and treat ICT practice as a profession ought to be an informed one, considering the rigidity posed by such an approach. While it is laudable to introduce legislation given the harm that can be perpetrated through ICT i.e., cyberattacks, unlawful interception, and disinformation to name a few, a balance should be struck; based on Kenya's National ICT Policy 2019 and Digital Economy Blueprint, 2019, the nurturing of innovation is a high priority for Kenya. Imposing a blanket obligation on individuals to register under this Bill poses the risk of inhibiting innovation.

The decision on how best to ensure a measure of quality control in ICT practice ought to take into account other non-legislative means available to existing regulators and rule-making bodies. For example, the use of guidelines/standards can be explored in order to capitalise on the fast-paced and fluid nature of the ICT industry. The benefit of using this approach is mainly flexibility. Given that technology is iterative, maintaining the ability to update the requirements with respect to quality of service is crucial. Furthermore, the fact that this approach is voluntary and would not involve licensing means that the rate of innovation will not necessarily be slowed down.

Should Kenya elect to adopt the guidelines/standards as its preferred regulatory mechanism, regulators can adopt incentives such as issuing endorsements upon proof of compliance by ICT Practitioners and institutions which train these ICT practitioners so as to ensure compliance with what would effectively be non-binding standards. These endorsements can be used in practice to bolster the credibility of practitioners and institutions. Further, these standards could be trickled down to practitioners through existing associations and representative bodies.

The practice of using industry wide standards is not novel; the ICT Authority, in 2019, issued the ICT Human Capital & Workforce Development Standard for ICT Practitioners in public service. This approach may perhaps be more appropriate given the rigidity that may result in legislating for ICT professionals.

This approach can also easily plug into the existing framework in Kenya where ICT Practitioners are part of private associations. These associations can easily and effectively act as a forum for Parliament to trickle down industry wide standards in a collaborative and voluntary way. It is also compatible with the numerous representations made by stakeholders in the ICT industry with respect to this Bill and its impact on the industry.

Please see specific comments and recommendations to the provisions of the Bill below.





Recommendations for the Bill <sup>1</sup>		
Clause/Paragraphs	Comment/Observation	Recommendation
	<b>Part II – Establishment of the ICT Practitioners Institute</b>	
<b>Clause 5(1)(f) (Composition of Council)</b>	Clause 1 (f) provides that the Council shall comprise of a person nominated by the 'Telecommunications Service Providers'. It is unclear how practically this would work as currently there is no such entity or association as the 'Telecommunications Service Providers' which would be responsible for nominating a representative on behalf of the telecommunications service providers in Kenya.	The Bill should be amended to replace this subsection with 'Telecommunications Service Providers of Kenya (TESPOK)' or alternatively, refrain altogether from listing particular associations given that their long-term existence is not guaranteed. It may be better to state the criteria to be used to determine the associations which are to nominate persons i.e., 'an association representing telecommunications service providers'. Where there are multiple entities, the regulator could coordinate their efforts to nominate.
<b>Clause 7 (Membership of the Institute)</b>	<p>The rigidity of registration and licensing is likely to slow down innovation and exclude potential entrants to this sector. The proposed format in the Bill of stipulating prerequisites to registration and continuous licensing conditions is not ideal for the following reasons:</p> <ul style="list-style-type: none"> <li>- Rigid structures which are hierarchical can serve to exclude large groups of individuals who may not be able to meet the specific conditions in the Bill but are qualified to offer ICT services;</li> <li>- Industry associations/representative</li> </ul>	It would be more effective for the Bill to capitalise on existing bodies and industry associations by collaborating with these entities and encouraging ICT Practitioners to join. These bodies would serve as a useful avenue through which the Institute can disseminate industry standards and incentivise compliance.

<sup>1</sup> We note that the Bill available on the National Assembly's website is incomplete. The specific pages that are missing are: 954, 956, 958, 960, 962, 964, 966, 968, 970, 972, 974, 976, 978, 980 and 982. We propose that this version of the Bill available is replaced with a complete version.



	<p>groups already exist, therefore the creation of an additional body is potentially superfluous; and</p> <ul style="list-style-type: none"> <li>- The wide scope of applicability of the Bill (i.e., ICT Practitioners), means that this provision would be logistically difficult to operationalise.</li> </ul>	
<b>Clause 9 (Membership Fees)</b>	Depending on the amount, the requirement on members of the Institute to pay fees is likely to exclude small time operators and entrench competitive disadvantages.	Where a fee is necessary for regulators to ensure any compliance, be it with laws or standards, the prescribed fee ought to be nominal given that it is applicable to a large group of individuals, and not just large companies.
<b>Clause 10(a) (Functions of the Institute)</b>	<p>The Institute joins a number of existing regulators with mandates touching on ICT i.e., the CA, ODPC, ICT Authority and the NCS. Some of these entities, such as the ICT Authority have issued standards for certain ICT practitioners i.e., those in the public sector. The Bill does not stipulate whether these standards would be complementary or whether the ones issued by the Institute would take precedence.</p> <p>Furthermore, some ICT Practitioners operate in industries which require specialised knowledge e.g., finance. The Bill does not permit a framework for collaboration with other sector regulators.</p>	<p>The Bill should specify the status of the standards issued under this section vis-à-vis existing standards previously issued for example by the ICT Authority to avoid a duplication or inconsistency.</p> <p>The Bill should also create a framework where the Institute can collaborate with other regulators like the CBK.</p>
<b>Clause 10(c) (Functions of the Institute)</b>	This sub-clause seems to obviate the work already done by existing representative bodies and associations.	The sub-clause should be amended to clarify the specific role of the Institute with respect to the working conditions of ICT Practitioners to avoid usurping the role of already existing entities.
<b>Clause 10(d) (Functions of the Institute)</b>	Requiring the completion of approved courses prior to registration as an ICT practitioner is likely to create barriers to entry for self-taught ICT experts and	The approval of courses should not result in a condition that ICT practitioners must have completed said courses in order to be registered. This sub-section should de-link the approval of





	those who have learned the necessary skills through informal means.	courses to registration. Nigeria has taken such an approach by allowing even those who did not specifically train in ICT to be registered as ICT professionals in Nigeria.
<b>Clause 10(f) (Functions of the Institute)</b>	Registration of ICT Practitioners under this Bill would result in the erection of barriers to economic activity and innovation, contrary to Kenya's stated policy aims. The ends sought through registration (i.e., quality control) can be achieved through less rigid and restrictive means. The payment of a registration fee compounds this concern.	The requirement to register as an ICT Practitioner should be omitted altogether. This is especially considering that the scope of an ICT practitioner is wide and would include a number of individuals incapable of complying with registration costs and conditions.
<b>Clause 10(h) (Functions of the Institute)</b>	The Institute regulating the pricing of ICT services is likely to negatively impact the market for ICT services. This is due to the fact that the Institute may not fully comprehend the nuances of the services at hand and how they contextually differ in the various sectors in which ICT experts operate.	This sub-clause should either be omitted, or alternatively, amended to include a consultation mechanism with representative groups of industry players.
<b>Clause 10(l) (Functions of the Institute)</b>	Empowering the Institution to monitor the conduct of ICT Practitioners and penalise them where found to be in breach of professional conduct guidelines is duplicative of existing legislation.	The Bill should state the specific conduct which it would apply to given that existing legislation such as the CMCA, and the KICA provide for offences relating to ICT.  The Bill should also clarify the applicability of codes of conduct developed by private industry bodies.
<b>Clause 13(2)(d) (Chief Executive Officer)</b>	The Bill provides that the CEO of the Council is to, among other things, perform duties which are prescribed within the Bill.	The Bill should clearly indicate the specific functions of the CEO.
<b>Clause 16 (Committees of the Council)</b>	The Bill provides for the establishment of various committees to perform functions prescribed within the Bill. We note that aside from the mention of the	Where the mandate of these committees is to be determined through Regulations at a later date, it should be clearly stated in the Bill. The specific provisions which the committees are to



	provision of the power to make regulations in Clause 41 and the list of Committees in the Second Schedule, there is not much detail given on the mandate of these committees.	operationalise (i.e., those relating to professional misconduct for the Disciplinary Committee) should be clearly stated.
	<b>Part III – Registration of ICT Practitioners</b>	
<b>Clause 19 (Qualifications for registration)</b>	<p>The applicable conditions for registration as an ICT Practitioner are highly restrictive. By placing formal education as the primary method of qualifying applicants, the Bill excludes a large number of self-taught ICT practitioners who are currently engaged in highly valuable work. Further, it excludes people who may have opted to take up a career in ICT later in life and may have a different education background. While Section 19(e) provides leeway for individuals to demonstrate experience, the fact that the decision is ultimately with the Council means that there is some uncertainty.</p>	<p>In the event that Parliaments opts to include an obligation to register, the prerequisites for such registration ought to clearly state how one can be able to satisfy the Institute that they possess the expertise. This could be through an exam.</p> <p>However, we propose that there should not be an obligation to register as an ICT Practitioner for the following reasons:</p> <ul style="list-style-type: none"> <li>a) registration based on these qualifications would be highly exclusionary;</li> <li>b) the number of people in the industry who have undergone formal training may not be as high, given the self-teaching culture; and</li> <li>c) formal education does not necessarily guarantee that the applicants would meet the required professional standards i.e., it may end up being a false equivalence.</li> </ul> <p>The scope of registrable people will also be considerably large.</p> <p>As opposed to registration and licensing, the Bill could provide for the Institute's role in developing voluntary industry standards in collaboration with industry stakeholders. Compliance with these standards can then be incentivised through the Institute's endorsement of compliant ICT Practitioners and training institutions.</p>





<b>Clause 20(1) (Registration)</b>	Prescribing a fee for registration further raises the barriers to entry for ICT experts to subscribe as ICT Practitioners.	In the event that the requirement to register is adopted once the Bill is enacted, the prescribed fee for ICT Practitioners ought to be nominal so as to prevent small scale ICT Practitioners from being excluded.
<b>Clause 21 (Register of ICT Practitioners) and 23(1) (Publication of registration)</b>	The maintenance of a register containing details of ICT Practitioners raises data privacy concerns. The Bill provides that the names and registered address of an ICT practitioner would be listed in the register. Given that there exists the potential of multiple ICT Practitioners having the similar names, there is a likelihood that further identifiers will be used to enable the public to make a distinction. There needs to be a data privacy policy guiding this data collection and dissemination process.	In the event that the requirement to register is adopted once the Bill is enacted, the Bill should provide that the Institute will develop a data privacy policy in line with the Data Protection Act 2019, to regulate its collection and sharing of ICT Practitioner's personal data. This can be done through Clause 41(2)(a) which provides that Regulations may be issued with respect to the maintenance of registers.
<b>Part IV – Licensing of ICT Practitioners</b>		
<b>Clause 24 (Licence to practice)</b>	The requirement on ICT Practitioners to obtain practicing licenses would have an exclusionary effect and hinder innovation. The compliance process attaching to licenses provided (i.e., continuous education) is rigid and incompatible with the fluid nature of progress in the ICT sector.	<p>There should be no requirement to obtain and maintain a license under the Bill. In order to ensure quality control, the use of standards may be more effective. Through collaboration with industry stakeholders, the Institute can nurture a practice where ICT Practitioners who are compliant with the standards receive a wider range of employment and business opportunities. This incentive-based approach is preferable to compelling a large group of individuals to register and obtain a license.</p> <p>The Bill could still provide for trainings by the Institute, though this should not be a prerequisite to any licensing.</p>
<b>Clause 27 (No fees for unlicensed persons)</b>	Limiting the opportunities to derive income from ICT services to licensed ICT practitioners places an onerous burden on ICT practitioners. This provision	There should not be any requirement that only licensed ICT practitioners can derive income from their services.



	would effectively compel all persons seeking to offer such services to register or exit the market.	
	<b>Part V – Enforcement</b>	
<b>Clause 29(a) (Professional misconduct)</b>	<p>The Bill provides that the relevant code of conduct shall be the one laid down by the Council. The Bill does not recognise already existing private codes of conduct which guide members of various representative groups such as the Computer Society of Kenya. This creates a situation where ICT Practitioners will have to be conversant with a number of rules and regulations in order to be compliant.</p> <p>We also note that these standards under the Bill are yet to be issued.</p>	<p>The Bill should recognise and address the status of private industry codes of conduct and perhaps specify how they relate to the Institute's own standards.</p> <p>In furtherance of the approach proposed in our comments (i.e., using guidelines/standards), it may be suitable for the Institute to define high level codes of conduct which can be adopted by existing entities as opposed to directly regulating conduct.</p> <p>The Regulations providing the standards of conduct should take into account the above approach.</p>
<b>Clause 29(d-h) (Professional misconduct)</b>	<p>The Bill lists a number of grounds which are considered to be professional misconduct such as 'emotional disturbance' or 'character defect'. These grounds are quite vague and subjective. In addition to this, there is no clear description of the conflict resolution mechanism through which the Council will handle cases of misconduct. There are no clear thresholds for the offences, making it difficult for ICT Practitioners to foresee liability and for customers of such practitioners to bring claims.</p>	<p>The Bill should delve into specifics with respect to what constitutes professional misconduct i.e., stipulate the applicable rules and clearly define instances where violation of such rules would amount to misconduct.</p> <p>In addition to this, the Bill should take into account conduct which amounts to an offence under other existing laws such as the KICA and the CMCA.</p>
	<b>Schedule 1 – Provisions as to the conduct of business and affairs of the Council</b>	
<b>Paragraph 1</b>	The tenure of office for the chairperson, the vice chairperson or other member of the Council has been provided as three (3) years, subject to re-	Clarity should be provided on how reappointment to the Council will work. This is not clear in this paragraph which generally provides for reappointment but does not state





	appointment. There is no clarity as to whether the office bearer will be eligible for appointment in perpetuity or if they will be subject for reappointment for one other term.	the length of tenure of the re-appointment and if reappointment can take place as many times as possible. We propose that for purposes of creating opportunities for others to occupy positions of the Council, re-appointment should be limited to at most, a further term of three (3) years.
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### Approach to regulation in other countries around the world

We have set out below some of the examples of the approaches that have been taken in various countries in Africa, in Australia and in the United States of America (US) in relation to the ICT Sector.

Country		Description of regulation for ICT Practitioners
<b>Africa</b>		
1.	<b>South Africa</b>	<p>South Africa has in place the Institute of Information Technology Professionals (<b>IITPSA</b>). The IITPSA is not a statutory body; the government appears to have decided to leave ICT professionals to self-regulate through this private body.</p> <p>IITPSA members are found in almost every province in South Africa, with the main concentrations being found in Gauteng, the Western Cape, the Eastern Cape and KwaZulu Natal. In each of these main areas, the IITPSA has a Chapter (or Branch), run by an elected Chapter Chair and his / her elected Committee members. The Chapter Chair is an ex officio member of the IITPSA Members' Council, which reports to the Board of Directors and forms a part of the Governing Body of the Institute.</p> <p>In the last two decades, IITPSA has played an active role in the formation of the South Africa ICT Sector Education &amp; Training Authority, the development of ICT Unit Standards, the compilation of the ICT Charter and the promotion of ICT industry programmes.  <a href="https://www.iitpsa.org.za/background/">https://www.iitpsa.org.za/background/</a></p>
2.	<b>Uganda</b>	<p>Uganda has taken a similar approach to South Africa. It has in place the Uganda ICT Association (<b>ICTAU</b>) which was formed by private individuals from Uganda, with the vision of providing professional guidance to individuals and organisations in the private sector, as well as offering advisory services to government on policy-based issues.</p> <p>Although not provided for in Ugandan legislation, ICTAU has made great strides to ensure quality control for ICT professionals in Uganda. This has been possible through partnerships with leading education institutions such as Makerere University's College of Computing and Information Sciences, among other ICT related institutions. Further, ICTAU seeks to become the foremost and largest forum for ICT practitioners, managers, researchers and policy makers to share their knowledge and experience on the technology, adoption, localisation, management and policy of development ICT practice in Uganda.</p> <p>Find out more about ICTAU here: <a href="https://ictau.ug/about-us/">https://ictau.ug/about-us/</a></p>
<b>Australia and United States (US)</b>		





Mr. Chemeno

Please deal

01/03/21

## Law Society of Kenya Nairobi Branch



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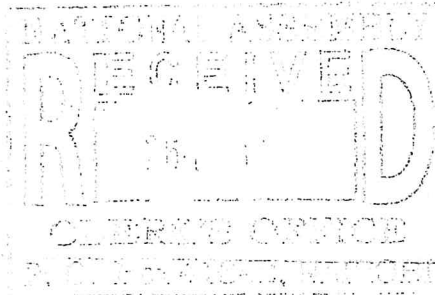
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OUR REF: ADM/02/NA/21

YOUR REF: T.B.A

DATE: 26<sup>TH</sup> FEBRUARY 2021

Michael R. Sialai, CBS  
The Clerk, National Assembly  
Parliament Buildings  
P. O. BOX 41842 - 00100  
**NAIROBI**



Heleen Kenya  
Ella Kendo  
P/O deal  
2/3/21

Dear Sir,

**RE: MEMORANDUM ON THE INFORMATION COMMUNICATION TECHNOLOGY PRACTITIONERS  
BILL, 2020 (NATIONAL ASSEMBLY BILL NO. 38 OF 2020)**

Please receive the highest regards from LSK Nairobi Branch.

LSK Nairobi Branch is a Branch of the Law Society of Kenya tasked with improving the standards and conditions of legal practice in Nairobi and Kiambu Counties. The Branch, represents about 75% of the lawyers in Kenya, and mainly deals with Practice and Welfare matters affecting Advocates practicing in the aforementioned Counties.

We submit a memorandum with reference to an invitation for public participation published in the local dailies indicating a submission deadline of Friday 26<sup>th</sup> February, 2021. The Devolution and Law Reform Committee which is mandated to work on law reform and devolution matters, has reviewed the aforementioned Bill. We are cognizant that the Bill has already undergone First Reading pursuant to Standing Order 127(3). This memorandum, therefore, summarizes our recommendations for the Information Communication Technology Practitioners Bill, 2020 with a focus on the regulation of the ICT practitioners and management of ICT practice in Kenya. For further information, please contact Wendy Muganda at 0721947638 or [wmuganda@nairobilaw.or.ke](mailto:wmuganda@nairobilaw.or.ke)

The following are our comments on the aforementioned Bill:

The preamble of the Bill is that it:- "... is an Act of Parliament to provide for the training, registration, licensing, practice and standards of ICT Practitioner and for connected purposes..."

### ISSUES ARISING

1. The note the definition of an ICT Practitioner, ICT Practice and the limitations arising with regard to the practicality of registering, and licensing one such;

**Comment** – There are young techno savvy Kenyans who are under the age of 18 years and who lack of access to the ICT related gadgets, but have the capacity to offer ICT services and be "paid in kind" e.g. a teenager repairing his parent's phone or computer or installing a mobile application.

NATIONAL ASSEMBLY

Eric Theuri (Chair), Helene Namisi (Vice-Chair), Rose Wanjala (Secretary), Wangila Waiyula (Treasurer) Collin Warutere (Kiambu County Representative), Soila Kigera (In House Counsel Representative), Stephen Saenyi, Charles Mwalimu, Kennedy Murunga, Julia Wanjiru.

9 MAR 2021

DEPUTY CLERK

P. O. Box 41842 - 00100, NAIROBI

2. Sections 4 – 11, there seem to be a mismatch and there could be occasion for duplicity between the Functions of the Council (Governing Body) and the Functions/Powers of the envisaged ICT Practitioners Institute.
3. Section 5, the composition of the Council Members is very technical in outlook and has not factored the upcoming incubation resources of young persons.

**Comment** – We note that it has not appreciated the fact that ICT and the targeted audience for this Bill is expansive and covers all regions of the country, backgrounds, populations etc.

4. Section 6(2) – This is a ripe clause for abuse by Council to create rules and regulations furthering their mandate beyond what are expressed in specific terms in the Bill.
5. Section 7 – With regards to members of an institute and its composition, how will consensus be reached if by any chance all ICT Practitioners as envisaged in the Bill get registered?

**Comment** – We propose that this be pegged on competitive bidding based on criteria built by the membership with relevant riders on gender and minority representations etc

6. Section 11(f) under Powers of the Council is another clause ripe for abuse and overreach in its mandate.

**Comment** – What is the definition of “any activity necessary” with regard to undertaking and or fulfilling its mandate?

7. Section 17(1) on immunity of Council Member is at cross purposes with Chapter 6 of the Constitution.

**Comment** – The element of good faith should not be a factor as the framing of the section deals with occasions of negligence by a vested officer.

8. Section 19, provides for the qualifications for one to be registered as an ICT practitioner. The section under part (e) provides that one can be registered if they have demonstrated, expertise, innovation or competence in ICT as may be determined by the council. The issue with this section comes in where the parameters of this innovation are left at the discretion of the council. What happens in a case where the council fails to understand the innovation brought forward? We propose instead of the council being left as the deciding body that the decision be left to the members of the ICT community in general. This is due to the rapid manner in which technology is ever changing in the field.

**Comment** – Countries such as Iceland which was among the top 3 ranked countries in ICT development by the world bank in 2020 focus more on registration more for service providers than they do for individuals. The mismatch therefore must be thoroughly addressed to cater for those who pick ICT skills practically and not through formal education.

9. Section 22 (3) (ii), we propose that this part “all avenues of appeal have been exhausted” should be deleted.

**Comment** – It raises the question that where one doesn't appeal, are they then allowed to remain on the register? Furthermore, it creates the impression that all convicted should then appeal even when there may not be a need to so as to fulfill the requirements.

10. Section 25(3), provides that the council may refuse to issue or renew a license. This section fails to provide the grounds under which the council's decision to issue or refuse to renew the license and therefore leaving it to the council to make a decision without any parameters can be dangerous in practice.
11. Section 27, is ambiguous due to the fact that it fails to indicate the consequence of recovering ICT fees without being licensed. Secondly, it fails to represent the current situation in the country where majority of freelance ICT providers who again may not meet the qualifications created under section 19 but are still able to provide good quality work.
12. Section 28, we propose addition of sub – section 3 to provide that a person convicted under section 28(2) should not be registered (even if he subsequently meets the qualifications) until after lapse of 2 – 3 years.

**Comment** – The purpose of the proposed sub-section 3 is to act as a further deterrent in addition to the other penalties.

13. Section 29, we propose deletion of sub – section (e).

**Comment** – The purpose of the proposed deletion of section 29 (e) is that it appears to be difficult to prove/enforce insensitivity towards clients and further section 29(f) appears to have captured well the intention of section 29(e).

14. Section 31(1) – We propose the addition of a statement to the effect that in the absence of a registered mail, the Council may inform the person whose name is to be removed from the Register through that person's mobile number or any other avenue as indicated against that person's name in the Register.

**Comment** – The purpose of the proposed addition is to broaden the avenues in which a person can be informed of his/her removal from the Register.

LSK Nairobi Branch strongly believes that Information and Communications Technology (ICT) has the potential to improve the lives of all Kenyans. In this regard, we recommend that the Departmental Committee on Communication, Information and Innovation and relevant offices take the necessary steps and actions in ensuring that the management of ICT practice and practitioners will adopt the globally accepted standards.

Accordingly, we look forward to working with your office on the issues mentioned above.

Yours faithfully,  
**LSK NAIROBI BRANCH**



**ERIC THEURI, CHAIRMAN**

