



Memorandum on the ICT Practitioner's Bill 2016

Submitted to

The National Assembly

08 July 2016

About KICTANet

The Kenya ICT Action Network (KICTANet) was established in 2005 as a multistakeholder policy forum bringing together individuals and organizations interested in, and working on ICT policy and regulation in Kenya. KICTANet's overall objective is to act as a catalyst for reform in the ICT sector and therefore supports national objectives towards ensuring ICT enabled growth and development to improve the livelihoods of Kenyans by ensuring the availability of accessible, efficient, reliable and affordable ICT services. Other subsidiary objectives include: improving engagement on ICT policy processes; providing platforms for policy debate and discussion; engagement in policy processes; facilitation of effective dissemination channels; and, enhancing partnerships with individuals and organizations working at the community and around the globe on areas of mutual interest.

The philosophy behind the network's formation was to focus on continuous improvement by leveraging on and strengthening existing capacities and processes. KICTANet, avoids multiplicity and encourage synergies in ICT policy development and related activities and initiatives. It also provides a platform to enhance collaboration among organizations and networks interested in working together to achieve the national aim of ICT enabled growth and development.

Since its establishment, the work of KICTANet has evolved and expanded in response to the emerging needs and priorities of the country. From a loose association of individuals and organizations, KICTANet has today grown into a formidable and credible organization with international recognition. Currently, KICTANet supports ICT reforms through advocacy, research, capacity building, and technology for public interest. KICTANet infuses a multi-stakeholder approach to promote cooperation and collaboration among its diverse membership. The KICTANet mailing list serves as an online platform for information, debate and discussion on key local and global ICT policy issues.

The Information Communication Technology Practitioners Bill, 2016

KICTANet through this petition seeks to respond to the advertisement by the Clerk of the National Assembly, pursuant to Article 118(1)(b) of the Constitution and Standing Order 123(7) inviting interested members of the public to submit any representations on the said Information Communication Technology Practitioners Bill, 2016.

The Bill, seeks to establish a legal framework for the training, registration, licensing, practice and standards of Information Communication Technology (ICT) professionals in Kenya.

After intense consultations through the mailing lists kictanet.or.ke and skunworks.or.ke as well as through social media and face to face meetings, we strongly oppose the Bill for the following reasons:

1. **Objective:** The Bill does not seek to solve any identified problem. In fact, it create more problems in our society as are outlined below.

2. **No Policy Backing:** Good governance standards require that Bills to enact legislation are informed by an appropriate policy framework. It is clear that there is no policy that has informed this bill. Currently, the ICT ministry is conducting a stakeholder public participation on the review of ICT policies (see <http://www.kictanet.or.ke/?p=25161>). It is our considered view that any new bill that might have an impact on the sector ought await the conclusion of the ICT Policy review process. The theme of human skills is one of the issues currently under consideration in the ICT Policy review process.
3. **Public Participation:** Players in the ICT sector have had a positive history of consultations with the government since 2005 during development of the Kenya ICT Policy. We feel that this ICT Practitioners Bill goes against this spirit as it was drafted and sponsored by a single organisation without the robust and required level of public participation that characterised the sector and demanded by the Constitution. Further, it has emerged that the Ministry of ICT was not aware or party to development of the Bill. This Bill was developed without input from those affected by it, namely technologists, associations of persons working in ICT related work, civil society, private bodies in the ICT industry, academics working on ICT related issues and the public at large. The Bill therefore is not a legitimate representation of the views of the stakeholders working in the ICT sector. Further it contravenes Article 10 of Kenya's 2010 Constitution which makes it mandatory for public participation in governance, including policy and law making.
4. **Incongruence with other laws and policies:** The Bill does not interface with Government policies on social and economic development, movement of labour as well as ICT development. It for example goes against the spirit of Vision 2030 on economic development through IT enabled services by restricting the people who can participate in ICT service provision.
5. **Impracticality:** The contents of the Bill are impractical to implement. This is a demonstration that the Bill drafters lacked a proper understanding of the needs of the sector or a holistic approach to identify key issues affecting stakeholders, and their views on the solutions to those issues.
6. **Incoherence:** The Bill contains many inconsistencies that would make it extremely difficult to implement. At a foundational level, the Bill fails to define unequivocally who an "ICT Practitioner" is. It is also not rationalised why only one non state actor has a wide mandate at the Council established under the Bill, yet there are many more representative bodies in the ICT community.
7. **Stifling Innovation:** The Bill if enacted would stifle innovation in the country. Innovation is the hallmark and driver of ICTs and more so economic growth. The Bill requires innovators who normally come up with solutions such as coders, developers, network engineers, programmers, application developers, mobile phone repairers and many others to register with an authority before they can innovate and consequently earn from their labour. Innovators need stronger

protection for their innovations, access to credit, less regulation and incentives from government. Consequently, a more robust intellectual property law regime and policies that promote access to finance for young innovators would be more suitable under the circumstances.

- 8. Ongoing ICT Policy Review:** The Ministry of Information and Communications is currently undertaking a consultative review of Kenya's ICT Policy 2006. The objective is to update it to ensure it takes into consideration developments that have taken place since 2006 and give direction on policy in the coming years. Stakeholders have been participating in this policy review process and they are of the view that the policy should be reviewed and passed before any other ICT legislation to implement the policy is enacted.
- 9. Priorities in the ICT sector:** As stated above, the ICT sector has a history of consultative policy and legislation making. Stakeholders have identified among others, a Data Protection Framework and a Cyber Security framework as urgent priorities in the sector. We urge Parliament to use this legislative opportunity to assist us in achieving these urgent priorities as they are paramount to the development of Kenya through ICTs.
- 10. Youth and Development:** Stakeholders in the ICT sector are as committed as the government in ensuring the use of ICTs to give youth more opportunities to develop themselves and achieve their destiny. Unfortunately, this Bill does the opposite by creating hurdles in the form of academic requirements, incorporation requirements and mandatory and annual registration before they can earn a living from ICT related work.
- 11. Overrating University/Formal Education:** The Bill is completely incognisant of the revolution brought about by ICTs that enables self learning and other methods of acquiring knowledge. It makes it mandatory for one to acquire a university degree or diploma, suggesting that those are the only paths to education and training.
- 12. Global Practices and Policies:** ICTs and the Internet are by their very nature global. The Bill is not anchored on any international best practice or policy. Its effect would be to isolate Kenyan skilled ICT human resource and probably lead to labour migration from the country to other jurisdictions where it is easier to practice.
- 13. Multistakeholder Environment:** The ICT Sector is not a homogeneous sector like medicine or engineers. It is a multi-professional sector that comprises professionals from different industries. ICT practitioners include teachers, academia, business, civil society, engineering, security and so on who are registered by other institutions. Therefore it would not be in the best interests of the country to attempt to bring under regulations all these professionals. A better solution would be to develop a conducive environment for these stakeholders to maximise their potential and contribute to nation building. This Bill does not do that.

14. **Standards prescription by a non-ICT Standard body:** ICT experts and users in Kenya and globally use, implement or create products and services that are built on global technical standards. These technical standards are built on guiding principles, such as end-to-end interoperability, that ensure continued evolution and permissionless innovation. A non ICT-standards making body, cannot propose policy or law that defines who is a practitioner of a resource, that knows no boundaries and is designed to empower everyone to be creative and innovative.

It is evident that the ICT Practitioners Bill was drafted by a small group in their self interest and not in the public interest. Our humble prayer is that the Bill is withdrawn in entirety as it shall create unnecessary problems in the space of innovation and economic development through ICTs.