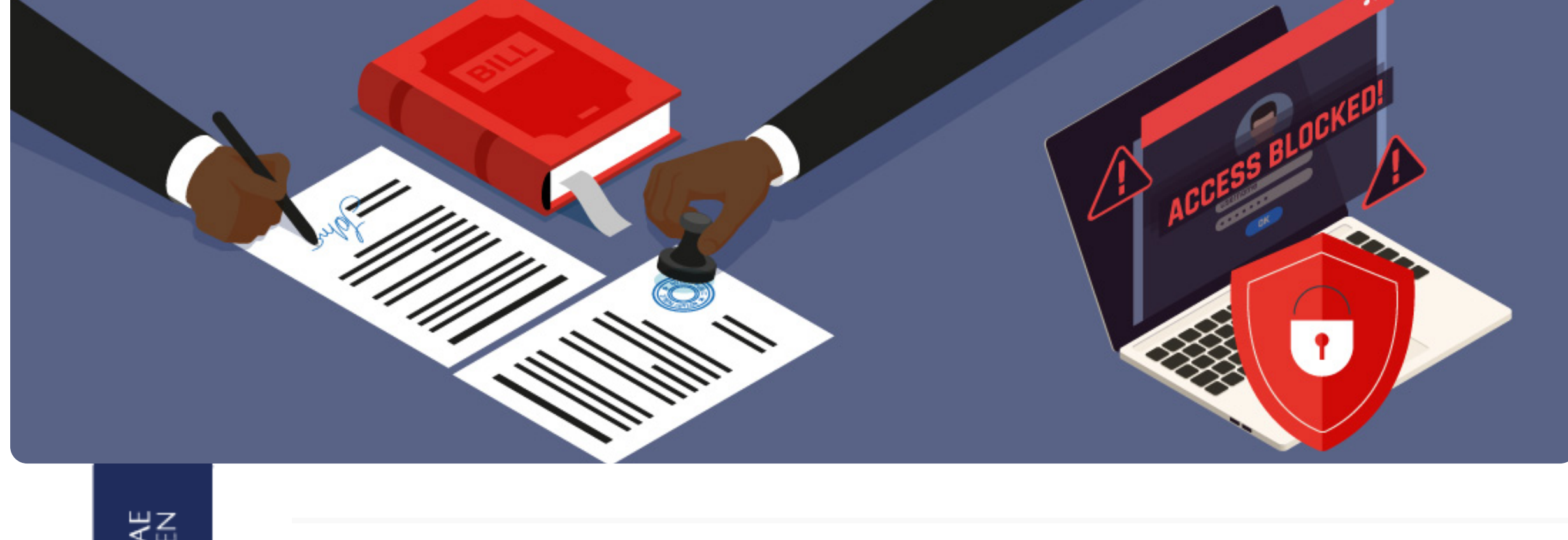


Information Communication Technology Practitioners Bill, 2020: An advancement or regressing on technology?

21 June 2022 - 15 min read



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"Globally ICT is more about your talent and passion than what you studied in University. The retrogressive law will slow down innovation and kill talent"

Tom Makau, an ICT Expert in the African and Global Space

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1.0. INTRODUCTION

Down the memory lane, the Information Communication Technology Practitioners (ICT) Bill was initially introduced to Parliament by Garissa Town MP, Aden Duale in 2016. The same was supported by a nominated MP, Godfrey Ososti.

The Bill received a counterattack only to be re-introduced by Osostsi in 2018. The Information Communication Technology Practitioners Bill, 2020 (the “Bill”) has recently been passed by Parliament awaiting assent by the President. A moment ago, the ICT Cabinet Secretary Joe Mucheru disavowed the Bill. A gainsay by the very person at the center of ICT in the country leaves a lot to be desired about the Bill. Is the Bill perfect for this society? Is it over-ambitious? or is it at the precipice of reality and practicality considering our developing economy?

2.0. NOTABLE PROVISIONS OF THE BILL

The seven Parts division in the Bill conclusively coalesces it. The Bill is purposed at providing the training, registration, licensing, practice and standardization of ICT practitioners.

2.1. Establishment of the ICT Practitioners Institute

Part II of the Bill establishes an institute, as a body corporate, **to establish the standards of the ICT profession, educate the members of the public on ICT matters, approve courses for ICT Practitioners registration, administration of such examinations, registering and licensing the Practitioners, approve institutions offering ICT training, dispute resolutions in the sector among other functions.**

2.2. Registration of ICT Practitioners

Part III of the Act provides for the qualification of ICT practitioners. **For a practitioner to be licensed under the Act they must have a Bachelor’s Degree in an ICT related field, electrical and electronics engineering (subject to at least one-year post qualification experience), hold a diploma in an ICT related field plus hold three years post-admission experience in the field, or have demonstrated innovation or competence in ICT as the Institute’s Council may determine.**

An eligible person applies to the ICT Practitioners Registrar who then registers the individual if satisfied with his/her qualifications, and thereafter issues a Certificate.

2.3. Licensing of ICT Practitioners

Part IV mandates all person wanting to practice as ICT Practitioners to **have complied with the requirements for continuing education and have been issued with a valid practice license.**

2.4. Enforcement

Part V makes it an offense for any person who procures (or attempts to) registration fraudulently. Moreover, the part delineates forms of **professional misconduct as an ICT practitioner including contradicting the Act, gross negligence, allowing those who haven’t been licensed to practise on their names, abusing their positions, incompetence, or even abandonment of their duties to clients.**

The Institute’s Council has been empowered to conduct disciplinary proceedings against ‘rogue’ ICT practitioners. Moreover, unregistered and/or unlicensed persons conducting ICT business commit an offense.

3.0. ANALYSIS OF THE BILL

The Bill can be seen in a lighter shade as a sword and shield protecting the end consumers of ICT services, especially in the ever-changing world technologically. The Bill has done this by licensing ICT practitioners, establishing courses to be undertaken before qualification, and even providing for misconduct, offenses and penalties thereto. It is pertinent in this aspect.

Howbeit, the Bill has invited a myriad of criticisms as hereunder explicated:

3.1. Definition of ICT

Section 2 of the Bill has attempted to place a definition on ICT to mean, in verbatim **“technologies employed in collecting, storing, processing, using or sending out information and include those involving the use of computers, mobile apparatus or any telecommunication system.”**

The foregoing definition appositely but erroneously places all technological apparatus under the ambits of the Bill. Most technological advancements are characterized as computers for they receive, process, store and even send out information, bringing them under the Bill. This therefore means that if a person wants to use the ‘computers’ for an economic purpose, for instance for in the form of gaming, he would need to be registered (which comes with its own share of qualifications) and annually seek approval from the Institute’s Council. The Bill also limits the definition of an ICT Practitioner (ICTP) as a person that is licensed. Section 2 defines an ICTP as **‘a person registered under this Act as an ICT practitioner who is also licensed under section 19 to practice as such’**

3.2. Qualification for ICT Practitioners

Section 19 of the Bill has delineated the qualifications for ICT practitioners as indicated above. It stipulates that ICT graduates (degree or diploma with three years post qualification experience), engineering degree graduates with one-year post qualification experience in the ICT field. It is noted that is another category for persons that demonstrate expertise, innovation or competence in ICT, however subject to the determination by the Council.

It is important to note that the eligibility criteria to guide the Council in permitting those who do not have certificates but do have relevant experience to become ICT practitioners has not been given by the Bill but left to the uncertainties of regulations to the Bill in the future.

Moreover, the Bill has made it an offense for a person to **practise as an ICT professional without certification from the registrar and licensing from the Institute.** It is therefore preposterous that section 19 still suggests that **a person who has demonstrated expertise, innovation or competence in ICT will get an audience before the Council for the certification, especially in future if the Bill becomes law.** That specific subsection will definitely become redundant for **its reliance will be an admission of an offense,** as the person would have already committed an offense under the Act by engaging in the field without certification first.

3.3. ICT Institute

The establishment of the Institute with the functions indicated in 2.1 above entrenches the endemic problem of the Bill. It is the Institute, acting through its Council, that has been given the powers to set the academic qualification, examination, and licensing standards in the ICT field.

Its mandate should be refocused into the creation of programmes that attract more raw and promising talents in the sector considering that in Kenya and Africa at large, the ICT sector is largely underdeveloped, instead of creating more barriers. The institute should refocus to promotion, partnering, upskilling, reskilling, and retraining the IT market instead of barricading the sector with degree/diploma qualifications.

3.4. Entry Barriers

The Bill has severed off the ICT sector from those that do not have the relevant academic qualifications by the Bill. This therefore places a hurdle to a lot of people who want to engage in the field but lack qualifications. Given that the education system is expensive, most dreams and innovations would be shattered. **The Bill is also in direct conflict with the recent efforts made by Government to introduce coding and computer programming teaching in public schools.** Adding coding to the school curriculum is aimed at enhancing students’ technological skills and is part of the Kenyan Government’s efforts to realize one of the core social pillars of Vision 2030; Incorporating ICT into teaching and learning. The coding and computer programme, though commendable for the practical skills that it will give the up-coming generation, will prove to be an exercise in futility because of the entry-barriers created by this ICT bill.

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3.5. Bureaucracies

From education, academic qualifications, post-admission experience, application to be registered as an ICT practitioner, to annual licensing, the Bill is over-ambitious and this creates outrageous bureaucracies.

According to Lawrence Lessig, an American Academic, Attorney and Political Activists, Law and technology should produce together, a kind of regulation of creativity we have never seen before. In essence, law and Technology should marry seamlessly. Sometimes, bureaucratic tendencies of the law shut technological innovation.

3.6 Stifling innovation, enthusiasm, and development

The Bill has created and in essence brought a broad definition of ICT matters under its ambits. Further, the Bill has provided for conditions governing qualification as an ICT Practitioner. To entrench the bottle-necks, the Bill has provided for the registration and annual licensing of ICT practitioners. The institute, being the bureaucratic entity created and characterized by the Bill, hits the last nail on the ICT sector in the country.

3.7 Brain Drain Migration and Talent Poaching

The barriers that have been created by the Bill might lead to shortage of economic opportunities. Experienced, more enthusiastic and innovative individuals may be poached by other countries or may decide to leave the country for greener pastures. This would then have a negative effect on Kenya. Firstly, when they leave, expertise that would have propelled Kenya is lost with each emigrant, diminishing the supply in the profession. Secondly, the country’s economy will be harmed because each professional represents a growth unit. Developed countries have an appetite for experienced and promising young talents.

3.8 A Step Backwards in Job Creation

The ICT sector offers exponential growth opportunities as it offers a level playing field and gives opportunities to all, with or without degrees. This Bill aims to do the opposite as the requirements it imposes will undoubtedly lock out millions of Kenyans from gaining meaningful employment in the ICT sector.

Job creation is a challenge to any developing economy and has been a big headache for the Kenyan Government and this ICT bill aims to make an even bigger headache. **If the President assents to it, he will have single-handedly made waste of most of the efforts that his government has made towards job-creation.**

4.0. SELF-REGULATION IN THE INDUSTRY

Borrowing from South African Institute of Information Technology Professionals (IITPSA), the industry should be left to self-regulate, at least for now. This is a professional body recognized by the South African Qualifications Authority for the service and representation of ICT practitioners. The IITPSA aims at maintaining and promoting codes of ethics for its members, defining and promoting ICT knowledge standards, formulation of effective policies, and extending the knowledge and understanding and usage of ICT in the communities. This is achieved by a multi-sectoral engagement. The **IITPSA does not engage in setting qualifications, registration and even licensing of the ICT sector.** Through this, the South African ICT space thrives.

5.0 CONCLUSION

All in all, and considering the variability of a developing country like Kenya, the Bill is over-ambitious, detached from reality and aimed to make tech a few members club. The creation of educational standards only serves to stifle the sector out of innovative ideas from a pool of enthusiasts interested in ICT. This means that those who are in practice now but without relevant certificates, would have to undergo vetting by the Council with an uncertainty that they may be locked out of the ICT field exacerbated by the fact that there are no guidelines to vet them based on their experience in the Bill.

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