



INTERNAL MEMO

STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION

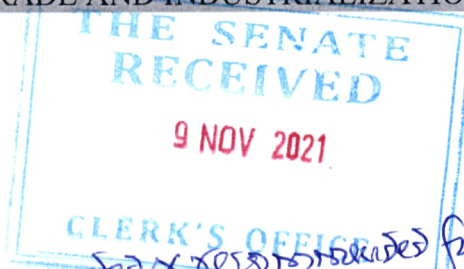
To: Speaker of the Senate

Thro': Clerk of the Senate

Thro': Deputy Clerk (EG)

Thro': Director, Committee Services

Date: 9th November, 2021



① Forwarded to Senate for consideration for approval for Tabling
For DC/ECOM
09/11/2021

② Rt Hon Speaker
You may approve for
tabling.
09/11/21

RE: REPORT ON THE START-UP BILL (SENATE BILLS NO.1 OF 2021)

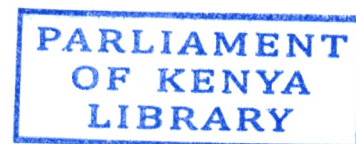
The above matter refers.

The Standing Committee on Tourism, Trade and Industrialization has considered and adopted its report on the Start-Up Bill (Senate Bills No. 1 of 2021)

The purpose of this memo is to forward for your consideration, the Report as adopted by the Committee and to seek your approval for Tabling of the said report to the Senate.

P. Mulesi

Peter Mulesi



Approved
9/11/2021

PARLIAMENT OF KENYA

RT-Hon. Speaker
You may approve for tabling.
09/11/21



THE SENATE



Approved
7/11/2021
TWELFTH PARLIAMENT – FIFTH SESSION

STANDING COMMITTEE ON TOURISM, TRADE AND
INDUSTRIALIZATION

REPORT ON THE START-UP BILL (SENATE BILLS NO.1) OF 2021

PAPERS LAID	
DATE	16/11/2021.
TABLED BY	DSML.
COMMITTEE	Trade and Industry.
CLERK AT THE TABLE	David

CLERKS CHAMBER
PARLIAMENT BUILDINGS

November, 2021

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ABBREVIATIONS AND ACRONYMS

CMA - Capital Markets Authority
GDP – Gross Domestic Product
KEPSA – Kenya Private Sector Alliance
NAILAB – Nairobi Innovation Laboratory
SAP - Start up Action

1.0 PREFACE

I wish to table the Report Standing Committee on Tourism, Trade and Industrialization on the consideration of the Start-up Bill (Senate Bills No.1) of 2021 pursuant to Standing Order 143. The Bill seeks to provide a framework to encourage growth and sustainable technological development and new entrepreneurship employment; to create a more favourable environment for innovation; to attract Kenyan talents and capital. As such the objects of the bill is to provide a framework¹:-

- (a) that fosters a culture of innovative thinking and entrepreneurship;
- (b) for the registration of start-ups;
- (c) for linkage of start-ups with private investors, financial institutions, the private sector, research institutions and such other institutions at the county, national and international level;
- (d) to facilitate investments in start-ups;
- (e) to facilitate the provision of fiscal and non-fiscal support to start-ups in Kenya;
- (f) to promote an enabling environment for the establishment, development, conduct of business and regulation of start-ups;
- (g) for the establishment of incubation facilities at the National and county levels of government;
- (h) to establish an environment that promotes the establishment of start-ups; and
- (i) for the monitoring and evaluation of the legal and regulatory framework to encourage the development of start-ups.

1.1 Committee Mandate

The Standing Committee on Tourism, Trade and Industrialization is established pursuant to Standing Order 218(3) of the Senate. As set out in the Second Schedule, the Committee is mandated to consider *all matters relating trade, industrialization, tourism, cooperatives, investment and divestiture policies*.

1.2 Committee Membership

The Standing Committee on Tourism, Trade and Industrialization comprises of the following Members-

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS, MP - Chairperson

¹The Start-up Bill, 2021

- | | |
|--|---------------------|
| 2) Sen. (Dr.) Gertrude Musuruve Inimah, MP | - Vice- Chairperson |
| 3) Sen. (CPA) Farhiya Haji, MP | - Member |
| 4) Sen. (Prof.) Kithure Kindiki, EGH, MP | - Member |
| 5) Sen. (Dr.) Agnes Zani, CBS MP | - Member |
| 6) Sen. Wario Golich Juma, MP | - Member |
| 7) Sen. Mercy Chebeni, MP | - Member |
| 8) Sen. Mohamed Faki, MP | - Member |
| 9) Sen. Philip Mpaayei, MP | - Member |

1.3 Consideration of the Start-up Bill (Senate Bills No.1) of 2021

Mr. Speaker, Sir,

The Start-up Bill (Senate Bills No.1) of 2021 was read for the first time on 11th May 2021 and thereafter committed to the Standing Committee on Tourism, Trade and Industrialization pursuant to Article 118 of the Constitution and Standing Order No. 143. The Committee held three (3) sittings to consider the bill, one of which was a public hearing forum on the 22nd September 2021. The following institutions presented their views and submissions; Ministry of Industrialization, Trade and Enterprise Development, Nairobi Incubation Laboratory (NAILAB), Capital Markets Authority (CMA), Lawyers Hub and Kenya Private Sector Association (KEPSA). The Committee also held a session with the proposer of the Bill, Senator Sakaja, EBS in a bid to find clarity on the substance of the proposed legislation. The emerging themes arising from the deliberations are included in the report. The issues also formed a guide to the drafting of the amendments on Bill. The recommendations arising from the deliberations are included in the report.

1.4 Public Memoranda and Views

Mr. Speaker, Sir,

On 8th May, 2021, the Committee placed advertisements on the local dailies (Daily Nation newspapers) calling for views and submissions from the general public on the Bill. The Committee received submissions from the following stakeholders: Lawyers Hub, Nairobi Incubation Laboratory (NAILAB), Capital Markets Authority (CMA) and Kenya Private Sector Alliance (KEPSA)

1.5 Committee Observations and Recommendations

Mr. Speaker, Sir,

The Committee therefore observed that the bill may proceed for the committee stage with amendments on the definition to provide clarity on the object of the Bill.

1.6 Committee's Recommendations

Following the Committee interactions with the Start-up Bill (Senate Bills No.1) of 2021 the Committee proposes the following two amendments-

CLAUSE 8

THAT clause 8 of the Bill be amended in sub clause (1)(b) by-

- (a) deleting the word “seven” appearing immediately after the words “not more than” in subparagraph (i) and substituting therefor the word “three”; and
- (b) deleting the word “ten” appearing immediately after the words “be up to” appearing in subparagraph (ii) and substituting therefor the word “five”.

CLAUSE 2

THAT clause 2 of the Bill be amended-

- (a) by deleting the definition of the word “startup incubator”;
- (b) in the definition of the word “startup” by deleting the word “an” appearing immediately after the words “startup includes” and substituting therefor the words “a technology-based”; and
- (c) by inserting the following new definition immediately after the definition of the word “startup”-

"start-up incubator" means a company, partnership, non-governmental organization or limited liability partnership whose principal object is the support of the birth and development of start-ups, innovation and activities related to the transfer of technology, research, and development and innovation processes through the offer of dedicated physical spaces and services advice.

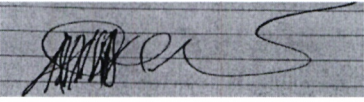
1.7 Acknowledgement

Mr. Speaker Sir,

The Committee wishes to acknowledge the time and considerable effort made by all representatives of the various institutions who appeared before the Committee. Further, the Committee appreciates the stakeholders for providing information through elaborate submissions. I also wish to express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter. Further, the Committee is indebted to the Office of the Speaker and the Clerk of the Senate for facilitating all the actions and interactions that led to the production of this report.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 143 to table the report of the Standing Committee on Tourism, Trade and Industrialization on the Start-up Bill (Senate Bills No.1) of 2021

Signed  Date 8th November, 2021

SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP

**(CHAIRPERSON, STANDING COMMITTEE ON TOURISM, TRADE AND
INDUSTRIALIZATION)**

2.0 BACKGROUND

2.1 Key Highlights of the Startup Bill, 2021

The Start-up Bill (Senate Bills No.1) of 2021 was published in the Kenya Gazette Supplement No. 27 of 8th March 2021. The Bill was read for the first time on the 25th May 2021 and subsequently committed to the Committee on Trade, Tourism and Industrialization. The Bill is for an act of Parliament to provide a legal framework to encourage growth and sustainable technological development and new entrepreneurship employment. Further, to create a more favourable environment for innovation so as to attract Kenyan talent and capital.

The Bill provides for the following key areas²:-

- (i) *Part II* of the bills seeks to provide for the role of the national and county government in so far as the establishment of the incubation Programmes is concerned.
- (ii) *Part III* provides for the establishment of an agency responsible for registration of start-ups and admission into any incubation programme among other functions of the registrar.
- (iii) *Part IV* outlines the eligibility for admission into the incubation programme hence criteria for certification.

3.0 INTRODUCTION

3.1 Start-ups: Unpacking and Contextualizing Start-ups and Start-ups Ecosystems

Steve Blank defines startups as an organization formed to search for a repeatable and scalable business model³, and based on technology and innovation⁴. The latter setting apart startups from other newly established businesses. Startups create new jobs and tax income as well as develop new services and solutions and as such fuel the renewal of more established businesses and industries⁵. However, most new startups fail and only very few are able to scale up and grow. Therefore, for each successful startup there will be several other startups. The definition almost highlights the nature of 'startup' as a certain phase in the lifecycle of a company.

To further underscore how startups can be set apart from other businesses, they need an idea and a clear vision for its implementation. This therefore calls for specific stages and requirements like building a team; defining concepts for the new products and services; setting up a viable strategy and committing to its implementation. Further, they also require the validation of products and services through initial customers and resources for further

² The Street Start-Up Bill, 2021

³ <https://steveblank.com>.

⁴ Lovely Matharu and Dr. Sunil Kumar, 'Different Laws related to Start-Up. Journal of Critical Reviews. Vol7, Issue 16, 2020

⁵ Kane, T. (2010)

development. Startups subsequently need to scale up by attracting new customers and getting into broader markets hence against startups from all over the world. For start up to succeed in global competition, they require the right people and talent and efficient collaboration; funding and growth financing; access to networks and strong business competence and potential customers and end-users.

Currently, Startup ecosystem is being used in the context of innovation and entrepreneurship to refer to a specific geographic area or 'hotspot' (e.g. Silicon Valley) with high density of startup companies and entrepreneurs. The Global Startup Ecosystem Ranking report⁶, defines startup ecosystems as 'a metropolitan city or geographic area with a shared pool of resources'. Further startup ecosystems rely on actors like startups themselves; funders and investors; incubators; accelerators or other public or private service providers; processes, events; and institutions like meetups and hackathons.

3.2 Startups Acts: Comparative Studies

Startup Acts are designed to make it easier for startups to operate. Startup Acts include an amalgamation of policies intended to increase the incentives for young people to start a venture, investors to put their money into promising companies, and other ecosystem actors to lend their support where it's needed. For Tunisia and Senegal, these policies are part of broader government strategies to position their countries as innovation hubs by leveraging an emerging tech scene to improve economic development.

The startup ecosystem emerged globally in the United States, in what is now referred to as the 'Silicon valley' consisting of mainly information technology companies like Google, Apple, HP, Oracle, Cisco, Facebook, Twitter among others. It also deemed to comprise the highest number of startups in the world⁷.

3.2.1 India

In 2016, India launched the Startup Action Plan, (SAP) 'the Startup India Initiative' whose objective was to address aspects of startups ecosystem and as a support framework for innovative entrepreneurs. India's motivation behind the action plan was to fast-track the spread of the startup movement from digital/technology sector to other sectors including social, manufacturing, agriculture, education and healthcare. Further, to move their concentration, from cities (Tier 1 cities like Mumbai, Delhi) to (Tier 2 and 3), semi urban and rural areas.

To this end, SAP contains three major areas for empowering potential start-ups: (i) handholding and simplification; (ii) funding support and incentives; and (iii) incubation and industry-academia partnership (Start-up India 2016). In terms of India's focus on 'simplification and handholding' the following strategies apply-

- (i) Relaxing the compliance regime
- (ii) Providing official online networking portals at www.startupindia.gov.in
- (iii) Fast tracking patent examination at lower costs including legal support
- (iv) Relaxed norms of public procurement for startups
- (iv) Faster exit for start ups

⁶most comprehensive international benchmark analysis of different startup ecosystems,

⁷ Ester, 2017

Funding support initiatives through funds of funds for startups include-

- (i) Formulation of Credit Guarantee Scheme for Startups.
- (ii) Offering Tax exemptions including tax exemption on capital gains, tax exemption/holiday for startups for three years, tax exemption on investments above fair market value etc.

To facilitate industry –academia partnership and incubation, SAP provides for the following-

- (i) Organizing startup fest for showcasing innovation and providing a collaboration platform
- (ii) Launch of the Innovation Mission
- (iii) Harnessing private sector expertise for incubator setup
- (iv) Building innovation centers at national institutes
- (iv) Setting up research parks
- (vi) Annual incubator and grand challenge.

3.2.2 Tunisia Start Up Act

The basis of the Tunisian Start-up Act was the following elements. **THAT:-**

- (a) The Tunisian entrepreneurship ecosystem is dominated by public sector entities.
- (b) The hierarchical structure of the business sector in Tunisia inhibits the entry of young entrepreneurs who are not yet part of established business networks but who are usually willing to bring innovative, often unconventional ideas into the market.
- (c) The business activity is highly concentrated in Tunis and a few other coastal cities, hence making it difficult to create jobs;
- (d) The high rate of youth unemployment, especially in the country's southern and interior regions where the digital sectors have started more slowly.
- (e) The low co-ordination of funding programs making some companies more dependent on outside funding than on maintaining a competitive edge.

The Start-up Act is therefore part of the wider strategy called Digital Tunisia 2020, promoted by the Tunisian Government. It identifies a legal framework that includes 20 measures in favour of investors and start-ups. These measures are structured around five main themes-

- (a) define and label the start-ups;
- (b) support entrepreneurship;
- (c) create an environment that makes it easier the establishment, development, and liquidation of companies;
- (d) access to funding;
- (e) access to international markets.

Key elements of Tunisia's Start-up Act include-

- (a) State salaries for up to three founders per company during the first year of operations;
- (b) Generous tax breaks, and a one-year leave period for both public and private sector employees to start a company with the right to return to their old jobs;
- (c) start-up grants;
- (d) Fast-track licenses to obtain start-up registration documents and
- (e) Increased state support for covering patent licenses.

The same applies to the Senegal version which aims to help position the country as the Francophone leader in tech and entrepreneurship on the continent. Senegal policies includes three tax-free operational years for start-ups, training for youth and female entrepreneurs, and a startup registration platform easily accessible on a government website.

3.2.3 Ghana Start-up Act

For the case of Ghana, the Start-up Act is a legal framework that defines what a start-up is and creates specific incentives that would encourage the creation and development of start-ups in Ghana to drive economic development. The Ghana start-ups Act provides the opportunity to create a start-ups-friendly ecosystem that would accelerate the digital transformation agenda. The reasons for the start-up-

(a) Definition and labelling of start-ups.

The Ghana start-ups Act clearly defines what a start-up is and what it is not hence providing clarity for policymakers, development partners, corporate entities, and other stakeholders who design specific programs to support the growth of start-ups in Ghana. This clear definition ensures quality data is collected for program and incentive design. A succinct definition of start-ups would also remove all ambiguity and territorial clashes among government agencies related to entrepreneurship and private sector support in Ghana.

(b) Clear and predictable framework

A clear and predictable framework for the start-ups ecosystem. The Ghana start-ups Act was expected to harmonize all the incentive structures aimed at supporting venture building scattered in various policies, programs implemented by different ministries. This ensures the alignment, coherence, and continuity needed to catalyse the entrepreneurship ecosystem. A consistent and predictable legislative framework attracts investors and significantly improves the business environment in a country. This makes start-ups acts preferable to the best entrepreneurship policy or program.

(c) Improved ease of doing “start-ups” in Ghana.

The start-ups Act prioritizes the unique challenges start-ups face at distinct phases of their growth and suggests specific recommendations to mitigate them. For instance, the act proposes a tiered tax obligation on start-ups based on their growth stage. It also recommends capacity and financial support for start-ups to protect their intellectual property, access market, and bankruptcy support, among others. Some of the success stories of tech start-ups in Ghana include *mPharma*, *ZeePay*, *AgroCenter*, *Dext* technology among many others. The process for drafting the Ghana start-ups act is still underway.

3.3 Startups: Policies and Instruments

Startup ecosystems rely on consistent policy instruments for successful implementation and scale up. The following eight (8) policy domains have been identified as key: Government and regulation; Research, development and innovation system; Infrastructure and attractively; Markets & customers; Financing; Entrepreneurial skills and education; Culture, networks and community and Business support. In terms of government and regulation, general policies linked to startup up law may include: regulation related to starting a business, exits,

bankruptcies, taxation, corporate and entrepreneurial laws, and immigration policies labour policies among others.

Start-ups require specific support instruments and programs and as such any start-ups policy may need to articulate the legal frameworks underpinning such instruments. The main ones include the following-

No.	Policies and Instruments	Definition	Role of Government	Prerequisites for law and regulation
1	Pre-incubators/ start-ups launch programmes	Support programmes for individuals or teams with early stage business ideas with an objective to inspire entrepreneurs to build motivation, confidence and skills needed to transform an idea into a new business. They prepare business ideas and future entrepreneurs to be ready for incubation or an accelerator programme.	Located in universities hence calls for public funding	No laws or regulations needed for pre-incubators to function
2.	Incubators	Support programmes for start-ups with an existing business idea, product or a concept. Focus on developing the business idea further. Services include business development, networking and basic infrastructure.	Majority of incubators and non-profit. Government can hold by providing funding schemes, grants	No laws or regulations needed for incubators to function. Public funding should not be curtailed by laws and policies.
3.	Accelerators	They are special focus oriented, targeting start-ups with skilled and established teams, a solid business idea and a strong (international) growth expectation. They provide programmed events, intensive mentoring and financial support with an objective to help start-ups to accelerate their growth and scale their business idea within the timeframe of the programme.	Government can engage through PPPs. However, once private accelerators markets are in place government should avoid disruptions with publicly funded accelerators.	Never addresses through laws and regulations. Government should not ensure not to prohibit this through regulation.
4.	Co-working Spaces	These are shared office spaces meant for individual entrepreneurs, teams and start-ups. They provide companies in their early phases an affordable and flexible access to office spaces, internet access, postal services. They the possibility to network, benchmark and share ideas with other entrepreneurs and hence peer support.	Public sector involvement occurs through universities or cities.	No additional laws and regulations are needed. However, if regulations on rental activities exists, this applies.
5.	Hackathons, Meetups and	They comprise of occasions for start-ups to meet other ventures,	Minimal government involvement except	These do not differ from other events hence no

other Startup events	entrepreneurs and other start-ups-minded people. Hackathons are the most resource intensive compared to casual meet-ups.	provide for a start-up culture to thrive	additional laws or regulations are needed.
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Source: Mekong Business Initiative, 'International Best Practices on supporting startups Ecosystems'⁸

3.0 CONSIDERATION OF THE BILL

3.1 Consideration of the Bill (Second Reading)

The Start-up Bill (Senate Bills No.1) of 2021 was considered for the second reading on the 22nd July 2021, 27th July and the 29th July 2021. The following were some of the emerging issues-

- (a) The role of start-ups ecosystems, their registration, incubation and their contribution to the Gross Domestic product (GDP);
- (b) Recognising the role of County governments in growing start-ups;
- (c) Harnessing the contributions and mandate of the Kenya National Innovation Agency in the startup ecosystem;
- (d) The role of government in growing startups which is to create an environment that enables their growth (through introduction of incentives including tax holidays as opposed to funding; and
- (e) The role of partnerships in innovation.

3.2 Committee Meeting with Stakeholders

The Committee held several sittings to consider the bill. Prior to the stakeholder's engagement, the Committee called on the public to make submissions on the bill through the local daily newspaper dated 8th May 2021. The following institutions presented their views and submissions; the Ministry of Industrialization, Trade and Enterprise Development, Nairobi Incubation Laboratory (NAILAB), Capital Markets Authority (CMA), Lawyers Hub and Kenya Private Sector Association (KEPSA).

3.3 Emerging Thematic Issues

The following are the key themes arising from the presentations and consequent submissions from the various stakeholders. The issues were considered by the Committee and as such form the basis of the amendments.

1. There exists a Micro and Small and Medium Enterprise Act, 2012 which speaks to the regulation of micro and small or any other newly established business enterprises in Kenya including startups. However, this is specifically on standards, product development, intellectual property, registration, incubation services and financing among other functions. This calls for the drafters to consider the various policies and

⁸at www.4front.fi retrieved on 7th September 2021

legislations to avoid overlaps with existing policy, legislative and institutional interventions,

2. The bill ought to bring out the specific segment of innovation start-ups that seem to have unique needs from the usual businesses and are mainly based on digital or technological platforms. The Ministry further suggested an amendment on the objective of the bill to read: *“To provide a framework to encourage growth and sustainable technological development of innovative entrepreneurship; job and wealth creation; and conducive business environment for innovation; attract talent and capital; and for connected purposes”*.
3. The bill must provide clarity on the definition of startup which according to the Ministry are “ventures that are founded around an idea or a problem with a potential for significant business opportunity and impact. The aim being innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.
4. The Startup Bill 2021’s focus is on those involved in technological development/innovations while on the other hand, there exist a wide range of other startups engaged in other sectors. The Ministry therefore proposes the establishment of an integrated framework for awareness, identification and profiling of startups across the country and for the establishment of a structured approach for technology transfer, commercialization of innovations and more engagement with the private sector through partnerships and incentives.
5. The key focus of the startup bill is to regulate organizations formed to search for a repeatable and scalable business model and based on technology and innovation hence setting apart startups from other newly established businesses. Additionally, concerns were raised as the bill seems to be too focused on incubation and not startups.
6. The startup bill should not introduce additional hurdles but should instead facilitate and provide an enabling environment for establishment of the ventures. Among the issues of concern are double compliance and membership of trustees among others.
7. The startup bill ought to focus on addressing fiscal and non-fiscal issues including introducing incentives as opposed to creating offices. According to the Ministry, the bill ought to consider incentives that are relevant to the enterprises at the startup and accelerator stages. It was noted that the incentives expected in the bill will be provided for at the point of consideration by the National Assembly to avoid the ‘money bill’ tag.
8. Enforcing the intellectual property rights in the context of start-up is paramount as intellectual property laws exist.

4.0 COMMITTEE’S OBSERVATIONS AND RECOMMENDATIONS

4.1 Committee Observations

The Committee therefore observed that the bill may proceed for the committee stage with amendments on the definition to provide clarity on the object of the Bill

4.2 Committee’s Recommendations

Following the Committee interactions with the Start-up Bill (Senate Bills No.1) of 2021 the Committee proposes the following two amendments-

CLAUSE 8

THAT clause 8 of the Bill be amended in subclause (1)(b) by-

- (c) deleting the word “seven” appearing immediately after the words “not more than” in subparagraph (i) and substituting therefore the word “three”; and
- (d) deleting the word “ten” appearing immediately after the words “be up to” appearing in subparagraph (ii) and substituting therefor the word “five”.

CLAUSE 2

THAT clause 2 of the Bill be amended-

- (d) by deleting the definition of the word “startup incubator”;
- (e) in the definition of the word “startup” by deleting the word “an” appearing immediately after the words “startup includes” and substituting therefor the words “a technology-based”; and
- (f) by inserting the following new definition immediately after the definition of the word “startup”-

"start-up incubator" means a company, partnership, non-governmental organization or limited liability partnership whose principal object is the support of the birth and development of start-ups, innovation and activities related to the transfer of technology, research, and development and innovation processes through the offer of dedicated physical spaces and services advice.

MINUTES OF THE 119TH SITTING OF THE STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION HELD ON SATURDAY 6TH NOVEMBER, 2021 AT 11. 00.AM AT THE MASHUA HALL, SERENA BEACH HOTEL, MOMBASA ON THE ZOOM ONLINE PLATFORM

PRESENT

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gertrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP
- 5) Sen. Mercy Chebeni, MP

ABSENT WITH APOLOGY

- 1) Sen. (Prof.) Kithure Kindiki, MP
- 2) Sen. Philip Mpaayei, MP
- 3) Sen. Agnes Zani, MP
- 4) Sen. Wario Golich, MP

SECRETARIAT

- 1) Mr. Peter Mulesi- Clerk Assistant
- 2) Ms. Lucy Radoli- Legal Counsel
- 3) Ms. Millicent Ratemo- Audio Officer
- 4) Ms. Njeri Manga- Media Relations Officer
- 5) Ms. Jackie Mali- Office Secretary
- 6) Mr. Mariko Roche- Office Assistant

MIN. NO. 435/2021: : PRELIMINARIES

The Chairperson called the meeting to order at 09.45 am and there followed a word of Prayer.

MIN. NO. 436/2021 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. (Dr.) Gertrude Musuruve, MP and seconded by Sen. CPA. Farhiya Haji, MP as follows-

1. Preliminaries
 - i. *Prayer*
2. Adoption of Agenda
3. Confirmation of Previous Minutes
4. Consideration and Adoption of the Draft Report on the Start-Up Bill (Senate bills No.1 of 2021)
5. Adjournment and Date of Next Meeting

MIN. NO. 437/2021: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the 118th Sitting of the Standing Committee on Tourism, Trade and Industrialization that was held on Thursday, 4th November, 2021 at 11.00 am were confirmed as true reflection of the deliberations after having been proposed by Sen. (Dr.)

Gertrude Musuruve, MP and seconded by Sen. Mohamed Faki, MP. The adoption was chaired by Sen. Farhiya Haji, MP.

There were no matters arising.

**MIN. NO. 438/2021: CONSIDERATION ADOPTION OF OF THE
COMMITTEE REPORT ON THE START-UP BILL
(SENATE BILLS. NO.1 OF 2021)**

The Chairperson invited the secretariat to briefly take the committee through the draft report and observed that most of the issues had been agreed upon. Ms. Lucy Radoli, Legal Counsel briefed the Committee on the Draft Committee Report on the Start-Up Bill (Senate Bills No.1 of 2021) as follows-

Start-ups: Unpacking and Contextualizing Start-ups and Startups Ecosystems

Steve Blank defines startups as an organization formed to search for a repeatable and scalable business model, and based on technology and innovation. The latter setting apart startups from other newly established businesses. Startups create new jobs and tax income as well as develop new services and solutions and as such fuel the renewal of more established businesses and industries. However, most new startups fail and only very few are able to scale up and grow. Therefore, for each successful startup there will be several other startups. The definition almost highlights the nature of 'startup' as a certain phase in the lifecycle of a company.

To further underscore how startups can be set apart from other businesses, they need an idea and a clear vision for its implementation. This therefore calls for specific stages and requirements like building a team; defining concepts for the new products and services; setting up a viable strategy and committing to its implementation. Further, they also require the validation of products and services through initial customers and resources for further development. Startups subsequently need to scale up by attracting new customers and getting into broader markets hence against startups from all over the world. For startup to succeed in global competition, they require the right people and talent and efficient collaboration; funding and growth financing; access to networks and strong business competence and potential customers and end-users.

Currently, Startup ecosystem is being used in the context of innovation and entrepreneurship to refer to a specific geographic area or 'hotspot' (e.g. Silicon Valley) with high density of startup companies and entrepreneurs. The Global Startup Ecosystem Ranking report, defines startup ecosystems as 'a metropolitan city or geographic area with a shared pool of resources'. Further startup ecosystems rely on actors like startups themselves; funders and investors; incubators; accelerators or other public or private service providers; processes, events; and institutions like meet ups and hackathons.

Startup Acts: Comparative Studies

Startup Acts are designed to make it easier for startups to operate. Startup Acts include an amalgamation of policies intended to increase the incentives for young people to start a venture, investors to put their money into promising companies, and other ecosystem actors to lend their support where it's needed. For Tunisia and Senegal, these policies are part of

broader government strategies to position their countries as innovation hubs by leveraging an emerging tech scene to improve economic development.

The startup ecosystem emerged globally in the United States, in what is now referred to as the 'Silicon valley' consisting of mainly information technology companies like Google, Apple, HP, Oracle, Cisco, Facebook, Twitter among others. It also deemed to comprise the highest number of startups in the world.

a) India

In 2016, India launched the Startup Action Plan, SAP 'the Startup India Initiative' whose objective was to address aspects of startups ecosystem and as a support framework for innovative entrepreneurs. India's motivation behind the action plan was to fastrack the spread of the startup movement from digital/technology sector to other sectors including social, manufacturing, agriculture, education and healthcare. Further, to move their concentration, from cities (Tier 1 cities like Mumbai, Delhi) to (Tier 2 and 3), semi urban and rural areas.

To this end, SAP contains three major areas for empowering potential start-ups: (i) handholding and simplification; (ii) funding support and incentives; and (iii) incubation and industry-academia partnership (Start-up India 2016). In terms of India's focus on 'simplification and handholding' the following strategies apply:-

- (i) Relaxing the compliance regime
- (ii) Providing official online networking portals at www.startupindia.gov.in
- (iii) Fast tracking patent examination at lower costs including legal support
- (iv) Relaxed norms of public procurement for startups
- (v) Faster exit for start ups

Funding support initiatives through funds of funds for startups include:-

- (i) Formulation of Credit Guarantee Scheme for Startups
- (ii) Offering Tax exemptions including tax exemption on capital gains, tax exemption/holiday for startups for three years, tax exemption on investments above fair market value etc.

To facilitate industry -academia partnership and incubation, SAP provides for the following:-

- (i) Organizing startup fest for showcasing innovation and providing a collaboration platform
- (ii) Launch of the Innovation Mission
- (iii) Harnessing private sector expertise for incubator setup
 - ✓ Building innovation centers at national institutes
 - ✓ Setting up research parks
 - ✓ Annual incubator and grand challenge.

b) Tunisia Start Up Act

The basis of the Tunisian Start-up Act was the following elements. THAT:-

- i. The Tunisian entrepreneurship ecosystem is dominated by public sector entities.

- ii. The hierarchical structure of the business sector in Tunisia inhibits the entry of young entrepreneurs who are not yet part of established business networks but who are usually willing to bring innovative, often unconventional ideas into the market.
- iii. The business activity is highly concentrated in Tunis and a few other coastal cities, hence making it difficult to create jobs;
- iv. The high rate of youth unemployment, especially in the country's southern and interior regions where the digital sectors have started more slowly.
- v. The low co-ordination of funding programs making some companies more dependent on outside funding than on maintaining a competitive edge.

The Start-up Act is therefore part of the wider strategy called Digital Tunisia 2020, promoted by the Tunisian Government. It identifies a legal framework that includes 20 measures in favour of investors and start-ups. These measures are structured around five main themes:-

- i. define and label the start-ups;
- ii. support entrepreneurship;
- iii. create an environment that makes it easier the establishment, development, and liquidation of companies;
- iv. access to funding;
- v. access to international markets.

Key elements of Tunisia's Start-up Act include:-

- i. State salaries for up to three founders per company during the first year of operations;
- ii. Generous tax breaks, and a one-year leave period for both public and private sector employees to start a company with the right to return to their old jobs;
- iii. start-up grants;
- iv. Fast-track licenses to obtain startup registration documents and
- v. Increased state support for covering patent licenses.

The same applies to the Senegal version which aims to help position the country as the Francophone leader in tech and entrepreneurship on the continent. Senegal policies includes three tax-free operational years for start-ups, training for youth and female entrepreneurs, and a startup registration platform easily accessible on a government website.

c) Ghana Start-up Act

For the case of Ghana, the Start-up Act is a legal framework that defines what a start-up is and creates specific incentives that would encourage the creation and development of start-ups in Ghana to drive economic development. The Ghana start-ups Act provides the opportunity to create a start-ups-friendly ecosystem that would accelerate the digital transformation agenda. The reasons for the start-up:-

- i. Definition and labelling of start-ups.

The Ghana start-ups Act clearly defines what a start-ups is and what it is not hence providing clarity for policymakers, development partners, corporate entities, and other stakeholders who design specific programs to support the growth of start-ups in Ghana. This clear definition ensures quality data is collected for program and incentive design. A succinct definition of start-ups would also remove all ambiguity

and territorial clashes among government agencies related to entrepreneurship and private sector support in Ghana.

ii. Clear and predictable framework

A clear and predictable framework for the start-ups ecosystem. The Ghana start-ups Act was expected to harmonize all the incentive structures aimed at supporting venture building scattered in various policies, programs implemented by different ministries. This ensures the alignment, coherence, and continuity needed to catalyse the entrepreneurship ecosystem. A consistent and predictable legislative framework attracts investors and significantly improves the business environment in a country. This makes start-ups acts preferable to the best entrepreneurship policy or program.

iii. Improved ease of doing “start-ups” in Ghana.

The start-ups Act prioritizes the unique challenges start-ups face at distinct phases of their growth and suggests specific recommendations to mitigate them. For instance, the act proposes a tiered tax obligation on start-ups based on their growth stage. It also recommends capacity and financial support for start-ups to protect their intellectual property, access market, and bankruptcy support, among others. Some of the success stories of tech start-ups in Ghana include *mPharma*, *ZeePay*, *AgroCenter*, *Dext* technology among many others. The process for drafting the Ghana start-ups act is still underway.

d) Startups: Policies and Instruments

Startup ecosystems rely on consistent policy instruments for successful implementation and scale up. The following eight (8) policy domains have been identified as key: Government and regulation; Research, development and innovation system; Infrastructure and attractively; Markets & customers; Financing; Entrepreneurial skills and education; Culture, networks and community and Business support. In terms of government and regulation, general policies linked to startup up law may include: regulation related to starting a business, exits, bankruptcies, taxation, corporate and entrepreneurial laws, and immigration policies labour policies among others.

Start-ups require specific support instruments and programs and as such any start-ups policy may need to articulate the legal frameworks underpinning such instruments. The main ones include-Pre-incubators or start-ups launch programmes, Incubators, Accelerators, Co-working Spaces, Hackathons, Meetups and other Startup events, among others.

e) Consideration of the Bill (Second Reading)

The Start-up Bill (Senate Bills No.1) of 2021 was considered for the second reading on the 22nd July 2021, 27th July and the 29th July 2021. The following were some of the emerging issues:-

- i. The role of start-ups ecosystems, their registration, incubation and their contribution to the Gross Domestic product (GDP);
- ii. Recognising the role of County governments in growing start-ups;

- iii. Harnessing the contributions and mandate of the Kenya National Innovation Agency in the startup ecosystem;
- iv. The role of government in growing startups which is to create an environment that enables their growth (through introduction of incentives including tax holidays as opposed to funding; and
- v. The role of partnerships in innovation.

f) Committee Meetings with Stakeholders

The Committee held several sittings to consider the bill. Prior to the stakeholder's engagement, the Committee called on the public to make submissions on the bill through the local daily newspaper dated 8th May 2021. The following institutions presented their views and submissions; the Ministry of Industrialization, Trade and Enterprise Development, Nairobi Incubation Laboratory (NAILAB), Capital Markets Authority (CMA), Lawyers Hub and Kenya Private Sector Association (KEPSA).

g) Emerging Thematic Issues

The following are the key themes arising from the presentations and consequent submissions from the various stakeholders. The issues were considered by the Committee and as such form the basis of the amendments.

1. There exists a Micro and Small and Medium Enterprise Act, 2012 which speaks to the regulation of micro and small or any other newly established business enterprises in Kenya including startups. However, this is specifically on standards, product development, intellectual property, registration, incubation services and financing among other functions. This calls for the drafters to consider the various policies and legislations to avoid overlaps with existing policy, legislative and institutional interventions,
2. The bill ought to bring out the specific segment of innovation startups that seem to have unique needs from the usual businesses and are mainly based on digital or technological platforms. The Ministry further suggested an amendment on the objective of the bill to read: *"To provide a framework to encourage growth and sustainable technological development of innovative entrepreneurship; job and wealth creation; and conducive business environment for innovation; attract talent and capital; and for connected purposes"*.
3. The bill must provide clarity on the definition of startup which according to the Ministry are "ventures that are founded around an idea or a problem with a potential for significant business opportunity and impact. The aim being innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.
4. The Startup Bill 2021's focus is on those involved in technological development/innovations while on the other hand, there exist a wide range of other startups engaged in other sectors. The Ministry therefore proposes the establishment of an integrated framework for awareness, identification and profiling of startups across the country and for the establishment of a structured

approach for technology transfer, commercialization of innovations and more engagement with the private sector through partnerships and incentives.

5. The key focus of the startup bill is to regulate organizations formed to search for a repeatable and scalable business model and based on technology and innovation hence setting apart startups from other newly established businesses. Additionally, concerns were raised as the bill seems to be too focused on incubation and not start-ups.
6. The startup bill should not introduce additional hurdles but should instead facilitate and provide an enabling environment for establishment of the ventures. Among the issues of concern are double compliance and membership of trustees among others.
7. The startup bill ought to focus on addressing fiscal and non-fiscal issues including introducing incentives as opposed to creating offices. According to the Ministry, the bill ought to consider incentives that are relevant to the enterprises at the startup and accelerator stages. It was noted that the incentives expected in the bill will be provided for at the point of consideration by the National Assembly to avoid the 'money bill' tag.
8. Enforcing the intellectual property rights in the context of start-up is paramount as intellectual property laws exist.

COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

Committee Observations

The Committee made the following observations-**That;**

- 1) The report had citations from successfully implemented Start-ups in India, Ghana, Tunisia and Senegal where the states had provided fiscal incentives to the innovators. Some of the best examples included payment of salaries for three staff for a period of one year. The Committee further observed that Kenya could benchmark and adopt such models on fiscal incentives to the young innovators. However, the committee observed that there was need for further information on the gaps that existed in the laws guiding start -ups;
- 2) once the Bill was passed, the Committee would follow-up to ensure that the regulations were geared towards facilitating rather than inhibiting the start-ups in the country and in the counties;
- 3) that the report was a true reflection of the deliberations of the Members and submissions by numerous stakeholders.
- 4) Following the Committee interactions with the Start-up Bill (Senate Bills No.1) of 2021 the Committee proposes the following two amendments-

CLAUSE 8

THAT clause 8 of the Bill be amended in subclause (1)(b) by-

- (a) deleting the word "seven" appearing immediately after the words "not more than" in subparagraph (i) and substituting therefor the word "three"; and

- (b) deleting the word “ten” appearing immediately after the words “be up to” appearing in subparagraph (ii) and substituting therefor the word “five”.

CLAUSE 2

THAT clause 2 of the Bill be amended-

- (a) by deleting the definition of the word “startup incubator”;
- (b) in the definition of the word “startup” by deleting the word “an” appearing immediately after the words “startup includes” and substituting therefor the words “a technology-based”; and
- (c) by inserting the following new definition immediately after the definition of the word “startup”-

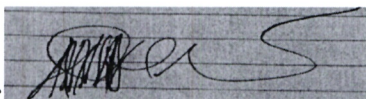
“startup incubator” means a company, partnership, non-governmental organization or limited liability partnership whose principal object is the support of the birth and development of start-ups, innovation and activities related to the transfer of technology, research, and development and innovation processes through the offer of dedicated physical spaces and services advice.

- 5) **Adoption of the Committee Report:** The Committee unanimously adopted the report on the Start-Up Bill (Senate Bills No.1 of 2021) after having been proposed by Sen. Mohamed Faki, MP and seconded by Sen. CPA. Farhiya Haji, MP.

MIN. NO. 439/2021: ADJOURNMENT AND THE DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 11.52 am and the next meeting was scheduled for **Wednesday, 10th November, 2021 at 11.00 am via zoom.**

SIGNATURE:



CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

6th November, 2021

**MINUTES OF THE 118TH SITTING OF THE STANDING COMMITTEE ON
TOURISM, TRADE AND INDUSTRIALIZATION HELD ON THURSDAY 4TH
NOVEMBER, 2021 AT 11. 00 AM VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gertrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. Mohamed Faki, MP

ABSENT WITH APOLOGY

- 1) Sen. (CPA) Farhiya Haji, MP
- 2) Sen. Mercy Chebeni, MP
- 3) Sen. (Prof.) Kithure Kindiki, MP
- 4) Sen. Philip Mpaayei, MP
- 5) Sen. Agnes Zani, MP
- 6) Sen. Wario Golich, MP

SECRETARIAT

- 1) Mr. Peter Mulesi- Clerk Assistant
- 2) Ms. Marale Sande- Research Officer
- 3) Ms. Lucy Radoli- Legal Counsel
- 4) Ms. Millicent Ratemo- Audio Officer
- 5) Ms. Njeri Manga- Media Relations Officer

MIN. NO. 429/2021: : PRELIMINARIES

The Chairperson called the meeting to order at 11.23 am and there followed a word of Prayer.

MIN. NO. 430/2021 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Mohamed Faki, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP as follows-

1. Preliminaries
 - i. *Prayer*
2. Adoption of Agenda
3. Confirmation of Previous Minutes
4. Consideration of the Committee Report on the Start-Up Bill (Senate Bills. No.1 of 2021)
5. Any other Business
6. Adjournment and Date of Next Meeting

MIN. NO. 431/2021: CONFIRMATION OF PREVIOUS MINUTES

Minutes of the 117th Sitting of the Standing Committee on Tourism, Trade and Industrialization that was held on Wednesday, 3rd November, 2021 at 11.00 am were confirmed as true reflection of the deliberations after having been proposed by Sen. (Dr.) Abdullahi Ali, CBS, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP. The adoption was chaired by Sen. Mohamed Faki, MP.

There were no matters arising.

MIN. NO. 432/2021: CONSIDERATION OF THE COMMITTEE REPORT ON THE START-UP BILL (SENATE BILLS. NO.1 OF 2021)

The agenda was deferred due to lack of sufficient quorum to adopt a Committee report as only three Members were present against a minimum of 5 Members

MIN. NO. 433/2021: ANY OTHER BUSINESS

Updates on the Committee workshop in Mombasa County (4th -7th November, 2021)

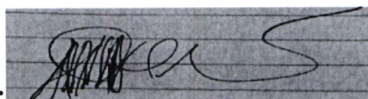
It was reported by the secretariat that all logistics related to the Committee travel to Mombasa for the workshop on Trade Negotiations were complete and the following Senators had confirmed attendance-

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gertrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. Mohamed Faki, MP
- 4) Sen. (CPA) Farhiya Haji, MP
- 5) Sen. Mercy Chebeni, MP
- 6) Sen. Philip Mpaayei, MP

MIN. NO. 434/2021: ADJOURNMENT AND THE DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 11.52 am and the next meeting was scheduled for **Wednesday, 10th November, 2021 at 11.00 am via zoom.**

SIGNATURE:



CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

6th November, 2021

**MINUTES OF THE 112TH SITTING OF THE STANDING COMMITTEE ON
TOURISM, TRADE AND INDUSTRIALIZATION HELD ON WEDNESDAY 13TH
OCTOBER, 2021 AT 11. 00 AM VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gertrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP

ABSENT WITH APOLOGY

- 1) Sen. Mercy Chebeni, MP
- 2) Sen. (Prof.) Kithure Kindiki, MP
- 3) Sen. Philip Mpaayei, MP
- 4) Sen. Agnes Zani, MP
- 5) Sen. Wario Golich, MP

IN ATTENDANCE

Sen. Johnson Sakaja, CBS, MP

SECRETARIAT

- 1) Mr. Peter Mulesi- Clerk Assistant
- 2) Ms. Lucy Radoli- Legal Counsel
- 3) Ms. Millicent Ratemo- Audio Officer

MIN. NO. 397/2021: : PRELIMINARIES

The Chairperson called the meeting to order at 11.16 am and there followed a word of Prayer. He welcomed Sen. Johnson Sakaja, CBS, MP and his delegation to the sitting of the Committee to consider the Start-Up Bill, 2021.

He explained that the Committee had interrogated the submissions on the Start-Up Bill, 2021 and identified areas of concern for further clarification.

MIN. NO. 398/2021 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Mohamed Faki, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP as follows-

1. **Preliminaries**
 - i. *Prayer*
2. **Adoption of Agenda**
3. **Consideration of Emerging Issues from Submissions on the Start- Up Bill (Senate Bills No.1 of 2021)**
4. **Any other Business**
5. **Adjournment and Date of Next Meeting**

**MIN. NO. 399/2021: CONSIDERATION OF EMERGING ISSUES FROM
SUBMISSIONS ON THE START- UP BILL
(SENATE BILLS NO.1 OF 2021)**

The Chairperson invited the Secretariat to take the Committee through the matrix on emerging issues on submissions made on the Start-Up Bill, 2021.

Ms. Lucy Radoli, Legal Counsel informed the meeting of the following areas of concern in the Start-Up Bill, 2021 as follows; **That;**

1. Definition of a start-up. In clause 8 of the Bill an entity may be classified as a start-up if the entity inter alia, has as its objects, the innovation, development, production or improvement and commercialization of innovative processes or services or if it's a scalable business model. Further, Mr. Sam Gichuru of Nailab posited that at the inception of a start-up, it may be difficult to determine scalability and this should be an aspect to be dispensed with when considering entrance into an incubation programme. Sen. Sakaja on the other hand sought to clarify that the Bill only intends to apply to emerging entities that are dealing with innovation centred around technology.
2. The time period dedicated to the registration of start-ups under clause 8. In its present form, the Bill requires that a start-up must be in existence for a period not exceeding seven years from date of incorporation and in the case of biotechnology sector a period not exceeding ten years from the date of incorporation.
3. That the requirement for registration presents an additional bureaucratic hurdle to start-ups. In addition to start-ups registering under traditional business models such as companies, partnerships or sole proprietorship, the requirement for registration before accessing an incubation programme will create additional hoops through which these entities should jump through and this may be detrimental to their sustainability where they are competing with bigger and more established firms.

Observations by the Committee

From the deliberations that ensued, the Committee made the following concerns-**That**

- 1) Whether or not to maintain the definition of the start-Up in the Bill and keep the general definition or amend it to include tech-based start-ups
- 2) Clearly bring out the difference between the objects and memorandum of the Bill and that of the Small and Micro-Enterprise Act of 2012;
- 3) The definition of the Start-Up in the Bill was not comprehensive and specific as most of it is covered in the Small and Micro- Enterprise Act, 2012.

Response by Sen. Sakaja, CBS, MP

Sen. Johnson Sakaja, CBS, MP and his delegation addressed the concerns of the Committee on the Bill on the following thematic areas –

- a) The difference between Startups and SMEs and why the Startups are a better option
The Bill was not targeting SMEs in the traditional sense as there was an existing legislation for normal businesses;
- b) Registration for start-ups was not an impediment but only for seeking fiscal and non-fiscal incentives for new start-ups; and
- c) The Potential for startups in Kenya noting that the Nigerian Start Up Act was taken from the Kenyan version of the Bill and had been successfully implemented.

He agreed with the Committee proposal to consider amending the title of the Bill and provide a broader definition of the Start-Ups.

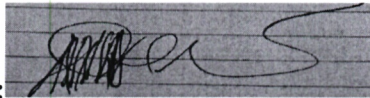
Resolutions of the Committee

From the deliberations, it was resolved as follows-**That** the secretariat-

- 1) Reviews the objects and memorandum of the Bill and further the definition of the Startups and if it was necessary to amend the title of the Bill; and
- 2) provide advisory on whether the objects and memorandum of the Bill can be achieved through amendments to the Small and Micro-Enterprise Act, 2012 and report back to the Committee during the subsequent meetings.

MIN. NO. 400/2021: ADJOURNMENT AND THE DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 12.31 pm and the next meeting was scheduled for **Thursday, 14th October, 2021 at 11.00 am via zoom.**



SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

14th October, 2021

**MINUTES OF THE 111TH SITTING OF THE STANDING COMMITTEE ON
TOURISM, TRADE AND INDUSTRIALIZATION HELD ON WEDNESDAY
6TH OCTOBER, 2021 AT 11. 00 AM VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gertrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP

ABSENT WITH APOLOGY

- 1) Sen. Mercy Chebeni, MP
- 2) Sen. (Prof.) KithureKindiki, MP
- 3) Sen. Philip Mpaayei, MP
- 4) Sen. Agnes Zani, MP
- 5) Sen. Wario Golich, MP

SECRETARIAT

- 1) Mr. Peter Mulesi- Clerk Assistant
- 2) Ms. Lucy Radoli- Legal Counsel
- 3) Ms. Millicent Ratemo- Audio Officer

MIN. NO. 392/2021: : PRELIMINARIES

The Chairperson called the meeting to order at 11.10 am and there followed a word of Prayer.

MIN. NO. 393/2021 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Mohamed Faki, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP as follows-

1. Preliminaries
 - i. Prayer
2. Adoption of Agenda
3. Confirmation of Previous Minutes
4. Consideration of Emerging Issues on Submissions made on the Start- Up Bill (Senate Bills No.1 of 2021)
5. Any other Business
6. Adjournment and Date of Next Meeting

MIN. NO. 394/2021: Confirmation of Previous Minutes

- 1) Minutes of the 109th Sitting of the Standing Committee on Tourism, Trade and Industrialization that was held on Wednesday, 29th September, 2021 at 11.00 am were confirmed as true reflection of the deliberations after having been proposed by Sen. CPA Farhiya Haji, MP and seconded by Sen. Mohamed Faki, MP.
There were no matters arising.
- 2) Minutes of the 110th Sitting of the Standing Committee on Tourism, Trade and Industrialization that was held on Thursday, 30th September, 2021 at 11.00 am were confirmed as true reflection of the deliberations after having been proposed by Sen.

CPA. Farhiya Haji, MP and seconded by Sen. Mohamed Faki MP. There were no matters arising.

MIN. NO. 394/2021: CONSIDERATION OF EMERGING ISSUES FROM SUBMISSIONS MADE ON THE START-UP BILL (SENATE BILLS NO. 1 OF 2021)

The Chairperson invited the Secretariat to take the Committee through the matrix on emerging issues on submissions made on the Start-Up Bill, 2021.

Ms. Lucy Radoli, Legal Counsel informed the Committee of the following areas of concern in the Start-Up Bill, 2021 as follows; **That;**

Overview of the legislative proposal

The Bill provides for the establishment of incubation programmes and provides for matters related to the role of the national and county governments.

(a) The role of national and county governments

The Bill provides for role of the National and county governments in relation to startups to include, among other things, to —

- (a) promote innovation;
- (b) facilitate the transfer of technology innovation;
- (c) create and develop a sustainable, globally competitive small and medium enterprise sector that contributes towards the accelerated growth of the economy;
- (d) promote the creation of employment and wealth creation; and
- (e) promote the linkages between universities and research institutions and the business community.

The Bill also mandates the National and county governments put in place a national and county incubation policy framework for the development of the business incubation sector and start-up system.

(b) Role of the Kenya National Innovation Agency

The Bill mandates the Kenya National Innovation Agency established under the Science, Technology and Innovation Act, 2013, and county executive committee members responsible for matters relating to science, technology and innovation to establish incubation programmes and provides a framework that regulates the relationship between incubators and startups.

(c) Registration of startups

The Bill provides that the Kenya National Innovation Agency shall be responsible for the registration of startups as well as maintenance of a startups database. The Bill also provides for the Registrar to be competitively recruited by the Public Service Commission and appointed by the Agency.

(d) Certification of incubators

The Bill provides for admission into incubation programmes, certification of incubators and obligations of incubators.

(f) Incentives for startups

The Bill provides the following incentives for startups—

- (a) subsidised formalisation of startups;
- (b) the protection of the intellectual property of innovations by startups in Kenya and with international organisations;
- (c) fiscal and non-fiscal support to startups admitted into incubation programmes;
- (d) support in the form of research and development activities; and
- (e) establishment of a credit guarantee scheme for startups.

Emerging issues

1. Definition of a start-up. In clause 8 of the Bill an entity may be classified as a start-up if the entity inter alia, has as its objects, the innovation, development, production or improvement and commercialization of innovative processes or services or if it's a scalable business model. Further, Mr. Sam Gichuru of Nailab posited that at the inception of a start-up, it may be difficult to determine scalability and this should be an aspect to be dispensed with when considering entrance into an incubation programme. Sen. Sakaja on the other hand sought to clarify that the Bill only intends to apply to emerging entities that are dealing with innovation centred around technology.
2. The time period dedicated to the registration of start-ups under clause 8. In its present form, the Bill requires that a start-up must be in existence for a period not exceeding seven years from date of incorporation and in the case of biotechnology sector a period not exceeding ten years from the date of incorporation.
3. That the requirement for registration presents an additional bureaucratic hurdle to startups. In addition to start-ups registering under traditional business models such as companies, partnerships or sole proprietorship, the requirement for registration before accessing an incubation programme will create additional hoops through which these entities should jump through and this may be detrimental to their sustainability where they are competing with bigger and more established firms.

Observations by the Committee

From the deliberations that ensued, the Committee made the following observations-**That**

- 1) Some of the Sections of the Bill were a duplication of the Small and Micro-Enterprise Act and there was need to limit the current Bill to Tech-based innovations.

- 2) The objects of the bill should be broadened to include other innovations spread in different spheres of production including technological innovations-
- 3) The definition of the Start-Up in the Bill was not comprehensive and specific;

Resolutions of the Committee

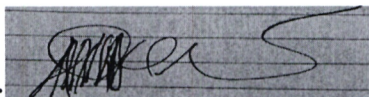
It was resolved that the Committee will schedule a meeting with Sen. Johnson Sakaja, CBS, MP to seek clarifications on the identified issues before the Committee makes its recommendations. The meeting was scheduled for Wednesday, 13th October, 2021 at 11.00 am on the zoom online platform.

MIN. NO. 395/2021: ANY OTHER BUSINESS

The Committee was informed that there was an invitation, which had been shared on the Committee platform from the Ministry of Agriculture, Livestock, Fisheries and Cooperatives, the state department for Fisheries, Aquaculture and Blue Economy. The invitation is for a breakfast briefing on the draft marine fisheries access regulations, 2021.

MIN. NO. 396/2021: ADJOURNMENT AND THE DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 12.05 pm and the next meeting was scheduled for **Wednesday, 13th October, 2021 at 11.00 am via zoom.**



SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

14th October, 2021

**MINUTES OF THE 110TH SITTING OF THE STANDING COMMITTEE ON
TOURISM, TRADE AND INDUSTRIALIZATION HELD ON THURSDAY 30TH
SEPTEMBER, 2021 AT 11. 00 AM VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gertrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP

ABSENT WITH APOLOGY

- 1) Sen. Mercy Chebeni, MP
- 2) Sen. (Prof.) Kithure Kindiki, MP
- 3) Sen. Philip Mpaayei, MP
- 4) Sen. Agnes Zani, MP
- 5) Sen. Wario Golich, MP

IN- ATTENDANCE

Sen. Johnson Sakaja, CBS, MP

**MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE
DEVELOPMENT**

- 1) Mrs. Betty Maina, Cabinet Secretary
- 2) Prof. Tuikong CEO, Kenya Industrial Research and Development (KIRDI)
- 3) Dr. Nkirae- Kenya Industrial Estates
- 4) Mr. Kimani Kiiru, State Department of Trade
- 5) Mr. Gregory Okal, State Department of Trade
- 6) Mr. Nancy Muya-State Department of Trade
- 7) Mr. Mathew Nyamu-State Department of Trade
- 8) Mr. Henry Rithaa-State Department of Trade

SECRETARIAT

- 1) Mr. Peter Mulesi- Clerk Assistant
- 2) Ms. Lucy Radoli- Legal Counsel
- 3) Ms. Marale Sande- Research Officer
- 4) Ms. Millicent Ratemo- Audio Officer
- 5) Ms. Njeri Manga- Media Relations Officer
- 6) Mr. Peter Mbuthia- Intern

MIN. NO. 388/2021: : PRELIMINARIES

The Chairperson called the meeting to order at 11.16 am and there followed a word of Prayer.

MIN. NO. 389/2021 : ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen. Mohamed Faki, MP and seconded by Sen. (Dr.) Gertrude Musuruve, MP as follows-

1. Preliminaries
 - i. Prayer

- ii. *Remarks and Introduction*
- 2. Adoption of Agenda
- 3. Submissions/Representation on the Start- Up Bill (Senate Bills No.1 of 2021) by the Ministry of Industrialization Trade and Enterprise Development
- 4. Any other Business
- 5. Adjournment and Date of Next Meeting

MIN. NO. 390/2021: SUBMISSIONS ON THE START-UP BILL (SENATE BILLS NO. 1 OF 2021)

The Chairperson invited Betty C. Maina, EGH, Cabinet Secretary, Ministry of Industrialization, Trade and Enterprise Development to make the Ministry's representations on the Start -Up Bill, Senate Bills No.1 of 2021).

The Cabinet Secretary thanked the Committee for the invitation and for coming up with the Bill and further thanked the Senate for the initiative taken in developing the Start-up Bill, 2021 that seeks to among others, ensure the growth and creation of a favourable environment for innovative Start-ups in the country through legislation.

The Cabinet Secretary proceeded make the Ministerial response on the Start-Up Bill, 2021 and requested that some of the observations made should be considered in the Bill to avoid overlaps, duplication on functions and conflict with other legislations by the various Ministries, Departments and Agencies (MDAs).. These observations were as follows:

i. Object of the Bill

The Bill should bring out the specific segment of innovation start-ups that seem to have unique needs from the usual businesses and are mainly based on digital or technological platforms. The objective of the Bill should therefore read: ***"To provide a framework to encourage growth and sustainable technological development of innovative entrepreneurship; job and wealth creation; and conducive business environment for innovation; attract talent and capital; and for connected purposes"***.

The objects of the Bill are broadly stated to include registration of start-ups. **The 7 years ceiling period set under the Bill may attract entities that are beyond the start-up stage.** Most entities at 7 years have progressed from 'start-up' to 'accelerator' stage. It would be prudent for the **Bill to consider incentives that are relevant to the enterprises at the start-up and accelerator stages** and how an enterprise enters and exits the different programmes in light of the operating environment where there are limited resources. Entities at the accelerator stage may benefit more from financial and market access support.

ii. Definition of Start-ups

A Start-up is commonly defined as venture that is **initiated by its founders around an idea or a problem** with a potential for significant business opportunity and impact. The aim of the initial founder(s) is to establish a committed co-founder team with necessary skills and abilities to be able to validate the initial problem/solution fit and product/market fit, before scaling it to a significant company and self-sustained business. It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

iii. Existing policies and legislations

Some of the Ministry's mandate and through its various agencies is promotion and development of Micro, Small and Medium enterprises (MSMEs) including start-ups. This is on Standards, product development, intellectual property, registration, incubation services and financing among other functions. Most recent policy being the **Sessional paper No. 5 of 2020 on the Kenya Micro and Small Enterprise policy**. As the bill is being reviewed, there is **need for the drafters to consider the various policies and legislations**.

To avoid overlaps with existing policy, legislative and institutional interventions, **the Bill should clearly spell out the specific segment of start-ups targeted under the Bill**, which is mainly start-ups within the digital/technological incubation and innovations space. The Bill also presupposes the existence of a start-up-incubator relationship. The title of the Bill should therefore reflect the focus of the Bill towards fostering digital/technological incubation and innovations.

iv. Registration of start-ups

One of the criticisms that has been levied against the ease of doing business in Kenya is bureaucracy and entry barriers. There are various statutory registration requirements for new entrants-as business names/companies, taxpayers. The further requirement of registration of start-ups under the Bill and the pre-registration requirement of the entity under stated legal regimes does not reflect a complementary effort among government agencies aimed at minimizing bureaucratic hurdles. For instance, the drafters can borrow a leaf from the Micro and Small Enterprises Act No. 55 of 2012 that registers micro and small enterprises without imposing on them the requirement for prior registration under any other legal framework. The Bill has

excluded enterprises registered as sole proprietors/business names which may be the registration regime that is most known and accessible to a majority of start-ups.

v. Incentives for Start-ups

The country should aim to create incentives to attract as many incubators as possible. It is proposed that the drafters should review the requirement for incubators offering dedicated physical spaces in their support of start-ups taking into account the increasing trend of service provision on online platforms. The Bill therefore should prescribe tangible benefits accruing to the Start-ups and Incubators such as tax incentives, access to markets, ease of doing business and access to affordable government incubation services. Further, most start-ups especially on digital driven innovations comprise of youth owned enterprises. Therefore, there is need to promote inclusivity in promotion and development of youth owned start-ups.

vi. Board of Trustees for Management of the Fund

Considering the key role played by the Ministry of Industrialization, Trade and Enterprise Development in promoting trade and enterprise development, appointment to the Board under the Bill should include representative(s) of the Principal Secretaries from the Ministry of Industrialization, Trade and Enterprise Development in order to integrate the start-up activities with those of MSMEs.

In conclusion, whereas the scope of the Start-up Bill 2021 focuses on start-ups involved in technological development/innovations, it is noteworthy that there is a wide array of other start-ups that are engaged in other sectors that play a key role in the country's economy. There is need therefore to establish an integrated framework for awareness, identification and profiling of start-ups across the country and for the establishment of a structured approach for technology transfer, commercialization of innovations and more engagement with the private sector through partnerships and incentives.

The Committee heard that without prejudice to the foregoing, it is noteworthy that the spirit of the Start-up Bill is encapsulated under existing legislation targeting start-ups, in particular, the Micro and Small Enterprises Act, No. 55 of 2012 ('MSE Act') that created the Office of the Registrar of micro and small enterprises who is charged with the responsibility of registering micro and small enterprises. The enterprises to be registered under the MSE Act need not to be registered under any other legal regime. The MSE Act provides for establishment of incubation centres, centres of excellence

and other infrastructure facilities. The MSE Act further provides for establishment of the Micro and Small Enterprises Development Fund that is yet to be established. It is therefore recommended that the drafters of the Start-up Bill should drive policy to ensure full implementation of the Micro and Small Enterprises Act, No. 55 of 2012. This will address majority of the gaps that the drafters intend to cure with the enactment of the Start-up Bill and impact a wider range of start-up enterprises, beyond those targeted under the Start-up Bill 2021.

The Cabinet Secretary thanked the Senate for drafting the Bill and further acknowledged invitation by the Committee to make submissions.

Reactions by Sen. Johnson Sakaja, CBS, MP

Sen. Johnson Sakaja, MP thanked the Cabinet Secretary for making the presentation and clarifications on the Start-Up Bill, 2021. He However made the following observations- That;

- 1) There were misconceptions and misunderstandings on the objects and memorandum of the Start-Up, Bill, 2021;
- 2) The Bill is not targeting any new businesses and appreciated that framework of existing Small and Micro- Enterprises (SMEs);
- 3) Registration of the Start-Up was not intended to be a hurdle as had been observed by stakeholders but for identification of those start-ups that were in need for special incentives;

Sen. Sakaja appealed for more time to interrogate the concerns of stakeholders primarily the Ministry of Industrialization, Trade and Enterprise development, Ministry of ICT and Konza Techno City to create deeper understanding on the Bill.

Responses by the Cabinet Secretary

The Cabinet Secretary welcomed the proposal for stakeholder engagement on the matter to provide a platform for deeper clarifications on the Bill especially the objects and incentive structure for Tech- based start-Ups.

The Committee was assured that the Ministry of Industrialization, Trade and Enterprise Development would make its presentation during the said retreat once the dates are confirmed and communicated.

Resolutions of the Committee

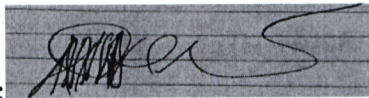
From the deliberations that ensued, the Committee made the following resolutions-

- 1) The Committee to undertake a retreat involving all the stakeholders and further invite the Ministry of ICT to seek consensus on the various views taken on the Start-Up Bill, 2021.

- 2) Sen. Johnson Sakaja, CBS, MP, to be invited to appear before the Committee to make further clarifications on the objects and memorandum in the Start-up Bill, 2021. This was based on the observation that the explanation given to the Committee by the sponsor of the Bill was not sequential to the published Bill before the Committee whereas there was need for a harmonized approach.
- 3) The Secretariat to flag out key issues from the presentations made by stakeholders and provide a brief on the emerging and contentious issues.

MIN. NO. 391/2021: ADJOURNMENT AND THE DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 12.15 pm and the next meeting was scheduled for **Wednesday, 6th October, 2021 at 11.00 am via zoom.**



SIGNATURE:

CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

6th October, 2021

**MINUTES OF THE 107TH SITTING OF THE STANDING COMMITTEE ON
TOURISM, TRADE AND INDUSTRIALIZATION HELD ON WEDNESDAY
22ND SEPTEMBER, 2021 AT 11. 00 AM VIA ZOOM**

PRESENT

- 1) Sen. (Dr.) Abdullahi Ibrahim Ali, CBS-**Chairperson**
- 2) Sen. (Dr.) Gertrude Musuruve, MP- **Vice- Chairperson**
- 3) Sen. (CPA) Farhiya Haji, MP
- 4) Sen. Mohamed Faki, MP
- 5) Sen. Mercy Chebeni, MP

ABSENT WITH APOLOGY

- 1) Sen. (Prof.) Kithure Kindiki, MP
- 2) Sen. Philip Mpaayei, MP
- 3) Sen. Agnes Zani, MP
- 4) Sen. Wario Golich, MP

IN ATTENDANCE

- 1) Sen. (Prof.) Malachy Ekal Imana
- 2) Sen. Petronila Were Lokorio, MP

STAKEHOLDERS ON THE START-UP BILL, 2021

- 1) Mr. Wycliffe Shamia, CEO Capital Market Authority (CMA)
- 2) Ms. Nyale Yango-CMA
- 3) Mr. Jairus Mwaka-CMA
- 4) Ms. Josephine Karigonga
- 5) Ms. Edna Moraa- CMA
- 6) Ms. Lindah Obonyo- Lawyers Hub
- 7) Ms. Selina Onyando-Lawyers Hub
- 8) Mr. Sam. Gichuru- Nailab
- 9) Mr. Ben Roberts- (KEPSA)

SECRETARIAT

- 1) Mr. Peter Mulesi- Clerk Assistant
- 2) Ms. Lucy Radoli- Legal Counsel
- 3) Ms. Marale Sande- Research Officer
- 4) Ms. Millicent Ratemo- Audio Officer

MIN. NO. 373/2021: : PRELIMINARIES

The Chairperson called the meeting to order at 11.13 am and there followed a word of Prayer.

The Chairperson welcomed the delegations from the various stakeholders on the Start-Up Bill, 2021; Capital Markets Authority, Lawyer's Hub, Kenya Private Sector Alliance and Nailab to the meeting of the Committee.

He then called for self- introduction.

MIN. NO. 374/2021

: ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after having been proposed by Sen.Mohamed Faki,MP and seconded by Sen.Farhiya Haji, MP as follows-

1. Preliminaries
 - i. *Prayer*
 - ii. *Introduction*
2. Adoption of Agenda
3. Submissions/Representation on the Start- Up Bill, 2021-
 - i. The Capital Markets Authority
 - ii. Kenya Private Sector Alliance
 - iii. Lawyer's Hub
 - iv. Nailab Ltd
4. Any other Business
5. Adjournment and Date of Next Meeting

MIN. NO. 375/2021:

The Chairperson invited stakeholders present to make their submissions. The presentations were as follows-

Submissions by the Capital Markets Authority (CMA)

General Concerns: Recognition of current efforts on business incubation- the CMA Proposed that the Bill should recognize the existing programmes and initiatives that have already been established to address the existing gaps and encourage innovation in different sectors in the country.

It was recommended that there was need to include this proposal in the statement of objects of the Bill to provide the context that there has been ongoing work on the same by other agencies including the Capital Markets Authority.

Clause 2: The Bill does not provide for an express definition of a Start-Up in its interpretation- It was recommended that this should be provided based on the definitions in the Tunisia Start-Up Act and Philippines Start- Up Act.

Clause 2: Reference to Incubation programme is narrow and should be enhanced to provide recognition of the regulator's role in fostering innovation.

This recommendation will enhance industry specific growth under the guidance of the regulators unlike the general provisions in the Bill which are not industry driven but are geared towards entrepreneurship in general.

Clause 2: There should be definition of "regulator or government agency"

Clause 7: To create awareness of the existence of incubation programmes for start- Ups. It was recommended that one of the roles of the registrar of could be to create awareness of the existence of incubation programmes for start- Ups

Clause 8(b): Limitation of Registration: It was recommended that the Bill should create a limitation on registration of Start-Ups to firms which are less than 7 years old. The justification was that there may be firms which have been in existence for a longer time but still have innovative ideas.

Clause 8 (d) Minimum total Asset Requirement: it was proposed that these requirements be deleted because these are small firms which are still coming up as such emphasis should be on human and technical capacity.

Clause 9(2) (b): Provision for Risk Mitigation: The Clause should include the following to be submitted by the applicant, *"the risks involved in innovation and any mitigation measures"* because it is necessary to disclose the associated risks and mitigation measures.

Clause 14: Appeal Process: It was recommended that a Tribunal may be set up to hear such appeals in a timely and well informed manner because the appeals to the Cabinet Secretary may be too bureaucratic.

Clause 19: The eligibility criteria is too stringent as most Kenyans with ideas have not formalized their business operations given the cost of registration.

It was recommended that there should be an express provision in the Bill on whether or not fees are applicable for the registration process of the Start-ups by the Agency. Further the inclusion of other forms of intellectual property closely related to patents like utility models should be considered in order to encourage SMEs to participate.

Clause 24: Widen the scope of credit guarantee- There should be consideration to broaden the access to the credit guarantee scheme as set in clause 24 of the Bill to other innovations that are being guided by regulators and government agencies.

Clause 30 (4): Widen Expertise and Members of the Board of Trustees: It was recommended that the constitution of the Board of Trustees of the Fund be amended to include a person with knowledge and experience in capital markets and investments entities in business incubation.

Other observations: Further it was observed that the Bill had no provisions with regard to the following-

- a) How to provide assistance to access domestic and international markets for innovators; and
- b) Provisions for actual incubation as there is need to expressly provide in the Bill the details of the actual incubation.

Submissions by the Lawyer's Hub

- 1) It was observed that the Bill should not introduce huddles especially double compliance mechanisms in the Bill;
- 2) The Membership of the Board of trustees to include the Attorney General, Law society of Kenya or the legal community;
- 3) The Bill should focus on fiscal and non- fiscal incentives rather than the introduction of more offices especially the role of counties;

- 4) The definition of incubators in the Bill is restrictive as it added registration hurdles and recommended that incubators should be specific to government rather than the private sector.

Submissions by Nairobi Incubation Laboratory (NAILAB)

Mr. Sam Gichuru, founder NAILAB explained that Start-Ups go through evolution and should be clearly defined;

- 1) Clause 8: Registration of Start-Ups- It was observed that noting that incubation is an idea, it was very rare for Start-UP to be confirmed as a business model within 6 months. It was further observed that this would ruin creativity.
- 2) It was stated that the Bill should focus on the following three (3) issues-
 - i. Start-Up
 - ii. Intellectual Property Rights
 - iii. Incentives to investors

Submissions by Kenya Private Sector Alliance (KEPSA)

Mr. Ben Roberts, Chairperson of the KEPSA ICT sector Board supported the views by NAILAB and observed that the enforcement of intellectual property law in Kenya was weak. He further urged the Committee to address the too many regulatory issues and ensure that the Bill was favourable to the Start-Ups.

He undertook to submit a written Submissions on specific issues of concern in the Bill.

Reactions by the Committee

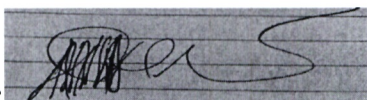
The Committee thanked the stakeholders present and stated that the purpose of the meeting was for the Committee to seek for ways to strengthen the Bill through targeted stakeholder engagements and to seek clarifications on the public participation memoranda.

Recommendations

- 1) It was recommended that stakeholders provide submissions to the Secretariat on the specific clauses that require deletion or improvement rather than generalized critique of the Bill.
- 2) It was resolved that the secretariat compiles the submissions made on the specific clauses and present them to the Committee for consideration

MIN. NO. 376/2021: ADJOURNMENT AND THE DATE OF THE NEXT MEETING

There being no other business, the meeting adjourned at 12.15pm and the next meeting was scheduled for **Thursday, 23rd September, 2021 at 11.00 am via zoom.**



CHAIRPERSON: SEN. (DR.) ABDULLAHI IBRAHIM ALI, CBS, MP)

Dated: 29th September, 2021

REPUBLIC OF KENYA



**TWELFTH PARLIAMENT
THE SENATE**

The Start-Up Bill (Senate Bills No. 1 of 2021)

INVITATION FOR SUBMISSION OF MEMORANDA

The Start-Up Bill (Senate Bills No. 1 of 2021) was read a First Time in the Senate on 25th May, 2021 and thereafter stood committed to the Standing Committee on Tourism, Trade and Industrialization.

Pursuant to the provisions of Article 118 of the Constitution and standing order 140(5) of the Senate Standing Orders, the Committee now invites interested members of the public to submit any representations that they may have on the Bill.

The representations may be made by way of submission of written memoranda, by email, on the address: cSenate@parliament.go.ke or senatetourismandtrade@gmail.com, to be received on or before Monday, 16th August, 2021 at 4:00 pm.

The Bill may be accessed on the Parliament website: <http://www.parliament.go.ke/the-senate/house-business/bills>.

**J.M. NYEGENYE, CBS,
CLERK OF THE SENATE.**

REPUBLIC OF KENYA



COUNTY ASSEMBLY OF KAKAMEGA

P. O. BOX 1470 - 50100, KAKAMEGA - KENYA
Web: www.kakamega-assembly.go.ke

TENDER NOTICE

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**MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE
DEVELOPMENT**

**MINISTERIAL RESPONSE ON THE ON THE STARTUP BILL NO. 1 OF 2021 TO
THE SENATE STANDING COMMITTEE ON TOURISM, TRADE AND
INDUSTRIALIZATION ON THURSDAY 30TH SEPTEMBER, 2021 AT 11.00 A.M.**

Hon. Chair and Committee Members,

On 15th September 2021 the Ministry received a letter from the Clerk of the senate for an invitation from the standing committee on Tourism, Trade and Industrialization for considering the Startup Bill No. 1 of 2021.

On behalf of the Ministry of Industrialization, Trade and Enterprise Development, I take this opportunity to thank the Senate for the initiative taken in developing the Startup Bill, 2021. The effort made by the Senate towards the growth and creating a favourable environment for innovative Startups in the country through legislation is most appreciated.

Hon. Chair and Committee Members,

There are some observations made that should be considered in the Bill to avoid overlaps, duplication on functions and conflict with other legislations by the various Ministries, Departments and Agencies (MDAs) and specifically this Ministry. These are as follows:

i. Object of the Bill

The Bill should bring out the specific segment of innovation startups that seem to have unique needs from the usual businesses and are mainly based on digital or technological platforms. The objective of the Bill should therefore read: ***"To provide a framework to encourage growth and sustainable technological development of innovative entrepreneurship; job and wealth creation; and conducive business environment for innovation; attract talent and capital; and for connected purposes"***.

The objects of the Bill are broadly stated to include registration of startups. **The 7 years ceiling period set under the Bill may attract entities that are beyond the startup stage.** Most entities at 7 years have progressed from **'startup' to 'accelerator' stage**. It would be prudent for the **Bill to consider incentives that are relevant to the enterprises at the startup and accelerator stages** and how an enterprise enters and exits the different programmes in light of the operating environment where there are limited resources. Entities at the accelerator stage may benefit more from financial and market access support.

ii. Definition of startups

A Startup is commonly defined as venture that is **initiated by its founders around an idea or a problem** with a potential for significant business opportunity and impact. The aim of the initial founder(s) is to establish a committed co-founder team with necessary skills and abilities to be able to validate the initial problem/solution fit and product/market fit, before scaling it to a significant company and self-sustained business. It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

iii. Existing policies and legislations

Some of the Ministry's mandate and through its various agencies is promotion and development of Micro, Small and Medium enterprises (MSMEs) including startups. This is on Standards, product development, intellectual property, registration, incubation services and financing among other functions. Most recent policy being the **Sessional paper No. 5 of 2020 on the Kenya Micro and Small Enterprise policy**. As the bill is being reviewed, there is **need for the drafters to consider the various policies and legislations**.

To avoid overlaps with existing policy, legislative and institutional interventions, **the Bill should clearly spell out the specific segment of startups targeted under the Bill**, which is mainly startups within the digital/technological incubation and innovations space. The Bill also presupposes the existence of a startup-incubator relationship. The title of the Bill should therefore reflect the focus of the Bill towards fostering digital/technological incubation and innovations.

iv. Registration of start-ups

One of the criticisms that has been levied against the ease of doing business in Kenya is bureaucracy and entry barriers. There are various statutory registration requirements for new entrants-as business names/companies, taxpayers. The further requirement of registration of startups under the Bill and the pre-registration requirement of the entity under stated legal regimes does not reflect a complementary effort among government agencies aimed at minimizing bureaucratic hurdles. For instance, the drafters can borrow a leaf from the Micro and Small Enterprises Act No. 55 of 2012 that registers micro and small enterprises without imposing on them the requirement for prior registration under any other legal framework. The Bill has excluded enterprises registered as sole proprietors/business names which may be the registration regime that is most known and accessible to a majority of startups.

v. Incentives for Start-ups

The country should aim to create incentives to attract as many incubators as possible. It is proposed that the drafters should review the requirement for incubators offering dedicated physical spaces in their support of startups taking into account the increasing trend of service provision on online platforms. The Bill therefore should prescribe tangible benefits accruing to the Startups and Incubators such as tax incentives, access to markets, ease of doing business and access to affordable government incubation services. Further, most startups especially on digital driven innovations comprise of youth owned enterprises. Therefore, there is need to promote inclusivity in promotion and development of youth owned startups.

vi. Board of Trustees for Management of the Fund

Considering the key role played by the Ministry of Industrialization, Trade and Enterprise Development in promoting trade and enterprise development, appointment to the Board under the Bill should include representative(s) of the Principal Secretaries from the Ministry of Industrialization, Trade and Enterprise Development in order to integrate the startup activities with those of MSMEs.

Hon. Chair and Committee Members,

In conclusion, Whereas the scope of the Startup Bill 2021 focusses on startups involved in technological development/innovations, it is noteworthy that there is a wide array of other startups that are engaged in other sectors that play a key role in the country's economy. There is need therefore to establish an integrated framework for awareness, identification and profiling of startups across the country and for the establishment of a structured approach for technology transfer, commercialization of innovations and more engagement with the private sector through partnerships and incentives.

Without prejudice to the foregoing, it is noteworthy that the spirit of the Startup Bill is encapsulated under existing legislation targeting startups, in particular, the Micro and Small Enterprises Act, No. 55 of 2012 ('MSE Act') that created the Office of the Registrar of micro and small enterprises who is charged with the responsibility of registering micro and small enterprises. The enterprises to be registered under the MSE Act need not to be registered under any other legal regime. The MSE Act provides for establishment of incubation centres, centres of excellence and other infrastructure facilities. The MSE Act further provides for establishment of the Micro and Small Enterprises Development Fund that is yet to be established. It is therefore recommended that the drafters of the Startup Bill should drive policy

to ensure full implementation of the Micro and Small Enterprises Act, No. 55 of 2012. This will address majority of the gaps that the drafters intend to cure with the enactment of the Startup Bill and impact a wider range of start-up enterprises, beyond those targeted under the Startup Bill 2021.

THANK YOU, VERY MUCH HONOURABLE CHAIR AND MEMBERS, FOR INVITING ME TO CONTRIBUTE TO THIS BILL.

**Betty C. Maina, EGH
CABINET SECRETARY**



MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT
STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT

OFFICE OF THE PRINCIPAL SECRETARY

Telephone: +254-(0)20-3315001/2-4
Web: www.trade.go.ke
Email: ps.trade@trade.go.ke
When replying please quote

TELPOSTA TOWERS
KENYATTA AVENUE
P.O. Box 30430 - 00100
GPO NAIROBI - KENYA

Ref. No. MOITED/SDT/12/3

16th August, 2021

Date:

Mr. Jeremiah Nyegenye
Clerk of the Senate
Parliament Buildings
NAIROBI



Dear

Mr. Nyegenye

RE: INVITATION FOR SUBMISSION OF MEMORANDA - THE START-UP BILL (THE SENATE BILLS NO.1 OF 2021)

Reference is made to the communication requesting for representation on the Start up Bill (the Senate Bills No.1 Of 2021).

The State Department for Trade appreciates the effort made by the Senate towards the growth and creation of a favourable environment for innovative start ups in the country through legislation.

We forward herewith comments from the State Department for Trade on the Bill for your consideration.

Yours

Sincerely

[Signature]
Amb. Johnson Weru
PRINCIPAL SECRETARY

Encl.

Copy to: Betty C. Maina, EGH
Cabinet Secretary
Ministry of Industry, Trade and Enterprise Development
NAIROBI

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Kindly deal.

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15/08/2021

COMMENTS ON THE STARTUP BILL, 2021

STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT

Clause	Title/subject	Issue	Comments/Remarks
PART I - PRELIMINARY			
1	Interpretation	The Word "startup" has been defined --<i>includes an innovative entity, legally recognized by the laws of Kenya, with strong growth potential and a disruptive economic model</i> The word <i>"legal recognized by the laws of Kenya"</i> means the entity has already been registered under an already existing law	What parameters will be used to measure adjectives such as 'strong potential', 'disruptive' economic models as used in the definition? - Encourage the use of simple, well understood words. ✓ <i>Why then set up another entity to do functions already been done elsewhere?</i>
3	Objects	Clause 3(b) identifies registration of startups as one of the objects of this law	One of the function the Business Registration Services Act is to oversee company registry. This allows BRS to carry out all registration required under the BRS Act including maintenance of registers, data and records on registration. ✓ <i>This therefore calls for need to avoid duplications of roles.</i>
PART II - ESTABLISHMENT OF INCUBATION PROGRAMMES			
4	Role of National and county governments	Clause 4 (1) enumerates some of the role of national and county Government. The role of creating a conducive environment for growth and sustainability of business is glaringly missing out. This together with the need for	Include creation of a conducive business environment to the role of National and County Governments

		creativity and innovation, in my opinion, should be the driving force behind this Bill.	
8	Eligibility for admission into the incubation programme	Clause 8 (1)(b) an entity shall be eligible to register as a startup if ...it is newly registered or has been in existence prior to the coming into force of this Act; (i) or a period of not more than seven years from the date of its incorporation or registration.	The rationale for this provision requiring this period of time remains unclear. Why 7 years? • Though innovative ideas and concepts require some period to mature, what other parameters could be used to determine eligibility in addition to duration? To what extent can this be a hindrance instead of being a facilitative factor if only pegged on duration? Suggestion ✓ <i>Consider other factor such as number of employees/employment potential; initial investment capital requirements, etc.</i>
8	The agency and Board of Management	Clause 8 (2) introduces for the first time the word "the agency" in the body of the Bill • The word 'Agency' is defined to mean - the Kenya National Innovation agency established under section 28 of the Science, Technology and Innovation Act; • The primary focus of Science, Technology and Innovation Act, No. 28 of 2013 was scientific innovations. There was little linkage of the innovation to the industry for commercialization.	The Startup Bill in our opinion is a bold attempt to link the ideas, disruptive innovations to the industry for commercialization. This is first tested at the incubation centres before taking them to the industry for commercialization and production. ✓ <i>There is need to strengthen the linkage between the generators of ideas/innovations with the industry.</i>
31	Amendment of No. 28 of 2013.	Clause 31(4) Reconstitution of the Board Membership to the board has been expanded by unfortunately left out a representative of either the PS-Industrialization or Ps responsible for trade.	The focus of the Startup bill should be building a bridge between innovation, ideas and actualization of these ideas into tangible production and commercialization by the industry players. Suggestion <i>There will therefore be need to relook at the Agency and its functions including reorganizing the Body to</i>

	The Ministry of Industrialization and Trade is key on areas of translating innovation to the industry for commercialization. A representative of the Ministry ought to be in the Board	<i>include representatives from the Ministry of Industrialization and Trade as well as the industry players</i>
GENERAL COMMENTS		
Sustainability of the incubation programme	The Bill has placed the entire burden of financing the programme on the National coffers.	There is need to explore other sustainable funding models. ✓ <i>Consider introducing a fee to all the startups who successfully go through the incubation programme. This can be in terms of contributing a small percentage to a central kitty to support the programme. This can be effected after a certain set period of time after graduation.</i> ✓ <i>It can also be in form of providing nurturing young innovators with internship opportunities , or simply provision of linkage/ to test and nurture their innovations</i>
The involvement of KEBS and KIPI	The use of standards the need to protect Intellectual property rights (IPR)has been recognized in the Bill but the involvement of the Standard Body (KEBS) and KIPI is not very clear in the Bill	Clearly define the role and responsibilities of the two institutions
Digitalization	The country is now operating on a digital era. More resources and efforts have been directed in ensuring government services goes digital. The youth who are the target of the bill are technology savvy. Hence the need to ensure the bill answers to this digital wave in the country	Creation of an online portal enables a multitasking approach and enhances collaboration with other ministers and government entities. ✓ <i>It shall also provide entrepreneurs with an opportunity to manage the whole process online hence removing red tape</i>

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Chief Executive's Office

Our Ref: CMD/ADM/01

September 22, 2021

Mr. Jeremiah M. Nyegenye, CBS
The Clerk of the Senate
Parliament Buildings
NAIROBI
Email: cSenate@parliament.go.ke

Dear Mr. Nyegenye,

RE: SUBMISSIONS ON THE STARTUP BILL

The above subject matter and the virtual meeting held on September 22, 2021 between the Senate Standing Committee on Tourism, Trade and Industrialization and the Capital Markets Authority refer

Enclosed herewith are our written submissions for your kind consideration.

Yours sincerely,

Wyckliffe Shamiah, FCPA
CHIEF EXECUTIVE

Enclosed.

Submissions on the Startup Bill 2020 and 2021

cc. Dr. Julius Muia, CBS
Principal Secretary
National Treasury and Planning
Treasury Building
NAIROBI



SUBMISSIONS MADE BY THE CAPITAL MARKETS AUTHORITY (CMA) ON THE STARTUP BILL, 2020 and 2021 TO THE SENATE STANDING COMMITTEE ON TOURISM, TRADE AND INDUSTRIALIZATION ON SEPTEMBER 22, 2021

Clause	The Issue	CMA Recommendations	Justification	Other Comments
General	Recognition of current efforts on business incubation	The Bill should recognize the existing programmes and initiatives that have already been established to address the existing gaps and encourage innovation in different sectors of the economy.	There is need to include this in the Statement of Objects to the Bill to provide context that there has been ongoing work on the same by other Agencies including the CMA. For example there should be consideration for partnerships with regulators that have regulatory sandboxes/incubation programmes so that once entities successfully graduate /test their ideas in the incubation programmes, then they can be linked to the relevant sandboxes or other such programmes depending on their nature of innovation. It is proposed that where such innovations are involved- the Agency in partnership with such regulator-, the regulators should be directly involved as some innovations may potentially cause financial loss to the investing public if not well managed and tested on a limited scale.	None

Clause	The Issue	CMA Recommendations	Justification	Other Comments
2	The Bill does not provide for an express definition of a "start-up" in its interpretations.	This should be provided. Consider definitions in the Tunisia Start Up Act and Philippines Start Up Act where focus is on " <i>a registered entity with an innovative product, process or business model, preferably innovative.</i> "	The application of the law should be clear and express on the subject matter of "startup".	The Bill defines a 'startup' but should be aligned to the scope of start-ups as provided in the body of the Bill which includes innovations by firms that have been in existence for seven years, innovation etc. Innovative entity may be misleading as the entity itself may not necessarily be innovative.
2	The reference to Incubation programmes is narrow and should be enhanced to provide recognition of the regulator's role in fostering innovation.	For example through the Regulatory Sandbox as an Innovation Support Programme.	This will be to enhance industry specific growth under the guidance of regulators unlike the general provisions in the Bill which are not industry driven but are geared towards entrepreneurship in general.	Consider enhancing scope of programmes and including the definition of regulator /government agency
2	There should be a definition of "regulator or government	To provide for "innovations that are under the guidance of a regulator or government agency established by an Act of Parliament"	In order to provide a facilitative environment for ongoing innovations under the regulators.	

Clause	The Issue	CMA Recommendations	Justification	Other Comments
	agency" in section 2 on interpretations			
7	To create awareness of the existence of incubation programmes for start-ups.	Under the role of the registrars, one of the roles could be to create awareness of the existence of incubation programmes for start-ups.	Create awareness of the existence of incubation programmes for start-ups.	Please consider the recommendation to include awareness in the Agency
8 (b)	Limitation of registration	Creates a limitation on registration of startups to firms which are less than 7 years old.	There may be firms which have been in existence for a longer period but have innovative ideas. How will these be registered?	Consider registration of firms which have been in existence beyond 10 years
8 (d)	Minimum total assets requirement.	Clause 8 (d)- We propose that the requirements for minimum total assets be deleted.	Because these are small firms which are coming up. Emphasis should probably be on Human Capital or Technical Capacity.	We are happy that our submission was adopted
9 (2) (b)	Provision for risks and mitigation	Clause 9 (2) (b)- should include the following to be submitted by the applicant. "The risks involved in the innovation and any mitigation measures."	It is necessary to identify risks involved in the innovation and any mitigation measures.	Please consider the recommendation to disclose risks and mitigation.
14	Appeal process	–Appeal process A Tribunal may be set up to hear such appeals in a timely and well-informed manner	The appeal to the Cabinet Secretary may be too bureaucratic.	Please consider need for lighter Alternative Dispute Resolution Mechanism as CS may be beyond the reach of start-ups for appeals.
19	The eligibility criteria is too stringent; as most	There is a need to have in place a lean and efficient registrations and licensing process for start-ups.	We further propose to include firms which have patentable ideas, which may not have necessarily been patented at the point of	We are happy that this has been incorporated

Clause	The Issue	CMA Recommendations	Justification	Other Comments
	Kenyans with ideas have not formalized their business operations given the cost of registration especially on the requirement to be a holder, depository or licensee of a registered patent or author or owner of a software.	There should be an express provision in the Bill on whether or not fees are applicable for the registration process of the start-ups by the Agency.	application. Also, the inclusion of other forms of Intellectual Property closely related to Patents like Utility Models should be considered in order to encourage SMEs to participate.	but may be improved as proposed.
24	Widen scope of credit guarantee	There should be consideration to broaden the access to the Credit Guarantee Scheme set at clause 24 of the Bill to other innovations that are being guided by regulators and government agencies.	This may still be achieved by registration of start-ups being nurtured by other regulators or Agencies thus making them eligible for credit guarantee	None
30(4)	Widen expertise and membership of Board of Trustees.	The constitution of the Board of Trustees of the Fund be amended to include a person with knowledge and experience in capital markets and investments.	To provide for wider expertise in the Board of Trustees.	We are happy with the inclusion of a Capital markets and investment expert to be nominated by CMA
Not provided for	Provide clarity on role of other government	There needs to be clarity on the role of other key supportive government agencies.	For example, Micro Small and Medium Enterprises Authority, Kenya Industrial Property Institute and ICT Authority in	Consider factoring the role pf other Government Agencies

Clause	The Issue	CMA Recommendations	Justification	Other Comments
	entities in business incubation.		view of their role in supporting Kenyan start-ups.	
Not provided for	Provide assistance to access domestic and international markets for innovators.	In addition to financial assistance, the Agency should as part of their facilitation include assistance to access both domestic and international markets.	This has been included so we can drop the same- may be elaborated in ensuing regulations	None
Not provided for	No provisions for actual incubation.	There is need to expressly provide in the Bill the details of the actual incubation.	What are the parameters, expected timelines etc. There is need for clarity on whether or not the certification for registration is perpetual.	Consider including provisions for actual incubation

Yours sincerely,

Wyckliffe Shamiah, FCPA
Chief Executive

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Mr. Jeremiah M. Nyegenye
The Clerk, Senate
Parliament Buildings
P.O. Box 41842-00100
Nairobi, Kenya

Dear Sir,

Re: The Lawyers Hub Kenya Submission on the Startup Bill, 2021

We refer to the public notice issued by The Senate inviting members to submit comments on the Startup Bill, 2021.

The Lawyers Hub is a Legal-Tech organization incorporated within the Republic of Kenya serving the global south. It exists to provide innovative and technology-driven solutions to policy, legal practice and access to justice with a particular focus on technology-driven enterprises and policy alternatives. We applaud the Senate's efforts in supporting the role that MSMEs and startups play in Kenya's digital economy and whilst recognising the challenge of entrenching fiscal incentives within the senate bill.

To this end, we submit the following recommendations towards the drafting of holistic, startup centric legislation.

- a. **Eliminate or in the alternative reduce CESS fees for the intercounty movement of goods for startups.**
- b. **Set up a singular registration system for start-ups;**
- c. **Ground the provision of non-fiscal incentives such as work permits, intellectual rights registration and benefits, flexible winding up and dissolution procedures within the Bill as opposed to regulation;**
- d. **Provide innovative funding options to start-ups such as crowd funding;**
- e. **Shift the focus of the Bill from incubators to startups;**
- f. **Introduce tax incentives to star-ups such as reduced income tax, exemption from income tax payment as well as tax credits for investors and star-ups investing in research and development;**
- g. **Separating the eligibility for registration as a startup from the enrollment into an accelerator program and rework the eligibility for support to include all startups whether admitted into an incubator or not;**
- h. **Make provisions to adequately resource the KENIA to meet its mandate under the Bill;**
- i. **Recognizing the functions of the County Public Service Board in staffing at the county level;**
- j. **Revising the scope of 'incubators' under clause 2 to speak specifically to government run incubator programs;**
- k. **Clearly define the type of training and capacity building programs envisioned under the Bill;**
- l. **Outlining key performance indicators that startups can use to measure growth; and**
- m. **Including fiscal incentives for startups and investors under the substantive provisions of the Bill.**

We appreciate efforts by The Senate in engaging stakeholders on this Bill and look forward to working with you on the same.

Yours Sincerely,



Linda Bonyo, C.E.O. Lawyers Hub Kenya

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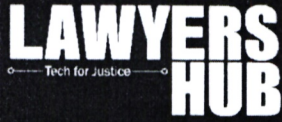
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18/08/2021



SUBMISSIONS TO THE SENATE ON THE STARTUP BILL, 2021

About the Lawyers Hub Kenya

The Lawyers Hub is a Legal-Tech organization headquartered in Kenya serving the global south on Digital Policy and Justice Innovation by providing innovative and technology-driven solutions to policy and legal practice. The Lawyers hub runs the Africa Digital Policy Institute, Africa Law Tech Association, The Africa Startup Law Accelerator and convenes the annual Africa LawTech Festival and the Africa Legal Innovation Week on Justice innovation. In the year 2020 alone, the Lawyers Hub convened policy makers, academia and legal-tech organizations from 20+ countries within the African Continent, curated rapid tech solutions under the Global Legal Hackathon and developed key policy briefs for the African Continent on Artificial Intelligence, Data Privacy & Digital Identity, Tech and Migration, and Taxing the Digital Economy.

Introduction

The Startup Bill, 2021 is a Bill for an Act to provide a framework to encourage growth and sustainable technological development and new entrepreneurship employment; to create a more favorable environment for innovation; to attract Kenyan talents and capital.

The Lawyers Hub Kenya welcomes the Bill and its objectives in promoting Kenya's place as a regional leader in the African startup ecosystem and the role that sustainable policies driven by incentives for startups, investors and other stakeholders play in creating an enabling environment for these businesses to thrive.

However, with an aim of improving the current framework, we urge Parliament to consider the following recommendations:

a. Eliminate fees for the Intercounty Movement of goods

We note that in June this year, the National Development Implementation and Communication cabinet Committee and the Council of Governors, resolved that those traders engaged in inter-county trade would only have to pay one off CESS Charges at the county of origin. However, this agreement is still requiring to be signed by the 47 County Governors to be implemented.

In line with this, we recommend that start-ups be exempt from county fees permits to allow for their scalability or in the alternative, have a reduced county fee.

b) Eliminate the double registration of Start-ups

The Bill requires start-ups and incubators to first register under the usual and bureaucratic means as limited companies, partnerships or NGOs, and then apply for registration under a Registrar of Start-ups. At this point, a start-up would have already provided their business location, KRA, NSSF, and NHIF PINs, among other details for registration on the Business Registration Service portal. Section 24 states that the Agency will subsidize the formalization of start-ups but fails to give more information on how this will be done. Therefore, this Bill does not ease business processes for start-ups or take away the taxation, licensing fees and processing challenges start-ups currently face.

We recommend the bill identify measures to reduce existing compliance challenges for start-ups in existing business entity structures such as the companies act.

c) Introduce more non-fiscal incentives to start-ups

Section 30 requires the Cabinet Secretary to make regulations on the Protection of Intellectual Property Rights, deregistration of start-ups etc. These are however extremely key provisions whose support ought to be anchored within the Bill. The Bill should therefore adequately provide for non-financial incentives such as:

i) Work Permits

Start-ups may benefit from having easy access to work permits that allow them to hire personnel that influence the growth and expansion of the organization. These permits can be categorized into short term and long term with vetting requirements to prevent abuse of such permits.

ii) Intellectual Property Incentives

Start ups need access to legal advice on the importance of Intellectual property, legal services in the acquisition of Intellectual Property Registration. The bill should also be alive to the ongoing amendments to the Intellectual Property Laws in Kenya and the impact this may have on start-ups.

iii) Winding Up and Dissolution

The Bill ought to provide easier process for the winding up and dissolution of start-ups than those set out in the insolvency Act. Further, the Bill could also propose innovative alternatives to bankruptcy in addition to those in the Liquidation Act to support entrepreneurs who invest heavily in the success of their start-ups.

In the alternative, The Lawyers Hub urges the Senate to explore the drafting of the Regulations in consultation with key stakeholders to ensure the development of holistic legislation that is supportive to the startup ecosystem as a whole.

d) Ensuring start-ups take advantage of innovative funding opportunities

The Capital Markets Authority is taking steps to develop the Crowdfunding regulations. This and other innovative funding options ought to be made available to start-ups through the bill to enable start-ups have easier financing options.

e. Shift focus from incubators to Start-ups

In its reading, the Bill presents a large focus on incubators by, requiring startups to form part of an incubator in order to be registered under the proposed law, creating additional registration and certification processes for private businesses, established both in and out of

the region, operating as incubators, and placing obligations on businesses providing incubation to Kenyan startups. These obligations include;

- a. providing secretarial and administrative services to startups; and
- b. creating investment opportunities for the private sector, including for venture capitalists.

The provisions on incubations diverts the focus of the Bill from startups and as a result fails to meet its objectives. The Bills definition of an incubator which is specific to private entities, clashes with other provisions, more specifically, clause 9 which recognizes two types of incubators; those run by the National Government and those run by the County Government, leaving out the incubators under clause 2 of the Bill. Clause 4 also gives the Agency power to; put in place a national and county incubation policy framework for the development of the business incubation sector and startup system. This implies the existence of government run incubator programs.

Similarly, the ambiguity around the identity of an incubator is disadvantageous to private entities in the business of delivery of services to support establishment and development of innovative start-ups by subjecting them to additional certification processes and obligations that these businesses did not envision when setting up.

The Lawyers Hub Kenya urges the Senate to review the objectives of the Bill vis-a-vis its reading as currently is to ensure the two align.

f. Flexible tax arrangements for Start-ups

I. Income Tax

a) Exemption

Tax exemptions offered to startups on income tax can be crucial in helping these businesses scale their operation in their earlier stages. The length and amount of income subject to exemption should be determined by considering various factors including;

- a. How long on average to Kenyan startups take to scale their product by unlocking various levels of funding; and
- b. How much on average Kenyan startups make a year.

Research indicated that as of 2018, Kenya's top funded startups took on average 2.5 years to unlock seed funding.¹ Although the sample size is small, this could help serve as an indicator on how long after registration as a business vehicle under clause 8 startups should enjoy a 100% tax exemption rate to allow them to reduce costs and focus resources on production.

¹ Kenyan Startups Raised a Record US\$126M in 2018
<https://founder360mag.com/kenyan-startupsraised-a-record-us126m-in-2018-slide-deck/>

This is further supported by Singapore's startup tax exemption that allows newly incorporated companies that meet the qualifying conditions to claim full tax exemption on the first \$100,000 of normal chargeable income for each of its first three consecutive Year of Assessments.²

A further requirement should be put in place to encourage startups to reinvest into their businesses by limiting the scope of the exemptions to startups that reinvest profits back into their businesses.

b) Reduced Income Tax Rate on Eligible Income

In a bid to ease startups back into the tax regime once the startup income tax exemption period lapses, we propose the adoption of a reduced income tax rate for an additional period, determined by the factors outlined in (a) above.

This rate will be adjusted annually in consultation with the National government as per its mandate under ART. 209 and ART. 114 of the Constitution that gives it the powers to impose tax.

ii) Research and Development Tax Credits

The Lawyers Hub welcomes the Senate's commitment to research and development under the Bill through clauses such as 24(d) that seek to support startups in their R&D initiatives. In furtherance of the provisions of this clause, we proposed the introduction of Research and Development Tax Credits. These credits should be available to startups registered as business vehicle under clause 8 that can demonstrate their commitment towards:

- a. Developing new products or processes
- b. Enhancing existing products or processes

R&D tax credits could be crucial in encouraging innovation in the region as well as building more research and reference points for future businesses, investors conducting due diligence and policy makers within the ecosystem.

iii) Tax credits for investors

Tax credits provided to investors under the Bill will play a huge role in encouraging local investment in startup businesses.

These credits should be pegged on a number of factors, including:

² The 6 most fashionable tax incentives for Singapore startups
<https://e27.co/the-6-most-fashionable-taxincentives-for-singapore-startups/>

- a. set minimum investment size
- b. whether or not the investor is a resident person

g) Adequately resource the Kenya National Innovation Agency to meet its obligations under the Act

There is need to increase budgetary allocations to KENIA to ensure it meets its obligations prescribed under the Act. In addition, there is need to look at the roles of other authorities in supporting the implementation of the Bill. For Example, The ICT Authority is mandated to promote innovation and enterprise. The Innovation Department at the Authority is tasked with: receiving innovations & products from all over Kenya, evaluating the potential to scale and providing technical assistance as well as linkage to markets.

h) Provide measures to ensure Start-ups are able to take advantage of International and Regional trade such as the Africa Free Trade Area

To begin with, the Agency should be tasked with creating awareness on international trade opportunities for Start-ups in Kenya.

In addition to the above, me also make the following specific recommendations:

9(1)	To this end, we propose that the scope of 'incubators' under clause 2 be revised to speak specifically to government run incubator programs.	The wording of clause 9 suggests that incubator programs must be managed by the Agency, County Government or any other entity on behalf of the National or County government. When read together with clause 20; which recognizes the existence of incubators managed by the Agency and the county government, the Bill creates ambiguity as to what constitutes an incubator and whether or not private entities (incubators) under clause 2 can come under the management of the Agency or county government. Given that the scope under clause 2 is specific to private businesses, there is need to clearly redefine what constitutes an incubator and avoid imposing restrictions and obligations on private entities and how they conduct their dealings.
22	To this end, we propose that the scope of 'incubators' under clause 2 be revised to speak specifically to government run incubator programs.	The obligations of an incubator under this clause create rigid requirements as to how private entities conduct their business.

22(g)	The reading of this sub clause should also be amended to: "Facilitate linkages with investors in the private sector, including venture capitalists."	Further, 22(g) obligates incubators to create investment opportunities for the private sector including for venture capitalists. It is difficult to implement such a provision as incubators are more inclined to link startup businesses to opportunities as opposed to creating these opportunities. The government is more inclined to provide incentives to investors aimed at boosting the attractiveness of local startups as investment vehicles. This is done through already existing bodies such as the Kenya Investment Authority (KenInvest) a statutory body currently operating through an Act of Parliament (Investment Promotion Act No. 6 of 2004)
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26	Clearly define the type of training and capacity building programs envisioned under this clause.	Clause 22 of the Bill sets out the obligations of incubators, highlighting, 'supporting novice technological entrepreneurs at the early stage and facilitating technological innovators to implement their ideas and form new business ventures'. These two obligations although not clearly defined can be translated to include capacity building and training initiatives. To avoid a clash with already existing obligations outlined under clause 22, there is need to clearly define what type of programmes the Agency shall put in place and whether or not they will be in collaboration with incubators or undertaken independently.
29	Outline key performance indicators that startups can use to measure growth.	Startups are private businesses whose growth objectives are set out internally in consultation with management, investors and other key stakeholders. Growth objectives set out by the Cabinet Secretary will be difficult to implement as these will differ from startup to startup. The use of key performance indicators as adopted in the Tunisian Startup Bill³ could be useful in not only influencing internal decisions by startups, but also serve as a great metric in measuring startups contribution towards achievement of the objectives set out under the Bill and Kenya's Digital Economy Blueprint.

³Tunisia's startup act (Law 20-2018 issued April 17th 2018) updated with the Decree issued 11th October 2018 <https://www.slideshare.net/ChihebCHAZOUANI/cag-tunisia-startup-act-law-202018-issued-april-17th-2018-updated-with-the-decree-issued-11th-october-2018>

In addition to amending the contents of the Bill, the Lawyers Hub makes the following additional

The Clause Number	Proposed Amendment	Rationale and Justification
6(3)	Recognize the functions of the County Public Service Board in staffing at the county level. "The Agency may, in consultation with the Public Service Commission and the County Public Service Board, appoint-"	Clause 6(3) provides for the appointment of county registrars responsible for the appointment of the registrars at county level. The clause provides that county registrars be appointed by the Agency in consultation with the Public Service Commission (PSC). The functions of the public service in Kenya are provided for under the Constitution in its ART. 234 and the Public Service Commission Act, 2017. The scope of the PSC excludes county government officials in ART. 234(3)(b).³ The County Governments Act, No. 17 of 2012⁴ gives the County Public Service Board power to appoint persons to hold or act in offices of the county public service. The appointment of county registrars by the PSC would not be legally binding as they are officers of the County government.

³ Clauses (1) and (2) on the functions and powers of the Commission shall not apply to any of the following offices in the public service—
an office in the service of a county government

⁴ County Governments Act, No. 17 of 2012

<https://www.health.go.ke/wpcontent/uploads/2015/09/County%20Government%20Act.pdf>

8(1)	Separating the eligibility for registration as a startup from the enrollment into an accelerator program by instead providing that: "An entity shall be eligible to be registered as a startup if -"	There is lack of a clear distinction between the eligibility for registration as a startup and admission to the incubator program. This is further seen under clause 12 which states that admission into the incubation program is conclusive evidence of startup registration.
24 (c)	Reworking the eligibility for support to include all startups whether admitted into an incubator or not by stating: "Provide fiscal and non-fiscal support to startup under SEC. 2 of this Act."	Incubators generally function to provide linkages that promote startup growth with most startups leaving; or not joining at all, once they have the right structure. Some startups are past the early stages and are less inclined to enroll into incubation programs. This requirement therefore locks out startups that are more established from acquiring the startup label and therefore, accessing fiscal benefits and other incentives.

8(1)(f)	Deletion of clause 8(1)(f)	The amount of capital that is set aside for research and development differs from startup to startup with some having lower R&D costs than others. Startups structure their expenses by considering various factors such as, the nature of the business; is it brick and mortar, online or a physical service. Therefore, capping the amount spent on R&D might be detrimental to a startups growth as it directly affects their business model and potentially their profits. This is by increasing cost at the expense of other important factors such as production expenses
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9(1)	To this end, we propose that the scope of 'incubators' under clause 2 be revised to speak specifically to government run incubator programs.	The wording of clause 9 suggests that incubator programs must be managed by the Agency, County Government or any other entity on behalf of the National or County government. When read together with clause 20; which recognizes the existence of incubators managed by the Agency and the county government, the Bill creates ambiguity as to what constitutes an incubator and whether or not private entities (incubators) under clause 2 can come under the management of the Agency or county government. Given that the scope under clause 2 is specific to private businesses, there is need to clearly redefine what constitutes an incubator and avoid imposing restrictions and obligations on private entities and how they conduct their dealings.
22	To this end, we propose that the scope of 'incubators' under clause 2 be revised to speak specifically to government run incubator programs.	The obligations of an incubator under this clause create rigid requirements as to how private entities conduct their business.

22(g)	The reading of this sub clause should also be amended to: "Facilitate linkages with investors in the private sector, including venture capitalists."	Further, 22(g) obligates incubators to create investment opportunities for the private sector including for venture capitalists. It is difficult to implement such a provision as incubators are more inclined to link startup businesses to opportunities as opposed to creating these opportunities. The government is more inclined to provide incentives to investors aimed at boosting the attractiveness of local startups as investment vehicles. This is done through already existing bodies such as the Kenya Investment Authority (KenInvest) a statutory body currently operating through an Act of Parliament (Investment Promotion Act No. 6 of 2004)
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26	Clearly define the type of training and capacity building programs envisioned under this clause.	Clause 22 of the Bill sets out the obligations of incubators, highlighting, 'supporting novice technological entrepreneurs at the early stage and facilitating technological innovators to implement their ideas and form new business ventures'. These two obligations although not clearly defined can be translated to include capacity building and training initiatives. To avoid a clash with already existing obligations outlined under clause 22, there is need to clearly define what type of programmes the Agency shall put in place and whether or not they will be in collaboration with incubators or undertaken independently.
29	Outline key performance indicators that startups can use to measure growth.	Startups are private businesses whose growth objectives are set out internally in consultation with management, investors and other key stakeholders. Growth objectives set out by the Cabinet Secretary will be difficult to implement as these will differ from startup to startup. The use of key performance indicators as adopted in the Tunisian Startup Bill³ could be useful in not only influencing internal decisions by startups, but also serve as a great metric in measuring startups contribution towards achievement of the objectives set out under the Bill and Kenya's Digital Economy Blueprint.



Subject: Startup Bill 2021 Interventions

From: Centre_for_Intellectual_Property & Technology Law <CIPIIT@strathmore.edu>

To: csenate@parliament.go.ke <csenate@parliament.go.ke>, senatetourimandtrade@gmail.com
<senatetourimandtrade@gmail.com>

Cc: Caroline Wanjiru Muchiri <cmuchiri@strathmore.edu>, Isaac Rutenberg <irutenberg@strathmore.edu>

Date: Monday August 16, 2021 9:20:30 PM

Dear Sir,

Please find attached interventions from CIPIT on the above referenced Bill. We look forward to further engagement with your office on the subject.

Sincerely,
CIPIT.

Regards,



Strathmore
UNIVERSITY

Centre for Intellectual Property & Information Technology Law

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DHS
Kindly deal

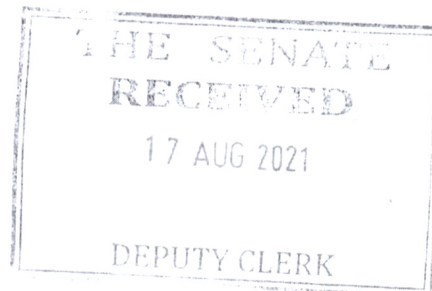
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Attachments

CIPIIT Intervention on Startup Bill 2021 16.08.pdf (612 kB)



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18 AUG 2021

8/17/2021, 8:28 AM



Strathmore University

*Centre for Intellectual Property and
Information Technology Law*

16th August 2021

To:

The Senate

J.M Nyegeye, CBS,

Clerk of the Senate

NAIROBI

csenate@parliament.go.ke & senatetourimandtrade@gmail.com

Dear Sir,

Re: Interventions on Startup Bill, 2021

Greetings from the Centre for Intellectual Property and Information Technology law (CIPIT) at Strathmore University, Kenya. CIPIT is a think tank and research centre established in 2012 which focuses on Intellectual Property (IP) and Information Technology (IT) Law in Kenya and global south. The scope of our work includes evidence-based research and training on IP and IT law and policy, especially as they contribute to African law and human rights. Our research and engagement in these focus areas has therefore been a central tenet for nearly a decade. Some of our publications in this area can be viewed at www.cipit.org.

CIPIT is pleased to the further intervention to the Startup Bill 2021 to enrich and contribute to the legislative process. This intervention is in addition to the one made on 23rd October 2020 on the same Bill. In the current intervention, we focus on Five (5) specific issues which we consider to be significant to the innovators and will impact on the implementation of the Bill once it becomes law. The specific issues are:

1. **Informality and Infrastructural Flexibilities:** Startups, due to their size, are SMEs and MSMEs as defined under the MSME Act¹. According to a study by the Kenya National Bureau of Statistics (KNBS), only 27% of SME establishments were licensed with the unlicensed ones operating at a household level². This is either by choice or default or choice. This level of informality is also characteristic with startups in the field of computer science and computational systems (tech startups) which are operated at household level especially due to their size. The Bill should therefore focus or attempt to introduce

¹ See section 2 of the Micro and Small Enterprises (MSME) Act, No 55 of 2012.

² KNBS 2016 Micro, Small and Medium Enterprises (MSME) Survey Basic Report. Available [here](#)

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infrastructural flexibilities to the formalities whilst attempting to achieve the governance objective of the law. This can be achieved during registration and operationalization of the Bill.

2. **Flexibility in Registration Process and Requirements:** The Bill introduces an extra layer of registration for startups to wit the registrar of startups. Whilst for ease of governance registration is desirable, business registration in Kenya remains one of the challenges for innovators. The Bill should be aim reducing this burden which we opine can be achieved through:

- a. **Recognition and Registration of Individual Innovators:** Inclusion of 'individual innovators' as part of qualification to an incubation program under section 8 of the Bill. This, in addition to the requirements under Partnership Act, Companies Act, NGO Act and Limited Liability Partnership Acts. The qualifications for individual innovators should include 'any person who has viable or scalable technology or innovation reduced in a tangible format.' Incubators can conduct periodical pitches to provide opportunities for individual innovators to present their innovations.
- b. **Recognition or registration with an Incubator:** Once registered as an Individual Innovator, an Incubator would then issue a certificate of recognition/registration. With this Certificate of recognition/registration, the individual's innovation would be incubated and they would benefit from the incubators' services including training, research services etc.
- c. **Incubator Certificate to be provisional incorporation Certificate:** the certificate issued by the Incubator not to be permanent but temporary to allow the innovator develop a viable business/economic model and thereafter register as a body corporate. During the incubation period, one of the services or incentives offered would be registration as a body corporate.

3. **Flexible, Staggered and/or Provisional Registration and licensing requirements:**

- a. Proposal for the Bill to include provisions amending the respective laws³ allowing and mandating the Registrars at Sheria house and the NGO Board Chair to accept an Incubator registration certificate as part of requirements in issuance of registration/incorporation certificates. This avenue of registration would be

³ Companies Act, Partnership Act, Limited Liability Partnership Act and the Non-Governmental Organisations Act



staggered over a period of time within which the innovator would be able to operate and be recognized as an entity albeit at provisional capacity.

- b. **Provisional Register:** The above should be followed by amendment to include a provisional register or entry in the registers⁴ to allow staggered registration process for persons qualified under the Startup Law. The objective for the amendment would be to allow use of the *incubation registration certificate* for a period of 6 to 12 months including payment of respective fees.
- c. **Compliance:** Failure to comply within the specified period would automatically void the provisional registration and withdrawal of related benefits accordingly. Such voidance should not attract any penalty on the part of the innovator. Lessons from Tunisia and Senegal on their Startup laws is that registration should not be mandatory but encouraged with accompanying flexibilities allowing innovators to focus on innovation and scaling their innovations without the burden of registration formalities. Further, failure in compliance should not attract extra punishment especially from the State.
- d. The approach above should be adopted for licensing of the startups for operational purposes.

The above recommendations would be aimed at encouraging individual innovators to engage the incubators; reduce the formality requirements at the initial stages of the innovators' journey.

4. **Sensitization of the Public:** The Bill should have specific provision mandating all the administrative bodies established under it to conduct sensitization of the public. Such sensitization efforts should be aimed at notifying the public on how to deal with entities with provisional registration certificates, increasing the confidence in the public to deal with the entities, introducing incentives of dealing with entities registered under the Startup law etc. These are provisions that can be further supported for in regulations for implementation purposes.
5. **Scope of the Bill:** From reading the Bill and Memorandum attached thereto, we propose specifying the scope of the Bill through:

⁴ Register of Companies, Partnerships, Limited Liability Companies and NGOs.



- a. **Definition of a Startup:** Remove the reference to 'strong growth potential and disruptive economic model' as part of the definition. This is what the administrative entities under the Bill should aim to create or support a startup to develop.

In addition, refocus the definition to include entities or persons working with, utilizing, involved in development of technology in their innovations.

- b. **Redefine Technology & Innovation** to mean or refer to the specific scientific field i.e. computer science and related fields anticipated under the Bill. From the content and memorandum attached to the Bill, the overall intention is to provide for or regulate those startups in the field of computer science and computational systems including software and hardware.
- c. **Adoption of products from startups:** Incentivize, mandate or require the government (National and County) and public institutions to adopt or support the adoption of technologies developed within the framework of these law. This could be through specified quotas or adoption so as to ensure that the development of the technologies is demand driven.
- d. **Institutions under TVETA⁵:** Include institutions of higher learning regulated under TVETA as part of collaborators for and during the implementation of the Bill.
- e. **Regulations:** Provide a timeline within which the Regulations operationalizing the Act will be published.

CIPIT continues to encourage a holistic approach to development of a framework that would support a startup and related ecosystem. We are ready and willing to contribute to efforts towards development of the policy and laws for such a legal framework for startups in Kenya. You may contact CIPIT at cipit@strathmore.edu or +254 0703 034 612.

Yours Sincerely,
Centre for Intellectual Property and Information Technology (CIPIT)
Strathmore University

⁵ TVETA: Technical and Vocational Training Authority

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TWELVTH PARLIAMENT
THE SENATE
J.M NYEGEYE, CBS,
CLERK OF THE SENATE

Nakuru Entrepreneurs Enablers Forum (NEEF)
P.O BOX 536, Egerton

RE: THE STARTUP BILL (SENATE BILL NO. 1 OF 2021)

Reference is made to the above bill that was read a first time in the Senate on 25th May 2021 and committed to the Standing Committee on Tourism, Trade, and Industrialization.

Nakuru Entrepreneurs Enablers Forum is based in Nakuru County and supports startups by, providing entrepreneurship training, providing co-working spaces, mentoring startups, linking startups to investors, organizing ideation sessions and entrepreneur meet ups, linking startups to markets. We have experienced challenges such as unfavorable government policies, limited access to investment opportunities, limited funds for scaling up of startups.

The startup law will go a long way in supporting startup in Kenya and Nakuru County through ensuring that we have robust national incubation programme, easing registration of startups and providing startups with incentives that encourage their growth, hence it has come at the opportune time.

We held a meeting in Nakuru County on 6th October 2020 that brought together over 15 organizations to deliberate on the draft bill and shared the recommendation with national Startup bill coordination committee that brings together various players including ASSEK, Association of Countrywide Innovation Hubs, KENIA, KEPISA, Startups among others for consolidation. Attached is minutes capturing our deliberations

We would like to thank the commitment shown by the senate as a whole and the standing committee on tourism, trade and industrialization to pass the startup bill hence open up opportunities for young Kenyan entrepreneurs to grow their ventures and create employment for other as well as contribute to socio economic development of Kenya.

Yours Sincerely,

Wilson Munene Karimi

Member NEEF



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18 AUG 2021

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18/08/2021

Nakuru Enablers

Meeting Minutes
6th October, 2020

Opening

The startup bill forum Nakuru County conducted by Nakuru Enablers was called to order at 11:20AM on 6th October, 2020 in Nakuru Box by Beatrice Wanjiku with a word of prayer.

Present

George Wayne, Dennis Tianta, Wilson Munene, Cynthia Muthoni, Beatrice Wanjiku, George Kariuki, Wallace Abade, Kelvin Kimani, Serah Njeri, Stanley Kimaru, Peter Njanja, Elvis Ouma, Peter.K, Janus Muli, Rebecca Kerubo, Linda Kageha, Gladys Wanjiru, Lawrence, Anthony Kissinger, Kevin Sang, Eunice Kimama, Moses Irungu, John Kamau, Nyawira Mariam, Makali Mike, Pinky Nduta, Odindo Gift.

Present Online

Charles Oloo, Kennedy Wafula, Victor Otieno, Loise Warui, James Ngari, Solomon, Micheal Kariah, Wesley Kijedi, Sarowiwa Adanje

Open Issues

PART 1- PRELIMINARY

- Concern on how the word “startup” was used and explained especially the number of years were a company is considered a startup since most SME’S collapse within 5 years. (*Elvis Ouma, E-maziwa*)
- Startup means Number of employees +Number of years in operation.
- What next after startup. (*Dennis Tianta, Prosperous coach*)

Recommendation

- For a company to be considered a startup the bill should reduce the number of years to 3-5 years maximum.
- Create an online platform for companies to register as a startup. (*James Ngari*)
- Clause on startup when registering a business especially on sole proprietorship. (*George wayne, Nakuru Box*)
- Systems to be put in place for startup authenticity. (*Elvis Ouma, E-maziwa*)
- Startups should be defined based on the size. Some businesses can scale up higher within a short period of time hence not considered a startup. (*Peter.K, Munchiz*)

PART 2- ESTABLISHMENT OF INCUBATION PROGRAMMES

- Satisfactory, No comments.

PART 3- REGISTRAR OF STARTUPS AND ADMISSION INTO AN INCUBATION PROGRAMME

- This looks like double registration since startups have to register as companies and as startups. (*Peter Njanja, Sheth & Wathigo advocates*)
- Incubation programs criteria eligibility (*Dennis Tianta, Prosperous coach*)
- Reduce some qualifications/compliance on being a startup since it is already covered when registering a business. (*George wayne, Nakuru Box*)
- Deregistration should be more elaborate, a business should be notified on registration expiry and deregistration process. Startups should be given reasons why they should not be registered to the programme if not accepted. (*Peter Njanja, Sheth & Wathigo advocates*)
- How do you differentiate two similar ideas joining the startup program and both considered as a startup. (*Wilson Munene, Egerton University*)
- Startup authentication, litigation process on funds.
- The startup bill mostly favors registrar. (*Peter Njanja, Sheth & Wathigo advocates*)
- 10. Include reasons why one was not considered for the process. (*Peter Njanja, Sheth & Wathigo advocates*)

- A procedure of exiting the program should be introduced (*Peter Njanja, Sheth & Wathigo advocates*)
- There is a lot of duplication on registration and compliance the eligibility criteria should be made simple (*Peter Njanja, Sheth & Wathigo advocates*)
-

Recommendations

- Anticorruption committee who are startup members. (*Elvis Ouma, E-maziwa*)

PART 4- CERTIFICATION OF INCUBATORS

Suggestions

- Create legal tech copyright. (*Peter.K, Munchiz*)
- For intellectual property rights can we make application startups through KENIA? (*Dennis Tianta, Prosperous coach*)
- Agency to provide support to apply for the patented rights. (*Peter Njanja, Sheth & Wathigo advocates*)

PART 5- INCENTIVES FOR STARTUPS

- Government to help/ invest citizens in the idea stage and develop it to a bigger scope by giving a business friendly environment and creating a space/platform (*Linda Kageha, Kenya National Chamber of Commerce*)
- Since most counties have an incubation center and enablers. How will the government work with enablers and reach out to startups directly. (*George Wayne, Nakuru Box*)
- More businesses will enjoy the perks(privilege) of being a startup which they shouldn't .(*Beatrice Wanjiku, Nakuru Box*)

- No act dealing with intellectual property. **(Peter Njanja, Sheth & Wathigo advocates)**
 - 23. (e) Too open/vague and issues might crop up. **(Linda Kageha, Kenya National Chamber of Commerce)**
 - The startup bill should cover more on IP, especially when it comes to technological innovations, what exactly is patented, is it the whole process (customer registration to the last detail), app design, content, name, IP address and more **(George Wayne, Nakuru Box)**
 - The IP support is very silent **(Peter Njanja, Sheth & Wathigo advocates)**
 - 23. (e) Expound on other support. **(Elvis Ouma, E-maziwa)**
 - The start ups need to be segmented according to their growth stage, needs and size so as to ease the on what support they require **(Elvis Ouma, E-maziwa)**
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- PART 6-MISCELLANEOUS PROVISIONS**
- The cabinet secretary has too much powers without checks and balances **(Peter Njanja, Sheth & Wathigo advocates)**
 - The Board of trustees a member from the legal body **(Peter Njanja, Sheth & Wathigo advocates)**
 - Who will check the activities of the board **(James Ngari)?**
 -

Suggestions

- Segment startups and provide technical assistance/acceleration depending on their needs. **(Elvis Ouma, E-maziwa)**
- Add a startup option in the registration so that startups can have a lifeline, tax holiday, subsidized registration fees which can be paid later. **(James Ngari)**
- Create a startup board so as to separate them from others like SME'S hence making it easier especially on their lifeline. **(James Ngari)**
- Create a criteria for grouping startups, it can be based on revenue, capital, number of employees or size of operation. **(Dennis Tianta, Prosperous coach)**

Vote of thanks provided by Beatrice Wanjiku, Nakuru Box.

Adjournment

Meeting was adjourned at 2pm by Wilson Munene.

Minutes submitted by: Cynthia Ngigi

Approved by: George Wayne

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REPUBLIC OF KENYA
NATIONAL PARLIAMENT

THE SENATE

J.M NYEGEYE, CBS,

CLERK OF THE SENATE

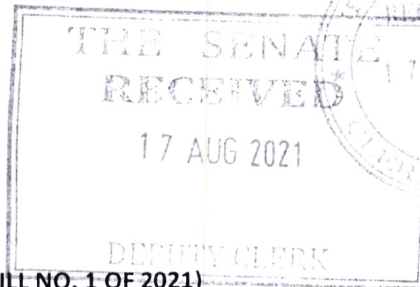
mhub
Mt. Kenya Hub

DOMINIC SAVIO WAMBUGU

FOUNDER

MT KENYA INNOVATIONS HUB

NYERI



RE: THE STARTUP BILL (SENATE BILL NO. 1 OF 2021)

Reference is made to the above bill that was read a first time in the Senate on 25th May 2021 and committed to the Standing Committee on Tourism, Trade and Industrialization.

Mt Kenya Hub is based in Nyeri and Kiambu Counties and supports startups in from ideation, startups, acceleration and investment programs through our spaces. We have experienced challenges such as;

- Timeline and items needed to file, process and get a partner. In innovation, the more time it takes the harder it is to get one
- Access to fund and funding instruments – The amount and items (collateral) asked for in order a youth to access funds the grassroots youth cannot get. So, a need to revise or reduce the items needed to access funds
- Most people have utility models and not patents; so we change the name patent to IP

The startup law will go a long way in supporting startup in Kenya and Nyeri and Kiambu Counties by powering policies that will provide an enabling ecosystem for youth to innovate and create jobs; hence it has come at the opportune time.

We held a meeting in Nyeri County that brought together over 22 organizations to deliberate on the draft bill and shared the recommendation with national Startup bill coordination committee that brings together various players including; ASSEK, Association of Countrywide Innovation Hubs, KENIA, KEPSA, Startups among others for consolidation. Attached is minutes capturing our deliberations

We would like to thank the commitment shown by the senate as a whole and the standing committee on tourism, trade and industrialization to pass the startup bill hence open up opportunities for young Kenyan entrepreneurs to grow their ventures and create employment for other as well as contribute to socio economic development of Kenya.

Sincerely

Savio Wambugu

Founder Mt Kenya Hub

(2) C-/Assist- STTI
Kindly Deal
18/08/2021



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Milestone Business Centre North Eastern Bypass Mombasa,
4th Floor Office E1.

18 AUG 2021

MATRIX OF SUBMISSIONS (AND GENERAL RECOMMENDATIONS)
RECEIVED ON THE START-UPS BILL 2021

Clause	Provision in the Bill	Proposed Amendment	Justification
Clause 2	“startup” includes an innovative entity, legally recognized by the laws of Kenya, with strong growth potential and a disruptive economic model.	<i>Use simple words. What parameters will be used to measure adjectives such as, strong potential and disruptive economic model?(Ministry Industrialization)</i>	The use of legally recognized means that the entity has already been registered under an existing law. There is no need to set up an entity to perform functions already been done elsewhere.
	"startup incubator" means a company, partnership, non-governmental organization or limited liability partnership, whose principal object is the support of the birth and development of start-ups, innovation, and related activities related to the transfer technological and research, development and innovation processes, through the offer of dedicated physical spaces and services advice;	<i>In the definition, incubators will be required to offer dedicated physical spaces in their support of start-ups.</i>	This is oppressive to the current reality with private business and some government institutions that offer services on online platforms or are moving towards remote-based service delivery.
Clause 3(b)	The object of this Act is to provide a framework for the registration of startups;	<i>Clause 3(b) states that one of the objects of the Bill is to provide a framework for the registration of start-ups.</i> <i>This is a function of the Business Registration Services established under the Business Registration Service Act, 2015. (Ministry of Industrialization)</i> <i>There already exists regulatory framework on the registration of start-ups under the Business Registration Services. The requirement under the Bill is not a complementary effort among other government agencies aimed at minimizing bureaucratic hurdles to</i>	There is need to avoid duplication of roles

Clause	Provision in the Bill	Proposed Amendment	Justification
		<i>simplify filing requirements or shorten application review periods. (Chamber of Commerce)</i>	
Clause 4(1)	The National and county governments shall— (a) promote innovation; (b) facilitate the transfer of technology innovation; (c) create and develop a sustainable, globally competitive technology innovation sector that contributes towards the accelerated growth of the economy; (d) promote the creation of employment and wealth creation; and (e) promote the linkages between universities and research institutions and the business community.	<i>Include the creation of a conducive business environment for growth and sustainability as this role should be the driving force behind this Bill. (Ministry of Industrialization)</i>	
Clause 6	(1) The Agency shall be responsible for the registration of startups under this Act. (2) There shall a Registrar of startup who shall be— (a) competitively recruited by the Public Service Commission; and (b) appointed by the Agency on such terms and conditions as the Agency may, in consultation with the Salaries and Remuneration Commission, determine.	<i>Recognize the functions of the CPSB. The Agency to consult with the CPSB in appointment of county registrars (Chamber of Commerce)</i>	To further cement the role of counties in implementation of the Bill.

Clause	Provision in the Bill	Proposed Amendment	Justification
	(3) The Agency may, in consultation with the Public Service Commission, appoint— (a) a Deputy Registrar; and (b) such number of county registrars in the counties as shall be necessary for the performance of the functions of the Registrar and who shall be subject to the directions of the Registrar		
Clause 8(1)	An entity shall be eligible to be registered as a startup and for admission into an incubation programme if the entity — (a) is registered in Kenya as a— (i) company under the Companies Act; or (ii) partnership firm under the Partnership Act; or (iii) limited liability partnership under the Limited Liability Partnership Act; or (iv) non-governmental organization under the Non-Governmental Organizations Coordination Act;	<i>Separate eligibility of registration as a start-up from inclusion in an incubation programme (Mr. Sam Gichuru)</i>	There is lack of distinction between the eligibility to be registered as a star-up and admission into an incubation programme. This ambiguity is further seen under clause 12 which states that admission into the incubation programme is a conclusive evidence of registration as a start-up
		<i>Clause 8 provides for eligibility for admission into incubation programme. The rationale for the seven year period is unclear. Though innovative ideas and concepts require some years to mature, what other parameters can be used to determine eligibility other than duration?(Ministry of Industrialization)</i>	<i>This can be a hindrance other than being a facilitative factor if only pegged on duration. There is need to consider other factors such as no of employees/ employee potential, initial investment capital requirements.</i>

Clause	Provision in the Bill	Proposed Amendment	Justification
Clause 9	9. (1) An entity that qualifies for admission into an incubation programme under section 8 may submit an application, in the prescribed form— (a) in the case of an incubation programme managed by the Agency, Ministry or any other entity on behalf of the National Government, to the Agency; or (b) in the case of an incubation programme managed by a county government, to the county registrar.	<i>Scope of incubators to be expressly those that are run by government</i>	To avoid ambiguity
		<i>To this end, we propose that the scope of 'incubators' under clause 2 be revised to speak specifically to government run incubator programs.</i>	The wording of clause 9 suggests that incubator programs must be managed by the Agency, County Government or any other entity on behalf of the National or County government. When read together with clause 20; which recognizes the existence of incubators managed by the Agency and the county government, the Bill creates ambiguity as to what constitutes an incubator and whether or not private entities

Clause	Provision in the Bill	Proposed Amendment	Justification
			(incubators) under clause 2 can come under the management of the Agency or county government. Given that the scope under clause 2 is specific to private businesses, there is need to clearly redefine what constitutes an incubator and avoid imposing restrictions and obligations on private entities and how they conduct their dealings.
Clause 22	22. An incubator registered under this Act shall— (a) support novice technological entrepreneurs at the earliest stage of technological entrepreneurship; (b) have a defined minimum and maximum technological innovation projects it can handle simultaneously; (c) facilitate technological innovators to implement their ideas and form new business ventures; (d) determine the technological and marketing applicability of a technological innovation idea; (e) have a viable research and development plan and expertise; (f) provide secretarial and administrative services to	<i>The scope of incubators be revised to specifically refer to programmes run by the government</i> <i>Further paragraph () should be amended to read “facilitate linkages with investors in the private sector including venture capitalists”</i>	The obligations of incubators under this clause create rigid requirements as to how private entities conduct their business. Clause 22(g) obligates incubators to create opportunities for the private sector including venture capitalists. It is difficult to implement such a provision as incubators link start-ups to business opportunities as opposed to creating them. The

Clause	Provision in the Bill	Proposed Amendment	Justification
	startups; (g) create investment opportunities for the private sector, including for venture capitalists; (h) transfer technologies from research institutions and into the technological startups' industry; a		government is more inclined to give incentives aimed at boosting the attractiveness of local start-ups as investment vehicles.
		<i>To this end, we propose that the scope of 'incubators' under clause 2 be revised to speak specifically to government run incubator programs (Lawyers Hub)</i> <i>Further clause 22(g) should also be amended to:</i> <i>"Facilitate linkages with investors in the private sector, including venture capitalists."(Lawyers Hub)</i>	The obligations of an incubator under this clause create rigid requirements as to how private entities conduct their business. Clause 22(g) obligates incubators to create investment opportunities for the private sector including for venture capitalists. It is difficult to implement such a provision as incubators are more inclined to link startup businesses to opportunities as opposed to creating these opportunities. The government is more inclined to provide incentives to investors aimed at boosting the attractiveness of local startups as

Clause	Provision in the Bill	Proposed Amendment	Justification
			investment vehicles. This is done through already existing bodies such as the Kenya Investment Authority (KenInvest) a statutory body currently operating through an Act of Parliament (Investment Promotion Act No. 6 of 2004)
26	The Agency shall put in place a programme for the training and capacity building of start-ups under this Act and shall, for this purpose establish a platform setting out information at the national and county level of government, on— (a) existing incubators; (b) available training programmes; (c) mentors and resource persons; (d) projects under existing incubation programmes; (e) available fiscal and non-fiscal support services; (f) business information necessary for the management and development of startups; and (g) such other information as the agency shall, in consultation with the county executive committee member consider necessary	<i>Clearly define the type of training and capacity building programmes envisioned under this clause (Lawyers hub)</i>	Clause 22 of the Bill obligates incubators to support novice technological entrepreneurs at the early stage and facilitate technological innovators to implement their ideas and form new business ventures. These two obligations although not clearly defined, can include capacity building and training initiatives. There is need therefore to avoid the clash between clause 22 and 26.

Clause	Provision in the Bill	Proposed Amendment	Justification
Clause 29	A start-up shall be encouraged to cumulatively achieve growth objectives as set out by the Cabinet Secretary by regulation.	<i>Outline key performance indicators that start-ups can use to measure growth (Lawyers Hub)</i>	Start-ups are private businesses whose growth objectives are set internally in consultation with managers, investors and other key stakeholders. Growth objectives set by the CS will be difficult to implement as this will differ from start-up to start-up. The use of KPIs as used in the Tunisian Start-up Bill in influencing internal decisions by start-ups and as a metric to measure the contribution of start-ups to the digital economy.

General comments

- 1) Sustainability of the programme: The Bill has placed the entire burden of financing on the Government. There is need to explore alternative sources of funding such as –
 - a) Introducing a fee for all start-ups that successfully go through the incubation programme. This can be in terms of contributing a small percentage to a central kitty to support the programme and can be effected after a certain set period of time after graduation.
 - b) A form of nurturing young innovators with internship opportunities or linkage to test and nurture their innovations.
- 2) There is need to involve KEBS and KIPI and clearly define their roles and responsibilities. The use of standards and the need to protect intellectual property rights has been recognized in the Bill but the involvement of the two agencies is not clear.

- 3) There is need to ensure that the Bill is in line with the digital wave in the country. There should be creation of an online portal that enables and enhances collaboration with other government agencies. This shall also provide entrepreneurs with an opportunity to manage the whole process online hence removing the red tape.
- 4) The Bill pre-supposes the existence of an incubator-start up relationship. The requirement to confine registration of a start up to incubation may be counterproductive in encouraging growth. Start ups may establish their operations and assess viability before committing to collaboration with incubators where assistance is sought.
- 5) The majority local content requirement for eligibility for admission into an induction programme may force investors to look elsewhere for investment opportunities.
- 6) There is need to have additional funding for successful start-ups from venture capitalists and angel investors. Start-ups get funding mostly from owner's savings and donations and their main objective is not to exist but to develop products that are scalable and disruptive.
- 7) Start-ups legal framework should facilitate capital investments by initiating a conducive partnership environment between private and public investors in local and foreign arenas.
- 8) There is need for decentralization of incubation centers and programmes which will act as the accelerator by enhancing technology transfers.
- 9) The incentives in the Bill for start up businesses are too broad thus making it difficult to follow up on the progress of implementation.

