

**REPUBLIC OF KENYA**

**MINISTRY OF ICT, INNOVATION AND YOUTH AFFAIRS**

*Office of the Cabinet Secretary*

**TELPOSTA TOWERS**

**P.O. Box 30025**

 **NAIROBI**

 **KENYA**

 **4th April 2022**

**Telephone: 020-4920000/4921000**

**Email: ps@ict.go.ke**

**When replying please quote**

**Our Ref: MIIYA/CONF/18/01**

**Hon. Justin B. N. Muturi, EGH, MP**

Speaker of the National Assembly

Parliament Buildings

**NAIROBI**

**REPORT ON THE ADOPTION OF THE REPORT OF THE INFORMATION, COMMUNICATION TECHNOLOY PRACTITIONERS BILL, 2020 BY THE DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND INNOVATION**

Reference is made to the above and your letter (**Ref: AG/LDD/118/1/36**) dated 17th March 2022.

The following is a summary of the Ministry’s views and comments on the proposed Bill:

**COMMENTS ON THE PRE-PUBLICATION SCRUTINY OF THE ICT PRACTITIONERS BILL, 2019**

On initial examination it seems a good idea to have a Bill which tries to address the issue of:

1. Unprofessional services from ICT practitioners

2. Proliferation of ICT training institutions offering substandard courses and services.

However, the following points are noted:

**BOTTLENECK AND BARRIER TO BUSINESS AND EMPLOYMENT**

1. This Bill is likely to create a bottleneck whereby the 10,000 or so ICT-related practitioners who come into the industry each year will have to rely on 11 persons to enable them to practice or even receive payments for their services.
2. ICT training institutions will also have to be registered by the Council:

a) This is in conflict with the current registration mandate of the Ministry of Education.

b) This will work against the "Ease of Doing Business" efforts of the Government of Kenya.

1. The licensing fees will place additional burdens on both ICT training institutions and young ICT graduates.
2. The Bill condemns ICT innovators to wait 5 years and raise money for licenses before they can practice in the sector or receive fees for their services. This runs counter to Kenya's efforts to spur innovation and reduce unemployment.
3. The form of licensing as proposed in the current Bill would only serve to enshrine entry barriers and stifle innovation. This would be a retrogressive move to the development of the country given the fundamental role that ICT has played in other developed nations.
4. The onerous licensing regime that the Bill seeks to create would have a potential adverse impact on Kenyan ICT professionals and investors working in other countries, including Kenyans working as online service contractors and vendors for foreign companies. It is not clear whether the requirement to obtain a license would also apply to them in order for them to qualify to work in other countries.
5. The same question arises in respect of foreign ‘ICT practitioners’ and investors operating in Kenya. In view of Kenya’s commitments to the World Trade Organization (GATTS,4) and the East African Common Market Protocol (EACP) on free movement of labor and services there is need to ensure that the bill does not undermine the country’s obligations.

**REGISTRATION OF ICT PRACTITIONERS**

1. A **profession** is a disciplined group of individuals who adhere to ethical standards. This group positions itself as possessing special knowledge and skills in a widely recognised body of learning derived from research, education and **training at a high level**, and is recognised by the public as such.
2. A close scrutiny of this definition *vis a vis* the Bill reveals that only ICT Practitioners who have some higher level of training will be registered under the Bill.
3. Without prejudice to the impact of formal education processes, this Bill ignores ‘self-taught’ innovators who with the introduction of the licensing regime would be limited to practice.
4. The unique nature of ICT training is not acknowledged, making the Bill incongruent with realities of ICT training, certification and practice. The question of aggregation of standards with regards to ICT education is not addressed.

**CAPACITY**

It will require an extraordinary level of capacity to fulfill the far-reaching mandates of the Council:

1. The ability to evaluate national and international qualifications for approval;
2. The ability to judge the quality of ICT projects and arbitrate between complainants and professionals;
3. The ability to set and administer examinations in a broad range of ICT subjects.
4. The ability to judge whether a person is of good moral character.
5. It is noteworthy that neither the Ministry of Education nor the Commission for Higher Education is represented on the board. There is a mandate problem since some of the powers bestowed on the Council currently lie with the Ministry and Commission.

**REPRESENTATION**

1. Only one ICT body, the ICT Association, is represented on the board. This Association arguably may not be accepted as the most respected association of professionals in the ICT realm in Kenya (there are others e.g. Information Systems Audit and Control Association (ISACA) Kenya Chapter, Computer Society of Kenya, Technology Service Providers of Kenya (TESPOK), Kenya ICT Action Network (KICKTANET), Bloggers Association of Kenya (BAKE), and Kenya Information Technology and Outsourcing Services (KITOS)).
2. The ICT Association is over-represented on the board given the sweeping powers given to the Council.

**CRIMINALIZATION**

There are a number of offenses in this bill which lead to fines and / or jail sentences. Some of them are civil rather than criminal in nature.

**PROCEDURES**

1. There are no formal procedures provided whereby the Council receives and handles complaints.
2. The procedure for re-licensing unlicensed persons seems casual.

**APPEALS**

There is no procedure for appeals and complaints against the Council (despite its sweeping powers) except recourse to the High Court. Given the powers of the Council it is desirable that complainants have recourse to cost-effective appeals procedures such as the Communications and Multimedia Appeals Tribunal established under Section 102 of the Kenya Information and Communications (Amendment) Act, 2013.

**FINANCIAL MANAGEMENT**

1. From the number of licenses, examinations etc. it appears that this Council has the ability to raise quite a lot of money. The financial procedures specified are not adequate for its potential income.
2. Funds of the Institute should not include such monies as may be appropriated by the National Assembly. In keeping with best practice, professions should regulate themselves in all aspects of their organization including funding.

**REGULATIONS**

1. According to the Bill, the Council may, upon consultation with the Cabinet Secretary, make regulations generally for the better carrying into effect of its provisions.
2. The Ministry of Information, Communications and Technology has the mandate of ICT and innovation. The Bill does not reflect the policy position of the Ministry and indeed the Government of the Republic of Kenya. This would make it impossible for the Cabinet Secretary to make regulations for this Bill.
3. In any event, the Bill should provide for self-regulation, consistent with other professionals
4. Further, there is no documented evidence of any benchmarked or success case in regulating practitioners in the ICT sector as proposed under the Bill.

**RECOMMENDATION**

The Bill is premature. It would be better to set up an Inter-ministerial and sectoral Task Force to:

1. Study the current state of the ICT profession in Kenya and make recommendations for the enhancement of professionalism;
2. Set out recommendations for ensuring that tertiary ICT colleges offer quality and cost-effective courses and certifications;
3. Give guidelines for the handling of professional disputes between ICT practitioners and their clients;
4. Identify ICT professional associations and create guidelines for legitimizing ICT professional associations.

Such work would enable drafters to come up with a bill which can enhance professionalism without endangering business and employment.

We enclose a more detailed memorandum herewith.

The Ministry thanks you for your continued support.

**JOE MUCHERU, EGH**

**CABINET SECRETARY**

**Cc Joe Mucheru, EGH**

Cabinet Secretary

 Ministry of Information, Communications and Technology

**NAIROBI**

Enc.