



**USAID**  
FROM THE AMERICAN PEOPLE



**AMCHAM**  
KENYA

# ICT SECTOR

A POLICY ANALYSIS  
REPORT

# 1

---

## EXECUTIVE SUMMARY

---

# EXECUTIVE SUMMARY

---

Kenya's digital economy policy landscape is broadly cited as a notable success story. According to the Kenya National Economic Survey report of 2019, the value of the ICT sector expanded by 12.9% from KES 345.6 billion (USD 3.1 billion) in 2017 to KES 390.2 billion (USD 3.5 billion) in 2018, driven by growth in the digital economy. The current administration has demonstrated that it perceives IT and attendant infrastructural developments as key drivers of socio-economic growth. Further, World Bank estimates indicate Kenya's ICT sector has expanded by over 28% in the past decade alone. Much of the tremendous growth in the local digital economy can be attributed to the successes of mobile money and digital financial service technologies in Kenya. Digital infrastructure and hardware investment account for nearly 60% of investments in the sector, with the rest going into ICT services.

**Additionally, Kenya remains a regional leader in terms of connectivity and infrastructure.** The country currently has an internet penetration of approximately 87%. According to the Communications Authority (CA) statistics, internet subscriptions reached 40.9 million in the quarter ending June 2020, up from 38.9 million in the period ending in March. The availability of both cheaper smartphones, along with 3G/4G and the relative affordability of mobile internet, are the biggest driving factors. This investment is set to continue, with Kenya becoming the second country on the continent to launch 5G connectivity.

**The Kenyan Digital Economy Strategy 2020 is the primary legislative framework informing sector-relevant developments.** The strategy sets out the government's plans to develop critical IT infrastructure and spur growth in the digital economy. As part of this strategy, the government aims to promote both local and foreign investments toward: IT infrastructure and network development; digital content creation; e-commerce; and other revenue-generating activities.

**The Digital Economy Strategy is based on the 2019 Digital Economy Blueprint, which is part of the Smart Africa Alliance (SAA) initiative - endorsed by the AU and other Sub-Saharan African intergovernmental agencies.** The blueprint is based on an implementation and intervention framework that includes six pillars: digital government; digital business; infrastructure; innovation-driven entrepreneurship; and digital skills and values.



Despite heavy investment in connectivity infrastructure and the digital economy writ large, there are still significant barriers to access and growth in the sector, including insufficient venture capital for Kenyan-led enterprises, high taxation, malpractice within the public sector, and multi-pronged cybersecurity threats. The Digital Economy Blueprint, ICT Policy and various other regulatory and policy reforms attempt to find a balance between protecting citizens and fostering continued growth and innovation. The report below will thus outline the commercial, political and policy environment of Kenya's ICT sector.

## 1.1 SECTOR OPPORTUNITIES

---



### POLITICAL

Policy-makers and officials within the Ministry of ICT have a demonstrable interest in sustained private sector investment and non-financial cooperation.

Driving a narrative that speaks to the important role of the digital economy in boosting COVID-19 economic recovery, the Government identified ICT as a key enabler and economic driver. It appointed a COVID-19 ICT Advisory Committee to coordinate ICT specific responses to the effects of the COVID-19 pandemic. The committee sought private sector partnerships in providing innovative solutions for Health, the Economy, Food, Livelihoods, Logistics and Security.



### ECONOMIC

U.S.-Kenya FTA; and enhanced market access and infrastructure development.

Partnering with Kenyan public sector officials and other relevant stakeholders to drive harmonisation of Africa Continental Free Trade Area (AfCFTA)-related digital policy/protocol and regulation.



### POLICY/ REGULATORY

Align with the government's digital economy development strategy and policy agenda, and maintain sustained engagement with regulators-Ministry of ICT, Information Communication Technology Authority (ICTA) and Communications Authority.

Develop working relationships with technocratic ICT Ministry, ICTA and Communications Authority officials, in order to build a foundation of policy support.

Engage with Central Bank and Capital Markets Authority on digital payments, fintech policy and regulatory development.



## BUSINESS

Utilise sector and industry associations, such as KiCTAnet and KEPSA ICT Board as and when goals are aligned.

Potential for private sector driven IT policymaking e.g. intellectual property, copyright legislation and enforcement Uptake of ICT by SMEs-Adoption of e-commerce by small and medium enterprises.

In multiple sectors (e.g. finance, healthcare, agriculture and logistics) ICT is acting as an enabler of new business models and investment.

---

## 1.2 SECTOR RISKS

---



## POLITICAL

Recurring budget deficits; and resultant efforts by tax authorities to close revenue gaps via instruments such Digital Service Tax.

Lack of robust knowledge and integration of Internet of Things (IoT), new technologies and innovation within the public sector.

Widespread corruption at the county and national government level.

Lack of dedicated resources and sustained engagement at EAC, preventing the harmonisation of digital economy legislation.

---



## ECONOMIC

Impact of Digital Services Tax and tax instruments targeting entities or persons in the digital economy.

Economic downturn occasioned by the COVID-19 pandemic.

ICT Infrastructure deficit (urbanrural connectivity divide).

Highly costconscious consumers.

---



## POLICY/ REGULATORY

Regulation, along with data protection and privacy legislation, holds the potential to disrupt ICT services through the inclusion of data-localisation requirements.

Non-progressive legislation e.g. 2018 Computer Misuse and Cybercrimes Act, which gives the government wide latitude to prosecute online speech and activity that is perceived to be harmful.

Weak industry-wide coordinating mechanism(s) (see KICTANet below).

Risk of digital and social media censorship by the state. The threat of internet shutdowns, arbitrary arrest and unlawful state surveillance remain present.

Highly influential private sector lobby groups including AMCHAM and KEPSA.



## BUSINESS

Local ownership quotas and requirements - 20 to 30% threshold (In other respects, local ownership regulations present a unique opportunity for foreign investors to build local csuite).

Data Localisation regulation and guidelines, which require government data and sensitive personal data to be stored locally.

Cybersecurity risks and threats - particularly with regard to the imminent implementation of data localisation regulation.

Poor technical infrastructure within the judiciary and courts system - evidenced by challenges with implementing electronic case management system.

Incongruent and overlapping legislative frameworks governing the sector.

Overzealous regulatory or tax enforcement, resulting in drawn-out disputes or litigation.



## LEGAL

# 2

---

## TABLE OF CONTENTS

---

# TABLE OF CONTENTS

---

1	EXECUTIVE SUMMARY .....	2
	1.1 Sector opportunities .....	5
	1.2 Sector risks .....	6
2	TABLE OF CONTENTS.....	8
3	SECTOR POLITICAL ECONOMY .....	10
	ICT Sector Profile .....	11
	3.1 Political landscape .....	12
	3.1.1 Key stakeholders and influencers .....	13
	3.1.2 Key government stakeholders .....	17
	3.2 Commercial landscape .....	20
	3.2.1 Investor and trade landscape .....	20
	3.2.2 Economy and investment climate .....	21
	3.3 Emerging Growth Areas .....	22
	3.3.1 Fintech .....	22
	3.3.2 The Creative industry .....	23
4	SECTOR POLICY LANDSCAPE .....	24
	Economic Recovery Strategy .....	25
	4.1 Policy priorities .....	26
	4.1.2 ICT Policy 2019 .....	31
	4.1.3 Copyright enforcement .....	32
	4.1.4 Online Child Protection Policy Implementation .....	33
	4.2 Policy hurdles .....	33
	4.2.1 Information and Communication (Amendment) Bill .....	33
	4.2.2 Localisation and Equity requirement .....	34
	4.2.3 Computer Misuse and Cybercrimes Act, 2018 .....	34
	4.2.4 Data Protection and Privacy Bill and Policy, 2021 .....	35
5	STAKEHOLDER MAPPING.....	36
6	RISKS AND OPPORTUNITIES .....	42
	6.1 Risks .....	43
	6.2 Opportunities .....	45

# 3

---

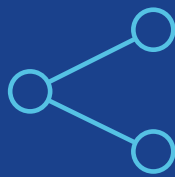
## SECTOR POLITICAL ECONOMY

---

## SECTOR PROFILE



**The government is eager to use digital innovation** as a means of removing governance bottlenecks, facilitating sectoral development through digitisation, and expanding its tax base by integrating informal activity in a taxed digital sphere. The current Cabinet Secretary for ICT is a key stakeholder for driving digital interventions and investment. These engagements can be escalated to the regional and continental level via the Smart Africa Alliance.



**There are a number of US private-sector actors and non-profit institutions**

who are working with the ICT Ministry and Communications Authority around multi-pronged and multi-sectoral digital interventions. AMCHAM and its members are advised to pursue partnerships with other stakeholders and advocacy groups in order to develop integrated homegrown solutions towards Kenya's digital transformation.



**Nonetheless, the Kenyan regulatory context is increasingly stringent.**

This is evidenced by the introduction of a new Digital Services Tax (DST) and a sector-specific Value Added Tax (VAT), both of which came into force from January 2021 and are directly applicable to non-resident digital services. New taxes in Kenya often experience teething problems as a result of the Kenya Revenue Authority (KRA) adjusting its tax administration systems; these issues are often burdensome on companies as they impose extra compliance costs. In addition, the Office of the Data Protection Commissioner (ODPC) is currently developing new data privacy and protection regulations, in line with the Data Protection Act, 2019. In May 2021, the ODPC published drafts of the 2021 Data Protection and Privacy regulations and the attendant impact assessment report. AMCHAM members submitted comments on the latter and expect further correspondence in due course.

The DST is also expected to increase the costs to the consumer of utilising digital platforms such as streaming services. In a highly price-sensitive market, this may push more consumers to rely on illegal streaming and other forms of piracy. The re-tabling of the ICT Practitioners Bill could also entail a new membership fee if and when it is enacted.

## 3.1 POLITICAL LANDSCAPE

---

The Kenyan political economy is characterised by high levels of political competition taking place in an increasingly constrictive fiscal space. Both of these aspects preceded the onset of the COVID-19 pandemic and continue to play a central role in the government's decision-making. ICT plays a key role in Kenya's political landscape. The proliferation of mobile phones, internet connectivity, and social media have been embraced by the country's political actors, and online spaces have become highly contested political spaces



The current administration's national development and strategic plan centres upon the Big 4 Agenda (B4A), which encompasses food security, universal health coverage, affordable housing, and manufacturing, aiming to deliver results by the end of Kenyatta's second mandate in 2022. These include the construction of half a million affordable housing units; enhancing food and nutrition security; achieving universal health coverage; and effecting structural changes which increase the share of manufacturing, industrial and exporting sectors in domestic and regional markets. ICT is classified as a key enabler of the B4A and, under its fiscal plans the government, continues to invest heavily in digital infrastructure and systems which will underpin the achievement of the Big 4.

### 3.1.1 KEY STAKEHOLDERS AND INFLUENCERS

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

The Ministry of ICT, Innovation and Youth Affairs, is the main regulatory institution mandated to oversee the administration; formulation and implementation of information; IT; broadcasting and communication policy; and management in the area. The ministry's mandate is responsible for the 'formulation of policies and laws that regulate standards and services in the ICT Sector, Telecommunications and the Media industry.'

In May 2016, through an executive order, the ministry was split into two departments; the State Department of Broadcasting and Telecommunications, and the State Department of ICT and Innovation. The Ministry was also merged with the Ministry of Youth Affairs in order to handle ICT skills and talent development among the youth.

#### **COMMUNICATIONS AUTHORITY (CA)**

The Communications Authority is the regulatory authority for the communications sector in Kenya, established in 1999 by the Kenya Information and Communications Act. The body is responsible for facilitating the development of the information and communications sectors, including broadcasting, cybersecurity, multimedia, telecommunications, electronic commerce, postal services, and courier services. Guidelines implemented by the CA were set up to curb online abuse.

The National Cohesion and Integration Commission (NCIC) is a statutory body that works to reduce interethnic conflict and worked on the above-mentioned guidelines. Further to this, CA acts as the industry regulator under the Ministry of ICT umbrella. Its mandate is to license and regulate postal, information and communication services.

In August 2019, Mercy Wanjau (see section below) – a respected technocrat known to be supportive of the private sector – was appointed interim acting director of the body, a position she still holds. The Universal Service Fund (USF), managed by CA, supports widespread access to ICT services and promotes capacitybuilding and innovation. The fund is expected to finance national projects that have a significant impact on the availability and accessibility of ICTs in rural, remote and poor urban areas.

### **THE OFFICE OF THE DATA COMMISSIONER (ODPC)**

The ODPC is the first of its kind in Kenya and is tasked with implementing provisions of the Data Protection Act (2019). The commissioner is responsible for the following areas, inter alia:

- Promoting self-regulation among data controllers and data processors;
- Conducting an assessment of a public or private body or at the request of a private or public body for the purpose of ascertaining whether data subject rights are safeguarded and regulatory compliant;
- Receiving and investigating complaints on infringements of the rights protected by the act;
- Carrying out inspections of public and private entities to evaluate the processing of personal data, promoting international cooperation in matters relating to data protection;
- Ensuring Kenya is in compliance with international conventions related to national data protection mandates.

### **KENYA COPYRIGHT BOARD (KECOBO)**

KECOBO is the state corporation responsible for the administration and enforcement of copyrights and related intellectual property matters. It operates under the purview of the Office of the Attorney- General and the Department of Justice. KECOBO ensures that legislation related to copyrights is maintained, while serving as the primary regulator on copyright issues. It also licenses various bodies within the sector.

In 2020, it launched a new digital registry that streamlined the collection of royalties for content creators. The database is linked to several bodies within the local creative and IT industries and takes into account all relevant sector tariffs.

Board members are drawn from several parts of Kenyan industry, cutting across the public and private sectors. In 2017 and 2018, two separate Copyright Amendment Bills attempted to influence the structure of KECOBO's leadership, highlighting growing concerns on the provisions of the Copyright Act (2001), which established the corporation.

In March 2020, KECOBO launched the "Partners Against Piracy" campaign, aimed at raising awareness about the consequences of online piracy. Moreover, KECOBO has a proven track record of collaborating with private sector stakeholders to ensure compliance and enforcement of copyright legislation.

### **NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND INNOVATION**

The above-mentioned committee has oversight over the Ministry of ICT, Innovation and Youth Affairs and its agencies. Thus, the committee has direct remit over issues concerning both the digital and creative economies; the ministry is responsible for informing committee members of any new policies and programmes. For example, the committee was heavily involved in the debate over digital services taxes, proving itself to have a business-friendly attitude. It did not oppose the tax, but sought to ensure that indigenous companies and entrepreneurs would not be adversely affected.

### **SENATE COMMITTEE ON INFORMATION COMMUNICATION AND TECHNOLOGY**

The Senate Committee on ICT has oversight over the Ministry of ICT, Innovation and Youth Affairs and its agencies. Similar to the above parliamentary committee, it is supportive and lenient towards local companies and entrepreneurs in the digital and creative economies. Although it is not as influential as its National Assembly counterpart, this committee is led by Senator Gideon Moi, who is seen as more pro-business than many of his colleagues.

### **THE INFORMATION AND COMMUNICATION TECHNOLOGY (ICT) AUTHORITY**

The Information and Communication Technology (ICT) Authority is a state corporation under the Ministry of Information Communication and Technology. The corporation was established in August 2013. It is tasked with rationalising and streamlining the management of all Government of Kenya ICT functions. Its broad mandate entails enforcing ICT standards in government and enhancing the supervision of its electronic communication. The authority also promotes ICT literacy, capacity, innovation and enterprise in line with Kenya's ICT masterplan. The ICT Authority has the following functions:

- Setting and enforcing ICT standards and guidelines for the public offices and services;
- Deploying and managing all ICT staff in the public service;
- Facilitating and regulating the design, implementation and use of ICT in the public service;
- Promoting ICT literacy and capacity;
- Promoting e-Government services;
- Ensuring optimal electronic equipment is used in public service;
- Promoting ICT Innovation and enterprise;
- Establishing, developing and maintaining secure ICT infrastructure and systems;
- Supervising the design, development and implementation of critical ICT Projects across the public service.
- Implementing and managing the Kenya National Spatial Data Initiative

### **KENYA COPYRIGHT BOARD (KECOBO)**

KECOBO is the state corporation responsible for the administration and enforcement of copyrights and related intellectual property matters. It operates under the purview of the Office of the Attorney- General and the Department of Justice. KECOBO ensures that legislation related to copyrights is maintained, while serving as the primary regulator on copyright issues. It also licenses various bodies within the sector.

### **THE KENYA ICT ACTION NETWORK (KICTANET)**

The Kenya ICT Action Network (KICTANet) is a multi-stakeholder platform and the primary coordinating mechanism for ICT-related policy-makers, practitioners and institutions operating in Kenya. Still, KICTANet's role in driving national policy prioritisation is limited.

The institution largely acts as an intermediary body between non-state and state actors. As the government accelerates efforts to regulate and raise revenue from the ICT sector, we anticipate KICTANet's centrality and impact in national policy dialogues and sector-specific networks to widen.

### **iLAB AFRICA**

iLab Africa is an ICT-focused research centre established in 2011, under the auspices of Strathmore University. The centre undertakes policy research via its Centre for Internet Governance and Policy Research (CIGAP) to aid local players' attempts to leverage the benefits of new media technologies, and assist them in acquiring ICT research and innovation (ICT4D) development tools to realise the government's Vision 2030 agenda. iLab Africa's strategic and programmatic agenda is geared towards innovation; ICT and policy research; skills training; and capacity building.

In 2017, iLab Africa became autonomous, widening its remit to integrate interdisciplinary STEM research at the national and county-level. Further to this, iLab Africa recently launched a business incubation and tech innovation hub that caters to young industry professionals. iLab's leadership comprises highly influential, non-partisan actors in ICT research, policy formation and mobile health circles.

Due to its strategic location within both the academia and tech/data ecosystems, iLab Africa wields significant influence over local tech stakeholders and leaders of innovation incubation hubs. This is principally as a result of the impactful policy research it has undertaken in this field.

### 3.1.2 KEY GOVERNMENT STAKEHOLDERS



#### **Joe Mucheru | Cabinet Secretary (CS) for ICT and Youth Affairs**

Joseph Mucheru was appointed to his current role in 2015 by President Kenyatta. As CS for ICT he has excelled, gaining a reputation as one of the most hard-working ministers in the cabinet. Before his appointment, Mucheru worked for Google for nine years (2007-2015). He led the delivery of strategy, business planning and operations in sub-Saharan Africa and became the Google sub-Saharan Africa ambassador, as well as country manager for Kenya. During his last two years at the company, Mucheru led Google's energy access and investment operations in the region. He is a current board member of UAP Investments, BitPesa, Give Directly, and AFB, all of which operate in the financial technology space. The CS for ICT has oversight on government policymaking in the sector. This is enacted through the ministry, and through the regulatory bodies that the CS oversees, such as the Communications Authority and the Office of the Data Protection Commissioner.



#### **Jerome Ochieng | PS for ICT and Innovation**

With over 17 years of experience in the ICT sector and public service, Ochieng is an established technocrat. He is known as a useful stakeholder among private sector actors, especially when building a consensus. Ochieng has continually advocated for the digitisation of public services and campaigned for the augmented use of technology. He is also a member of the board of directors at Kenya's ICT Authority. Prior to his PS appointment in March 2018, he served as the Director of Integrated Financial Management Information Systems (IFMIS) at the National Treasury. He additionally served as the ICT manager in the Public Procurement Oversight Authority. To fulfil the government's B4A, Ochieng advocates for the realisation of robust ICT skills among youth groups. As part of this, he has supported efforts to develop innovation hubs at the county level, and to provide equal opportunities to youths.



**Mercy Wanjau | Acting Director-General of Kenya  
Communications Authority**

Wanjau has served in this position since mid-2019, having previously headed the legal department within the authority and serving as board secretary. She is seen as a capable and driven technocrat who has led a number of initiatives, and has provided crucial oversight and monitoring on the implementation of the Kenya Information Communications Act (KICA). She is active in managing engagements with stakeholders interested in advancing the policy and legislative framework in the sector.

Wanjau played a vital role in the CA taskforce consolidated to review Kenya's Broadcasting Regulations. She comes from a commercial law background, with extensive experience in regulatory and governance advisory work, as well as in ICT policy design. As such, she has taken a leading role in driving the CA's agenda to harmonise ICT policy at both the national and county level. She has also provided national governments, regional institutions (e.g. EAC and COMESA), and INGOs (such as the World Bank, UNCTAD and ITU) with strategic insights on driving ICT policy reform and economic development. Before joining CA, Wanjau was a legal/tax consultant at KPMG South Africa and PwC Kenya.





### **Ms Immaculate Kassait | Data Protection Commissioner**

Kassait is Kenya's first Data Protection commissioner. She previously served as the Director for Voter Education, Partnership and Communication at the Independent Electoral and Boundaries Commission (IEBC). Prior to that, she was Director for Voter Registration and Electoral Operations at the commission for nine years. A lawyer by profession, with an executive MBA from United States International University in Nairobi, Kassait is an elections specialist, as well as an accrediting facilitator for Bridge International. Kassait has served as a Programme Officer in the Women's Rights and Advocacy Programme at Federation of Women Lawyers (FIDA) Kenya.

She has worked for the Institute for Education in Democracy (IED), a leading NGO in the area of elections in Kenya. As the country's first Data Commissioner, Kassait will be expected to set standards regarding the handling, storage and sharing of personal and corporate data. She will be responsible for the enforcement of the Data Protection Act (2019), with duties including but not limited to: exercising oversight on data processing operations; promoting self-regulation among data controllers; promoting international cooperation in data protection-related issues; and conducting research on data processing development.

## 3.2 COMMERCIAL LANDSCAPE

### 3.2.1 INVESTOR AND TRADE LANDSCAPE

In 2019, the ICT sector was valued at

**USD 717M**

with 60% of total investments from hardware, and the remainder from tech-based services. The current government has made considerable investment in broadband technologies, including the four undersea fibre optic cables that landed on the Kenyan coastline: SEACOM, TEAMS, EASSY, and LION2. Additionally, Kenya's mobile money, mobile banking, value added and IT-enabled services (ITES) have cemented the sector's dominance in the region and propelled it to the forefront of tech-based innovation. According to some estimates, Kenya's IT sector is projected to contribute over 8% of GDP by the end of 2021.

The largest GSM and internet service providers include Airtel, Safaricom, Telekom Kenya and Equitel/ Finserve Africa. With a 71.2% market share, Safaricom is the largest of the above-mentioned providers, and pioneered the mobile money service M-Pesa. Both mobile cellular penetration rates and telephone subscriptions have steadily increased in recent years. Wired subscriptions climbed by 50.9% as a result of an uptick in fixed fibre optic subscriptions to 268,000 in 2019.

Mobile money and digital payments continue to be significant drivers of growth in the sector; regulatory efforts to ensure the interoperability of mobile money services took effect in 2018. In 2022, this will be extended to merchants, creating a seamless digital payments ecosystem. The Central Bank of Kenya, as the regulator of payments systems, has developed the Kenya National Payments System Vision and Strategy, which looks to further enhance Kenya's leadership in digital payments.

Overall, the country's economy has grown considerably in recent years and maintained a stable outlook. However, political patronage, a rising public debt burden, and subdued private sector investment have undermined growth. Nonetheless, Kenya maintains a resilient ITES, computer hardware and IT infrastructure market, in addition to long-standing investor confidence –the capital Nairobi is widely perceived as the East African hub for IT-related development and innovation.

### 3.2.2 ECONOMY AND INVESTMENT CLIMATE

In recent years, Kenya's economy has grown considerably and maintained a stable outlook, in spite of poor climatic conditions and subdued private sector investment undermining growth. Economic performance is robust, mostly due to a diversified economy, a resilient services sector, and longstanding investor confidence. Nairobi is uniformly seen as a regional tech hub and is increasingly attractive as a pan-continental commercial centre to the investment community. In the 2020 World Bank's Ease of Doing Business Index, Kenya ranked 56th out of 190 countries globally. Meanwhile, the government's long-term vision for economic growth for the sector is set out in its digital economy strategy, and in Vision 2030, which seeks to transform Kenya into a middle-income country by 2030. The vision's economic and macro pillar identifies six sectors, including ICT, as priorities for GDP growth.

Although the Kenyan economy is East Africa's most dynamic, it has failed to reach its GDP growth targets (7-10%) since 2013. Despite this, the World Bank, IMF and Africa Development Bank all project growth rates between 5-7% over the next 5 years. In the second quarter of 2020, growth dropped 5.7% from the previous year – this was the first economic contraction since 2004, due to the impacts of the COVID-19 pandemic. In November 2020, the World Bank estimated that Kenya's economy would contract by between 1 and 1.5% in 2020, as ongoing COVID-19 containment measures and responses restrict economic activity.

IMF & Africa Development Bank  
all project growth rates between

5.0 – 7.0%

over the next 5 years.



## 3.3 EMERGING GROWTH AREAS

---

### 3.3.1 FINTECH

Fintech, a portmanteau of "financial technology," is the application of new technological advancements to products and services in the financial industry.

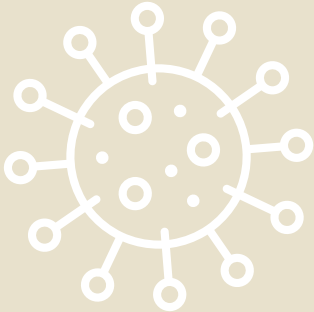
---

The 2020 Findexable Global Fintech Rankings report ranked Kenya number 63 out of the top 100 leading fintech hub countries in Africa. In terms of African cities, Nairobi was ranked the second largest fintech city hub in Africa.



These rankings can be attributed to the presence of an estimated 20% of African fintechs in Nairobi, an emerging ecosystem of local investors, an enabling human resource environment, increased mobile phone penetration, and growing interest from global technology firms. The key driver of the fintech revolution in Kenya has been the synergy between technology providers and traditional financial institutions, fintech start-ups and regulators, sustained market demand and an open-minded appetite

for these types of solutions, all in the context of an enabling regulatory framework. Increasingly, partnerships are being formed and integration is occurring between Mobile Network Operators (MNOs), which offer mobile money services and traditional financial institutions, such as commercial banks. The most popular services offered as a result of these partnerships are payment solutions, money transfer, and access to credit.



The COVID-19 pandemic has created opportunities for the development of fintech products and services, and has fuelled adoption of fintech solutions. For instance, on 16 March 2020, the Central Bank of Kenya (CBK) announced emergency measures to facilitate greater use of mobile money transactions in lieu of cash.



Furthermore, the COVID-19 pandemic has stimulated e-commerce business, which has also led to an increase in the use of electronic payment methods. As the mainstream use of fintech gains traction in Kenya, commercial enterprises and government entities are exploring the adoption of fintech to promote their efficiency and improve service delivery.

### 3.3.2 THE CREATIVE INDUSTRY

Kenya's creative industry has seen rapid growth in the last few years, as the recent migration to digital platforms and other technological innovations provide a significant opportunity for further growth. Broad policy interest in the creative economy is also growing – the government recognises the opportunities it provides in regards to employment and intellectual capital exchange.

In its COVID-19 economic recovery strategy, intended to guide the government's fiscal policy for 2021-2022, the National Treasury identified the ICT sector as a key driver of growth. The government is looking to enhance investment in digital infrastructure to facilitate e-commerce and the efficient delivery of public services.

# 4

---

## SECTOR POLICY LANDSCAPE

---



# SECTOR POLICY LANDSCAPE

---

## ECONOMIC RECOVERY STRATEGY

The National Treasury in 2019 led the development Covid economic recovery strategy (ERS), following inputs from various working groups that included both government and private sector stakeholders. The ERS will be implemented over the course of the final two years of the Jubilee administration. The ICT sector was identified as a critical enabler of commerce and the safe and efficient delivery of public services, both of which will be key to driving an economic recovery. A number of projects and programs have been identified for investment. Key highlights include:

- ⤵ **Telecoms & Broadband Connectivity Project:** Funded by the Universal Services Fund, this will connect public secondary schools to high speed internet.
- ⤵ **Kenya Education Cloud Open Resources Portal:** funded by the universal services fund, the aim is to establish a cloud resource for primary, secondary and tertiary educational content.
- ⤵ **National Fibre Optic Backbone Infrastructure (NOFBI II) Expansion**
- ⤵ **County Connectivity Programme Phase III:** covers 140 sites in 17 counties.
- ⤵ **Implementation of the National Addressing System:** to facilitate e-commerce.
- ⤵ **Enhancing ICT Connectivity to the health industry:** Connecting 123 public health facilities to ICT systems to facilitate UHC delivery.
- ⤵ **Studio Mashinani:** increase the number of operational studios from 5 to 25 to enhance local content production.
- ⤵ **Film Industry:** Financial support for local content production and the establishment of film hubs.

**To facilitate this, the government envisions the creation and implementation of the following frameworks and strategies over the course of the third Medium Term Plan (MTP III 2018-2022)**

- ① A digital economy strategy (that builds off the digital economy blueprint and ICT policy).
- ① Child protection legislation.
- ① Huduma Number Digital Integration Policy.
- ① E-learning legislation and regulatory framework.
- ① ICT sector competition policy.
- ① Spectrum Policy.
- ① Emerging technologies (distributed ledger/bitcoin and Artificial intelligence) policy.
- ① A Film Policy and Legal framework.
- ① Restructuring of the Postal Corporation of Kenya and the Kenya Broadcasting Corporation.

## 4.1 POLICY PRIORITIES

---

### 4.1.1 THE DIGITAL ECONOMY STRATEGY

Kenya's Digital Economy Strategy was formulated under the Smart Africa Alliance (SAA) Initiative - headquartered in Rwanda and endorsed by other AU intergovernmental agencies and platforms. In line with the SAA agenda, Kenya aims to drive domestic and regional ICT adoption and the development of robust digital economy ecosystems to achieve 'leapfrog' development. This includes adapting to the gig and sharing economy, with an understanding that platforms active in this space create and capture significant value; this results in a focus to develop indigenous platforms or integrate indigenous features into popular digital platforms, such as social media. The government sees its role in fostering the creation of local digital ecosystems as key to achieving this goal.

The aims articulated in the Digital Economy Strategy are aligned with Kenya's Vision 2030 and National ICT Master Plan. The latter development agenda and programs aim to transform the country into an 'ICT hub and globally competitive digital economy.' Notably, the government drafted its Digital Economy Strategy alongside its partners within the Smart Africa Alliance (SAA) Council of African Regulators, whose members include national governments, international development partners, and private sector stakeholders such as Microsoft, MTN and Huawei.

The Kenyan Digital Economy Blueprint is, therefore, one of the measures taken by the Alliance and the government to domesticate the digital development framework. This domestication is intended to be driven by a Digital Economy Implementation Secretariat. However, it remains unclear as to which ministry the secretariat will be domiciled. Notably, critics maintain the above-mentioned is merely a reiteration of previous policies, and the government faces recurring issues with implementation. The latter works to AMCHAM members advantage, given the ability for private sector actors to act as implementers and the growing appetite for public-private partnerships (PPPs).

The blueprint is based on an implementation and intervention framework that includes 5+1 Pillars:

- 1 **Digital Government:** The presence and use of digital services and platforms to enable public service delivery.

---

- 2 **Digital Business:** Development of a robust marketplace for digital trade, digital financial services and digital content.

---

- 3 **Infrastructure:** The availability of affordable, accessible, resilient and reliable infrastructure.

---

- 4 **Innovation-Driven Entrepreneurship:** The presence of an ecosystem that supports homegrown firms to generate world-class products and services which help to widen and deepen digital economic transformation.

---

- 5 **Digital Skills and Values:** The development of a digitally skilled workforce that is grounded on sound ethical practices and socio-cultural values.

---

- 6 **Cross-Cutting Issues:** namely the integration of ecosystems, green/sustainably ICT and security.

---

## FOCUS AREAS FOR DIGITAL GOVERNMENT

The policy generally originates as part of the country's constitution, implemented by local laws and regulatory frameworks. Some of these include areas of privacy; freedom of expression and media; access to information; intellectual property; labour relations; and economic and social rights. One of the fundamental policies needed is the National ICT Policy.



**Improved business environment:** By making it easier for businesses to register, digitising land records, pay the payment of tax through an electronic system improves the ease of doing business. This will lead to an improvement in Kenya Government Ease of Doing Business global ranking and therefore attract foreign direct investment.



**Technology transfer and job creation in the wider ICT sector:** this can be achieved by involving the local technology eco-system in the delivery of Digital Government projects.



**Promoting local manufacturing of ICT:** Government can drive local ICT industry by promoting local manufacturing of ICTs used by Government.

## FOCUS AREAS FOR DIGITAL BUSINESS

The digital business pillar focuses on the development of a robust digital market characterised by the increased quality of financial inclusion, fair competition, resilient data infrastructure, advanced consumer protection and greater regional integration. The main goal is to create a digital economy wherein every citizen and business can trade real goods; information goods, and services, including labour. This pillar has three main focus areas, namely: digital trade, digital financial services and digital content. The goals and primary objectives of the pillar are elaborated as follows:



**Affordable, resilient, open and efficient payment systems:** To develop and adopt widespread merchant acceptance of digital payments platforms that are both customer- and businessfriendly in terms of interoperability, security, fees/tariffs and quality of service.



**Digital financial services for all to enable participation:** To support the growth of digital financial services that lead to financial inclusion and the resulting increase in prosperity through poverty alleviation (by helping people and enterprises manage day-to-day, deal with risks and invest in the future) and job creation.



**Legal framework to enforce contracts, resolve disputes and protect consumers:** To develop adaptive legal frameworks that establish a level playing field between providers and customers and advance consumer protection through improved supervision, transparency and digital/financial literacy



**Developed regional markets for cross border trading:** Encourage greater usage of a regional payments switch that has the potential to facilitate the single digital market ambitions of the EAC and to contribute to increased financial inclusion through interoperability at the regional level.

## FOCUS AREAS FOR INFRASTRUCTURE

The Foundation of infrastructure is the physical connectivity that is a combination of several facets:

- ① First Mile (the undersea cables);
- ② Middle Mile (the backbone and metro networks along with transmission and core networks);
- ③ Last Mile (the final connection to users such as fibre, wireless, VSAT and delivery centres/hubs);
- ④ The Invisible Mile (the policies that enable the investment and maintenance of the infrastructure such as spectrum, fees, taxes etc.).

## **FOCUS AREAS FOR INNOVATION-DRIVEN ENTREPRENEURSHIP**

The Digital Economy transformation will open up opportunities on three fronts: digital skills, entrepreneurship and innovation. The objective is to create an innovators-entrepreneurship ecosystem which is essentially a collection of stakeholders that will include government agencies, financiers such as venture capitalists; educators and R&D agencies; service providers and support agencies; and entrepreneurs themselves. Well-developed, innovation-driven entrepreneurship ecosystems provide the bedrock for a robust private sector by facilitating the creation and growth of businesses.

Kenya's transition toward the digital economy has led to the emergence of an innovation-driven entrepreneurship ecosystem based on factors and features rather than established game rules. Digital transformation of businesses will bring different benefits depending on the sector it is operating in, the stage of its digitalization journey, and its value proposition to customers, among other factors. In addition, digitalisation could enable businesses to reach out to a broader customer base or tapping new markets. Digital transformation will also target the MSME sector, which accounted for 81.1% of employment opportunities in the country. MSMEs employ approximately 14.9 million Kenyans. They are a crucial driver of the digital economy and need to be a key focus of the digital transformation process through digital entrepreneurial programs.

### **Public sector players involved in the drawing up of the blueprint include:**

- ① The National Communications Secretariat (NCS),
- ② Ministry of Information Communications and Technology (MoICT)
- ③ The Ministry of Trade
- ④ The Ministry of Education
- ⑤ The National Treasury
- ⑥ Communication Authority of Kenya (CA)
- ⑦ Konza Technopolis Development Authority (KoTDA)
- ⑧ Postal Corporation of Kenya
- ⑨ The Central Bank of Kenya
- ⑩ The Kenya Revenue Authority

### 4.1.2 ICT POLICY 2019

The policy was developed following a review of the ICT policy of 2006, and was intended to align policy in the sector with the 2010 constitution and Vision 2030, as well as with the significant evolution of the sector over the proceeding 13 years. The main policy objectives are to:

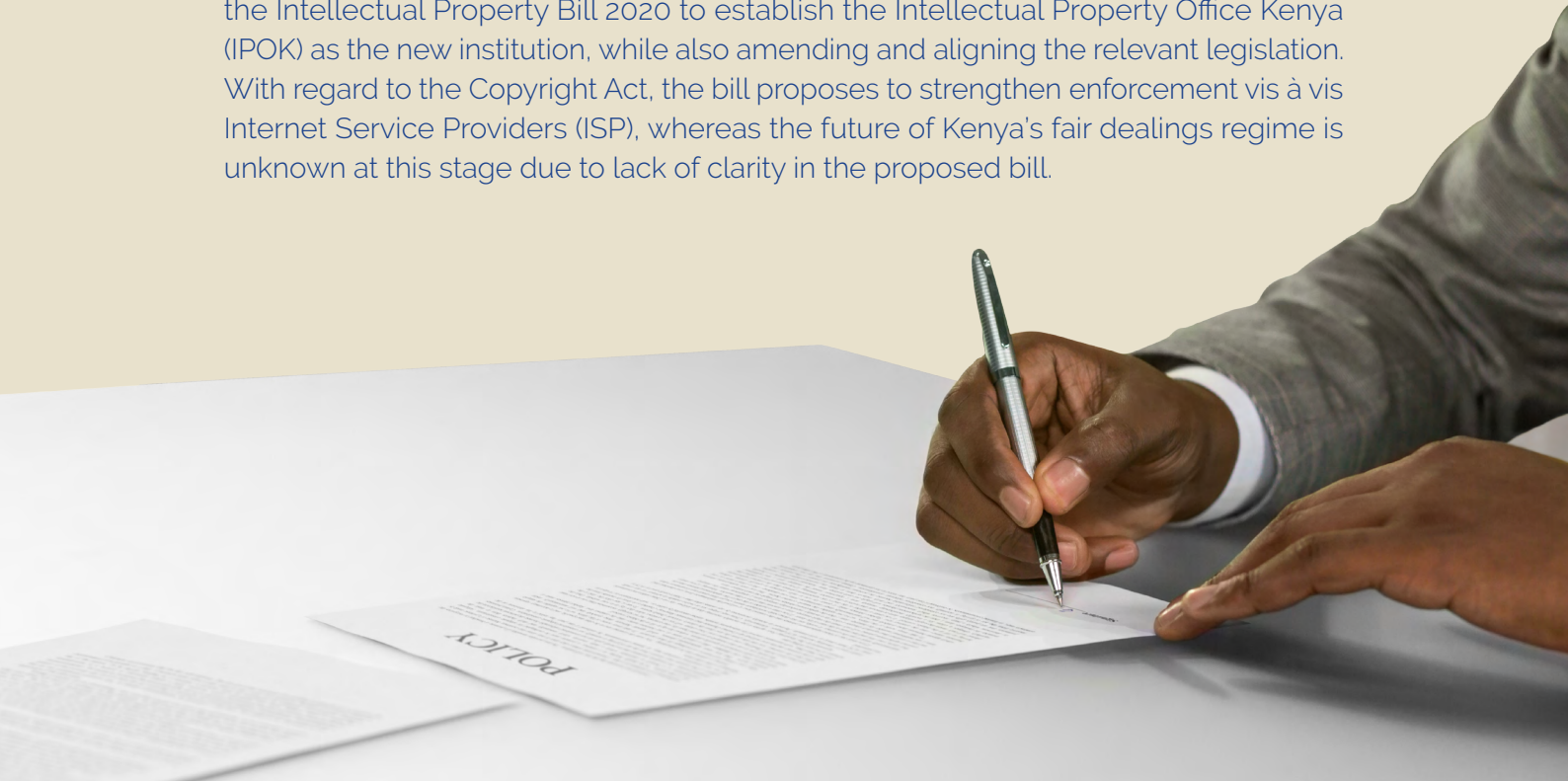
- ① Create the infrastructure conditions for use of always-on, high speed, wireless internet across the country. Provide enabling infrastructure and frameworks which support the growth of data centres, pervasive instrumentation (Internet of Things), machine learning and local manufacturing, whilst fostering a secure, innovation ecosystem;
- ② Grow the contribution of ICT to the economy to 10% by 2030;
- ③ Leverage regional and international cooperation and engagements to ensure that Kenya is able to harness global opportunities;
- ④ Position the country to take advantage of emerging trends, such as the shared and gig economy, by enhancing our education institutions and skills, and fostering an innovation and start-up ecosystem;
- ⑤ Gain global recognition for innovation, efficiency and quality in public service delivery.

In line with the digital economy blueprint, the objectives are to be actualised through four thematic focus areas:

- ① **Mobile first;** ensure that every Kenyan can access inexpensive internet and reasonable access to locally-produced devices;
- ② **Market;** increase the overall size of the digital and traditional economy to 10% of GDP by 2030;
- ③ **Skills and Innovation;** jumpstart a self-supporting ecosystem that will produce world-class research, technology products and industries;
- ④ **Public Service Delivery;** all government services should be available online, that every Kenyan has online access, and that government services are delivered quickly and fully at the time and place in which they are needed

### 4.1.3 COPYRIGHT ENFORCEMENT

In 2014, a Presidential Task Force on Parastatal Reforms proposed that Kenya's three Intellectual Property agencies namely the Kenya Industrial Property Institute (KIPI), the Kenya Copyright Board (KECOBO) and the Anti-Counterfeit Authority (ACA), be merged. In 2020, a task force established to advance and oversee the merger – comprising of KIPI, ACA and KECOBO staff, as well as representatives from the Ministry of Industrialisation, Trade and Enterprise Development – developed and introduced the Intellectual Property Bill 2020 to establish the Intellectual Property Office Kenya (IPOK) as the new institution, while also amending and aligning the relevant legislation. With regard to the Copyright Act, the bill proposes to strengthen enforcement vis à vis Internet Service Providers (ISP), whereas the future of Kenya's fair dealings regime is unknown at this stage due to lack of clarity in the proposed bill.



The Intellectual Property Bill 2020 proposes to increase pressure on ISPs by introducing a notice-and-takedown system, while also imposing new obligations and ISP liability. With regards to IPS' responsibility to proactively monitor and moderate their content, however, considerable ambiguity remains in the document. On the one hand, the bill specifically does not provide for a general obligation to monitor content. At the same time, liability for the infringement is assumed when the infringing nature of the material

is "apparent". This system, modelled after the Digital Millennium Copyright Act in the US, has been criticised in that it incentivises the removal of content without proper notice or evidence of actual infringement to avoid sanctions. Human rights groups have specifically warned that this ambiguity "gives an incentive to hosting services to remove content without proper notice or evidence of actual infringement, which will have a chilling effect on freedom of expression."

#### 4.1.4 ONLINE CHILD PROTECTION POLICY IMPLEMENTATION

The Child Online Protection Policy, 205 was introduced by CA in 2015 under its mandate to protect ICT consumers in the country, specifically minors. The COP is largely based on guidelines introduced by the International Telecommunications Unit, and harmonised with local legislative provisions such as the Children's Act No. 8 of 2001. The COP outlines issues that parents, guardians and teachers should be aware of in order to safeguard minors under their care. The policy provides guidance on preventing the solicitation of minors on the internet, cyber-bullying, identity theft, fraud, child pornography, as well as internet addiction. Following the launch of the CO, the CA ran several advocacy campaigns with stakeholders – including service providers and industry associations such as GSMA – to encourage safe internet use for children. Industry stakeholders were also encouraged to develop solutions that will better protect minors online, including products and services that block access to harmful content for underage users.

## 4.2 POLICY HURDLES

---

### 4.2.1 INFORMATION AND COMMUNICATION (AMENDMENT) BILL

The proposed Kenya Information and Communication (Amendment) Bill seeks to amend the Kenya Information and Communication Act (KICA) by introducing stringent regulations on the use of social media, introducing new obligations for social media users, bloggers and online platforms. The bill was tabled in parliament in October 2019 and was last debated during the 11 March 2021 parliamentary session. It is being championed by Elisha Ochieng Odhiambo, MP for Gem Constituency (Siaya County). Odhiambo's motivation for tabling the bill is unclear but has raised his profile and propelled him into the national political arena ahead of next year's general election.

The bill notably requires social media platforms whose services are accessible in Kenya to obtain social media licences and establish a physical presence in the country, while requiring them to verify all users are of the age of majority. Under the bill, social media companies would be mandated to keep all data relating to their users and submit it to the CA when requested, raising privacy concerns. Failure to respect these conditions would lead to licence revocation.

Furthermore, it also requires social media users to ensure their published content is fair, accurate and unbiased, does not degrade or intimidate recipients, and is not prejudicial to persons or groups of people. The bill also proposes a mandatory requirement for bloggers to be licenced by the CA. Under the provisions of the bill, group administrators would be responsible for approving members of the group and their published content, while "controlling] undesirable content and discussion". Users contravening these provisions would be liable to fines of up to KES 200,000(USD 2000) or face imprisonment of up to a year. The bill's definition of "blogging" is wide and ambiguous, spelled out in the proposed legislation as "collecting, writing, editing and presenting of news or news articles on social media platforms or in [sic] the internet." This definition may be broad enough to include ordinary users of social media platforms, such as YouTube, Facebook and Twitter.

#### 4.2.2 LOCALISATION AND EQUITY REQUIREMENT

The ICT Ministry published updated local content and equity participation requirements under the ICT policy 2019. A key aspect of the policy is equity participation, which was developed in order to encourage an increase in the participation of Kenyans in the ICT sector. The respective clause mandates that only companies with at least 30% substantive Kenyan ownership, whether corporate or individual, will be licensed to provide ICT services in the country. The government will allow companies three years to meet the equity ownership requirements, after which they may apply to the ICT Cabinet Secretary for a one-year extension. The policy's equity participation provision has already attracted significant scrutiny and is likely to act as a deterrent for international investors. Various players in the sector have already voiced concerns around the enforcement of this local content provision, its relatively high mandated equity for Kenyans (30%), and the avenues for wrongful conduct it might open up. Kenya's relatively vibrant start-up and ICT spheres have long benefitted from an international perception of ease of doing business in the country, especially when contrasted with most of its neighbours.

#### 4.2.3 COMPUTER MISUSE AND CYBERCRIMES ACT, 2018

The act establishes various offences, including cyber terrorism, false publication of data, cyber harassment, identity theft, impersonation, and computer fraud. It contains provisions that service providers are to assist in the investigation of offences, specifically by collecting and providing data to law enforcement. The act includes penalties for non-compliance. Over the last year, the government has used this legislation to threaten action against people spreading COVID-19 dis/misinformation online.

#### 4.2.4 DATA PROTECTION AND PRIVACY BILL AND POLICY, 2021

The Data Protection (General) Regulations 2021 outline the statutory requirements the OPDC and relevant regulators will exercise to enforce data protection regulations and attempts to safeguard the rights of data subjects. Key definitions and terms assigned to stakeholders under the 2019 Data Protection Act have remained unaltered and, as articulated elsewhere the Data Protection (General) Regulations 2021, are closely aligned with global standards i.e. the GDPR and PbD principles. Data processors or controllers are henceforth directed to align their data-processing activities and policies with PbD principles. Data protection with respect to PbD principles is expressed in areas encompassing integrity and confidentiality, lawfulness, transparency, purpose and storage limitations, as well as the notion of data minimisation.

Prior to the publication of the 2021 Data Protection regulations and the appointment of DPC Kassait, data controllers and processors were unable to wholly comply with guidelines informing the registration process for relevant stakeholders, such as carrying out impact assessments or implementing safeguards to facilitate cross-border transfers, in line with the DPA. With the publication of draft Data Controllers and Processors Regulation 2021, the OPDC has attempted to address the latter bottlenecks by detailing the thresholds required for mandatory registration and other details relevant to the application process for data controllers and processors. In sum, Kenya's data protection statutory obligations place a particular emphasis on data governance and internal processing protocols that are "grounded in principles of purpose and transparency." Data processors or controls are henceforth mandated to demonstrate the specificity and relevance of data processing activities to subjects, in addition to operationalising personal data retention schedules. Despite the compliance and enforcement challenges that lie ahead, the government's renewed interest in regulating data processing activities has the potential to benefit and safeguard data subjects and SMEs in the sector from cybersecurity risks and other data-related threats.

A critical aspect of the regulations is proposed measures on the cross-border transfer of sensitive personal data, around which there are opposing views, issuing from the public sector, civil society, and local and international businesses. The concerns touch on security and technical considerations, compatibility with the current digital global marketplace within the context of multinational organisations, and the right of a data subject to determine where his or her data should be stored. This is an evolving area of regulation both locally and internationally but it is likely that Kenyan regulators will allow personal data transfers outside of Kenya, where the receiving jurisdiction has a legal data protection framework in place that provides similar or greater safeguards to Kenyan regulations.

# 5

---

## STAKEHOLDER MAPPING

---



## STAKEHOLDER MAPPING

NAME	INSTITUTION	ROLE/TITLE	ISSUE OF RELEVANCE
<b>PRESIDENCY AND MINISTRIES</b>			
Uhuru Kenyatta	Office of the President/Jubilee Party	President/Chairman	Economic development, Local content, politics, security, creative industry development
Nzioka Waita	Office of the President	Chief of Staff	Policy, the telecoms sector
Ruth Kagia	Office of the President	Deputy Chief of Staff, Head of Policy and Strategy	Economic policy, economic recovery
Njee Muturi	Office of the President	Deputy Chief of Staff	Legislation, regulation
Joseph Kinyua	Office of the President	Head of Public Service	Fiscal policy
Paul Kihara Kariuki	Office of the Attorney General	Attorney General	International treaties, government contracts, PPPs
Kennedy Ogeto	Office of the Attorney General	Solicitor General	International treaties, government contracts, PPPs
Ukur Yatani	The National Treasury	Cabinet Secretary	Fiscal policy, digital tax
Julius Muia	The National Treasury	Principal Secretary	Taxation, multilateral taxation, revenue-generation
Patrick Njoroge	Central Bank of Kenya	Governor	Fintech lenders, interest rate caps
Betty Maina	Ministry of Industrialisation, Trade and Enterprise Development	Cabinet Secretary	Infrastructure development, data pricing, digital economy development
Amb. Weru	Ministry of Industrialisation, Trade and Enterprise Development	Principal Secretary	Infrastructure development, data pricing, digital economy development
Joe Mucheru	Ministry of ICT, Innovation and Youth Affairs	Cabinet Secretary	Digital literacy, digital responses to COVID, private sector involvement, ICT legislation, ICT infrastructure, data pricing

## STAKEHOLDER MAPPING

NAME	INSTITUTION	ROLE/TITLE	ISSUE OF RELEVANCE
<b>PRESIDENCY AND MINISTRIES</b>			
Jerome Ochieng	Ministry of ICT, Innovation and Youth Affairs	Principal Secretary	Digital literacy, digital responses to COVID, private sector involvement, ICT legislation, ICT infrastructure
Esther Koimett	Ministry of ICT, Innovation and Youth Affairs	Principal Secretary, Broadcasting and Telecommunications	Broadcasting, telecommunications, ICT, Ajira Digital programme, Studio Mashinani, KBC
Julius Korir	Ministry of ICT, Innovation and Youth Affairs	Principal Secretary, Youth	Broadcasting, telecommunications, ICT, Ajira Digital programme, Studio Mashinani, KBC
Maureen Mbaka	Ministry of ICT, Innovation and Youth Affairs	Chief Administrative Secretary	Broadcasting, telecommunications, ICT, Ajira Digital programme, Studio Mashinani, KBC

<b>REGULATORY BODIES AND GOVERNMENT AGENCIES</b>			
Mercy Wanjau	Communications Authority of Kenya	Acting Director-General	Licensing, competition, regulation, broadcasting, data privacy PPPs
Timothy Odhiambo Owase	Kenya Film Commission	CEO	Development and regulation of the film industry, promotion of the local film industry, marketing of Kenya as a filming location
David Omwoyo	Media Council of Kenya	CEO	Media rights, media ethics, compliance of media with regulation.
Maina Muiruri	Media Council of Kenya	Chairperson	Media rights, media ethics, compliance of media with regulation.

## STAKEHOLDER MAPPING

REGULATORY BODIES AND GOVERNMENT AGENCIES			
Ezekiel Mutua	Kenya Film Classification Board	CEO	Content management, censorship, regulation
Katherine Getao	ICT Authority	CEO	ICT literacy, ICT capacities within government
Edward Sigei	Kenya Copyright Board (KECOBO)	Executive Director	Copyright, IP, piracy
Mutuma Mathiu	Kenya Copyright Board (KECOBO)	Chairman	Copyright, IP, piracy
Githii Mburu	Kenya Revenue Authority	Director-General	Revenue collection, trade facilitation

PARLIAMENT			
William Kipkemoi	National Assembly	Chairperson of the Committee on Communication, Information and Innovation	Legislation, ICT, broadcasting, creative industry
Patrick Makay King'ola	National Assembly	Chairperson of the Committee on Sports, Culture and Tourism	Legislation, creative industry, tourism promotion, culture promotion
Moi Gideon Kipsielei	Senate	Chairperson of the Committee on Communication, Information and Innovation	Legislation, ICT, broadcasting, creative industry
Ali Abdullahi Ibrahim	Senate	Chairperson of the Committee on Tourism, Trade and Industrialisation	Legislation, creative industry, tourism promotion, culture promotion

OTHER POLITICAL STAKEHOLDERS			
Raila Odinga	Orange Democratic Movement	Chairman	Economic development, politics, local content

## STAKEHOLDER MAPPING

ASSOCIATIONS			
Kenya ICT Action Network (KICTANet)	Multi-stakeholder platform	N/A	ICT policy, national policy dialogues
Technology Service Providers of Kenya (TESPOK)	Hillary Itela	Chair	Telecoms regulation and policy
	Karimi Ruria	Vice Chair	
	Fiona Asonga	CEO	
Kenya Private Sector Alliance (KEPSA)	Carole Kariuki	CEO	KEPSA is the apex private sector advocacy body and regularly liaises with the government on policy development and implementation.
	Mike Macharia	Chair - ICT sector board	
Kenya Bankers Association	Habil Olaka	CEO	Digital Finance, Fintech

PRIVATE SECTOR			
Safaricom	Peter Ndegwa	CEO	
Mpesa Africa	Sitoyo Lopokoiyit	MD	
Telkom Kenya	Mugo Kibati	CEO	
Equity Bank	James Mwangi	CEO	
BRCK/I-Hub	Erick Hersman	CEO	
IPSL	Gituku Kirika	MD	
Airtel	Prasanta Das Sarma	CEO	
Liquid Intelligent Technologies	Adil Youssefi	CEO	
Wanainchi	Thomas Hintze	CEO	
Jamii Telecoms	C.K Joshua	CEO	

PRIVATE SECTOR			
Facebook	Mercy Ndegwa	Policy & Government Relations Manager, East and Horn of Africa	
Google	Agnes Gathaiya	Director for East Africa	
Microsoft	Kendi Ntwiga Nderitu	Kenya CEO	
Uber	Brian Njao	Head of East Africa	

COMMUNITY-BASED ORGANISATIONS (CBOS) AND DIGITAL RIGHTS ACTIVISTS			
Multiple	Ory Okolloh- Mwangi	IT policy specialist and Founder	Technology innovation, digital public service delivery and policy reform
AkiraChix	Linda Kamau	Director	Women in STEM and IT

RESEARCH INSTITUTIONS			
iLab Africa	Emmanuel Kweyu	Deputy Director	Internet governance and policy research
Independent	Nanjala Nyabola	Researcher and IT policy analyst	AI, IT policy reform and technology innovation

# 6

---

## RISKS AND OPPORTUNITIES

---



# RISKS AND OPPORTUNITIES

---

## 6.1 RISKS

**Risk:**

Data Protection and Privacy Legislation.

**Current status:**

Draft Data Protection and Privacy Legislation and Impact Assessment published, and public participation process concluded.

**Driver:**

GDPR- global best practice in data protection and privacy; AU protocols & guidelines.

**Risk level:**

High

---

**Risk:**

Digital Economy Taxation and VAT

**Current status:**

The Kenya Revenue Authority (KRA) was cleared to tax resident and non-resident IT and technology, media, and telecom firms via the new Digital Marketplace Supply Regulations, 2020. The regulations took effect on 1 January 2021. Cryptocurrencies will also be liable to 1.5% tax under the new law, in addition to a flat rate of 1.5% on the value of goods/services offered via digital platforms. Ultimately, KRA aims to collect approx. USD 50 million from the sale and supply of digital services and goods in six months to June 2021.

**Driver:**

National government revenue shortages and budget deficits

**Risk level:**

High

## 6.1 RISKS (Cont.)

**Risk:**

Frequency Spectrum Management

**Current status:**

Following the release of the 2020 Frequency Spectrum Management Guidelines by CA to guide the allocation of frequencies, CA has introduced a new set of proposals including the setting aside spectrum provisions for the national and county governments, as well as enhanced penalties for interference and underutilisation by service providers. The service providers in question are particularly concerned by the proposal to exempt several operators from paying spectrum fees. The debate is ongoing; however, due to revenue deficits in state-owned corporations, the regulator is unlikely to indulge proposals oriented towards widespread spectrum fee exemptions.

**Driver:**

Private sector stakeholders, regulators

**Risk level:**

High

---

**Risk:**

Crypto-assets

**Current status:**

In 2015, the Central Bank of Kenya (CBK) issued a public notice titled 'Caution to the Public on Virtual Currencies such as bitcoin'. The CBK directive outlined the risks of crypto assets and asserted that such tenders are illegal and remain unregulated in the market. To date, there is no regulation regulating crypto-assets, however the ICT taskforce has been tasked with assessing the use of digital currencies and AI.

**Driver:**

Consumers and consumer protection interest groups

**Risk level:**

Low

## 6.2 OPPORTUNITIES

### Opportunity:

US-Kenya FTA

### Current status:

At the behest of 3,200 US entertainment companies, the International Intellectual Property Alliance submitted a letter to the USTR finalising arrangements in the U.S.-Kenya FTA talks. The letter urged both parties to prioritise developing legislation geared towards overhauling Kenya's legal and enforcement copyright regime, as part of the on-going negotiations. The government is keen to enforce the Copyright Act and enact the Intellectual Property Bill, 2020. Enforcement responsibility for intellectual property will likely lie with local internet service providers.

### Driver:

Using U.S.-Kenya FTA to strengthen copyright and IP enforcement; Private sector stakeholders and FTA trade negotiations.

---

### Opportunity:

Creation of coordinating unit

### Current status:

Mechanism to strengthen industry associations and interest groups

### Driver:

Digital rights activists, private sector stakeholders.

---

### Opportunity:

IT infrastructure development

### Current status:

Scope and room for continued investment in critical IT infrastructure

### Driver:

Private sector stakeholders and consumer advocacy

