



REPUBLIC OF KENYA



*paper laid by the chair,  
D/committee on information  
& innovation*

*16/8/2018*



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT - SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION  
AND INNOVATION

REPORT ON THE PETITION REGARDING THE ENACTMENT OF LEGISLATION  
TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL  
SECURITY AND FORENSIC PROFESSIONALS

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI.

AUGUST, 2018

*Approved for tabling  
16/8  
RS*

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**ABBREVIATIONS**

ICT

Information Communication and Technology

IOCTA

Internet Organized Crime Threat Assessment

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## **CHAIRPERSON'S FOREWORD**

**Mr. Speaker,**

On Thursday 15<sup>th</sup> February, 2018 a petition was conveyed to the House pursuant to Article 119 (1) of the Constitution of Kenya 2010 and Standing Order 225 (2) (b) by Hon. Justin Muturi, Speaker of the National Assembly on behalf of Mr. Michael Ouma Omuga and Mr. Julius Njiraini.

Pursuant to Standing Order 227, the petition was referred to the Departmental Committee on Communication, Information and Innovation for consideration and thereafter report to the House.

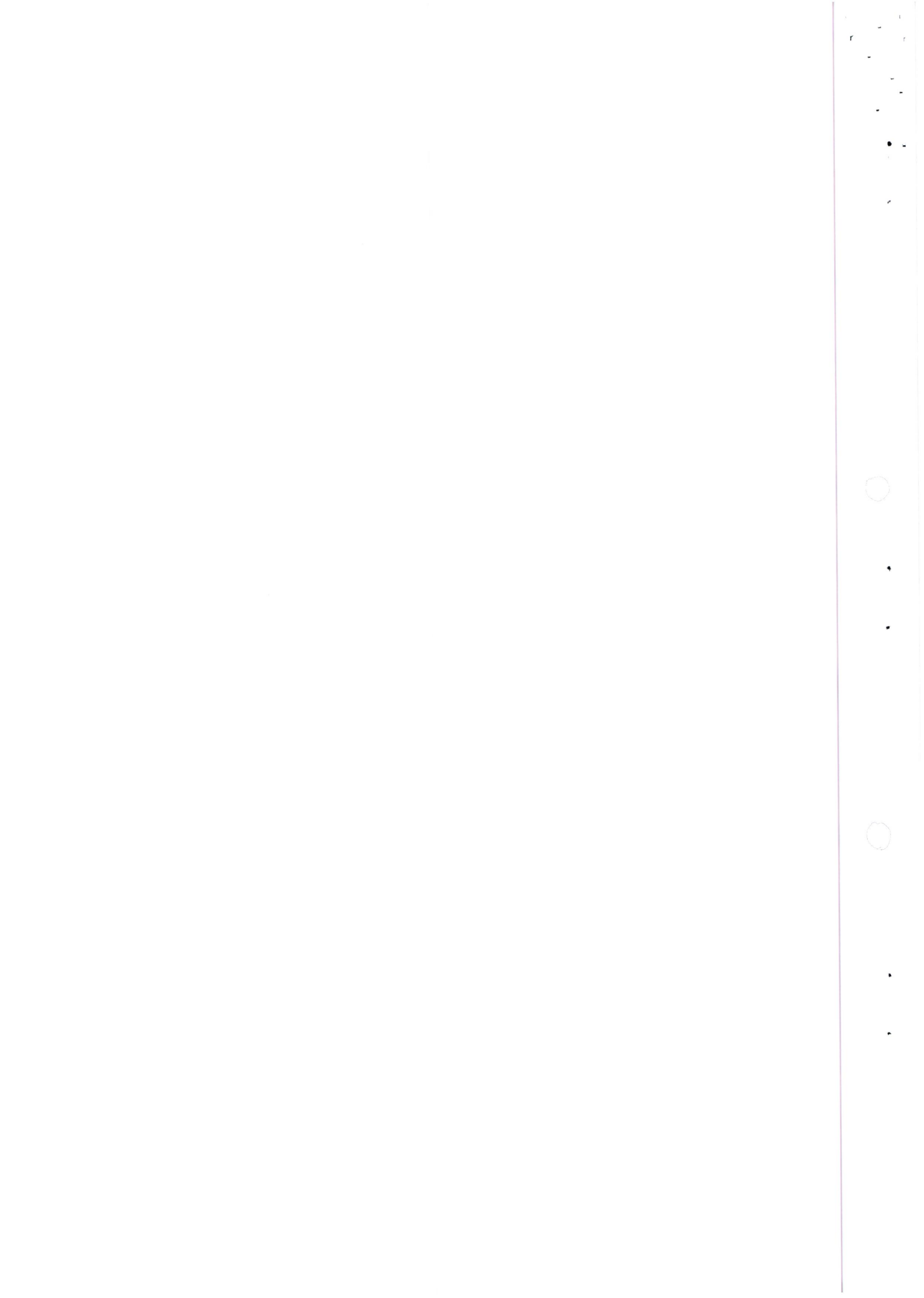
The petitioners prayed that the National Assembly—

1. Enacts legislation to provide for the registration, regulation and licensing of digital security and forensics professionals in Kenya and sets guidelines on qualification and authorized professionals to practice the same in line with the Computer and Cyber Crime Act, Cyber security and protection and any other related legislation; and
2. Enact legislation to provide the Cabinet Secretary, Information and Communication with powers to maintain database of qualified digital forensic experts in Kenya.

In considering the Petition, the Committee held meetings with the petitioners and the Ministry of Information, Communication and Technology to consider the prayers sought. The minutes of the meetings are annexed to this Report.

Based on the submissions and oral presentations made by the Petitioners and the Ministry, the Committee therefore recommends that;-

The Committee shall formulate and sponsor a Bill for enactment to regulate the practice of all professionals in the ICT sector.



**Acknowledgement**

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition.

I take this opportunity to thank all Members of the Committee for their input and valuable contributions during the consideration of the petition.

On behalf of the Departmental Committee on Communication, Information and Innovation and pursuant to Standing Order, 227 it is my pleasant privilege and honor to present to the House the Report of the Committee on its consideration of the petition regarding the enactment of legislation to govern the registration, regulation and licensing of digital security and forensic professionals.

SIGNED..........DATE.....15 (08) 2018.....

**HON. WILLIAM KISANG MP, CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND  
INNOVATION**





## 1.0 PREFACE

### 1.1 Committee Mandate

The Departmental Committee on Communications, Information and Innovation is established under Standing Order 216 and mandated under Standing Order 216 (5) to—

- a. Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b. Study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c. Study and review all legislation referred to it;
- d. Study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e. Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*);
- (fa) examine treaties, agreements and conventions;
- g. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h. make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- i. consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- j. Examine any questions raised by Members on a matter within its mandate.

In accordance with the Second Schedule of the Standing Orders, the Committee oversees the Ministry of Information, Communication and Technology and matters Communication,



Information, media and broadcasting (except for broadcast of parliamentary proceedings), Information Communications Technology (ICT) development and advancement of technology and modernization of production strategies.

## **1.2 Committee Membership**

1. The Hon. Kisang William Kipkemoi, M.P - **Chairperson**
2. The Hon. George Macharia Kariuki, M.P - **Vice Chairperson**
3. The Hon. Liza Chelule Chepkorir, M.P.
4. The Hon. Alfah O. Miruka, M.P.
5. The Hon. Annie Wanjiku Kibeh, M.P.
6. The Hon. Joshua Kimilu Kivinda, M.P.
7. The Hon. Marwa Kitayama Maisori, M.P.
8. The Hon. Mwambu Mabongah, M.P.
9. The Hon. Maritim Sylvanus, M.P.
10. The Hon. Mwangaza Kawira, M.P.
11. The Hon. Jonah Mburu, M.P.
12. The Hon. Gertrude Mbeyu Mwanyanje, M.P.
13. The Hon. Wamuchomba Gathoni, M.P.
14. The Hon. (Eng.) Mark Nyamita Ogola, M.P
15. The Hon. John Kiarie Waweru, M.P.
16. The Hon. Erastus Nzioka Kivasu, M.P.
17. The Hon. Innocent Momanyi Obiri, M.P.
18. The Hon. Godfrey Osotsi Atieno, M.P.
19. The Hon. Anthony Tom Oluoch, M.P.



### 1.3 Committee Secretariat

1. Mr. Nicholas Emejen Deputy Director Committee Services (Lead Clerk)
2. Ms. Ella Kendi Third Clerk Assistant
3. Mr. Ronald Walala Legal Counsel II
4. Ms. Lorna Okatch Research Officer III
5. Ms. Catherine Gati Fiscal Analyst III
6. Ms. Deborah Mepusi Media Relations Officer
7. Mr. Wilson Angatangoria Serjeant At arms



## 2.0 INTRODUCTION

Article 37 of the Constitution provides that every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities. Article 119(1) of the Constitution provides that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.

Upon presentation of a petition to the House, the Speaker refers it to the relevant Committee for consideration, and reporting. After referral the Committee invites the Petitioner (s) to appear before it and prosecute the petition; and the authority responsible for matters relating to the subject matter of the Petition to respond in writing or through oral representations.

The National Assembly Standing Orders require that a Committee, to which a petition is committed, responds to a Petitioner within sixty days (60) days through a report tabled in the House.

The Petitioners, Mr. Michael Ouma and Mr. Julius Njiraini are digital forensics professionals. In their petition, they seek the enactment or amendment of laws to govern the registration, regulation and licensing of digital forensics professionals in Kenya and establish guidelines for the practice of the profession in line with the Computer Misuse and Cybercrime Act, 2018 and any other related legislation. The Petition is submitted pursuant to Article 37 and 119 of the Constitution, the Petition to Parliament (Procedure) Act and Part XXIII of the National Assembly Standing Orders.

The petitioners therefore pray that the National Assembly

- (a) Enacts legislation to provide for the registration, regulation and licensing of digital security and forensics professionals in Kenya and sets guidelines on qualification and authorized professionals to practice the same in line with the Computer and Cyber Crime Act, Cyber security and protection and any other related legislation; and
- (b) Enact legislation to provide for the Cabinet Secretary, Information and Communication with powers to maintain database of qualified digital forensic experts in Kenya.





### **3.0 CONSIDERATION OF THE PETITION**

#### **3.1 Meeting with the Petitioners**

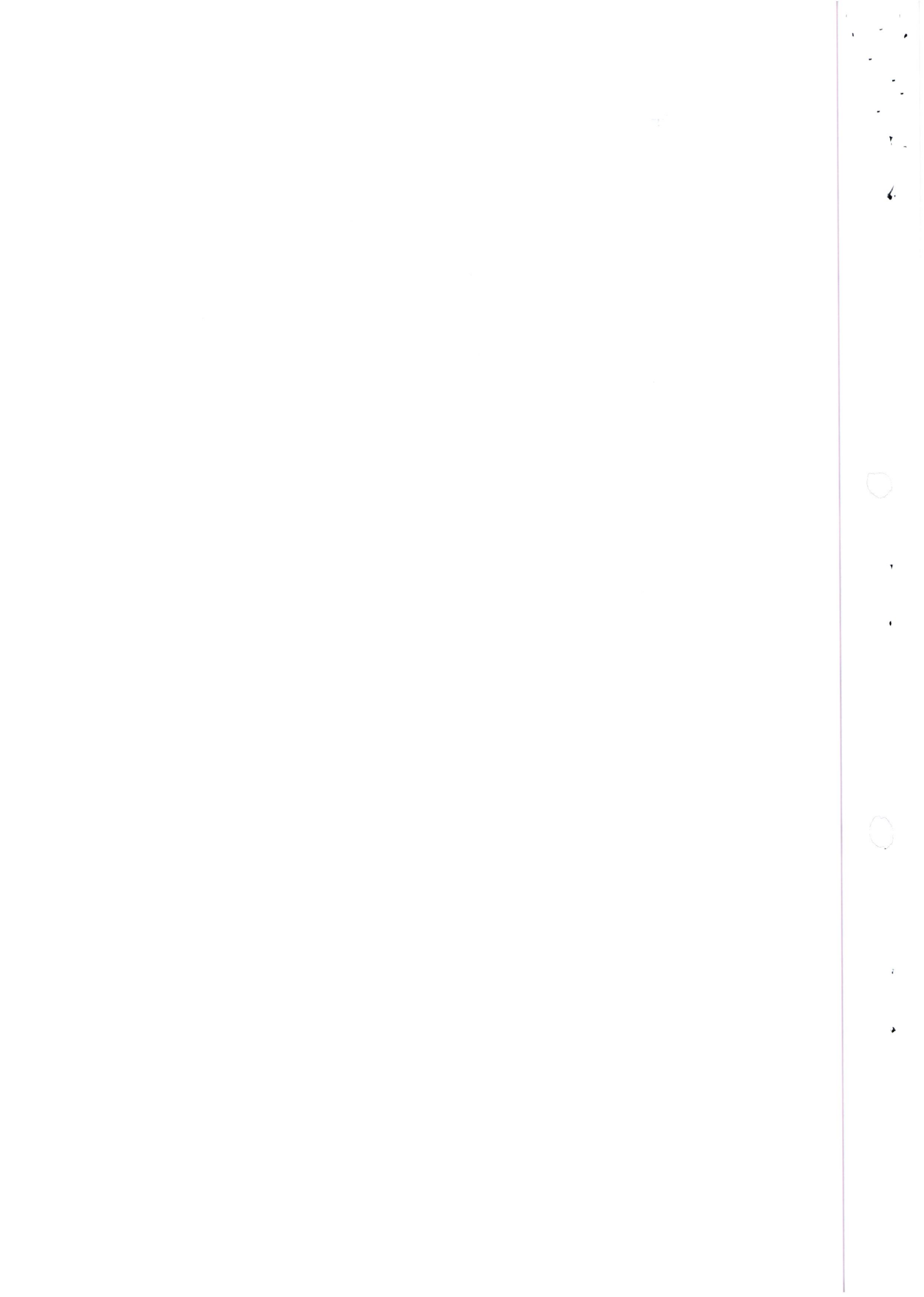
On 15<sup>th</sup> May, 2018 the Committee met with the petitioners, Mr. Michael Ouma and Mr. Julius Njiraini who submitted that—

- (i) Digital security and forensic professionals have a legally registered association called Kenya Cyber Security and Forensics Association (**KCSFA**) which has a total membership of three hundred registered professionals;
- (ii) In the year 2016, African countries are reported to have lost at least USD 2 billion in cyber-attacks due to increase in the use of financial technology;
- (iii) Several factors affect the investigation and prosecution of cybercrimes including the failure to maintain a proper chain of custody and preservation of the evidence collected;
- (iv) Cyber-criminals are deliberately targeting the Kenyan digital economy with the intention of wreaking havoc and making away with millions. The targets of these cyber-attacks are the government, telecommunications, mobile money services, savings and credit cooperative societies, microfinance, e-commerce and online markets;
- (v) During an investigation of a computer security incident, an untrained system administrator, law enforcement officer or computer security expert may accidentally destroy valuable evidence or fail to discover critical clues of unlawful or unauthorized activity. The Petitioners noted that they have witnessed lack of education curtail efforts to apprehend external and internal cyber attackers;
- (vi) The threshold for admissibility of digital evidence is high as it is volatile evidence. There is therefore need for computer forensic expertise in digital crime investigations;
- (vii) Digital forensics involves the investigation of the theft of source code or proprietary information, theft of password files or credit information, spam, e-mail harassment and threats, unauthorized or unlawful intrusions into computer systems, denial-of-service attacks, forensic support of criminal, fraud, intelligence, and security investigations, fake online accounts. A digital forensics professional may



also act as the focal point for computer incident and computer forensic matters, provide on-site assistance for computer search and seizures and help in ensuring an organization adheres to regulations, standards, and statutes that promote incident response capability;

- (viii) A digital forensics professional is trained on how to create reports that accurately describe the details of an incident which are understandable to decision makers, can withstand the barrage of legal scrutiny, and that are produced in a timely manner. When working with law firms, a digital forensics professional is usually requested to offer an opinion, which qualifies him or her as an expert witness who will appear in court;
- (ix) There is need for qualified digital forensics professionals who can work well with other forensic science experts. Currently there are no mechanisms where evidence collected at a crime scene can be shared among different forensic experts. This has made most digital evidence susceptible to tampering at crime scenes, compromised the chain of custody of digital evidence thus rendering it inadmissible in court;
- (x) Digital evidence may require evaluation in a forensic lab which can only be done by a qualified forensic expert. During an investigation of a computer security incident, the untrained system administrator, law enforcement officer, or computer security expert may accidentally destroy valuable evidence or fail to discover critical clues of unlawful or unauthorized activity;
- (xi) non-regulation of computer security and forensics professionals may pose danger to the country's cyber eco-system as computer forensic experts are trained in handling of evidence from a crime scene and maintaining the confidentiality, integrity, authenticity, availability and non-repudiation of data;
- (xii) Forensic and Computer security professionals can help the Government in setting the required standards for management of digital evidence and its production on court during prosecution of cybercrimes;
- (xiii) The Computer and Cybercrime Bill, 2018 (now the Computer Misuse and Cybercrime Act, 2018) only contemplates “authorized persons” assisting in the



investigation of cybercrimes but does not state the qualifications such an authorized person ought to have. Various institutions of higher learning are producing computer security and forensics professionals who are well versed with evidence seizure, gathering, preservation and presentation in a manner admissible in legal proceedings. Evidence of cybercrime should be handled by trained digital forensics experts. This is evidenced by the growing sophistication of cyber criminals where there is even development of service based criminal industry which specializes in virtual underground economy to develop products for use by other criminals. According to Internet Organized Crime Threat Assessment (IOCTA), barriers to fighting cybercrime are hampered by lack of technical expertise needed to investigate it. IOCTA further calls for legislation, awareness raising and international and cross border cooperation;

The petitioners therefore prayed that the National Assembly—

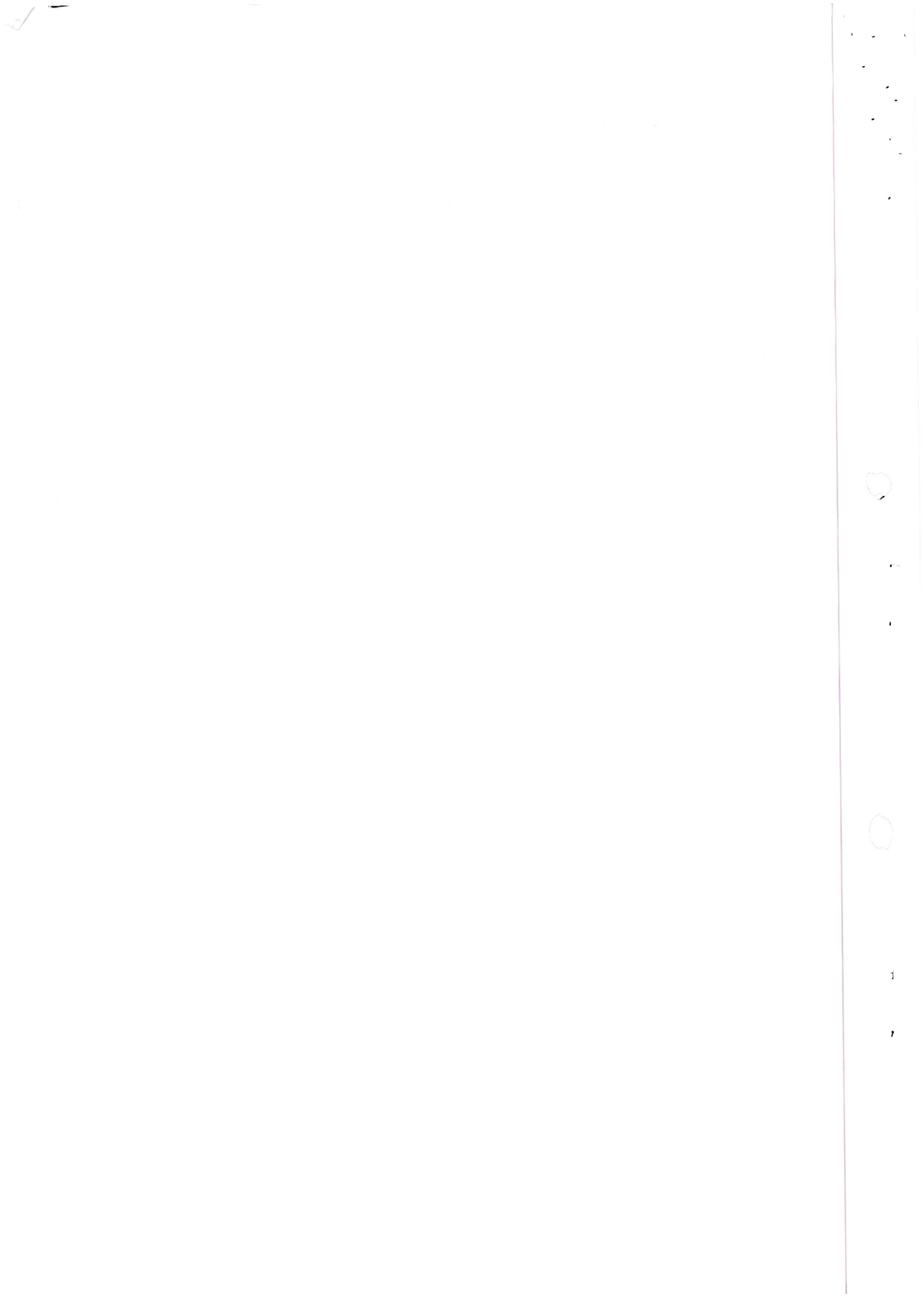
- (a) Enacts legislation to provide for the registration, regulation and licensing of digital security and forensics professionals in Kenya and sets guidelines on qualification and authorized professionals to practice the same in line with the Computer and Cyber Crime Act, Cyber security and protection and any other related legislation; and
- (b) Enact legislation to provide the Cabinet Secretary, Information and Communication with powers to maintain database of qualified digital forensic experts in Kenya.



### 3.2 Meeting with the Principal Secretary, Ministry of Information Communications and Technology

- (i) The Committee met with the Principal Secretary in the Ministry of ICT, Mr. Jerome Ochieng who made oral and written submissions on the Petition. The Principal Secretary noted that the Computer Misuse and Cyber Crimes Act, 2018 does not fully define “authorized persons” as “an officer in a law enforcement agency or a cyber-security expert designated by the Cabinet Secretary responsible for matters relating to national security by notice in the *Gazette* for the purposes of Part III of this Act” while the petition seems to seek limitation of the definition to only digital security and forensic professionals;
- (ii) The Act stipulates that the process of collecting the evidence of cybercrime should be carried out by a police officer or authorized person, however that can only be done by a digital forensic expert;
- (iii) The Petition therefore proposes enactment of legislation on the profession of digital security and forensics to draw expertise from this sector to assist in cyber security issues. The Ministry was of the opinion that—
  - a) Legislation to regulate the affairs of digital security and forensic professionals may assist in the gazettement of such professionals under the Computer Misuse and Cybercrime Act, 2018 as “authorized persons”;
  - b) If enacted by the House, such Legislation should provide for self-regulation of digital security and forensics akin to other professional bodies in the country; and
  - c) Any deliberations on the enactment of the proposed legislation should be undertaken with the Ministry responsible for matters relating to national security who are also charged with enforcing the provisions of the Computer Misuse and Cybercrime Act, 2018.





## **4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS**

### **4.1 Observations**

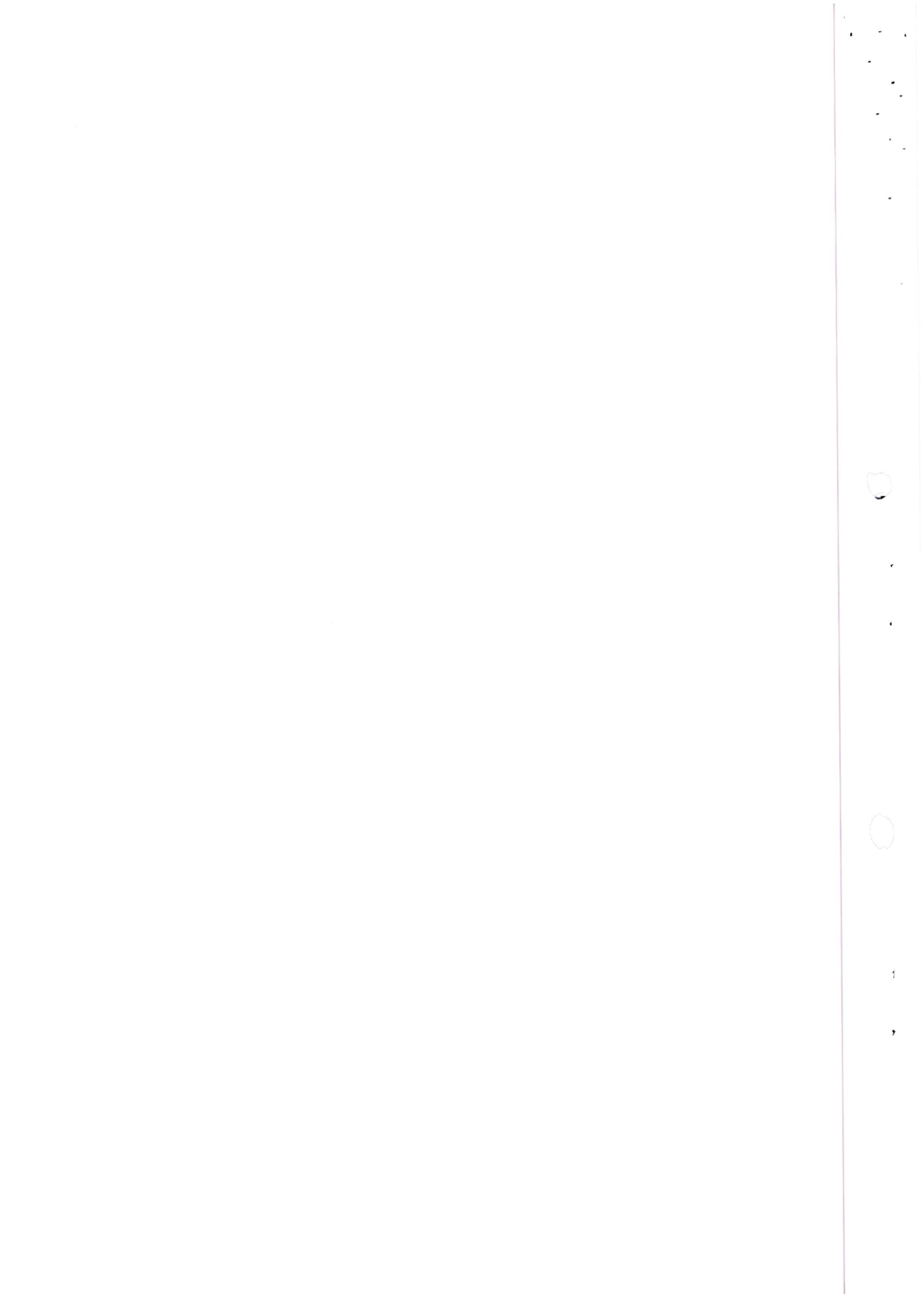
Having held meetings to consider the petition, the Committee observed that—

1. Digital security and forensic professionals have a legally registered association called Kenya Cyber Security and Forensics Association (**KCSFA**) which has a total membership of three hundred registered professionals;
2. The Computer Misuse and Cybercrimes Act, 2018 does not limit the definition of an “authorized person” who may be gazetted to assist law enforcement agencies in investigations under the Act with reference to academic or professional qualifications;
3. Enacting a legislation solely covering the area of Digital Security and forensics professionals would lead to similar petitions for the enactment of legislation covering other professionals in the broader ICT sector;
4. The Leader of the Majority Party, the Hon. Aden Duale had sponsored the Information Communication Technology Practitioners Bill, 2016 (National Assembly Bills No. 18 of 2016) seeking to regulate practitioners in the broader ICT sector. The Bill however lapsed in the 11<sup>th</sup> Parliament and is yet to be reintroduced;
5. As submitted by the two Petitioners, the Kenyan economy is largely leveraged on ICT and there is need to regulate professionals in the ICT sector to prevent the ICT skills being used to assist in the commission of crimes. This can be done through an umbrella legislation instead of piecemeal legislation covering each ICT specialization.

### **4.2 Recommendations**

The Committee therefore recommends that—

The Committee shall formulate and sponsor a Bill for enactment to regulate the practice of all professionals in the ICT sector.



## **Annexure 1 – Copy of the Petition**

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PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

Mr. Traubert  
pls deal  
JW  
4/12

TO: THE CLERK OF THE NATIONAL ASSEMBLY,  
PARLIAMENT BUILDINGS,  
P.O BOX 41842-00100,  
NAIROBI.



ParPetual  
Please  
deal  
Rkani  
4/12/17

I/We the undersigned petitioners being a citizen of Kenya pursuant to Article 37 and 119 of the Constitution of Kenya, the Petition to Parliament (Procedure) Act, 2012 and Standing Order Part XXIII of National Assembly Standing Orders:-

DRAW the attention of the house to the following:

THAT, according to Serianu's Cyber security Report 2016 African countries lost at least \$2 billion in cyberattacks in 2016 due to increase in the use of financial technology. Several factors including lack of proper maintenance of the *chain of custody* which *requires* that evidence collected are stored in a tamper-proof manner, where it cannot be accessed by unauthorized individuals. Chain of custody also requires that the digital forensics investigators to trace the location of the evidence from the moment it was collected to the moment it was presented in a judicial proceeding, must "check-out" the evidence

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whenever they need to review it, and then “check-in” the evidence each time it is returned to storage.

Another challenge is to ensure that the data collected is identical to the data that is presented in court. It is not uncommon for several years to pass between the collection of evidence and the production of evidence at a judicial proceeding. But most attackers protect their source code. These require a sound scientific approach to performing tool analysis.

1. THAT, cyber-criminals are deliberately targeting the Kenyan digital economy with the intention of wreaking havoc and making away with millions. The targets of these cyber-attacks are the government, telecommunications, mobile money services, Saccos, microfinance and co-operatives, e-commerce and online markets. There are upto 3000

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monthly incidences according to the Information Technology, Security, and Assurance (ISACA). Computers and networks are involved in virtually all activities today. We use them to communicate, to create intellectual property, to shop, to perform business transactions, to plan trips, and much more. Networks afford users the opportunity to continuously use computers through cell phones, personal digital assistants (PDAs), wireless connectivity, and the ubiquitous Internet. Any computer can be used for many purposes. The pervasive nature of computers and networks means that they are increasingly connected to incidents and crimes. During an investigation of a computer security incident, the untrained system administrator, law enforcement officer, or computer security expert may accidentally destroy valuable evidence or fail to discover critical clues of unlawful or unauthorized activity. We have witnessed lack of education curtail too many efforts to apprehend external and internal attackers.

2. THAT there is a high degree requirement of threshold to admissibility of digital evidence especially volatile evidence. There is need for computer forensic expertise in digital crime investigations. Law enforcers and legal practitioners rely on computer forensics to catch criminals and present



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admissible evidence to court. Computer forensics is quickly becoming used in many different areas of criminal investigations and there is an internationally accepted standard methodology that is used. This is very important in how the evidence is maintained and collected and it has become quite a precise process in law enforcement hence increasing demand for expertise in computer forensics. Digital forensics Investigate the theft of source code or proprietary information, performs investigation of the theft of password files or credit information, spam or email harassment and threats, unauthorized or unlawful intrusions into computer systems, denial-of-service attacks, forensic support of criminal, fraud, intelligence, and security investigations, fake online accounts , may acts as the focal point for government/organization's computer incident and computer forensic matters, Provides on-site assistance for computer search and seizures and helps in adhering to regulations, standards, and statutes that promote an incident response capability. Responding to computer security incidents can involve intense pressure, time, and resource constraints. There is need to address relevancy of information be obtained from computers to support criminal, civil, or disciplinary action, the person

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responsible for obtaining this information and the roles of law enforcement, system administrators, legal counsel, and business managers.

The digital forensics investigation phase should involves determining the who, what, when, where, how, and why surrounding an incident by conducting investigation, reviewing host-based evidence, network-based evidence, and evidence gathered via traditional, nontechnical investigative steps and the relation with the "other evidence" category involving testimony and other information obtained from people. These are the collection of evidence following more traditional investigative techniques. It's imperative to build on the legal standards can regulate the admissibility of expert testimony. The U.S. Supreme Court published an opinion that wrote the standards necessary for the admissibility of scientific evidence in federal cases. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S.579 (1993), shifting the focus from a test for general acceptance to a test for "reliability and relevance. These helped in developing a methodology that promotes coordinated, cohesive response and achieved the following: Prevented a disjointed, non-cohesive response (which could be disastrous), Confirms or dispels whether an incident occurred, Promotes accumulation of accurate information, Establishes controls for proper retrieval

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and handling of evidence, Protects privacy rights established by law and policy, Minimizes disruption to business and network operations, Allows for criminal or civil action against perpetrators, Provides accurate reports and useful recommendations, Provides rapid detection and containment, Minimizes exposure and compromise of proprietary data, Protects government and organization's reputation and assets, helps in education , Promotes rapid detection and/or prevention of such incidents in the future (via lessons learned, policy changes, and so on). Users are becoming more adept at using encryption, steganography, anonymous email accounts, fake mail, spoofed source IP addresses, spoofed MAC addresses, masquerading as other individuals, and other means to mask their true identity in "cyberspace." In fact, establishing the identity of an attacker who brought down web site can be time consuming that most companies may elect not to even try making many organization concentrate on the *things* harmed or damaged than focusing solely on what was damaged, how it was damaged, and how to fix it.

The digital forensics is trained on how to create reports that accurately describe the details of an incident, which are understandable to decision makers, that can withstand the barrage of legal scrutiny, and that are produced in a timely

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manner. According to U.S. Federal Rules of Evidence (FRE) §1002, an item or information presented in court must be the original. With digital forensics usage in investigation , the following four factors can be applied to determine the reliability of scientific evidence namely whether the scientific theory or technique have been empirically tested, whether the scientific theory or technique been subjected to peer review and publication, whether there a known or potential error rate, whether there exists standards control the technique's operation and general acceptance of the methodology or technique in the relevant scientific community. The digital evidence and documents obtained are likely to be used as *exhibits* in the trial. Special rules exist to ensure that the exhibits are genuine and exactly what they purport to be. Therefore, during adverse civil or criminal proceedings, collection, handling, and storage of electronic media, paper documents, equipment, and any other physical evidence can be challenged by an adversary. According to the U.S. Federal Rules of Evidence (FRE), *relevant evidence* is defined as any information "having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the information." (FRE 401).

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Evidence is *any information of probative value*, meaning it proves something or helps prove something relevant to the case. It is safest to treat any information of probative value that is obtained during an investigation as evidence.

Therefore, any document, electronic media, electronic files, printouts, or other objects obtained during an investigation that may assist in proving your case should be treated as evidence and handled according to evidence-handling procedures. Documents and recorded material must be authenticated before they may be introduced into evidence. *Authentication*, defined in FRE 901(a), basically means that whomever collected the evidence should testify during direct examination that the information is what the proponent claims. In other words, the most common way to authenticate evidence is to have a witness who has personal knowledge as to the origins of that piece of evidence provide testimony. If evidence cannot be authenticated, it is usually considered inadmissible, and that information cannot be presented to the judging body. You meet the demands of authentication by ensuring that whoever collected the evidence is a matter of record. It is important to develop some sort of internal document that records the manner in which evidence is collected.

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A forensic report should document facts and/or offer opinions with a style of communication that provides decision-makers with useful. When working with law firms, corporate/private sector examiners are usually requested to offer an opinion, which suggests that the examiner writing the report will eventually qualify as an expert and offer this opinion in court (hence, be an expert witness).

3. THAT, there is need for qualified digital forensics professionals who can work well with other forensic science experts. Currently there are no mechanisms where evidence collected at a crime scene can be shared among different forensic experts; this has made most digital evidence to be tampered with at the crime scene, improper use of chain of custody thus making it hard to present that evidence in the court. Digital evidence may be further required to be evaluated in a forensic lab which can only be done by forensic tool kit and being handled by a qualified forensic expert. During an investigation of a computer security incident, the untrained system administrator, law enforcement officer, or computer security expert may accidentally destroy valuable evidence or fail to discover critical clues of unlawful or unauthorized activity. We have witnessed lack of education curtail too many efforts to apprehend external and internal attackers.

PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

4. THAT, non-regulation of computer security and forensics professionals may pose danger to the country's cyber eco system. The computer forensic experts are trained in handling of evidence from a crime scene and maintaining the confidentiality, integrity, authenticity, availability and non-repudiation. ICT on its own is broad comprising of IT/BIT professionals, computer science/ engineering. This profession may not be equipped in some of the skills that a digital forensic professional has, including cyber-crime investigations, analysis, documentation of evidence act
5. THAT, the Forensic and Computer security profession can help the Government in setting the required standards for digital evidence management and apply it as expert witness in a court of law to allow best adjudication of cybercrime related cases.
6. THAT the law aimed at legislation and investigation of cyber-crimes with technological and law tools for tangible evidence for prosecution is already tabled in parliament for enactment.

PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

7. THAT there is need for an expert professional in collection, maintaining proper processes, preserving, analyzing , and presenting computer-related evidence in support of vulnerability mitigation and/or criminal, fraud, counterintelligence, or aiding law enforcement investigations in court processes.
8. THAT there is need for an expert professional for recovering digital evidence to be used in court of law against offenders.
9. THAT there is need for an expert professional for Identifying , Preserving , Recovering , Analyzing and Presenting digital evidence in court proceeding.
10. THAT these professionals should be knowledgeable in technology, laws, investigation and court process including being an expert witness.  
Section 48 of the Evidence Act, Cap 80 of the Laws of Kenya states that  
*(1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting or finger or other impressions, opinions upon that point are admissible if made by persons specially skilled in such foreign law, science or art, or in questions as to identity, or genuineness of*




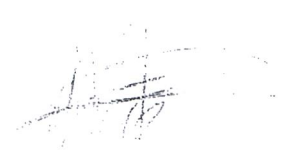


PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

*handwriting or fingerprint or other impressions..* The petitioners are graduate of Computer Security and Forensics hence fits to serve in these petition prayers.

11. THAT the Computer and Cybercrime Bill only talks of authorized person but does not state the qualification and profession of the said authorized person.
12. THAT various institutions of higher learning are producing computer security and forensics professionals who are well versed with evidence seizure, gathering, preservation and presentation in a manner admissible in legal proceedings. Currently there is no official qualification on the same.
13. THAT there is need for professionals who can work with police investigators and crime scene first responders.

CONCERNED



PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN ~~KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS~~

14. THAT although the Government did introduce The Computer and Cybercrimes Bill, 2016, Part 3 section 21 explains the process of search and seizure of stored data as follows:

*Where a police officer or an authorised person has reasonable grounds to believe that there may be in a specified computer system or part of it, computer data storage medium, program, data, that-*

*(a) is reasonably required for the purpose of a criminal investigation or criminal proceedings which may be material as evidence; or*

*(b) has been acquired by a person as a result of the commission of an offence, the police officer or the authorised person may apply to the court for issue of a warrant to enter any premises to access, search and similarly seize such data.*

15. THAT in subsection 3 the Bill explains the process of making application in the court of law as follows:

*When making an application under subsection (1), the police officer or the authorised person shall:*

*(a) explain the reason they believe that the material sought may be found on the premises to be searched;*

PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

*(b) state that the search may be frustrated or seriously prejudiced unless an investigating officer may at the first instance on arrival at the premises secure immediate entry to the premises;*

*(c) identify and explain, the type of evidence suspected to be found on the \_\_\_\_\_ premises; \_\_\_\_\_ and*

*(d) explain the measures that shall be taken to prepare and ensure that the search and seizure is carried out through technical means such as imaging, mirroring or copying of relevant data and not through physical custody of computer system, program, data, or computer data storage medium.*

16. THAT the Bill goes on to explain other processes. The bill also enumerates the role of authorized person in *section 24 (2),(3) and (4)* in process and access to seized data, *section 24 (1) and (2)* on production order, *section 25* explains on expedited, preservation and partial disclosure of traffic data, *section 26* further explains on Real-time collection of traffic data, *section 27* interception of content data and *section 28* on obstruction and misuse.



PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

17. THAT the Bill only indicates that the foregoing process is carried out by a police officer or authorized person whereas this process can only be done by trained digital forensic investigator to maintain the integrity of evidence through maintaining the chain of custody which is crucial for the admissibility of the collected evidence during the legal process. Some of the evidence may be volatile.
18. THAT these sections of the Bill can and should only be handled by trained digital forensics experts. This is evidenced by the growing sophistication of cyber criminals where there is even development of service based criminal industry which specializes in virtual underground economy to develop products for use by other criminals (crime as a service business model). According to Internet Organised Crime threat assessment (iOCTA) barriers to fighting cybercrime are hampered by lack of technical expertise needed to investigate it. iOCTA further called for further legislation, awareness raising and international and cross border cooperation.

PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

FURTHER CONCERNED

19. THAT Part 1 of the Evidence Act Cap 80 of the Laws of Kenya talks on condition of general admissibility, where Part V provides for statements in documents produced in civil proceedings, Part IV provides statements under special circumstances, and Part IX provides for Opinions. The Evidence Act is inadequate as it also needs to provide input of digital forensics.
20. THAT digital forensics is trained to work with across different professions including ICT practitioners, digital security experts, legal practitioners, criminal experts and other branches of forensics science hence being part of first responder in crime scene.

THEREFORE your humble petitioner(s) Pray that Parliament—

- (1) Enacts and or amends existing laws to govern the registration, regulation and licensing of digital security and forensics professional in Kenya and sets guidelines on qualified and authorized professionals to



PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

practice on the same in line with the Computer and Cyber-crime Act and Cyber security and Protection Act and any other related legislation

- (2) Enacts legislation providing the cabinet secretary ICT with the powers to maintain the database of qualified digital forensic experts professionals in Kenya and methodologies of process of registration, licensing and regulations of digital security and forensics professional in Kenya

And your PETITIONER(S) will ever pray.

Name of Petitioner(s)	Full Address	Signature/	Thumb
Impression MICHAEL DUMA	64520-00400		10-MW-2834379 0724725385
PRUGA	MIRABI		
JULIUS K. NJIRANI	3, 45-C-200 NAIROBI		16ND 327280
			080093490

Date:

PETITION TO THE NATIONAL ASSEMBLY FOR THE ENACTMENT AND OR AMENDMENT OF LAWS TO GOVERN THE REGISTRATION, REGULATION AND LICENSING OF DIGITAL SECURITY FORENSICS PROFESSIONALS IN KENYA AND SET GUIDELINES ON QUALIFIED AND AUTHORIZED PROFESSIONALS TO PRACTICE ON THE SAME IN LINE WITH COMPUTER AND CYBER-CRIME ACT AND CYBER SECURITY AND PROTECTION ACT AND ANY OTHER RELATED LEGISLATION, PURSUANT TO ARTICLE 37 AND 119 OF THE CONSTITUTION, THE PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDER PART XXIII OF THE NATIONAL ASSEMBLY STANDING ORDERS

## **Annexure 2 – Adoption list**



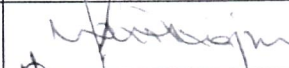
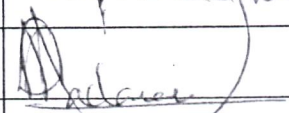
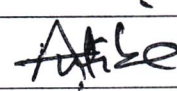
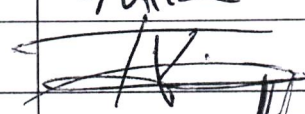
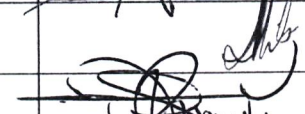


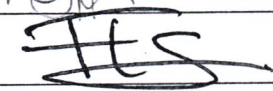
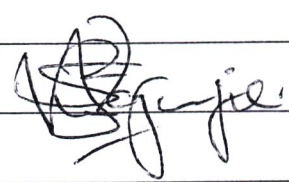
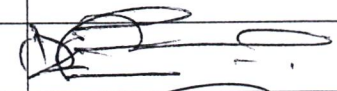

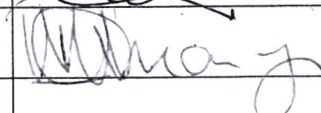


**THE DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND INNOVATION**

**MEMBERS ATTENDANCE LIST**

**DATE:** 14/05/2018 **TIME:** 11:30am **VENUE:** 4<sup>th</sup> Floor Committee of

**AGENDA:** Adoption of the Report on Petition regarding enactment of legislation to govern the registration and licensing of digital society and other Proprietors

NO.	NAME	SIGNATURE
1.	Hon. Kisang, William Kipkemoi, M.P - Chairperson	
	Hon. George, Macharia Kariuki, M.P - Vice - Chairperson	
3.	Hon. Liza, Chelule Chepkorir, M.P.	
4.	Hon. Alfah, O. Miruka, M.P.	
5.	Hon. Annie Wanjiku Kibeh, M.P.	
6.	Hon. Joshua Kimilu, Kivinda, M.P.	
7.	Hon. Marwa Kitayama Maisori, M.P.	
8.	Hon. Mwambu Mabongah, M.P.	
9.	Hon. Maritim Sylvanus, M.P.	
10.	Hon. Mwangaza Kawira, M.P.	
11.	Hon. Jonah Mburu, M.P.	
12.	Hon. Gertrude Mbeyu Mwanyanje, M.P.	
13.	Hon. Wamuchomba, Gathoni, M.P.	
14.	Hon. (Eng). Mark Nyamita Ogola, M.P.	
15.	Hon. John Kiarie Waweru, M.P.	
16.	Hon. Erastus Nzioka Kivasu, M.P.	
17.	Hon. Godfrey Osotsi, Atieno, M.P.	
18.	Hon. Innocent Momanyi, Obiri, M.P.	
19.	Hon. Anthony, Tom Oluoch, M.P.	



**Annexure 3 - Minutes**



MINUTES OF THE 38<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
COMMUNICATION, INFORMATION AND INNOVATION HELD IN 5<sup>TH</sup> FLOOR  
CONTIENTAL HOUSE ON 15<sup>TH</sup> MAY, 2018 AT 10.30AM

---

**PRESENT**

1. Hon. William Kipkemoi, M.P. -Chairperson
2. Hon. George Macharia Kariuki, M.P. -Vice- Chairperson
3. Hon. Annie Wanjiku Kibeh, M.P.
4. Hon. Marwa Kitayama Maisori, M.P.
5. Hon. Godfrey Osotsi Atieno, M.P.
6. Hon. Erastus Nzioka Kivasu, M.P.
7. Hon. Joshua Kimilu Kivinda, M.P.
8. Hon. Jonah Mburu, M.P.
9. Hon. Mwambu Mabongah, M.P.
10. Hon. Mwangaza Kawira, M.P.
11. Hon. (Eng.). Mark Nyamita, M.P.

**APOLOGIES**

1. Hon. Wamuchomba Gathoni, M.P.
2. Hon. Liza Chelule Chepkorir, M.P.
3. Hon. Maritim Sylvanus, M.P.
4. Hon. John Kiarie Waweru, M.P.
5. Hon. Gertrude Mbeyu Mwanyanje, M.P.
6. Hon. Alfah O. Miruka, M.P.
7. Hon. Innocent Momanyi Obiri, M.P.
8. Hon. Anthony Tom Oluoch, M.P.

**National Assembly Secretariat**

1. Ms. Ella Kendi Clerk Assistant III
2. Mr. Ronald Walala Legal Counsel II
3. Mr. Elijah Ichwara Audio Officer
4. Albert Atunga Serjeant at arms

**MINUTE NO. 141/2018: PRELIMINARIES**

The meeting was called to order at thirty minutes past ten o'clock followed with a word of prayer and introductions thereafter.

**MINUTE NO.142/2018: CONSIDERATION OF THE PETITION**

The Chairperson informed the Committee that the petition regarding enactment of legislation to govern the registration, regulation and licensing of digital security and forensic professionals was committed to the Departmental Committee on Communication, Information and Innovation on 15<sup>th</sup> February, 2018 for consideration and thereafter report to the House.

The Petitioners prayed that the National Assembly;-

- i. Enacts Legislation to provide for the registration, regulation and licensing of digital security and forensics professionals in Kenya and sets guidelines on qualification and authorised professionals to practice the same in line with the Computer and Cyber Crime Act, Cyber Security and protection and any other related legislation and;
- ii. Enact legislation to provide for Cabinet Secretary, Information and Communication with powers to maintain database of qualified digital forensic experts in Kenya.

The Chairperson invited the petitioners, Mr Njiraini and Mr. Michael who made their presentations as follows; that;

1. Cyber- criminals are deliberately targeting the Kenyan digital economy with the intention of wreaking havoc and making away with millions. The targets of these cyber -attacks are the government, telecommunications, mobile money services, sacco, microfinance and cooperatives, e commerce and online markets. There are up to 3000 monthly incidences according to the Information Technology, Security and Assurance.
2. There is high degree requirement of threshold to admissibility of digital evidence especially volatile. There is need for computer forensic expertise in digital crime investigations. Law enforcers and legal practitioners rely on computer forensics to catch criminals and present admissible evidence to court.
3. There is need for qualified digital forensics professionals who can work well with other forensic science experts. Currently there are no mechanisms where evidence collected at a crime scene can be shared among different forensics experts and this has made most digital evidence to be tampered with at the crime scene, improper use of chain of custody thus impossible to present the evidence in the court.
4. Non-regulation of computer security and forensics professionals may pose danger to the Country's cyber eco system. The computer forensic experts are trained in handling

of evidence from a crime scene and maintaining the confidentiality, integrity, authenticity, availability and non-reputation.

5. The Forensic and Cyber security profession can help the government in settling the required standards for digital evidence management and apply it as expert witness in a court of law to allow best adjudication of cybercrimes related cases.
6. The law is aimed at legislation and investigation of cybercrimes with technological and a law tool for tangible evidence for prosecution is already tabled in parliament for enactment.
7. There is need for an expert professional in collection, maintaining proper processes, preserving, analysing and presenting computer evidence in support of vulnerability mitigation and or criminal, fraud, counterintelligence, or aiding law enforcement investigations in court processes.
8. There is need for an expert professional for recovering digital evidence to be used in court of law against offenders.
9. There is need for an expert for identifying, preserving, recovering, analysing and presenting digital evidence in court proceedings.
10. These professionals should be knowledgeable in technology laws, investigations and court process including being an expert witness.
11. The computer and cyber Crime bill only talks of authorized person but does not state the qualification and profession of the said authorized person.
12. Various institutions of higher learning are producing computer security and forensics professionals who are well versed with evidence seizure, gathering, preservation and presentation in a manner admissible in legal proceedings.
13. There is need for forensic professionals who can work with police investigators and crime scene first responders.
14. That the Bill indicates that the foregoing process is carried out by a police officer or authorized person whereas this process can only be carried out by a trained digital forensic investigator to maintain the integrity of evidence through maintaining the chain of custody which is crucial for the admissibility of the collected evidence during the legal process.
15. That some sections of the Bill can and should be handled by trained digital forensics experts. this is evidenced by the growing sophistication of cyber criminals where there is development of service based criminal industry which specializes in virtual underground economy to develop products for use by other criminals.

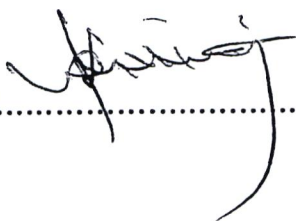


Following the presentations by the petitioners, the Committee observed that;

1. Digital security and forensic professionals have a legally registered association called Kenya Cyber Security and Forensics Association (KCSFA) which has a total membership of three hundred registered professionals;
2. The Computer Misuse and Cybercrimes Act, 2018 does not limit the definition of an “authorized person” who may be gazetted to assist law enforcement agencies in investigations under the Act with reference to academic or professional qualifications;
3. Enacting a legislation solely covering the area of Digital Security and forensics professionals would lead to similar petitions for the enactment of legislation covering other professionals in the broader ICT sector;
4. The Leader of the Majority Party, the Hon. Aden Duale had sponsored the Information Communication Technology Practitioners Bill, 2016 (National Assembly Bills No. 18 of 2016) seeking to regulate practitioners in the broader ICT sector. The Bill however lapsed in the 11<sup>th</sup> Parliament and is yet to be reintroduced;
5. The Kenyan economy is largely leveraged on ICT and there is need to regulate professionals in the ICT sector to prevent the ICT skills being used to assist in the commission of crimes. This can be done through an umbrella legislation instead of piecemeal legislation covering each ICT specialization.

**MINUTES NO.143/2018      ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.43a.m.

Signed..........Date.....12/06/2018.....

**Chairperson.**

MINUTES OF THE 46<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND INNOVATION HELD AT CONTINENTAL RESORT, MOMBASA ON THURSDAY 24<sup>TH</sup> MAY, 2018 AT 9.30 A.M.

---

**PRESENT**

1. Hon. William Kipkemoi, M.P. -Chairperson
2. Hon. George Macharia Kariuki, M.P. -Vice- Chairperson
3. Hon. Joshua Kimilu Kivinda, M.P.
4. Hon. Gertrude Mbeyu Mwanyanje, M.P.
5. Hon. Erastus Nzioka Kivasu, M.P.
6. Hon. Jonah Mburu, M.P.
7. Hon. Alfah O. Miruka, M.P.
8. Hon. Liza Chelule Chepkorir, M.P.
9. Hon. Wamuchomba Gathoni, M.P.
10. Hon. Mwambu Mabongah, M.P.
11. Hon. Anthony Tom Oluoch, M.P.
12. Hon. (Eng.). Mark Nyamita, M.P.
13. Hon. Maritim Sylvanus, M.P.
14. Hon. Innocent Momanyi Obiri, M.P.
15. Hon. Mwangaza Kawira, M.P.
16. Hon. Godfrey Osotsi Atieno, M.P.
17. Hon. Marwa Kitayama Maisori, M.P.

**APOLOGIES**

1. Hon. John Kiarie Waweru, M.P.
2. Hon. Annie Wanjiku Kibeh, M.P.

**National Assembly Secretariat**

1. Nicholas Emejen Deputy Director
2. Ms Ella Kendi Clerk Assistant
3. Mr.Ronald Walala Legal Counsel
4. Ms.Catherine Gati Fiscal Analyst
5. Mr.Elijah Ichwara Audio Officer
6. Albert Atunga Serjeant at arms
7. Mr.Stephen Omunzi Office Attendant
8. Ms.Linah Kimuge Secretary

**Ministry of Information, Communication and Innovation**

1. Mr.Joe Mucheru Cabinet Secretary
2. Mr.Sammy Itemere Principal Secretary, Broadcasting and Telecommunication
3. Mr.Jerome Ochieng Principal Secretary, ICT and Innovation
4. Ahmed Ibrahim Chairperson Media Council of Kenya
5. John Sergon Ag.CEO ICTA
6. Marwa Maguma Information Secretary

- |                       |                            |
|-----------------------|----------------------------|
| 7. Kennedy Ogola      | Economist                  |
| 8. Abdragma Ondeng    | Deputy Secretary           |
| 9. Peter Wakoki       | Finance                    |
| 10. Henry Mungasia    | Director Administration    |
| 11. David Jakaiti,EBS | Senior Accountant          |
| 12. Daniel Obam       | Ag.Communication Secretary |
| 13. Patrick Ngicuru   | Finance                    |
| 14. Paul Macharia     | Senior Economist           |
| 15. Gabriel Kaunda    | Chief Economist            |
| 16. Josphat Kimani    | Human Resource             |
| 17. Edith Nkanata     | GAA                        |
| 18. Violet Kipken     | Head of Internal Audit     |
| 19. Paul Jilani       | Ag.MD KBC                  |
| 20. Julie Nyawira     | KYEB                       |
| 21. Hiram Mucheke     | KIMC                       |
| 22. Moreen Mwangi     | KOTDA                      |

**MINUTE NO.164/2018: PRELIMINARIES**

The meeting was called to order at thirty minutes past nine o'clock followed with a word of prayer.

**MINUTE NO. 165/ 2018: CONSIDERATION OF THE 2018/19 BUDGET ESTIMATES FOR THE MINISTRY OF ICT**

Mr.Sammy Itemere, the Principal Secretary appeared before the Committee and informed them that the allocation for the FY 2018/19 was as follows;

**The State Department has been allocated a total of KShs 3,703.7 million for FY 2018/19(Recurrent and Development)as indicated below**

Area of Expenditure	Approved Estimates FY 2017/18 KSh Million	Resource Requirements FY 2018/19 KSh Million	Estimates FY 2018/19 KSh Million
Recurrent	3,363.3	8,852.0	3,015.7
Development	380.4	8,532.0	688.0
Total	3,743.7	17,384.0	3,703.7

Resource Requirement Versus Allocations for FY 2018/19 development BUDGET(KSH Millions)

Project Name	Implementer	Resource Requirement	Estimates	Variance	Remarks
KBC Analogue to Digital TV Migration.	KBC	600	310.0	290.0	To enhance roll out of Digital TV Broadcast infrastructure in the underserved regions Kenyans
KBC Rollout of Studio Mashinani.	KBC	144	54	90	To operationalize newly established five studios and set up additional five studios to promote youth employment through music and creative arts
Modernization of KNA National Desk and Press Centre.	Department of Information	286	74	212	To modernize the operations of Kenya News Agency (KNA) to facilitate the creation of content for socio-economic development
Modernization of KIMC Film.	KIMC	197	186	11	To set up 3 state of the art studios and modernize existing analogue training facilities to facilitate skill based training
405 Bed Capacity Hostel Annex –Phase III	KIMC	90	64	26	Complete Phase III of the project in FY 2018/19
<b>Total</b>		<b>1,317</b>	<b>688</b>	<b>629</b>	

**RECURRENT BUDGET BY ECONOMIC CLASSIFICATIONS**

Budget Component	Approved Estimates FY 2017/18	Estimates FY 2018/19	Remarks
Compensation to Employees	381.7	386.0	To cater for the existing Personnel emoluments in line with the expenditure trends
Use of goods and services	1,809.2	1,718.4	Operation and maintenance
<b>CURRENT GRANT TO SAGAS</b>			
Kenya Broadcasting Corporation	574.0	435.6	To cater for public broadcasting

Kenya Institute of Mass Communications	207.4	207.5	To support development of mass media industry through training in communication and cinematic-arts.
Media Council of Kenya	131.3	129.3	Support media regulation in the country
Media Complaints Commission	10.0	10.0	To cater for operations and maintenance expenses.
Kenya Yearbook Editorial Board	128.4	59.3	Publication of Kenya Yearbook detailing Kenya's social economic, political and environmental
National Communication Secretariat	120.0	80	Offer advisory services to the Ministry
<b>Total</b>	<b>1,171.1</b>	<b>921.7</b>	
<b>Total Vote</b>	<b>3,362.0</b>	<b>3,015.7</b>	

#### KENYA VISION 2030 PROJECTS under MTP III 2018-2022

The following MTP III projects have been funded in FY 2018/19

Project Name	Approved Estimates FY 2018/19	Estimates FY 2018/19	Remarks
KBC Analogue to Digital TV Migration.	268.5	310	To facilitate rollout of Digital TV transmission infrastructure
KBC Rollout of Studio Mashinani.	11.6	54	To facilitate establishment of 5 studio in the FY 2018/19
Modernization of KNA National Desk and Press Centre.	18.3	74	To upgrade the Kenya News Agency
Modernization of KIMC Film.	28.0	186	To cater for the ongoing modernization of the TV, radio and film training studios
405 Bed Capacity Hostel Annex - Catering Unit	25.3	64	To facilitate completion of the catering unit
<b>Total</b>	<b>380.5</b>	<b>688.0</b>	

1. It was observed that due to inadequate provision in the FY 2018/19 budget estimates the following services would be affected; Weekly publication of My Gov by GAA, Public

broadcasting services by KBC Remittance of staff pension scheme for KIMC and operationalization of already established 5 Mashinani studios delaying the expected outcomes.

2. It was noted that the State Department required additional funding for job and wealth creation through investment in digital broadcasting and telecommunications and promotion of knowledge based economy through collection, packaging and dissemination of real time information to the citizens.
3. The Committee raised concerns operations and restructuring the KBC as the organization was not economically viable. It was resolved to invite the Acting Managing Director to provide a report to the Committee on the following;
  1. Status of the TV digital migration project;
  2. Restructuring of the KBC
  3. Status of the studio mashinani project;
  4. The joint venture between KBC and Multi choice Kenya Ltd.

**MINUTE NO.165/2018: CONSIDERATION OF THE PETITION**

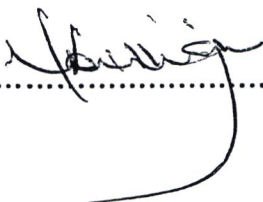
The Committee met with the Principal Secretary in the Ministry of ICT, Mr. Jerome Ochieng who made oral and written submissions on the Petition. The Principal Secretary noted that the Computer Misuse and Cyber Crimes Act, 2018 does not fully define “authorized persons” as “an officer in a law enforcement agency or a cyber-security expert designated by the Cabinet Secretary responsible for matters relating to national security by notice in the *Gazette* for the purposes of Part III of this Act” while the petition seems to seek limitation of the definition to only digital security and forensic professionals;

- (i) The Act stipulates that the process of collecting the evidence of cybercrime should be carried out by a police officer or authorized person, however that can only be done by a digital forensic expert;
- (ii) The Petition therefore proposes enactment of legislation on the profession of digital security and forensics to draw expertise from this sector to assist in cyber security issues. The Ministry was of the opinion that—
  - a) Legislation to regulate the affairs of digital security and forensic professionals may assist in the gazettelement of such professionals under the Computer Misuse and Cybercrime Act, 2018 as “authorized persons”;

- b) If enacted by the House, such Legislation should provide for self-regulation of digital security and forensics akin to other professional bodies in the country; and
- c) Any deliberations on the enactment of the proposed legislation should be undertaken with the Ministry responsible for matters relating to national security who are also charged with enforcing the provisions of the Computer Misuse and Cybercrime Act, 2018.

**MINUTE NO.166/2018: ADJOURNMENT**

There being no other business the meeting was adjourned at 12.34pm.

Signed..........Date.....12/06/2018

(Chairperson)

MINUTES OF THE 74<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
COMMUNICATION, INFORMATION AND INNOVATION HELD IN 4<sup>TH</sup> FLOOR  
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS ON TUESDAY 14<sup>TH</sup>  
AUGUST, 2018 AT 11.30AM.

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**PRESENT**

1. Hon. William Kipkemoi, M.P. -Chairperson
2. Hon. George Macharia Kariuki, M.P. -Vice- Chairperson
3. Hon. Annie Wanjiku Kibeh, M.P
4. Hon. Mwambu Mabongah, M.P.
5. Hon. Gertrude Mbeyu Mwanyanje, M.P
6. Hon. Erastus Nzioka Kivasu, M.P.
7. Hon. Marwa Kitayama Maisori, M.P
8. Hon. Innocent Momanyi Obiri, M.P
9. Hon. Godfrey Osotsi Atieno, M.P
10. Hon. Maritim Sylvanus, MP
11. Hon. Mwangaza Kawira, M.P
12. Hon. Joshua Kimilu Kivinda, M.P.

**APOLOGIES**

1. Hon. (Eng.). Mark Nyamita, M.P
2. Hon. Jonah Mburu, M.P.
3. Hon. Wamuchomba Gathoni, M.P
4. Hon. Alfah O. Miruka, M.P
5. Hon. John Kiarie Waweru, M.P
6. Hon. Anthony Oluoch, M.P.
7. Hon. Liza Chelule Chepkorir ,M.P

**National Assembly Secretariat**

- |                   |                         |
|-------------------|-------------------------|
| 1. Ella Kendi     | Clerk Assistant III     |
| 2. Ronald Walala  | Legal Counsel II        |
| 3. Deborah MUpusi | Media Relations Officer |
| 4. Mary Atieno    | Office Assistant        |



**MIN.NO/NA/CII/2018/269**

**PRELIMINARIES**

The meeting was called to order at thirty minutes past eleven o'clock followed with a word of prayer.

**MIN.NO/NA/CII/2018/270:**

**CONFIRMATION OF THE MINUTES**

The agenda was deferred

**MIN.NO/NA/CII/2018/271: ADOPTION OF THE REPORT ON PETITION**

**REGARDING ENACTMENT OF LEGISLATION TO  
GOVERN THE REGISTRATION AND LICENSING OF  
DIGITAL SECURITY AND FORENSICS  
PROFESSIONALS**

The Committee considered and adopted the draft report with the following observations and recommendation having been proposed by Hon. Godfrey Otsosi, MP and seconded by Hon. Kawira Mwangaza, MP-;

The Committee observed that—

1. Digital security and forensic professionals have a legally registered association called Kenya Cyber Security and Forensics Association (**KCSFA**) which has a total membership of three hundred registered professionals;
2. The Computer Misuse and Cybercrimes Act, 2018 does not limit the definition of an “authorized person” who may be gazetted to assist law enforcement agencies in investigations under the Act with reference to academic or professional qualifications;
3. Enacting a legislation solely covering the area of Digital Security and forensics professionals would lead to similar petitions for the enactment of legislation covering other professionals in the broader ICT sector;
4. The Leader of the Majority Party, the Hon. Aden Duale had sponsored the Information Communication Technology Practitioners Bill, 2016 (National Assembly Bills No. 18 of 2016) seeking to regulate practitioners in the broader ICT sector. The Bill however lapsed in the 11<sup>th</sup> Parliament and is yet to be reintroduced;
5. As submitted by the two Petitioners, the Kenyan economy is largely leveraged on ICT and there is need to regulate professionals in the ICT sector to prevent the ICT skills being used to assist in the commission of crimes. This can be done through an umbrella legislation instead of piecemeal legislation covering each ICT specialization.

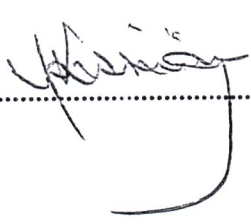
**Recommendation**

The Committee therefore recommends that—

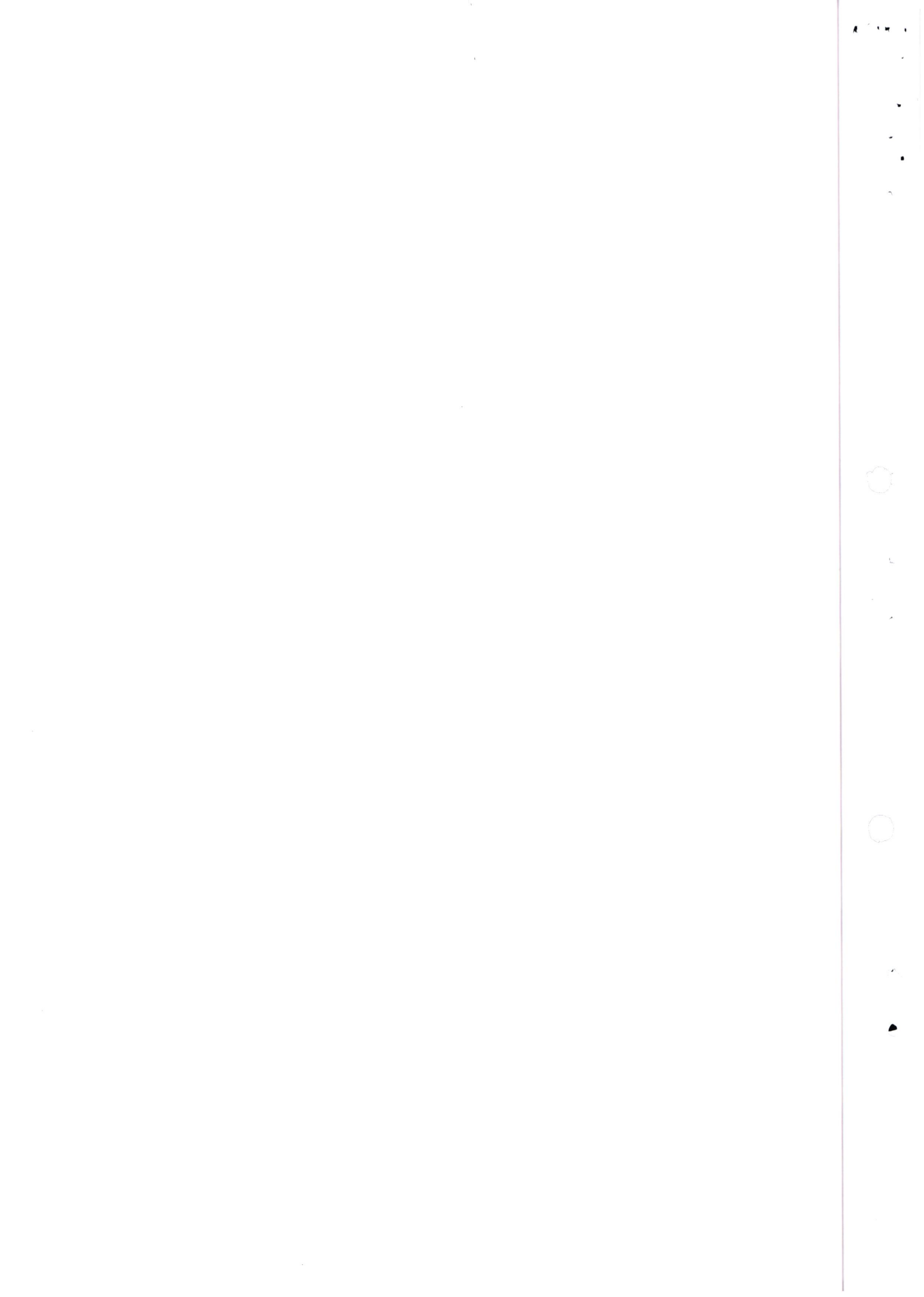
The Committee shall formulate and sponsor a Bill for enactment to regulate the practice of all professionals in the ICT sector.

MIN.NO/NA/CII/2018/272 ADJOURNMENT

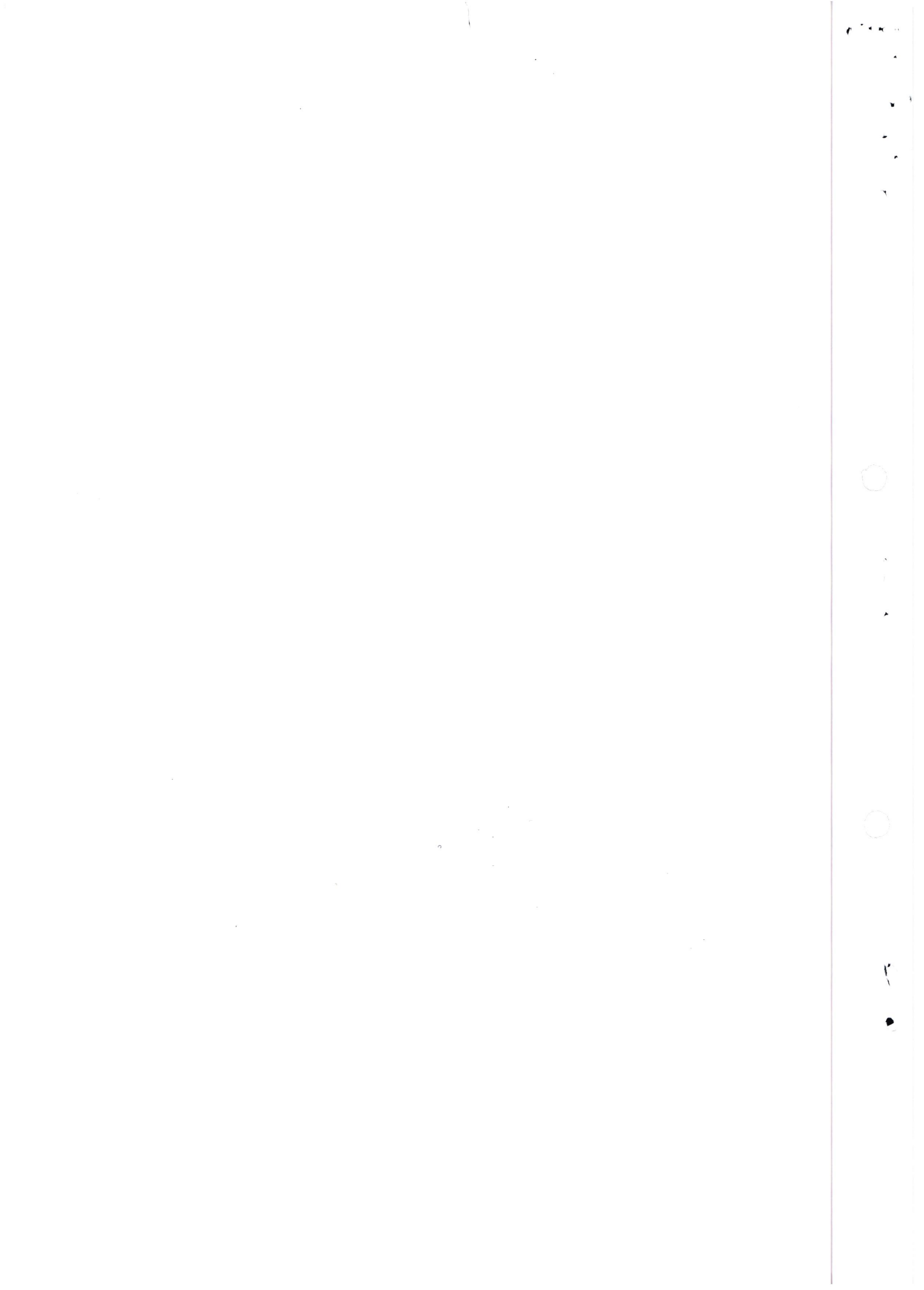
There being no other business, the meeting was adjourned at thirty minutes past twelve o'clock.

Signed..........Date.....15/08/2018.....

(Chairperson)



**Annexture 4 - Submission from the  
Ministry of ICT**





REPUBLIC OF KENYA  
MINISTRY OF INFORMATION, COMMUNICATIONS AND TECHNOLOGY  
STATE DEPARTMENT OF ICT & INNOVATION

*Office of the Principal Secretary*

Telephone: 020-4920000/4921000

Email: info@information.go.ke

When replying please quote

Our Ref: MICT/CONF/18/21

TELPOSTA TOWERS

P.O. Box 30025

NAIROBI

KENYA

5<sup>th</sup> June 2018

Clerk of the National Assembly  
Parliament Buildings  
NAIROBI

*W. Mitter*  
*12/6*

ATTN: Mr. Jeremiah W. Ndombi

RE: PETITION REGARDING ENACTMENT OF LEGISLATION TO GOVERN THE  
REGISTRATION, REGULATION AND LICENCING OF DIGITAL SECURITY  
AND FORENSIC PROFESSIONALS

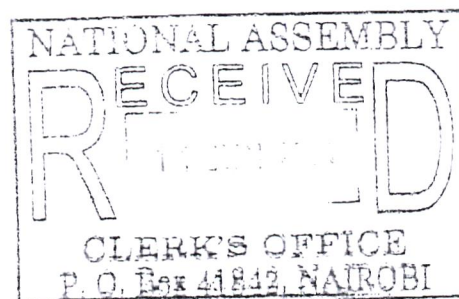
Reference is made to the matter above which anticipated the enactment of the  
Computer and Cybercrimes Bill, 2017 (the Bill).

The Bill did not interpret the meaning of authorized persons and the petition went  
into great detail to define such persons as digital security and forensic professionals.  
To be able to effectively administer the Act, the petition posited that legislation on  
the profession of digital security forensics should be enacted to draw expertise from  
this sector to assist in the governance of the Bill once enacted.

The Bill was recently passed by H.E. the president as the Computer misuse and  
Cybercrimes Act, 2018 ("the Act"). Authorized persons have been interpreted under  
the Act to mean:

*"an officer in a law enforcement agency or cyber security expert designated by the  
Cabinet secretary responsible for the matters relating to national security by notice  
in the Gazette for the purpose of Part III of the Act".*

As to the proposal for the legislation under reference, the Ministry is of the opinion  
that:



1. Legislation to regulate the affairs of digital security and forensic professionals may assist in the gazettelement of such professionals under the Act;
2. Such legislation should provide for self-regulation akin to other professional bodies within the Republic of Kenya; and,
3. In any event, deliberations on the proposed legislation for digital security and forensic professionals to assist in the administration of the Act should chiefly be undertaken with the Ministry in charge of national security who are charged with carrying out the provisions of the Act.

We thank you for your continued support.



Henry Mung'asia  
FOR: PRINCIPAL SECRETARY

CC Mr. Joe Mucheru, EGH  
Cabinet Secretary  
Ministry of Information, Communications & Technology  
State Department of ICT & Innovation  
NAIROBI