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THE NATIONAL ASSEMBLY

THE NATIONAL ASSEMBLY PAPERS LAID	
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THE TABLE: Evans Oanda	

TWELFTH PARLIAMENT – FOURTH SESSION (2020)

DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION AND
INNOVATION

REPORT ON THE CONSIDERATION OF THE KENYA INFORMATION AND
COMMUNICATION (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 20
OF 2019)

Paper laid
by Hon.
Kisang

3/11/2020

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2020



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LIST OF ABBREVIATIONS AND ACRONYMS

CODE IP	Content Development & Intellectual Property Trust
CA	Communications Authority
CEWG	Creative Economy Working Group
KICTANET	Kenya ICT Action Network
ICT	Information Communication & Technology
KICA	Kenya Information and Communications Act, CAP 411A
JTL	Jamii Telecommunication Limited
USF	Universal Service Fund

LIST OF ANNEXURES

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THE CHAIRPERSON'S FOREWORD

This report contains details of the Committee proceedings on the consideration of the Kenya Information and Communication (Amendment) Bill (National Assembly Bill No. 20 of 2019).

The Kenya Information and Communication (Amendment) (National Assembly Bill No. 20 of 2019) sponsored by Hon. Elisha Odhiambo, MP, was read a First Time on 25th September, 2019 and referred to the Departmental Committee on Communication, Information and Innovation for consideration pursuant to National Assembly Standing Order No.127.

The principal objective of the Bill is to amend the Kenya Information and Communications Act Cap. 411A to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for the separation of such other business from the telecommunication business. The Bill further seeks to make provisions for quality of service to consumers making calls by compelling licensees in the telecommunication industry to invest in infrastructure that will guarantee quality of service for consumers making calls. Further, the Bill seeks to amend Section 84J of the Act, which makes provisions for the universal Fund in order to improve on the management of the Universal Service Fund by the Communications Authority of Kenya by expanding the objectives of the Fund.

The Committee placed an advertisement in the local dailies on 18th October 2019 inviting the public to submit their views on the Bill on or before 1st November 2019. By close of the submission's deadline, the Committee had received a total of four memoranda from CODE-IP, Kictanet, Jamii Telecommunications and Communications Authority which are incorporated in this report.

The Committee further held County forum meeting with stakeholders from Nairobi County whereby they met with CODE-IP, Kictanet, Jamii Telecommunications and Communications Authority Thereafter, the Committee proceeded for a report writing retreat which provided the opportunity to consider the submissions and to further draft, consider and approve the report.

On behalf of the Departmental Committee on Communication, Information and Innovation and pursuant to the provisions of the Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Kenya Information and Communication (Amendment) Bill(National Assembly Bill No. 20 of 2019)

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

Hon. William Kisang, M.P – Chairperson
Departmental Committee on Communication, Information and Innovation

1.0 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Communications, Information and Innovation is established under Standing Order 216 whose mandate pursuant to the Standing Order 216 (5) is as follows;
 - 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.

1.2 Mandate of the Committee

2. In accordance with Second Schedule of the Standing Orders, the Committee is mandated to oversee 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.
3. In executing its mandate, the Committee oversees the following Departments;
 - i.) State Department of Broadcasting and Telecommunications
 - ii.) State Department of ICT & Innovation

1.3 Committee Membership

4. The Departmental Committee on Communication, Information and Innovation was constituted by the House in December 2017 and comprises of the following Members-

Hon. Kisang William Kipkemoi, M.P (**Chairperson**)
MP for Marakwet West Constituency
Jubilee Party

Hon. Jane Wanjiku Njiru (**Vice Chairperson**)
MP for Embu County
Jubilee Party

Hon. George Theuri, MP
M.P for Embakasi West Constituency
Jubilee Party

Hon. Alfah O. Miruka, MP
M.P for Bomachoge Chache Constituency
Kenya National Congress

Hon. Annie Wanjiku Kibeh, MP
MP for Gatundu North Constituency
Jubilee Party

Hon. Joshua Kimilu, Kivinda, MP
MP for Kaiti Constituency
Wiper Democratic Party

Hon. Marwa Kitayama Maisori, MP
MP for Kuria East Constituency
Jubilee Party

Hon. Mwambu Mabongah, MP
MP for Bumula Constituency
Independent

Hon. Maritim Sylvanus, MP
MP for Ainamoi Constituency
Jubilee Party

Hon. Mwangaza Kawira, MP
MP for Meru County
Independent

Hon. Jonah Mburu, MP

MP for Lari Constituency
Jubilee Party

Hon. Gertrude Mbeyu Mwanyanje, MP
MP for Kilifi County
Orange Democratic Party

Hon. Anthony Githiaka Kiai, MP
MP for Mukurweini Constituency
Jubilee Party

Hon. (Eng.) Mark Nyamita Ogola, MP
MP for Uiri Constituency
Orange Democratic Party

Hon. Victor Munyaka, MP
MP for Machakos Town Constituency
Jubilee Party

Hon. Erastus Nzioka Kivasu, M.P.
MP for Mbooni
New Democrats Party

Hon. Innocent Momanyi Obiri, MP
Bobasi Constituency
People's Democratic Party

Hon. Godfrey Osotsi Atieno, MP
Nominated
African National Congress

Hon. Anthony, Tom Oluoch, MP
MP for Mathare Constituency
Orange Democratic Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following secretariat: -

Ms. Hellen Kina
Clerk Assistant II/ Lead Clerk

Ms. Ella Kendi
Clerk Assistant II

Ms. Marlene Ayiro
Senior Legal Counsel

Mr. Thomas Ogwel
Fiscal Analyst II

Mr. Donald Manyala
Research Officer II

2.0 OVERVIEW OF THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL (N.A. BILL NO. 20 OF 2019)

2.2 Overview of the Bill

6. This Bill is an Act of Parliament which seeks to amend the Kenya Information and Communications Act, 1998.

7. The objects and purposes of this Bill have been highlighted as follows—

- i. To enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for the separation of such other business from the telecommunication business;
- ii. To provide a regulatory framework for person operating telecommunications and engaging in other business by providing for reporting by the Communications Authority of Kenya on such businesses;
- iii. Ensure quality service provided to consumers making calls and compel licensees in the telecommunications industry to invest in infrastructure that will guarantee quality of service; and
- iv. Improve the management of Universal Service Fund by the Communications Authority by expanding the objectives of the Fund as utilized in every financial year and enumerating the formula for distributing the Fund.

8. Clause 1 of the Bill provides for the short title of the Bill to be known as the Kenya Information Communications (Amendment) Act, 2020.

9. Clause 2 of the Bill seeks to insert a new section immediately after section 25 of the Act as follows-

25A (1) In addition to operating a telecommunication system or providing a telecommunication services as may be specified in the license granted under section 25 which section 25 of the Act provides for telecommunications licenses. The Bill provides that a persona may engage in any other business provided that such person-

- (i) Obtains the relevant licences from the respective regulators of any industry or sector ventured into;*
- (ii) Legally splits or separate the telecommunications business from such other business; ad provides separate accounts and reports in respect of all businesses carried out.*

10. Clause 3 of the Bill seeks to insert a new section immediately after section **34** of the Bill to provide that a licensee is liable to credit a consumer who initiates a call that gets cuts out after a connection by ten Kenyan shillings worth of airtime for each call drop within its network for a maximum of three call drops a day.

11. Clause 5 of the Bill seeks to amend section **84J** of the Kenya Informational Communications Act by deleting sub-section (2) and substituting therefore the following new sub-section 2

(2) The object and purpose of the Universal Service Fund shall be -

- (i) promote the availability of quality services at just, reasonable and affordable rates for all consumers;*
 - (ii) increase nationwide access to advances telecommunications services;*
 - (iii) advance the availability of such services to all consumers including those in low income and rural areas;*
 - (iv) increase access to telecommunications and advances services in schools, libraries and rural health care facilities;*
 - (v) provide equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs; and*
 - (vi) support capacity building and promote innovations in information and communications technology services.*
- 12. The Bill further seeks to introduce a new subclause that requires the Communications authority of Kenya to report to the National Assembly a report indicating-
 - (a) the total amount of money that was collected for the respective financial year;*
 - (b) the activities that the Communications Authority of Kenya undertook to implement the objectives of the Fund; and*
 - (c) the extent to which the objectives of the Fund were achieved.*
- 13. The proposed sub-clause (5) of the Bill seeks to provide for how the USF shall be utilized—
 - a) Six-percent of the Fund shall be used for securing the availability of telecommunication services to all consumers, including those in low income and rural areas;*
 - b) Twenty percent of the fund shall be used for increasing access to telecommunication services and advanced services in schools, libraries and rural health care facilities;*
 - c) Ten percent of the fund shall be used for furthering the other objectives of the fund as the Commission may determine.*
- 14. The final sub-clause of the Bill provides for the offence of failure to utilize the fund in a manner that promotes the objects of the fund.

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

15. In considering the Kenya Information Communication (Amendment) Bill, 2019, the Committee took into account the memoranda and oral submissions received from the public and its deliberations. The following constitutes the views of the Committee on the issues arising with regard to each Clause of the Bill—

Clause 2 on licensees may operate other business

16. JTL submitted that Section 25A already exist in the KICA Act 1998 (No.2 of 1998) which was introduced by Act No. 18 of 2018.They recommended renumbering of the sections in the Act to avoid duplication. They further noted that the word “and” or “or” was missing in subsection (a) and that it should be inserted as the subsections are conjunctive.
17. CA proposed deletion of the amendment as the Companies Act, 2015 allows for registered companies to carry out any legal business activity other than those they may specifically prohibit under their memoranda and articles of association. Further, the Authority as the regulator of the ICT sector encourages innovations in the industry and does not desire to cripple this by mandating the telecommunication service providers have each innovation running on different platforms by splitting business. The Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations 2010 provides a regulatory framework for the promotion of fair competition and equal treatment in the sector.
18. CODE-IP proposed that in subsection 25A(1)(5), the word “Commission” be deleted and replaced with the word “Authority” to align institutional definition with that on Kenya Information and Communications Act, 2013
19. Kictanet submitted as follows;
 - (i) agreed with subsection 25 A (a) and (b) stating that there was a framework in place for licenses in any industry and if a telco gets into that business it would need to apply for that license. Further submitted that subsection (b) should be deleted citing dictating how a company runs its strategy will add bottlenecks, increase operational costs and stifle it.
 - (ii) Deletion of subsection (2) indicating that any other related business needs an operating license as the available regulations
 - (iii)Deletion of subsection (3), that the offence being committed should be clear enough
 - (iv)Deletion of subsection (3) and (4)

Clause 3 on compensation of call drops

20. JTL was of the view that Section 83A of the Act, licensees are penalized Kshs. 500,000 up to a maximum of 0.2%of annual gross turnover for failing to comply with license conditions which include meeting quality of service standards. They were of the opinion that enacting this provision would amount to the Authority penalizing a service charter even when it complies with another regulation made under the same source of power.
21. CA proposed deletion of subsection (1) and (2) citing that the proposed amendment is already provided for under the (Kenya Information and Communication and Licensing of Service) Regulations 2010. The proposal places a significant liability on

telecommunication companies for dropped calls and the amount prescribed is too punitive and can cripple business in the industry.

22. Kictanet proposed amendment of the subsection 34A (1) to have the figure as percentage of the cost of the call and that it was not clear how the figure was arrived at. They further observed that there was a subsidiary clause by the regulator where telecommunication companies are penalized a percentage of their profit for the poor quality of service.

Clause 5

23. CA proposed deletion of section citing Kenya Information and Communications (Universal Access and Service Regulations 2010 provides a regulatory framework for the design and implementation of universal access and service provision for the administration of fund. The regulations also provide for the preparation, maintenance and reporting mechanisms of the Fund's account. The Authority also submits a report on the utilization of the fund to Ministry of information Communication and Technology which in turn tables the same to Parliament, hence no need for the Authority.

24. JTL submitted that;

- (i) It was important to have a clear definition of the overall USF objectives in order to put the Fund to the use for which it was intended and to achieve desired levels of governance and oversight.
- (ii) Subsection 2(a) was ambiguous and fails to provide for measurable objective.
- (iii) Subsection (a) the word "promote" is a rather passive word and one that carries no incentive.
- (iv) Subsection (b) was not clear whether it is intended that all libraries in the Country are covered under this provision or whether reference should be public libraries only.
- (v) Subsection (5) the utilization percentage in subsections (a) to (d) does not add up to 100%.
- (vi) new subsection 5(2) (g) be inserted to include an additional objective of the USF to build five or BTS's in at least ten underserved counties. The BTS must be available for sharing and this will lower entry barriers and increase competition, promote provision of quality services at affordable costs, increase take up of connectivity services, lower asset duplication and increase investment in innovation and emerging technologies.

25. Kictanet proposed ;

- (i) deletion of subsection 2 (a) as the objective of the Fund is very clear and should be used to fulfill those objectives and that CA has a department that can address quality control issues hence no need for legislating it.
- (ii) Amendment of subsection (b) to ensure there is proportionate allocation of the USF to expand coverage in underserved regions and ensure that there is equitable distribution of resources across the Country.
- (iii) Maintaining of subsection (c), (d) (e) and (f)
- (iv) subsection (4) should be tailored towards demanding more transparency from the Authority.
- (v) Agreed with subsection 4(b) citing that there should be more outcomes of Universal Service Advisory Council board meetings and how the UF is spent.

- (vi) Agreed with subsection (5) citing that it prescribe in the narrowest terms possible on what USF should be used to achieve to avoid abuse of the fund.
- (vii) Proposed deletion of subsection 5(d) indicating that 10% is a lot to be allocated as miscellaneous instead of expanding the uses of USF, it should be utilized first to meet its original objectives
- (viii) Agreed with subsection 6

26. CODE-IP submitted as follows; -

- (i) Subsection 5 (a), correct the typographical error (sixty percent and not six percent). Emphasis should be put on provision of supplying telecommunication services as opposed to more generic;
- (ii) Subsection 5(c); that section 5(a) already provides for sixty percent of the Fund to increase access to telecommunication to all consumers nationwide;
- (iii) Subsection 5(d) delete the word “commission” and replace with the word “Authority” to align with the definition on KICA Act, 2013;
- (iv) Proposed insertion of subsection 6 (a) to read “a person who fails to utilize the USF commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for term not exceeding two years or both”; and
- (i) Insert subsection 6(b) to read “ a person benefitting from the fund contrary to established objectives of the USF, commits an offence and shall be liable upon conviction to refund the full amount, a fine not exceeding twenty million shillings or an imprisonment for a term not exceeding four years or both”

4.0 COMMITTEE OBSERVATIONS

The Committee having analysed the Bill and representation from stakeholders observed that; -

- (a) The proposed Bill refers to the term, “Commissions” in reference to the communications Authority of Kenya the same should be amended in accordance with the provisions of the Kenya Information and Communications Act in reference to the Authority;
- (b) The Companies Act, No. 17 of 2015 allows registered companies to carry out any legal business activity other than those they may be specifically carrying out, and this is outlined in their respective Memoranda and Articles of Associations;
- (c) The Kenya Information and Communication Licensing and Quality of Service regulations ,2010 adequately provide parameters necessary for quality of service;
- (d) There was no need of prescribing actual amounts of money to be paid to consumers in terms of compensation as the figure may vary from time to time. Prescriptions of any form of consumer compensation including monetary compensation is best done in regulations which can be amended easily as opposed to legislation;
- (e) There was urgent need to audit the efficacy of all regulations promulgated under the Kenya information Communications Act, CAP 411A and propose amendments to the regulations that are not effective; and
- (f) The objectives and uses of the Universal Service Fund ought to be amended under section 84J as the fund was being under-utilized yet there was an urgent need for affirmative action to ensure that marginalised areas are able to access information technology services.

5.0 COMMITTEE RECOMMENDATIONS

In light of the submissions in the memoranda, the oral representations made before the Committee and the Committee deliberations on the Bill, the Committee made the following recommendations: -

CLAUSE 2

THAT, clause (2) of the Bill be deleted;

Justification:

The companies Act, 2015 already provides for this proposal that allows telecommunication companies to carry out other businesses and obtain the necessary licenses.

CLAUSE 3

THAT, clause (3) of the Bill be deleted;

Justification:

The Kenya Information and Communication Licensing and Quality of Service regulations 2010 have been formulated and adequately provides parameters necessary for the quality of services by providers to consumers;

CLAUSE 5

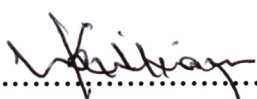
THAT, clause 5 of the Bill be further amended by-

- (i) renumbering the existing clause (5) as clause (4);
- (ii) deleting subclause (2) and substituting thereof the following new sub-clause (2)
 - “(2) The object and purpose of the fund shall be to –
 - (a) develop telecommunication infrastructure to be shared by all providers;
 - (b) increase telecommunications and advanced services to all consumers, including those in low income and rural areas;
 - (c) support capacity building and promote innovation in information and communications services technology;
 - (d) increase nationwide access to advanced telecommunication and information communication technology services; and
 - (e) provide grant funds for information and communication technology entrepreneurial startups.
- (iii) deleting the word “Commission” wherever it appears in subclause (4) and substituting therefor the words, “Authority”;
- (iv) deleting subclause (5) and substituting therefor the following new subclause (5)-

“(5) The Universal Service Fund shall be utilized by the Authority in accordance with the recommendations of the Universal Service Advisory Council as approved by the Board and in conformity with the relevant laws and regulations.

Justification:

The amendment seeks to improve the management of the Universal Service Fund by expanding the objectives to ensure that the fund is utilized properly and there is access of telecommunications services to the consumers in the low income and rural areas.

SIGNED..........DATE.....30/10/2020.....

HON. WILLIAM KISANG, MP - CHAIRPERSON

THE DEPARTMENTAL COMMITTEE ON COMMUNICATION,
INFORMATION AND INNOVATION

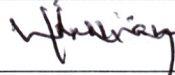

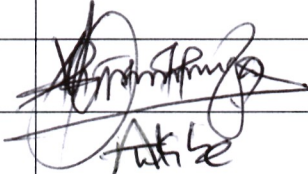

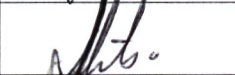
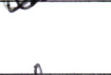

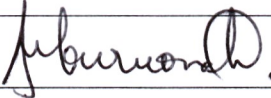
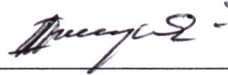
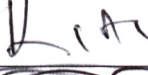


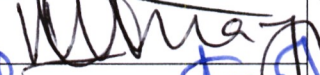

ANNEXURE 1

- ADOPTION LIST

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

**THE NATIONAL ASSEMBLY
12TH PARLIAMENT - FOURTH SESSION (2020)
REPORT ON CONSIDERATION OF THE KENYA INFORMATION AND
COMMUNICATION (AMENDMENT) BILL, 2019 (N.A BILL NO.20)**

We, the undersigned, hereby affix our signatures to this Report to affirm our approval

	HON. MEMBER	SIGNATURE
1.	Hon. Kisang, William MP (Chairperson)	
2.	Hon. Jane Wanjuki Njiru, MP (Vice Chairperson)	
3.	Hon. George Theuri, 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. Victor Munyaka, M.P.	
14.	Hon. (Eng). Mark Nyamita Ogola, M.P.	
15.	Hon. Anthony Githiaka Kiai, 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 2

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MINUTES

MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON COMMUNICATION, INFORMATION & INNOVATION HELD IN THE BOARDROOM ON 6TH FLOOR AT HILTON GARDEN INN HOTEL ON FRIDAY 30TH OCTOBER, 2020 AT 10.00AM.

PRESENT

- | | |
|--------------------------------------|---------------------------|
| 1. Hon. William Kipkemoi, M.P. | -Chairperson |
| 2. Hon. Jane Wanjuki Njiru, M.P. | -Vice- Chairperson |
| 3. Hon. Joshua Kimilu Kivinda, M.P | |
| 4. Hon. Jonah Mburu, M.P | |
| 5. Hon. Anthony Githiaka Kiai, M.P | |
| 6. Hon. Erastus Nzioka Kivasu, M.P | |
| 7. Hon. Godfrey Osotsi Atieno, M.P | |
| 8. Hon. Anthony Oluoch, M.P. | |
| 9. Hon. Alfah O. Miruka, M.P | |
| 10. Hon. Maritim Sylvanus, MP | |
| 11. Hon. Annie Wanjiku Kibeh, M.P | |
| 12. Hon. Marwa Kitayama Maisori, M.P | |
| 13. Hon. Innocent Momanyi Obiri, M.P | |
| 14. Hon. Victor Munyaka, MP | |

APOLOGIES

1. Hon. Mwambu Mabongah, M.P
2. Hon. Mwangaza Kawira, M.P
3. Hon. Gertrude Mbeyu Mwanyanje, M.P
4. Hon. George Theuri, M.P
5. Hon. (Eng.). Mark Nyamita, M.P

THE SECRETARIAT

- | | | |
|-----------------------|---|-----------------------------|
| 1. Mr. Daniel Mutunga | - | Principal Clerk Assistant I |
| 2. Ms. Ella Kendi | - | Clerk Assistant II |
| 3. Mr. Douglas Katho | - | Clerk Assistant II |
| 4. Mr. Donald Manyala | - | Research Officer II |
| 5. Mr. Thomas Ogwel | - | Fiscal Analyst II |
| 6. Mr. Ndemo Atunga | - | Searjeant At-Arms |
| 7. Mr. Eugene Luteshi | - | Audio Recording Officer |
| 8. Mr. Steve Omunzi | - | Office Assistant |

MIN.NO/NA/CII/2020/158: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten o'clock followed by a word of prayer.

MIN.NO/NA/CII/2020/159: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Hon. Joshua Kimilu, MP and seconded by Hon. Alfa Miruka, MP.

MIN.NO/NA/CII/2020/160: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The confirmation of the minutes of the previous sitting was deferred to the next sitting agenda was deferred.

MIN.NO/NA/CII/2020/161: CONSIDERATION AND ADOPTION OF THE REPORT ON CONSIDERATION OF KENYA INFORMATION AND COMMUNICATION (AMENDMENT) BILL (N.A BILL NO. 20 OF 2019)

The Committee considered the draft report and adopted it with the following observations and recommendations having been proposed by Hon. Erastus Kivasu, MP and seconded by Hon. Godfrey Osotsi,MP.

Committee Observations

The Committee having analysed the Bill and representation from stakeholders observed that; -

- (a) The proposed Bill refers to the term, “Commissions” in reference to the communications Authority of Kenya the same should be amended in accordance with the provisions of the Kenya Information and Communications Act in reference to the Authority;
- (b) The Companies Act, No. 17 of 2015 allows registered companies to carry out any legal business activity other than those they may be specifically carrying out, and this is outlined in their respective Memoranda and Articles of Associations;
- (c) The Kenya Information and Communication Licensing and Quality of Service regulations ,2010 adequately provide parameters necessary for quality of service;
- (d) There was no need of prescribing actual amounts of money to be paid to consumers in terms of compensation as the figure may vary from time to time. Prescriptions of any form of consumer compensation including monetary compensation is best done in regulations which can be amended easily as opposed to legislation;
- (e) There was urgent need to audit the efficacy of all regulations promulgated under the Kenya information Communications Act, CAP 411A and propose amendments to the regulations that are not effective; and
- (f) The objectives and uses of the Universal Service Fund ought to be amended under section 84J as the fund was being under-utilized yet there was an urgent need for affirmative action to ensure that marginalised areas are able to access information technology services

Committee Recommendations

In light of the submissions in the memoranda, the oral representations made before the Committee and the Committee deliberations on the Bill, the Committee recommended as follows: -

CLAUSE 2

THAT, clause (2) of the Bill be deleted;

Justification:

The companies Act, 2015 already provides for this proposal that allows telecommunication companies to carry out other businesses and obtain the necessary licenses.

CLAUSE 3

THAT, clause (3) of the Bill be deleted;

Justification:

The Kenya Information and Communication Licensing and Quality of Service regulations 2010 have been formulated and adequately provides parameters necessary for the quality of services by providers to consumers;

CLAUSE 5

THAT, clause 5 of the Bill be further amended by-

- (i) renumbering the existing clause (5) as clause (4);
- (ii) deleting subclause (2) and substituting thereof the following new sub-clause (2)
“(2) The object and purpose of the fund shall be to –
 - (a) develop telecommunication infrastructure to be shared by all providers;
 - (b) increase telecommunications and advanced services to all consumers, including those in low income and rural areas;
 - (c) support capacity building and promote innovation in information and communications services technology;
 - (d) increase nationwide access to advanced telecommunication and information communication technology services; and
 - (e) provide grant funds for information and communication technology entrepreneurial startups.
- (iii) deleting the word “Commission” wherever it appears in subclause (4) and substituting therefor the words, “Authority”;
- (iv) deleting subclause (5) and substituting therefor the following new subclause (5)-
“(5) The Universal Service Fund shall be utilized by the Authority in accordance with the recommendations of the Universal Service Advisory Council as approved by the Board and in conformity with the relevant laws and regulations.

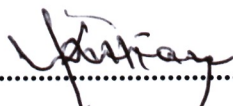
Justification:

The amendment seeks to improve the management of the Universal Service Fund by expanding the objectives to ensure that the fund is utilized properly and there is access of telecommunications services to the consumers in the low income and rural areas.

MIN.NO/NA/CII/2019/162: ADJOURNEMENT

There being no other business, the meeting was adjourned at ten minutes past one o'clock. The next meeting to be held on Friday 30th October 2020 at 2.30pm.

SIGNED.....



DATE.....

02/11/2020

HON.WILLIAM KISANG, MP

-

CHAIRPERSON

Uhuru dismisses entire KFS board

... as Likoni tragedy victims family say they will sue the agency over Kighenda, Amanda deaths

by Reuben Mwambu and Bernard Gitau
@reubenmwambu



POSTMORTEM RESULTS

● Chief Government Pathologist Dr. Johansen Oduor said postmortem conducted at Jocham Hospital on Wednesday revealed the two died of asphyxia-lack of oxygen in the body.

● Oduor said Kighenda and her daughter died around the same time. He, however, said it is difficult to tell how long they stayed alive underwater.

legal action against KFS," he said. Mbat said John Wambua, the widower, had already recorded a statement at the Likoni Police Station. Chief Government Pathologist Dr. Johansen Oduor said an autopsy conducted at

Ferry tragedy victims' family spokesman Luka Mbat addresses the press at Jocham Hospital in Mombasa, yesterday. PD/NDEGWA GATHUNGU

Jocham hospital on Wednesday revealed that the two died of asphyxia which connotes lack of oxygen in the body.

"I can confirm to you that both of them died due to lack of oxygen. So we have done due diligence and now we will hand over the case to the Police so that they can continue with their investigation," the pathologist said after the exercise that took one-and-a-half hours.

According to Oduor both, Kighenda and her daughter died around the same time. He, however, said following the long stay of the bodies in water, it is difficult to

tell how long they stayed alive underwater. "The longer they stay in water the more inaccurate it becomes. So it is difficult to tell how long they stayed before death," Oduor said.

Likoni DCI Charles Onyango said investigations onto the death of the two are still ongoing. "We have not questioned KFS managing director Bakari Gowa but we are planning to do so soon," he said.

Mbat said burial arrangements have been ongoing and the deceased are scheduled to be laid to rest at Ngaamba area of Kilome, Makeni county on Saturday.

President Uhuru Kenyatta yesterday sent home the Kenya Ferry Services (KFS) board members in the wake of the Likoni channel tragedy that claimed the lives of a mother and her daughter.

The sacking comes six days after the bodies of Mariam Kighenda, 35, and Amanda Muthu, 4, were pulled from the Indian Ocean after their vehicle slipped off MV Marambee on September 29.

"In exercise of the powers conferred by section 7 (3) of the State Corporations Act, Uhuru Kenyatta, President and Commander-in-Chief of the Defence Forces for the Republic of Kenya revokes the appointments of Dan Mwazo, Duala Omar..." part of Gazette Notice dated October 17 read.

Uhuru's move comes as the family of Kighenda said it will sue KFS over their children's deaths.

The decision follows the outcome of the autopsy which revealed that the duo died of suffocation because of drowning.

Spokesman Luka Mbat said the family would seek justice for their departed kin. "We have seen the postmortem and as the doctor has indicated, they died as a result of suffocation because of drowning. From here we will continue with our plans for burial and we are definitely going to take



Kuro chair Peterson Wachira with treasurer Mary Boniface in Nairobi, yesterday. PD/KENNA CLAUDE

Clinical officers issue 14-day strike notice over CBA

by Alvin Mwangi
@alvinmwangi

Healthcare providers under the Kenya Union of Clinical Officers (KUCO) have threatened to down tools citing frustrations in the Collective Bargaining Agreement (CBA) negotiations.

Issuing the strike notice in Nairobi yesterday, the union chair Peterson Wachira (pictured, left) accused both the County and National governments of deliberately mishandling the CBA signed in 2017.

He said negotiations started in December 2017 with a time line of up to Jan-

uary 31, 2018 but dragged to April last year when the government allegedly walked out of the talks.

"Since 2017, we have held talks with the government, but its sad that the government has failed to honour the CBA," said Wachira.

He said they had even made efforts to meet the Senate health committee but their attempts to have their issue addressed hit a snag. KUCO issued a 14-day ultimatum even as it lamented inhuman treatment allegedly meted out on interns holding diploma certificates.

BRIEFLY

Man handed 10 years for defiling daughter

A 55-year-old mason charged with defiling his 15-year-old daughter for six years was yesterday handed a 10-year sentence by a Nyeri court.

Edward Theuri was accused of committing incest on diverse dates between January 1, 2013 and February 23, 2019 at his home in Gitathinlini village in Nyeri county.

The court heard that one day his wife came back home unannounced and found Theuri in bed with their daughter.

In mitigation, the accused told the court that his daughter had framed him. He claimed when his wife walked in on the material day, the daughter had brought him food.

However, while sentencing him, chief magistrate Wendy Kagenido said his defence was an afterthought, adding that the minor's evidence was water-tight.

—by Josphat Kinyua

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – THIRD SESSION

In the Matter of consideration by the National Assembly –

1. The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 20)
2. The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 61)

SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127 requires the Departmental Committee to which a Bill is committed to facilitate public participation and take into account views and recommendations of the public when the Committee makes its report to the House.

The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 20) seeks to amend the Kenya Information and Communications Act Cap.411A to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for the separation of such other businesses from the telecommunication business.

The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 61) main objective is to amend the Kenya Information and Communications Act to provide for regulation of use of social media platforms.

The two Bills underwent First Reading as stipulated in the Standing Orders of the National Assembly and has been committed to the Departmental Committee on Communication, Information and Innovation for consideration and reporting to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee invites the public to submit representations they may have on the said Bill.

The Committee will also be undertaking public hearings in the following counties.

COUNTY	VENUE/TOWNS	DATE
1. Kirinyaga	Baricho Sub County Hall	8 th November, 2019
2. Nairobi	County Hall, Parliament Buildings	11 th November, 2019

The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received not later than Thursday, 31st November, 2019 at 5.00pm. The Bill may be accessed on the Parliamentary website – www.parliament.go.ke

MICHAEL R. SIALAI, EBS
CLERK OF THE NATIONAL ASSEMBLY

MYSTERY DEEPENS

Counties paid nothing for leased medical equipment, says CS Sicily

JULIUS OTIENO/ The controversy over Sh63 billion leased Medical Equipment Scheme yesterday deepened further after the Health ministry said that counties have not been paying for it.

Health CS Sicily Kariuki told the Senate ad-hoc committee investigating the scheme that her ministry has been paying for the programme.

The CS said the scheme is budgeted for in her ministry as a development vote advanced to the devolved units as a conditional grant.

"No county has ever paid a coin for the equipment. You can ask individual counties to disclose in their budgets the money they have paid for this project," Sicily said.

She presented the committee with a letter from the National Treasury showing that the money had been a grant.

The submission, however, infuriated the committee with some members accusing her and the ministry of misleading the country.

"In every Division of Revenue Act and County Allocation of Revenue,

money for MES has always been captured as part of equitable shareable revenue," Bungoma Senator Moses Wetangula said.

Even if it was a grant, the money must go to the county revenue accounts. Grants are never deducted at source, Wetangula said.

Sicily dismissed claims by the Council of Governors that the county chiefs were coerced to sign the Memorandum of Understanding that facilitated the supply of the equipment.

CoG chairman Wycliffe Oparanya on Tuesday told the Isiolo Senator Fatuma Dullo-led committee that the governors signed the MoU under duress.

He said that they were never consulted nor participated in the procurement for the equipment.

But Sicily said that the ministry widely consulted the counties and held several GECs with governors and GECs before the supply of the equipment.

All the contract documents were also availed to the council, she added.

She said that the decision to pro-



Health Cabinet Secretary Sicily Kariuki when she appeared before MPs in Parliament yesterday /EZEKIEL AMING'A

cur the hi-tech equipment was informed by the 2013-14 health performance report and a resolution of the Senate in June 2013.

The motion was sponsored by former Migori Senator Wilfred Machage. "The report noted that most [existing] medical equipment used in

public facilities is more than 20 years old (some double their lifespan) and therefore characterised by frequent breakdowns," she said.

The Senate, she said, had resolved that the national government establishes level 5 and 4 hospitals in each of the 47 counties.

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BRIAN OTIENO/ Kighenda has the Kenya Fer-

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REPUBLIC OF KENYA



NATIONAL ASSEMBLY
TWELFTH PARLIAMENT - THIRD SESSION

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MICHAEL R. SIALAI, EBS

REPUBLIC OF KENYA



TWELFTH PARLIAMENT
THE SENATE

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA

- The Constitution of Kenya (Amendment) Bill (Sen. Bills No. 40)
- The Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2)
- The Statute Law (Miscellaneous Amendments) (No. 2) Bill (NA Bills No. 16)
- The Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16)
- The Elections (Amendment) Bill (Sen. Bills No. 18 of 2017)
- The Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019)
- The Independent Electoral and Boundaries Commission (Amendment) Bill (Sen. Bills No. 19 of 2019)

The following Bills were read a First Time in the Senate on various dates and committed to the Senate Standing Committee on Justice, Legal Affairs and Human Rights.

- 1) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 40 of 2018);
- 2) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 2 of 2019)
- 3) the Statute Law (Miscellaneous Amendments) (No. 2) Bill (NA Bills No. 16)
- 4) the Constitution of Kenya (Amendment) Bill (Sen. Bills No. 16 of 2019)
- 5) the Elections (Amendment) Bill (Sen. Bills No. 18 of 2017);
- 6) the Alternative Dispute Resolution Bill (Sen. Bills No. 19 of 2019); and
- 7) the Independent Electoral and Boundaries Commission (Amendment) Bill (Sen. Bills No. 19 of 2019)

Pursuant to the provisions of Article 118 and standing order 140 (5) of the Constitution of Kenya, the Standing Committee on Justice, Legal Affairs and Human Rights invites interested members of the public to submit any representations that they may have on the said Bills. The representations may be made orally or by submission of written memoranda in the following manner -

1. Public Hearing for the Bills shall be held on Thursday, 24th October, 2019 at 1.00 pm at Shimba Hall, First Floor, KICC, Nairobi; or
2. Written Memoranda may be forwarded to the Clerk of the Senate/ Secretary, P.O. Box 41842-00100, Nairobi, hand-delivered to the Clerk of the Senate/ Secretary, Parliamentary Service Commission, Parliament Buildings, Nairobi or emailed to csenate@parliament.go.ke on or before Wednesday, 23rd October 2019 at 5.00 pm.

The Bills may be found on the Parliament website at <http://www.parliament.go.ke>

CLERK OF THE SENATE/ SECRETARY

ANNEXURE 3 - ADVERTISEMENT DATED 18TH OCTOBER, 2019

ANNEXURE 4 - MEMORANDA

539



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"By Hand Delivery"

13th November 2019

① Director
8/19/11

Mr. Michael Sialai, EBS
The Clerk
National Assembly of the Republic of Kenya
Parliament Buildings
NAIROBI

Dear Sir

RE: JAMII TELECOMMUNICATIONS LTD - SUBMISSIONS ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2019

Reference is made to the above subject matter.

Please find attached our written submissions on the same.

Yours faithfully

② KINA
Please deep
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20/11/19

Caroline Simba
Head of Legal & Regulatory Affairs

Enclosure://

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J.W.N
P. O. Box 41842 - 00100. NAIROBI

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P. O. Box 41842, NAIROBI

Jamii Telecommunications Limited. Jamii Towers, Matumbato Close, Off Hospital Road, Upperhill, Nairobi
P.O.Box 47419-00100 Nairobi, Kenya Tel: +254 747 585 100 Email: info@jtl.co.ke Website: www.jtl.co.ke

Thank you for staying connected with JTL

THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2019
JAMII TELECOMMUNICATIONS LIMITED WRITTEN SUBMISSIONS

Executive Summary

Jamii Telecommunications Limited is a duly licensed telecommunications operator in Kenya. We have reviewed The Kenya Information and Communications (Amendment) Bill, 2019 (“**Amendment Bill**”) and wish to make the following comments:

Amendment Bill Section	Proposed Amended KICA Section	JTL’s Views	Proposed JTL’s Amendment
Section 2	Insertion of new section 25A	There already exists a Section 25A in The Kenya Information and Communications Act, 1998 (No.2 of 1998) (the “ Act ”) which was introduced by Act No. 18 of 2018.	Please relook at the numbering of sections in the Act to avoid duplicity.
Section 2	Insertion of new section 25A	The word ‘and’ or ‘or’ is missing in subsection (a).	It is important to clarify whether subsections (a) and (b) are to be read conjunctively or disjunctively. From a reading of the section, it appears that the subsections are conjunctive hence the word “ and ” should be inserted.
Section 3	Insertion of new section 34A	Under Section 83A of the Act, licensees are penalised KES.500,000 upto a maximum of 0.2% of annual gross turnover for failing to comply with license conditions which include meeting quality of service standards.	It is our opinion that enacting this provision would amount to the Authority penalising a service provider even when it complies with another regulation made under the same source of power. The provision should therefore be deleted. However, in the event that it must remain, subsection 2 should be amended to include the words ‘user’s fault’ and read as follows: (2) Despite subsection (1), a licensee shall not be liable to compensate a consumer, where a call gets cut out due to <u>the user’s fault</u> or third party interference on the licensee’s connection limes, inevitable accident or force majeure.

			<p>We also propose insertion of a subsection 3 to take care of instances where the Authority has already levied a penalty in respect of the same matter, to read as follows:</p> <p><i>“(3) Provided that the licensee shall not be liable to compensate the affected person where the Authority has levied a penalty on the licensee in respect of the same subject matter.”</i></p>
Section 5 <i>(there appears to be a numbering error. This should be section 4 and not 5)</i>	Amendment of section 84J	It is important to have a clear definition of the overall USF objectives in order to put the fund to the use for which it was intended, and to achieve desired levels of oversight and governance.	<p>In our view subsection 2(a) is rather ambiguous and fails to provide for a measurable objective.</p> <p>Subsection (a) - the word ‘promote’ is a rather passive word and one that carries no incentive. We propose a re-drafting on the subsection to read as follows:</p> <p><i>“(a) accelerate provision of specified quality services to all consumers at just, reasonable and affordable rates.”</i></p> <p>Subsection (b) – it is not clear whether it is intended that all libraries in the country are covered under this provision or whether reference should be to public libraries only. This needs to be clarified.</p>
Section 5(5)	Amendment of section 84J	The utilization percentages in subsections 5(a) to (d) appear not to add up to 100%.	It appears that subsection (a) should provide for sixty-percent (60%) and not six-percent. Please clarify.
Insertion of a new section 5(2)(g)	Amendment of section 84J	In order to accelerate the achievement of the Big Four Agenda , an additional objective of the USF should be to build 5 or so BTS’s in at least 10 underserved counties every so often. The BTS’s so build MUST be available for sharing. This will lower entry barriers and increase competition,	<p>The additional subsection should read as follows:</p> <p><i>“(2)(g) support deployment of a sizeable number of base transceiver stations in under-served and economically non-viable areas on an open access non-discriminatory basis and at a regulated price.”</i></p>

		<p>promote provision of quality services at affordable costs, increase take up of connectivity services, lower asset duplication and increase investment in innovation and emerging technologies thus positioning Kenya as a great business destination for technology companies.</p>	
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Conclusion

The enactment by Parliament of Section 25A of The Kenya Information and Communications Act, 1998 (No.2 of 1998) (Act no. 18 of 2018) was a positive move towards spurring growth in the telecommunications industry in Kenya. Kenya has emerged as an innovation leader in technology and digitization in Africa and is considered as one of three top innovation hubs in sub-Saharan Africa. Recently President Uhuru Kenyatta launched Kenya’s Digital Economy Blueprint in order to power Kenya’s economic transformation by accelerating the adoption of digital technologies. Through digitization, the government will be able to actualize its agenda of improving the manufacturing sector, providing universal healthcare, creating affordable housing and food security in the country under the “Big Four” agenda.

We are therefore confident that the amendments proposed vide this Bill as well as the proposals contained in the National Assembly’s Departmental Committee on Communication, Information and Innovation report on the Inquiry into legislative and regulatory gaps affecting competition in the telecommunications sub-sector dated 2nd March 2019 (once implemented), will contribute to the growth of the industry; bridge the digital divide and bring government services closer to the citizenry regardless of where they are or their status in society.



COMMENTS ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2019

No.	Section	Comment	Recommendations
1.	<p>25A Licensee may operate other businesses.</p> <p>(1) In addition to operating a telecommunication system or providing a telecommunication service as may be specified in the licence granted under section 25, a person may engage in any other business provided that such person shall—</p> <ul style="list-style-type: none"> a) obtain the relevant licences from the respective regulators of any industry or sector ventured into; b) legally split or separate the telecommunication business from such other business; and c) Provide separate accounts and reports in respect of all businesses carried out. <p>(2) A person who provides any service without the relevant licence under this section commits an offence.</p>	<p>The Companies Act, 2015 allows for registered companies to carry out any legal business activity other than those they may specifically prohibit under their memoranda and articles of association. As such, they can carry out different businesses under the same company name and structure.</p> <p>Secondly, the Authority as the regulator of the ICT sector encourages innovation in the industry and does not desire to cripple this by mandating</p>	<p>We propose that this amendment be deleted.</p>

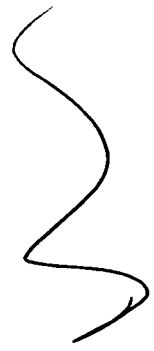
	<p>(3) A person convicted of an offence under this section shall, on conviction be liable to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding two years, or to both.</p> <p>(4) A person who, at the commencement date of this section, was operating a business that does not comply with the requirements of this section shall ensure that the business is compliant within six months of the coming into force of this section.</p> <p>(5) The Commission, shall, within six months of the coming into force of this section and thereafter annually, report to Parliament on the extent to which this section has been implemented.</p>	<p>the telecommunication service providers have each innovation running on different platforms by splitting the business. The Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations 2010 provides a regulatory framework for the promotion of fair competition and equal treatment in the sector. It also provides for protection against the abuse of market power and other anti-competitive practices within the communications sector.</p>	
2	<p>34A-Compensation for call drops</p> <p>(1) A licensee is liable to credit a consumer who initiates a call that gets cut out after a connection by Kenya Shillings ten worth of airtime for each call</p>	<p>The proposed amendment is already provided for under the (Kenya Information and Communication Licensing and Quality of Service)</p>	<p>We propose that this amendment be deleted.</p>

	<p>drop within its network for a maximum of three call drops per day.</p> <p>(2) Despite subsection (1), a licensee shall not be liable to compensate a consumer, where a call gets cut out due to third party interference on the licensee's connection lines, inevitable accident or force majeure.</p>	<p>Regulations 2010. It provides the parameters necessary for quality of service. The amendment proposal also places a significant liability on telecommunication companies for dropped calls and the amount prescribed is too punitive and can cripple businesses in the industry.</p>	
<p>3</p> <p>84J</p> <p>(2) The object and the purpose of the Fund shall be to—</p> <p>(a) promote the availability of quality services at just, reasonable and affordable rates for all consumers;</p> <p>(b) increase nationwide access to advanced telecommunications services;</p> <p>(c) advance the availability of such services to all consumers, including those in low income, and rural areas;</p> <p>(d) increase access to telecommunications and advanced services in schools, libraries and rural health care facilities;</p> <p>(e) provide equitable and non-discriminatory contributions</p>		<p>The Kenya Information and Communications (Universal Access and Service) Regulations 2010 provides a regulatory framework for the design and implementation of universal access and service provision and for the administration of the Fund. The regulations also provide for the preparation,</p>	<p>We propose that this amendment be deleted.</p>

	<p>from all providers of telecommunications services to the fund supporting universal service programs; and</p> <p>(f) Support capacity building and promote innovation in information and communications technology services.</p> <p>4) The Commission shall in each financial year submit to the National Assembly a report indicating —</p> <p>(a) the total amount of money that was collected for the respective financial year;</p> <p>(b) the activities the Commission undertook to implement the objectives of the Fund; and</p> <p>(c) The extent to which the objectives of the Fund were achieved.</p> <p>(5) The Universal Fund shall be utilized by the Commission as follows—</p> <p>(a) six-percent of the Fund shall be used for ensuring the availability of telecommunication services to all consumers, including those in low income and rural areas;</p> <p>(b) twenty percent of the Fund shall be used for increasing access to telecommunications and advanced services in schools, libraries and rural health care facilities.</p> <p>c) ten percent of the Fund shall be used for ensuring</p>	<p>maintenance and reporting mechanisms of the Fund's account.</p> <p>The Authority also submits a report on the utilization of the fund to MoICT which in turn tables the same to parliament and thus there is no need for the Authority to give a report on the same to parliament to avoid double reporting on the same matter.</p>	
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	<p>increased nationwide access to advanced telecommunications services; and</p> <p>(d) ten percent of the Fund shall be used for furthering the other objectives of the Fund as the Commission may determine.</p> <p>(6) A person who fails to utilize or utilizes the Universal Fund in a manner that does not promote the objectives of the Fund, commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or to both.</p>		
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		<p>liable upon conviction to a fine not exceeding five hundred thousand shillings, or to an imprisonment of a term not exceeding two years.</p>	
6.	<p>Section 84IE Bloggers code of Conduct.</p>	<p>(1) The Commission shall develop a bloggers code of conduct.</p>	
<p>Conclusion- So-called OTT applications and services are the most visible part of the Internet for ordinary users. The rules and liability that are created for these applications and services impact freedom of expression, net neutrality, consumer rights and innovation. Therefore, discussions and rules on OTT regulation is at its core a debate about how the Internet should be regulated. Recognizing the global nature of online platforms, the International Telecommunications Union (ITU) has stepped in to explore global multilateral framework for OTT services and applications.</p>			



MEMORANDUM ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2019 (No. 20)

Dated: 31 October, 2019

Prepared by;

Content Development & Intellectual Property (CODE-IP) Trust
Box 75474-00200 City Square,
Nairobi.

Submitted to:

The Clerk,
National Assembly of Kenya
Parliament Buildings
P. O. Box 41842-00100
NAIROBI, KENYA

For the attention of:

Departmental Committee on Communication Information and Innovation,
The National Assembly, Twelve Parliament of Kenya,
Nairobi, Kenya

Signed by:

Alex Gakuru
Executive Directors
CODE-IP Trust

REPUBLIC OF KENYA



**THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT – THIRD SESSION**

In the Matter of consideration by the National Assembly –

1. The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 20)
2. The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 61)

SUBMISSION OF MEMORANDA

Article 118(1) (b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". Standing Order 127 requires the Departmental Committee to which a Bill is committed to facilitate public participation and take into account views and recommendations of the public when the Committee makes its report to the House.

The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 20) seeks to amend the Kenya Information and Communications Act Cap. 411A to enable persons operating a telecommunication system or providing a telecommunication service to engage in any other business and provide for the separation of such other businesses from the telecommunication business.

The Kenya Information and Communications (Amendment) Bill, 2019 (National Assembly Bills No. 61) main objective is to amend the Kenya Information and Communications Act to provide for regulation of use of social media platforms.

The two Bills underwent First Reading as stipulated in the Standing Orders of the National Assembly and has been committed to the Departmental Committee on Communication, Information and Innovation for consideration and reporting to the House.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127(3), the Committee invites the public to submit representations they may have on the said Bill.

The Committee will also be undertaking public hearings in the following counties.

	COUNTY	VENUE/TOWNS	DATE
1.	Kirinyaga	Baricho Sub County Hall	8 th November, 2019
2.	Nairobi	County Hall, Parliament Buildings	11 th November, 2019

The representations may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke, to be received not later than Thursday, 31st November, 2019 at 5.00pm. The Bill may be accessed at the Parliamentary website – www.parliament.go.ke

**MICHAEL R. SIALA, EBS
CLERK OF THE NATIONAL ASSEMBLY**

MEMORANDUM ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2019 (No. 20)

CODE-IP Trust
Box 75474-00200
City Square,
Nairobi.

31 October, 2019

Mr. Michael Sialai Rotich, EBS
The Clerk,
National Assembly of Kenya
Parliament Buildings
PO Box 41842-00100
NAIROBI, KENYA

Dear Mr. Sialai,

MEMORANDUM ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2019 (No. 20)

Reference is made to above media Notice inviting members of the public to submit representations on the Kenya Information and Communications Bill, 2019 (No. 20). We thank the Departmental Committee on Communication Information and Innovation for the invitation to provide input and appreciate being consulted on the law currently under House deliberations.

The Universal Service Fund established by the Kenya Information and Communication Act, 2009 was a welcome intervention to ensure high quality telecommunications services are available for all citizens throughout the country. As the nervous system is to the body, so is communication to the economic and social development of the nation and there importance of the Fund could not be emphasized enough. Commend the establishment of the Fund considering the role of government, here ensuring communication rights for all, unlike private companies primary profit motive. The Fund was therefore meant initiate and catalyse alternative-to-profit-driven telecommunications corporations motivation for universal coverage.

As of 2017-2018 the Fund had accumulated KShs 9.1 billion¹ and among its governance questions raised include;- why had so much money accumulated into the Fund without being directed to objectives of the fund? Had the Fund turned into a revolving door for the very private companies to draw back their contribution? Why no community-benefit telecommunication services models had been developed by the Authority? Why local content development had been excluded from benefiting from the fund, especially considering its youth self-employment jobs creation potential?

In our considered opinion, the internationalization of the Fund has been sub-optimal and lacking innovative new approaches to ensure universal services. We commend Parliament for revisiting the Fund with a view to re-railing its path to its original direction and purpose. And therefore hereby submit our Memorandum of Views for your consideration.

Respectfully submitted,

Alex Gakuru
Executive Director ,
CODE-IP Trust

1 'Connecting Kenyans: Impact of Improved Network Coverage in Turkana and Marsabit Counties' The Chamwada Report broadcast recording available at <https://www.youtube.com/watch?v=NniZ1z9P28E> (viewed 31 October, 2019)

MEMORANDUM ON THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL, 2019 (No. 20)

Clause	Title	Phrased	Proposal	Rationale
25A(1)(5)	Licensee may operate other businesses	The Commission , shall, within six months of the coming into force of this section and thereafter annually, report to Parliament on the extent to which this section has been implemented.	The Authority , shall, within six months of the coming into force of this section and thereafter annually, report to Parliament on the extent to which this section has been implemented.	Align institutional definition with that on Kenya Information and Communications Act, 2013
84J(2)(f)		Support capacity building and promote innovation in information and communications technology services.	Fund public capacity building and national innovation in information and communications technology services.	Avoid “ support ” and “ promote ” legal interpretations implementation challenges and specify funding to public preventing the Authority utilising funds internally.
Insert 84J(2)(g)		Proposed new	Fund local content development grants to competitive bid applicants	To promote quality local content, national identity and youth job creation, for example, local film making, music, arts and culture by local creative industries and potentially exported thereafter.
4		“The Commission shall in each financial year submit to the National Assembly a report indicating – ”	“The Authority shall in each financial year submit to the national Assembly a report indicating – ”	Align institutional definition with that on Kenya Information and Communications Act, 2013
4(b)		“The activities the Commission undertook to implement the objectives of the Fund; and”	“The activities the Authority undertook to implement the objectives of the Fund; and”	Align institutional definition with that on Kenya Information and Communications Act, 2013

5		The Universal Fund shall be utilised by the Commission as follows –”	The Universal Service Fund shall be utilised by the Authority as follows –”	<ul style="list-style-type: none"> • Universal Service Fund established under Section 84J of the Act • Align institutional definition with that on Kenya Information and Communications Act, 2013
5(a)		“ six-percent of the Fund shall be used for ensuring the availability of telecommunication services to all consumers, including those in low income and rural areas”	“ sixty-percent of the Fund shall be used on provisioning of telecommunication services to all consumers, including those in low income and rural areas”	<ul style="list-style-type: none"> • sixty-percent (typographical error?) • Provisioning: Emphasise the <i>action of providing supplying telecommunication services</i> as opposed to more generic “<i>ensuring the availability</i>” – which could be interpreted to mean Authority staff spending 60% of the Fund travelling around the country with their mobile phones, internet devices, radios and television sets to map coverage then hold series of meetings services providers asking them when, if ever, they will cover the whole country
5(b)		“twenty percent of the Fund shall be used for increasing access to telecommunications and advanced services in schools, libraries and rural healthcare facilities”		<ul style="list-style-type: none"> • No comment,
5(c)		“ten percent of the Fund shall be used for ensuring increased nationwide access to advanced telecommunication services; and”	“ten per cent of the Fund shall be used for local content development grants, and;”	<ul style="list-style-type: none"> • Section 5(a) already provides for sixty percent of the Fund to increase access to telecommunications to all consumers, nationwide. • It would be a squander by Authority to promote obsolete, primitive, and

				<p>archaic telecommunication services rendering this 5(c) redundant.</p> <ul style="list-style-type: none"> • Create jobs to tens of thousands of local content developed youth and other self-employed local creative industries entrepreneurs. • Align institutional definition with that on Kenya Information and Communications Act, 2013 • Align institutional definition with that on Kenya Information and Communications Act, 2013 • Disaggregate offences committed by implementers from those Fund beneficiaries • a maximum fine of two million shillings and or imprisonment for a term not exceeding two years or both is no more than a slap on the wrist of dangerous criminals. • The Fund accumulates billions of Kenya shillings therefore increasing penalties for Fund abuse is an appropriate penalty • Requiring the full refund of ill-gotten gains is a just deterrent from Fund abuse
5(d)	<p>“ten percent of the Fund shall be used for furthering the other objectives of the Fund as the Commission may determine.”</p>	<p>“ten percent of the Fund shall be used for furthering the other objectives of the Fund as the Authority may determine.”</p>		
6	<p>A person who fails to utilize or utilises the Universal Fund in a manner that does not promote the objectives of the Fund, commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings of to imprisonment for a term not exceeding two years of to both.</p>	<p>6 (a) A person who fails to utilize the Universal Service Fund commits an offence and shall be liable upon conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years or both.</p> <p>6 (b) A person benefiting from the Fund contrary to established objectives of the Universal Service Fund, commits an offence and shall be liable upon conviction to refund the full amount, a fine not exceeding twenty million shillings or an imprisonment for a term not exceeding four years or both.</p>		