**Section of Bill:** Part II, Establishment and Administration of the Authority

**Proposal:** Include representatives from the private sector, particularly independent developers and small businesses, on the Board of the ICT Authority.

**Justification:**

The current composition of the Board, primarily comprised of government officials, lacks the diverse perspectives and practical insights needed to effectively represent the interests of the entire ICT sector. Including representatives from the private sector, especially independent developers and small businesses, will ensure that the Authority's decisions and policies are informed by the realities and challenges faced by those who are actively building and contributing to Kenya's digital economy. Their participation will bring valuable insights into the practical needs of developers, startups, and small businesses, leading to more effective policies that promote innovation, inclusivity, and growth within the ICT sector.

**S/No:** 3

**Section of Bill:** Part IV, Financial Provisions

**Proposal:** Establish a dedicated fund or grant program to support innovation and research within the ICT sector, particularly focusing on supporting independent developers and small businesses.

**Justification:**

While the bill addresses the funding of the ICT Authority, it lacks a specific mechanism to encourage innovation and research within the broader ICT ecosystem. A dedicated fund or grant program would provide much-needed resources to independent developers and small businesses, enabling them to pursue cutting-edge technologies, develop innovative solutions, and contribute to the advancement of Kenya's digital landscape. Such a program would foster a culture of experimentation, creativity, and progress within the ICT sector, ultimately contributing to Kenya's economic and technological growth.

**S/No:** 4

**Section of Bill:** Part V, General Provisions

**Proposal:** Include provisions for promoting digital literacy and access to affordable internet services across Kenya, particularly in rural and underserved communities.

**Justification:**

While the bill mentions digital literacy, it lacks specific provisions for ensuring that all Kenyans have access to affordable and reliable internet connectivity. Expanding digital literacy and internet access is crucial for fostering economic growth, improving public service delivery, and empowering citizens. This requires a comprehensive strategy that includes investments in infrastructure, affordable internet packages, and targeted programs to bridge the digital divide, ensuring that all Kenyans can participate in the digital economy.

**S/No:** 5

**Section of Bill:** Part III, Condition for Deployment of ICT Resources

**Proposal:** Clarify the scope and application of "ICT codes" to ensure they do not become overly burdensome for independent developers and small businesses, particularly those working on innovative technologies.

**Justification:**

The bill's focus on establishing ICT codes is commendable, but it is crucial to avoid creating overly stringent or inflexible standards that could stifle innovation. The development and implementation of ICT codes should be a collaborative process that involves input from developers, entrepreneurs, and technology experts, ensuring that they are relevant, adaptable, and supportive of emerging technologies and innovative approaches.

## **Comments on the Information and Communications Technology Authority Bill, 2024**

| **S/No** | **Section of Bill** | **Proposal** | **Justification** |
| --- | --- | --- | --- |
| 1 | 18(1) | **Amend to remove requirement for sharing plans with the Authority.** | This section unfairly burdens independent developers by requiring the sharing of detailed plans, potentially disclosing intellectual property and hindering innovation. A more flexible approach focused on ensuring compliance with ICT codes through testing or certification after development would be more effective. |
| 2 | 21(1) | **Remove the required fee for accreditation.** | The proposed fee for accreditation could create a significant barrier for entry for independent developers, particularly startups and small businesses, hindering competition and innovation within the ICT sector. Removing the fee or offering tiered accreditation based on project scope would foster a more inclusive and vibrant ecosystem. |
| 3 | 21(3)(a) | **Clarify the "minimum technical qualifications and skills" required.** | The bill lacks clarity regarding the specific qualifications required for accreditation. This vagueness could lead to arbitrary interpretations and potentially exclude skilled developers who may not have formal qualifications but possess extensive practical experience. Defining clear and objective criteria, potentially through recognition of relevant certifications or portfolio submissions, would ensure fairness and transparency. |
| 4 | 21(3)(c) | **Revisit the requirement for "necessary ICT resources".** | This clause could disproportionately impact independent developers who often rely on cloud infrastructure or open-source tools. The requirement for "necessary ICT resources" should be re-evaluated to ensure it is reasonable and does not hinder innovation and entrepreneurship, especially for those who operate on lean budgets. |
| 5 | 31(1)(d) | **Remove the penalty for providing ICT services without accreditation.** | The proposed penalty for providing services without accreditation is unnecessarily harsh and could stifle innovation and experimentation. A more pragmatic approach would focus on ensuring compliance with ICT codes through post-development certification or testing, rather than imposing severe penalties before a product or service is even launched. |

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| **S/No** | **Section of Bill** | **Proposal** | **Justification** |
| --- | --- | --- | --- |
| 6 | 19 | **Ensure ICT codes are developed in a collaborative and transparent manner.** | The bill does not provide a clear mechanism for developing ICT codes. This should involve consultation with stakeholders, including independent developers, to ensure that the codes are practical, relevant, and do not stifle innovation. A process that allows for public review and input would foster trust and encourage broader adoption. |
| 7 | 20(2) | **Redefine "regulatory nudges" with a focus on positive reinforcement.** | The bill uses vague language like "regulatory nudges," which could be interpreted broadly and lead to overly burdensome regulations. Instead, the focus should be on positive reinforcement, such as providing incentives for compliance, offering support for adoption of ICT codes, and promoting a collaborative approach to achieving best practices. |
| 8 | 21(2) | **Establish a tiered system of accreditation.** | The bill proposes a general accreditation system, which might not be suitable for all types of ICT service providers. Implementing a tiered system, with different levels of accreditation based on the complexity of projects and services offered, would provide greater flexibility and cater to the diverse needs of the industry. |
| 9 | 22 | **Ensure ongoing monitoring and evaluation of accreditation requirements.** | The bill lacks provisions for periodically reviewing and updating accreditation requirements. The Authority should establish a mechanism for ongoing monitoring and evaluation to ensure that accreditation standards remain relevant, practical, and do not become barriers to innovation or entry into the market. |
| 10 | 23(1)(b) | **Provide clear definitions for "detrimental to the interest of a public entity."** The bill uses ambiguous language that could be subjectively interpreted, leading to potential abuse of power by the Authority. Clearer definitions, with specific examples, are necessary to ensure fairness and transparency in the application of this provision. |  |
| 11 | 24(3) | **Consider a more independent and transparent appeals process.** | The bill proposes appealing to the Board of the Authority, which might create a conflict of interest. An independent appeals process, overseen by an external body or a panel of experts, would enhance fairness and impartiality in resolving disputes. |
| 12 | 29 | **Develop a clear framework for investing surplus funds.** | The bill mentions investing surplus funds but lacks specific guidelines or criteria. A detailed framework for investment, including transparency measures and accountability, would ensure responsible management of the Authority's resources. |
| 13 | 31 | **Ensure penalties are proportionate and focused on remediation.** The bill proposes a blanket penalty of five years imprisonment or a fine of five million shillings, which is overly punitive and could have a disproportionate impact on individuals and small businesses. Penalties should be proportionate to the offense and focus on remediation, such as requiring compliance with ICT codes or making amends for any damage caused. |  |
| 14 | 32 | **Establish a comprehensive transition plan for the transfer of existing ICT resources and personnel.** | The bill only briefly mentions transferring assets and staff from the existing ICT Authority. A detailed transition plan, including timelines, procedures, and clear responsibilities, is essential to ensure a smooth transfer and avoid disruption to ongoing services. |

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| **S/No** | **Section of Bill** | **Proposal** | **Justification** |
| --- | --- | --- | --- |
| 15 | 18(3) | **Eliminate the clause altogether.** | This section is a blatant attempt to stifle innovation and competition by granting the Authority undue control over ICT infrastructure. It's a classic example of how government intervention often backfires, leading to increased costs, bureaucracy, and delays. The private sector is perfectly capable of building and maintaining ICT infrastructure efficiently and effectively without government interference. |
| 16 | 20(3) | **Scrap the requirement for an annual compliance report.** | This is an unnecessary and burdensome requirement that creates bureaucratic overhead without any demonstrable benefit. Instead of focusing on endless reporting, the Authority should shift its focus to creating a supportive environment that empowers businesses to thrive and innovate. |
| 17 | 21(4) | **Reduce the processing time for accreditation applications to a maximum of seven days.** | The proposed 30-day processing time is simply unacceptable in today's fast-paced digital world. Independent developers need to be able to get their businesses up and running quickly, and any delays can have a significant impact on their success. The Authority should prioritize agility and responsiveness in its operations. |
| 18 | 23(1)(a) | **Reconsider the definition of "contravention" and prioritize flexibility.** | The bill lacks a clear definition of "contravention," which could lead to arbitrary interpretations and unfair sanctions. The focus should be on fostering a collaborative and supportive environment where independent developers can learn, adapt, and evolve their products and services without fear of arbitrary punishment. |
| 19 | 24(2) | **Establish an independent appeals body with strong legal expertise and a clear mandate to protect the rights of developers.** | The proposed appeals process is heavily biased towards the Authority, making it difficult for developers to challenge unfair decisions. An independent appeals body, composed of respected legal professionals, would ensure a fair and transparent review of disputes and protect the rights of individuals and businesses. |
| 20 | 25 | **Revisit the funding model for the Authority.** | The bill relies heavily on government funding, potentially leading to undue influence and control. Consider a more diverse funding model, including contributions from the private sector, to ensure the Authority remains independent and accountable to the broader ICT community. |
| 21 | 30(2) | **Eliminate the power to levy fees and charges.**The bill grants the Authority broad power to levy fees and charges, potentially creating an excessive burden on businesses and hindering growth. Instead, the focus should be on creating a supportive ecosystem that encourages innovation and entrepreneurship. |  |
| 22 | 31 | **Redefine offenses and penalties to focus on education and remediation.** The current penalties are unnecessarily severe and could stifle innovation and experimentation. Instead of punishment, the focus should be on education, guidance, and support, ensuring that developers understand and comply with regulations while fostering a healthy and vibrant ICT sector. |  |