



Memorandum on the ICT Practitioner's Bill 2020, Submitted to The National Assembly

Through: clerk@parliament.go.ke

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[The Kenya ICT Action Network \(KICTAnet\)](#) is a multistakeholder think tank whose overall objective is to act as a catalyst for reform in the ICT sector through public policy advocacy, research, and multistakeholder engagement at both national, regional and global processes. KICTAnet has established strong partnerships within the region with representatives of government, private sector, civil society, academia, philanthropic organizations and the technical community within Africa. KICTAnet conducts research and country-level studies and has produced reports, policy briefs and toolkits on various ICT policy issues which are available [online](#). KICTAnet continues to build the capacity of key stakeholders to understand ICT and internet policy through its Kenya School of Internet Governance (KESIG), which aims to bring in fresh voices to appreciate the intersection of internet governance, technology, and human rights.

The Information Communication Technology (ICT) Practitioners Bill, 2020

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, 2020.

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 through social media, KICTAnet strongly opposes the Bill for the following reasons:

1. **Objective:** The Bill does not seek to solve any identified problem. It in fact creates more problems in our society as outlined below with the most critical factor being the risk of loss of employment for the youth and stifling of innovation that will result if the proposed form of regulation of the ICT industry is enforced. It is our position that the level of global innovation that has been seen as a result of the ICT industry can be attributed to the freedom to innovate without boundaries, and that the proposed legislation will be a severe blocker for innovation not just in Kenya but the entire region where Kenya has been at the forefront of delivering innovation.
2. **No Policy Backing:** Good governance standards require that Bills to enact legislation are informed by an appropriate policy framework. Currently, there is no evidence to show the rationale that informed this Bill. This is the third time the Bill is being introduced and yet once again the proposers of the Bill have failed to show why we need the Bill or the ills it will cure. The challenges meant to be addressed by the bill are adequately covered by available legal avenues through both civil and criminal proceedings in the case of malpractice by a practitioner. Furthermore the ICT industry is so wide that it would be futile to attempt to cluster players in the industry, even users of social media and other tech platforms that are utilised in daily life for processing documents, files and enterprise resource planning (ERP) would need to be registered as practitioners.
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. This ICT Practitioners Bill goes against this spirit as it appears to have been drafted and sponsored by a single person without the robust and required level of public participation that characterises the sector, and demanded by the Constitution. 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. For example, it goes against the National ICT Policy 2020 whose main objectives include: Grow the contribution of ICT to the economy to 10% by 2030, by using ICT as a foundation to the creation of a more robust economy, providing secure income and livelihoods to the citizenry; leverage regional and international cooperation and engagements to ensure that Kenya is able to harness global opportunities; position the country to take advantage of emerging trends such as the shared and gig economy by enhancing our education institutions and the skills of our people, and fostering an innovation and start-up ecosystem that is able to lead on a global scale; and gain global recognition for innovation, efficiency, and quality in public service delivery. Services will be delivered in a manner that ensures we have a prosperous, free, open, and stable society.
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 identifying key issues affecting stakeholders, and their views on the solutions to those issues. For example, Section 10 of the Bill on the functions of the proposed institute will be required to approve courses for purposes of registration of ICT Practitioners. Given that ICT courses are always changing and almost every course now has an ICT aspect to it, it will be an almost impossible task to determine what courses one will be required to undertake to be termed as an ICT Practitioner. Further, the section also states that the institute shall administer an examination to determine whether one qualifies to be an ICT Practitioner given that the broad nature of ICT implementing this may prove an impossible task. The Bill has failed to recognise the malleable and evolving nature of ICT with the evolution of new programming languages and innovation on an almost daily basis.
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. The definition given by the Bill is so broad it captures the entire population. Given that Kenyan Mobile phone penetration is at 100% going by the definition of ICT and ICT Practitioner, majority of the Kenyan population will be classified as ICT Practitioners.
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 the 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. **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, Digital Taxes Policy Framework, and Data Protection Regulations to support the Data Protection Act as urgent priorities. We urge Parliament to use this legislative opportunity to assist the stakeholders in achieving these urgent priorities as they are paramount to the development of Kenya through ICTs. One critical area that needs urgent attention is the protection of ICT critical infrastructure that will ensure that the current losses of maintenance and replacing expensive infrastructure are reduced through the formulation of a legal framework for assets.
9. **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 ICT practitioners 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.
10. **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. Further, the Bill fails to recognize that there is a large number of people in the ICT sector who are self-taught and have managed to innovate without having gone to a learning institution. This Bill risks discouraging a culture of innovation and may lead to brain drain as people may leave Kenya to go seek opportunities elsewhere, where their talent is appreciated. Some of the best companies ever created such as Microsoft, Apple and Facebook came from people who did not have a university qualification.
11. **Global Practices and Policies:** ICTs and the Internet are by their very nature global. The ICT practitioners Bill is not anchored on any international best practice or policy. Its effect would be to isolate Kenyan skilled ICT human resources and probably lead to labour migration from the country to other jurisdictions where there is an enabling environment to practice. Further, the bill has no provision in it for bringing in external trainers and consultants and hence damages the industry by working against international knowledge sharing. Also, the Bill creates serious and deep problems with intercompany staff transfers or people in multi-nationals coming in to work on intra-company projects that require external resources. The overall result may be a reduced tax base as people will end up leaving Kenya to seek opportunities in countries that provide conducive environments for them to innovate and create thriving businesses.
12. **Multistakeholder Environment:** The ICT Sector is not a homogeneous sector such as medicine or engineers. It is a multi-professional sector that comprises professionals from different industries. ICT practitioners include teachers, academia, business, civil society, engineering, and other sectors 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.

13. **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 whoever drafted the ICT Practitioners Bill did not have the interest of the public at heart. Our humble prayer is that the Bill is withdrawn in its entirety as it shall create unnecessary problems in the space of innovation and economic development through ICTs.