To the Clerk of the National Assembly,

P.O. Box 41482-00100, Nairobi

Dear Sir/Madam,

Re: Submission of Memoranda for The ICT Practitioners Bill

We write with regards to the above, as ICT stakeholders and practitioners, to voice concern about the Bill and its contents.

Please see this link to a detailed outline of the problematic areas as identified: http://bit.ly/ICTBillKE

We strongly feel that this Bill is ill-advised, and completely out of touch with the realities in the ICT industry today.

We therefore urge the Energy, Communications and Information Committee to heed the collective voices from the industry, consolidated in the attached document.

This attachment is also available as a collaborative document at: http://bit.ly/ICTBillKE

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INTRODUCTION

The ICT sector is identified as a key sector within Vision 2030's Economic Pillar and currently has millions of Kenyans' livelihoods pegged on the direction it takes. The immensely cross cutting nature of this sector demands that any regulation affecting it should have the widest possible consultation and considerable prudence in formulation, enactment and execution.

This is a summarised version of valid questions around the ICT Practitioners Bill from the greater ICT community; it is to be used as fodder for engaging relevant arms of government for encouraging wider consultation around the content and objectives of the private member's Bill with potent ramifications for the millions of Kenyans and foreigners directly and indirectly employed in the sector with Billions of Kenyan shillings in investments at stake.

BACKGROUND

The "Kenya ICT Practitioners Bill" is a private member's Bill by Hon. Adan Duale who is also the Jubilee government chief whip. It is important to note at the onset that the Jubilee government came into power with the promise of a "digital government" and the proposed Bill goes against the spirit of their manifesto.

The momentum of this document originated from deep concern and disappointment expressed in the Kenya Techpreneurs forum where the news of the gazettement of the Bill was received with shock, leading to the initiative to petition the relevant government bodies about the irregularities of both the content and process of the Bill.

The need for this document emanates from the fact that the Bill was not sanctioned by any known private sector stakeholder primarily being denounced by KEPSA which is the key private sector body. Moreover, wider and more public concern has been raised by ICT stakeholders, in both individual and corporate capacity; all have been by surprise at the gazettement of the Bill.

Following these developments, KEPSA has written to the clerk, Speaker and Chairman of the Energy, Communications and Information parliamentary committee on this issue.

There are concerns herein about the Bill, ranging from the violation of basic human rights, to violations of international treaties to anti competition restrictions. The other key issue after lack of proper consultation being the inapplicability of this proposed law to the unique nature of the ICT industry both locally and globally.

OBJECTIVE

This document aims at clarifying and unifying the Agenda of stakeholders in the ICT industry identified as a key pillar of the Vision 2030, who would like to be included in the discussion of the ICT practitioners Bill.

The document was compiled by volunteers and stakeholders from the ICT sector as a tool to guide discussion on how best and in what context to respond to the Bill and the process it has taken.

THEMATIC AREAS OF PUBLIC AND STAKEHOLDERS' CONCERN

1. Lack of evidence of any form of consultation with any industry stakeholders.
2. Inconsistency with current and other proposed laws.
3. Impact of the proposed law on status quo and growth trends in the industry.
4. Lack of clarity as to the objective and/or motive of the Bill
5. Lack of consensus on definition of terms used in the Bill, the structure of proposed bodies, their powers, capacity and relevance to growth of the sector.
6. Operationalisation of the Bill and the emerging conflict with existing statutory bodies operating in the sector
7. Lack of any global success case for regulating practitioners in the ICT sector as proposed in the Bill.
8. Lack of evidence of a policy that informed the creation of the Bill.
9. Lack of evidence that this has worked elsewhere on the globe.

Summary of concerns in the thematic areas identified

1.Who was consulted, how and when?

Despite the wide opposition of the Bill, there has not been a single member of the private sector who has emerged defending the consultation process. There is also the fact that the ICT Authority (ICTA), the body purported to represent the sector has remained silent on the matter.
Most prominently, the Kenya private sector Alliance (KEPSA), the overarching private sector body in Kenya has denounced the Bill.

2. The Inconsistency of this Bill with:

(I) Current laws

   (a) Which policy has informed the drafting of this Bill?
   (b) Powers of the proposed Council and accountability to the public, its licensees and other stakeholders
   (c) How insulated is the public and other stakeholders from abuse, mis-interpretation and malicious operationalisation that can attract elements of corruption to the proposed Institute?
   (d) Don't the current labor laws already protect tech people? If not, what are the identified gaps within the ICT sector that this Bill seeks to address?
   (e) Section 6(h) that assigns the ICT Practitioners Institute the function of determining fees charged on a client interferes with the right to trade and agreed negotiations between parties.
   (f) the Computer and Cybercrimes Bill
   (g) The ongoing ICT policy review.

(II)Vision 2030

The vision's objective of creating millions of jobs with ICT as a contributing sector is at threat by this Bill's objective to create unnecessary restrictions without commensurate enablement.

Projects like Digify Africa by Google and Ford Foundation aiming to impart digital marketing skills have targeted and invested significant resources to empower the very groups that this Bill seeks to segregate.

(III) Jubilee Manifesto

In accordance with the Jubilee manifesto, the Office of the Deputy President is currently undertaking the following projects to boost youth in the ICT sector . The relevance and tenability of these grand efforts is undermined by proposals in the ICT Practitioners Bill.

- Develop ICT Incubation hubs at county level with the plan of extending these to constituency levels to empower our youth with the necessary training and work experience to develop market ready ICT services and products.
- Investing and facilitating a digital economy by empowering our youth to develop software that is market ready and which the Government and County Governments will be primary consumers of these software/products.
- Create employment for our youth through ICT related jobs in Government and the corporate world supported by education and professional development programmes as well as granting them the necessary work experience.
- We are also going to equip our youth with the necessary skills, capital and opportunities to create wealth for themselves through securing local and foreign investment in new factories and giving tax breaks, grants and loans to setup.

iv) other statutory bodies

- How different would the role played by this association be from that played by Communications Authority and the ICT Cabinet Secretary?
- Will this 'governing body' sort other fees we have to pay to other IT-related institutions, both local and international?

3. The impact of this Bill on current growth trends in the sector

i) Job Creation

Section 23 states that "A person shall not be entitled to recover a fee for ICT services, unless such person is licensed under this Act."

- What about those young innovators/app developers in our incubation hubs who have not yet graduated and have no relevant experience? Which then, are prerequisites for their registration? Can they not monetize their work?
- What happens to startups whose founding teams, or chief engineers don't have college degrees?

ii) Labour Implications for:

- Kenyan ICT professionals and investors working in other countries, including Kenyans working as online service contractors and vendors for foreign companies; will they need to obtain a license in Kenya in order to qualify to work in other countries?"
- Foreign 'ICT practitioners' and investors operating in Kenya;
- Kenya's commitments to the East African Community (EAC) on free movement of labor and services;

iii) Innovation and learning/knowledge, technology transfer and fostering tech entrepreneurship

- How does the Bill enhance protection of ICT innovations?
- How does the Bill address the dynamic nature of ICT? As some contributors have noted, "everything that was taught in school is now non existent. We've had to teach ourselves new tech. How will this be regulated?" As another contributor asked, "what if my ten year old son wants to be coder? Does he have to wait till he has gone to (and finished) university to start practising?"

iv) Excellence of practice

- This Bill looks a lot at inputs such as qualifications, educations, but not outputs. What happens when qualified 'ICT professionals' produce poor standard technology?
- How/who will determine the standards to apply to innovation?

v) Training, research and development

- How will the resulting Act regulate most of the ICT-related courses that are examined internationally?
- Why was the question of standards with regards to ICT education not addressed?
- Will the ICT curriculum change, now that it's pretty evident that ours is of a lower standard compared to those of other countries?
- Will tutors in training institutions be required to acquire proposed licenses?

vi) As a barrier or enabler of entry

- Are startups provided leeway in regulation as they are fledgling companies and too much red tape would stifle them?
- Not to inflict grievous corporate harm on hobbyists and young learners who are just picking up ICT skills.

- Apart from the regulatory role, what other value would the Institute provide to ICT practitioners? There is a need to create value to not only the public but also to the practitioners themselves.

- Is there an existing legal precedence in any other jurisdiction?
- How successful has such a measure been, if in effect elsewhere?

- How will it affect communication
- Government operations
- Private sector
- Transport
- Geographic Information System (GIS)
- Manufacturing etc?

4. Qualification vs Proficiency levels.

- Who exactly is an ICT practitioner, given that ICT is an ever evolving field with jobs of the future still being created? How does this translate to the cross-cutting nature and application of ICT?
- What does this mean for self-taught practitioners?
    - For certification holders such as CCNA and MCSA?
    - For graduands of institutions like the Moringa School and Andela?
    - For those who pursue MOOCs and other online channels of education/skills enhancement?
- How will regulation of most of the ICT related courses that are examined internationally pan out in this context? (How will the bill accommodate ICT system audit?)

5. Definitions and their implications for practitioners

- Of
    - ICT
    - ICT practitioner
    - ICT firm
    - ICT qualification

- Will there be different assessments for Developers, Quality Assurance practitioners, Networking people, Cybersecurity practitioners, SysAdmins, DevOps guys to name a few? In the words of several contributors,
    - "I sell ICT solutions, how does this Bill affect me? Am I considered a practitioner?"
    - "I write C, Python and even Perl, who will decide that am a professional in these languages? And what expertise will they need to have, to be given authority to do the same? It is impossible for the institute to determine the needs of the client, the resources, skills, experience and time required by a practitioner."
    - "My day job essentially involves picking up calls and answering questions from my clients. They are fully certified and have a paycheck every month. They call me to help them figure out this and that issue. So in the ecosystem am called an IT consultant. In essence I run a very virtual setup. No mortar or brick. I just get paid via Mpesa and file my returns. By the way I don't have a CCNA or MCSE or whatever the certs are. Just God give intelligence for figuring out. Am I actually supposed to be issued with the licence. Next since I get the calls on a need to basis and do small scale farming will I get jailed for picking the calls since I will miss a year if we have a boom in farming?"
    - "Does this Bill ban me from fixing my mother's computer without a license, or charging my neighbor for fixing their wifi and/or printer?"
- How does this affect engineers, architects, music producers, researchers for example, who use software to produce their work?

6) Operationalisation
- Who is going to check that people are regulated? Which/what methods will be used to check registration?
- How should we prepare for the implications of this Bill?

7) Actual content of the Bill
- Licensing:
- Licensing categories
- Licensing conditions
- Licensing process- Certificate's validity for 12 months irrespective of the time of issuance/application.
- Council's sweeping powers for non-issuance or non-renewal of a licence.
- Is this an absolute discretion to the council on issuance and renewal of licences?

QUESTIONS AS SUBMITTED

1. Who originated the Bill and how widely/whom did they consult?
    a. Specifically, which policy informed the drafting of this Bill? This needs to be shared.
2. What is the rationale for the Council to be set up as a result of this Bill?
    a. Why have the council in the first place? What is the need being met?
    b. Why does a field that has managed to do well and come up with its own framework of holding meetups, events and even attracting Investors all of a sudden need regulation, what informed this?
    c. Don't the current labor laws already protect Tech people?
3. What does "Practice of ICT" really mean?
    a. What is ICT taken to mean in this context? (eg Does it include GIS? Which was traditionally practiced by surveyors, but now can be applied virtually in any field? Will there be different assessments for Developers, QA, Networking people, SysAdmins? DevOps guys?
    b. What is an ICT firm?
4. Who exactly is an ICT practitioner? The term ICT is normally used to refer to use of electronic devices to process and access information. It is an ever-evolving field with no single boundary, and it cuts across fields and its growth cannot be measured. It ensures that jobs of the future are still being created. Since ICT is a generic term with no boundary, anyone using technology to access and gain from it either financially or otherwise is technically an ICT practitioner. Therefore, is this council going to be overseeing the roles of other already existing bodies who have invested and use technology, such as the media?
    a. What does this mean for self-taught practitioners? And for certification holders? CCNA,MCSA etc. What does this Bill mean for freelancers and other actors in the sector who work online?
    b. As a programmer or Software developerI write C, Python and even Perl, who will decide that am a professional in any of the languages I use, some of which have no certification bodiesthese languages? And what expertise will they need to have, to be given authority to do the same?
    c. Does this mean someone without an ICT degree will be banned from starting a tech company?

d. How will the proposedthe does proposed ICT Councilthe authority propose to ensure that certifications are agnostic of a specific Vendor? (.e.g Networking certification as opposed to Cisco certification)

e. What institutions are ready to certify the cutting edge practitioners, since our education system still has a lot to catch up?

f. Why was the question of standards when it comes to ICT education not addressed?

g. What are the implications for the ICT curriculum in our education system? Will the ICT curriculum change now that it's pretty evident that ours is of a lower standard compared to those of other countries?

h. How will they rank degrees and verify quality from different universities that have differing curriculums, quality standards, teaching standards and programs?

i. There are lots of professionals who are currently entrenched in the sector without the said qualifications. Way forward?

j. How does this Bill measure quality given as most people with degrees and masters in ICT related courses from universities can't even practice what they have papers in and yet, self taught people perform even better in terms of delivery

k. How was the Registration amount (there is no registration amount yet. It shall be set by the council, probably) & registration period arrived at? Will this 'governing body' sort our other fees that we have to pay for the other international IT governing bodies eg ISACA for renewing membership considering we'll be paying them a yearly membership fee?

l. What will be the costs of obtaining licences for the practitioners? Is it a renewable annual licence or a life-time licence? Are there licence categories?

m. Why deal with this issue of practitioners before dealing with issues such as internet access, net neutrality, infrastructure sharing, exorbitant internet charges and data residency issues?

n. A previous endeavor to provide certification for the tech community, seems to have flopped due to poor planning, strategy and lack of consultation. Also most of the community feels you are incapable of regulating us, since you barely understand what we do, how will you resolve this quandary?

o. Won't this Bill stifle competition, creativity, labor fluidity and potential earnings of gifted technology actors?

p. Apart from the regulatory role that the Council through the Institute, what other value will the institute provide to ICT practitioners. There is need to create value to not only the public but also to the practitioners themselves.

q. Why was the bulk of the Bill devoted to the council? Isn't this Bill about practitioners?

r. Will there be special concessions for underrepresented groups in tech: Women, Ethnic Minorities?

s. This Bill looks a lot at inputs - qualifications, educations but not outputs. What happens when qualified 'ICT professionals' produce poor standard tech.? How/Who will determine the standards to apply to innovation?

t. If you have undertaken online courses from Coursera, Udacity, EDX, codeacademy, and let's not forget all good free youtube how does the Bill go about acknowledging this qualification or skills acquired.

5. Have the potential implications on entrepreneurship and technology SMEs been considered? And the industry at large?

    a. Are Startups provided leeway in regulation as they are fledgling companies and too much red tape would stifle them?

    b. Is it possible to convert the certificate to a badge of merit bestowed upon those who desire it so as not to inflict grievous corporate harm on hobbyists and young learners who are just picking up ICT skills

6. Is there existing legal precedence in any other jurisdiction?

    a. How different would the role played by this association be from that played by CA? What are the overlapping areas and what makes sense? Strengthening the CA or creating an entirely new entity???

    b. What other Bills are supposed to be read/interpreted in conjunction with this one?

7. How will they ensure that this Council does not end-up toothless and ineffective just like other councils formed before that just eat taxpayer money and fees from members?

8. Why introduce new taxes for young innovators who are struggling in their trade?

9. Is this just another ploy to create employment for irrelevant bureaucrats at the expense of hardworking Tech people and to make government tendering a preserve of a certain clique?

10. We would like the Bill to be structured in a manner that allows for democracy in the organisation where we can vote in and out the council if they are not serving our interests.

11. We would like a clause in the Bill allowing us to censure any member of the council for undermining the community, profession and its members.

12. How will foreign consultants (either working locally or abroad) fit into this Bill? Will they need to obtain a license for 3 months of work?

13. Will ICT practitioners get tax exemptions and rebates for tools of their trade such as Computers, Servers, Software Licenses e.t.c like other tradespeople do?

14. How does the Bill protect ICT practitioners from undercutting practices and other professional underhanded tactics?

15. If Cyber Fraud, and other crimes are the motivation for the Bill, shouldn't you amend the Cyber Security laws instead of subjecting Tech people to this draconian Bill?

16. What is the need for this Bill that isn't already met by the free market? What problem is this Bill solving? If the bill seeks to solve skills in the ICT level, can't it originate from the ICT review process under the theme of skills and labor?

17. Does this Bill ban me from fixing my mother's computer without a license, or charging my neighbor for fixing their wifi and/or printer?

18. Does this Bill ban me from opening a computer fixing shop, phone fixing shop etc with a certificate from the ICT Council?

19. Does this Bill ban me from giving computer advice on the internet without a valid license?

20. How does this Bill relate with open source software developed by unlicensed people being used in a product developed by licensed entities?

21. Does this prevent companies from using open source software built by unregistered parties?

22. What happens to startups whose founding teams, or chief engineers don't have college degrees?

23. What are the implications of this Bill for IT professionals.eg. Andela Fellows, Moringa school graduates?

24. How should we prepare for the implications of this Bill?

25. When will our questions be answered?

26. Who is going to check that people are regulated? Are what will be used to check registration? Some kind of kangaroo police?

27. What problem is this Bill trying to solve?

28. Everything that was taught in school is now non- existent. We've had to teach ourselves new tech. How will this be regulated?

29. This Bill looks a lot at inputs - qualifications, educations but not outputs. What happens when qualified 'ICT professionals' produce poor standard tech.? How/Who will determine the standards to apply to innovation?

30. Has this law been applied anywhere else in the world? Did It work?

31. Why the move to disqualify and discourage self taught ICT practitioners and hobbyists, who make up a sizable constituency?

32. How does this ICT Bill protect the practitioner's work and intellectual property e.g. business methods in our softwares and innovations?

33. What does the ICT Bill mean to certificate holders in ICT related fields? Does this mean they are not qualified since they do not have diplomas and degrees?

34. What about self-taught practitioners and persons qualified through online certifications and degrees?

35. "…A person shall not be entitled to recover a fee for ICT services, unless such person is licensed under this Act.…." What about those young innovators/app developers in our incubation hubs who have not yet graduated and have no relevant experience, which are prerequisites for registration? Can they not monetize their work?

36. I sell ICT solutions, how does this Bill affect me? Am I considered a practitioner?

37. How will the ACT regulate most of the ICT related courses that are examined internationally?

38. Have they considered the negative effects that this Bill would have on ICT innovation in Kenya?

39. Why have they ignored protection of ICT innovations and gone straight to regulations that are not necessary?

40. The ICT ecosystem has a Billion devices. IoT. So when I want to configure the Billion of things I need a licence? I have my phone, with a garmin and a smart tv in the house. Will I have to go to Huduma center type center to get a certified pro to help me set them up. What happens to the user manual that comes with the device(s) ? Or have I lost the plot of what is being legislated !

41. My day job essentially involves picking up calls and answering questions from my clients. They are fully certified and have a paycheck every month. They call me to help them figure out this and that issue. So in the ecosystem am called an IT consultant. In essence I run a very virtual setup. No mortar or brick. I just get paid via Mpesa and file my returns. By the way I don't have a CCNA or MCSE or whatever the certs are. Just God give intelligence for figuring out. Am I actually supposed to be issued with the licence. Next since I get the calls on a need to basis and do small scale farming will I get jailed for picking the calls since I will miss a year if we have a boom in farming?

42. How will the continuing education points earned from other bodies(ISACA, EC_COUNCIL etc) be handled?

43. What happens to a form four who clears high school and joins Moringa School and graduates? Will s/he be eligible to be an ICT Practitioner?

44. If you have undertaken online courses from Coursera, Udacity, EDX, codeacademy, and let's not forget all good free youtube how does the Bill go about acknowledging this qualification or skills acquired.