Joint Submission on the Kenya Information and Communications (Amendment) Bill, 2026

Date: 17 November 2026
To: The Cabinet Secretary, Ministry of Information, Communications and the Digital Economy
Contact: kicavalidation@ca.go.ke
From: CIPESA and KICTANet

Submission on the Kenya Information and Communications (Amendment) Bill, 2026

1. Summary

CIPESA and KICTANet welcome the Ministry's invitation to comment and jointly submit the enclosed Comments Matrix as part of this memorandum. The notice set 17 November 2026 for written comments.[1] We respectfully ask that you consider this submission and allow us to present it at the validation forum on 25 November 2026. We also ask that the Ministry publish all the public comments-and-responses matrices.

We assess that the Bill is a mixed package. Much of it is legitimate modernisation, and several amendments advance rights (repeal of s.29, ss.83Y and 84D; Judicial Service Commission appointment of the Tribunal; a hearing before licence sanctions). However, a small number of provisions would concentrate speech-relevant and infrastructure-relevant discretion in the Communications Authority, delegate rights-limiting detail to the Cabinet Secretary, and create new criminal exposure, without the safeguards the Constitution and international standards require.

2. Who we are

CIPESA (www.cipesa.org) is a regional organisation that works on technology policy, digital rights and inclusion across East and Southern Africa, including in Kenya. KICTANet (www.kictanet.or.ke) is a multi-stakeholder think tank on ICT policy in Kenya. Both organisations have conducted extensive work on internet freedom and ICT policy around the continent.

3. Standards applied

We assessed the Bill against (a) Article 24 of the Constitution, which requires that any limitation of a right be by law, specific about its nature and extent, and reasonable, justifiable and the least restrictive means available;[2] (b) the three-part test in Article 19(3) of the International Covenant on Civil and Political Rights, as interpreted in General Comment No. 34;[3] (c) the African Commission's 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa, in particular Principles 13, 16, 17, 22, 39, 40 and 41;[4] and (d) developing international practice on intermediary regulation, including the EU Digital Services Act and the Santa Clara Principles.[5][6]

4. Principal concerns

(a) New s.85C (digital platforms). The definition of a "digital platform" would reach almost every online service, with extraterritorial effect. Providers would have to notify and be registered, ensure "availability and safety", and "report to the Authority any unlawful activity". "Safety" and "unlawful activity" are undefined; there is no threshold, no notice-and-action process and no judicial check. The provision also creates no offence or sanction, and on our reading the Act has no general contravention offence (s.83A reaches only licensees), so enforcement is left undefined and would be filled by regulations or an ambiguous use of s.96A. Further analysis of the provision

[1] Communications Authority of Kenya. (2026). *Revised draft Kenya Information and Communications (Amendment) Bill, 2026: Public notice, draft Bill and comments template [Consultation page].* https://www.ca.go.ke/node/967

[2] Constitution of Kenya, Art. 24. Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[3] United Nations Human Rights Committee. (2011). *General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34).* https://www.refworld.org/docid/4ed34b562.html

[4] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[5] European Union. (2022). *Regulation (EU) 2022/2065 on a single market for digital services (Digital Services Act).* https://eur-lex.europa.eu/eli/reg/2022/2065/oj

[6] Santa Clara Principles. (n.d.). *The Santa Clara Principles on transparency and accountability in content moderation.* https://santaclaraprinciples.org

raises the same concerns about thresholds, data protection and oversight.[7] ACHPR Principle 39 prohibits requiring intermediaries to proactively monitor content and requires removal orders to come from an independent judicial authority.[8] We propose a rewrite (or deletion in favour of a single, rights-compliant platform law) with thresholds, no general monitoring, court-order takedown, transparency, independent appeal and an express bar on suspension or throttling without a court order. See Matrix entries 3–6.

(b) Concentration of power in the Authority. The Bill would let the Authority register platforms, receive reports of unlawful activity, map infrastructure, set equipment standards, designate the public broadcaster, hear complaints against licensees and attach open-ended renewal terms. Article 34(3) and (5) require independence from government, political and commercial interests for those who license and regulate media.[9] In November 2024, civil society organisations, in a statement published by CIPESA and KICTANet, called on the Authority to retract its reported letter directing operators to suspend Telegram.[10] The Authority's June 2025 directive to broadcasters to stop live coverage was quashed by the High Court,[11] and on 2 July 2026 the High Court struck down the NC4 power to block websites without a court order, as examples of abuse of power.[12] Given these experiences, each additional discretionary power should come with robust structural safeguards.

(c) Public broadcaster, programme standards and complaints. The designation of the public broadcaster by Gazette notice (s.46E), repeal of the programming code and child-protection watershed while vague content duties remain enforceable (ss.46H & 46I), and the move of complaint-hearing to the Authority (ss.102A–102B) each weaken independence, legal certainty or due process. The Authority's current Programming Code (March 2024) rests on s.46H, so repeal removes its legal basis.[13] See Matrix entries 7–10 and 12–14.

(d) Penalties and delegation. Section 96A would create a catch-all offence punishable by up to three years' imprisonment, and s.106 a general power of the Cabinet Secretary to make regulations. Article 94(6) of the Constitution requires the Act itself to state the purpose, limits and standards of delegated lawmaking, and Article 50(2)(n) requires offences to be defined in law.[14]

(e) Privacy and infrastructure. The shift to subscriber registration is acceptable in principle, but the requirement for "such other information as may be prescribed" and disclosure without a court order (s.27A) need safeguards is problematic. Infrastructure mapping (s.85B) is protected only by a reference to the Data Protection Act, which covers personal data alone.[15]

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[7] TechTrendsKE. (2026, November 4). *[Report on proposed regulation of digital platforms under the Kenya Information and Communications (Amendment) Bill, 2026].* https://techtrendske.co.ke/2026/11/04/kenya-social-media-regulation/; CEA Digital Law. (2026, November 6). *[Commentary on the proposal that platforms report unlawful activity in Kenya].* https://ceadigilaw.org/en/blog/kenya-proposes-platforms-report-unlawful-activity/

[8] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[9] Constitution of Kenya, Art. 34(3), (5). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[10] CIPESA. (2024, November 11). *Civil society statement on Kenya's Telegram shutdown [Statement].* https://cipesa.org/2024/11/civil-society-statement-on-kenyas-telegram-shutdown/

[11] Eastleigh Voice. (2025). *High Court nullifies Communications Authority's broadcast ban on June 25 demos.* https://eastleighvoice.co.ke/national/246859/high-court-nullifies-communications-authority's-broadcast-ban-on-june-25-demos

[12] The Star. (2026, July 2). *High Court strikes down State website-blocking powers in Cybercrimes Act.* https://www.the-star.co.ke/news/2026-07-02-court-strikes-down-state-powers-to-block-websites

[13] Communications Authority of Kenya. (2024, March). *The programming code for broadcasting services in Kenya (4th ed.).* https://www.ca.go.ke/sites/default/files/CA/Programming%20Code/Programming%20Code%204th%20Edition%20March%202024.pdf

[14] Constitution of Kenya, Arts. 50(2)(n) and 94(6). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[15] Data Protection Act, No. 24 of 2019 (Kenya). *Kenya Law.* https://new.kenyalaw.org/akn/ke/act/2019/24

5. A systemic view

The central risk is cumulative. A single regulator that registers platforms, defines "safety", holds a national map of networks, can attach conditions at renewal and can sanction licensees creates a lawful-looking scaffold for informal pressure, over-compliance by platforms and, in a worst case, disruption. The risk is heightened in the run-up to the August 2027 general election and by parallel instruments (the Online Safety Bill, 2026 and other pending measures).[16]

The most effective point of leverage is a statutory rule that no suspension, blocking or throttling may occur without an order of the High Court, together with independent oversight and reporting to Parliament. Our own work points the same way. CIPESA's 2025 policy brief documents surveillance of activists and journalists without adequate oversight and Kenya's first nationwide shutdown in June 2024;[17] KICTANet warned in June 2025 that the then KICA amendment and the Computer Misuse and Cybercrimes Act were being used to stifle dissent and that public submissions risked being dismissed;[18] and CIPESA's October 2026 analysis identifies the 2027 election period as one of heightened shutdown risk.[19]

We acknowledge the legitimate aims behind the Bill, including child safety, consumer protection and equipment safety, and our proposals are designed to meet those aims by narrower means.

6. Provisions we support

- Repeal of s.29, giving effect to *Geoffrey Andare v Attorney General & 2 others* [2016] eKLR.[20]
- Repeal of ss.83Y and 84D (with the caveat in Matrix entry 20), and of s.102E.
- Appointment of the Tribunal by the Judicial Service Commission (with secure funding), and a hearing before sanctions under s.83A.
- The independence test for community broadcasting, courier regulation, type approval of equipment, and infrastructure sharing, each with the amendments proposed.

7. Process and drafting

We request the Ministry to publish a Regulatory Impact Statement and a Human Rights Impact Assessment, correct the clause numbering (several sections are misnumbered), and delete the statement that the Bill "does not limit any fundamental right or freedom", which is not consistent with Articles 24(2), 31, 33, 34 and 35.[21]

8. Conclusion

We thank the Ministry for the opportunity to comment, and remain open to further consultation.

Enclosure: Comments Matrix on the Kenya Information and Communications (Amendment) Bill, 2026.

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[16] TechTrendsKE. (2026, November 6). *[Report on the Online Safety Bill, 2026 (Kenya)].* https://techtrendske.co.ke/2026/11/06/kenya-online-safety-bill/

[17] CIPESA. (2025, February). *Surveillance, activism, and the urgent fight for digital rights in 2025 (Kenya's Digital Crossroads policy brief series).* https://cipesa.org/wp-content/files/briefs/Kenyas_Digital_Crossroads-_Surveillance_Activism_and_the_Urgent_Fight_for_Digital_Rights_in_2025_Policy_Brief.pdf

[18] Nyakundi, N. (2025, June 24). *The looming shadow over digital rights. KICTANet.* https://www.kictanet.or.ke/the-looming-shadow-over-digital-rights/

[19] Kambua, R. (2026, October 28). *Kenya's 2027 elections will test its commitment to digital and media rights. CIPESA.* https://cipesa.org/2026/10/kenyas-2027-elections-will-test-its-commitment-to-digital-and-media-rights/

[20] Geoffrey Andare v Attorney General & 2 others, Petition 149 of 2015 [2016] eKLR. *Kenya Law.* https://new.kenyalaw.org/akn/ke/judgment/kehc/2016/7592/eng@2016-04-19

[21] Constitution of Kenya, Art. 24(2). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

Comments Submission Template: **The Kenya Information and Communications (Amendment) Bill, 2026**

Name of Organisation: CIPESA (Collaboration on International ICT Policy for East and Southern Africa) and KICTANet (Kenya ICT Action Network)			
No.	**Clause of the Bill**[22]	**Proposal**	**Justification**
1.	**General – process and drafting**	(i) Extend the comment period and accept supplementary submissions until the validation forum of 25 November 2026 and beyond, and publish a comments-and-responses matrix. (ii) Publish a Regulatory Impact Statement and a Human Rights Impact Assessment before the Bill is submitted to Cabinet. (iii) Correct the clause numbering (body and Memorandum differ by five from clause 12 onward), the misnumbered new sections (printed "12" for s.11A and "85B" for s.85C) and the internal cross-references. (iv) Delete the statement that the Bill "does not limit any fundamental right or freedom", or replace it with an Article 24-compliant statement that identifies each limitation.	Public participation is a constitutional value and a legislative duty.[23] The Ministry's validation window was 14 days for a 90-page Bill that touches speech, privacy, broadcasting, and platform governance.[24] Article 24(2) provides that a limiting provision is not valid unless the legislation specifically expresses the intention to limit the right and is clear about its nature and extent.[25] Provisions such as s.85C, s.27A, s.46I, s.89 and s.96A engage Articles 31, 33, 34 and 35, so the Memorandum's "no limitation" statement is not sustainable and weakens the Bill's defensibility. Clause numbering errors create real legal risk in a Bill that amends an 85-page principal Act by cross-reference.
2.	**General – regulatory coherence**	(i) Request a single coherence assessment before any of these measures proceeds, and legislate platform duties in one instrument only. (ii) KICTANet and CIPESA confine their substantive comments to this Bill and flag the overlap with the Online Safety Bill, 2026 (National Assembly Bill No. 69 of 2026), the KICA (Amendment) Bill, 2025 and the draft Media Council Bill as a risk to be resolved by the Ministry and Parliament.	Reports indicate that the Online Safety Bill, 2026 also designates the Communications Authority as platform regulator with substantial penalties.[26] Two statutes imposing overlapping duties on the same actors, enforced by the same regulator, create legal uncertainty, forum-shopping, double jeopardy risk and a compounded chilling effect.

[22] *Note:* clause numbers are those printed in the body of the Bill; the Memorandum of Objects and Reasons numbers clauses differently (five lower from clause 12 onward) and is cited as "Memo cl.".

[23] Constitution of Kenya, Arts. 10(2)(a) and 118(1)(b). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[24] Government Advertising Agency. (2026, November 3). *MyGov [Public notice on validation of the Kenya Information and Communications (Amendment) Bill, 2026].* https://gaa.go.ke/sites/default/files/2026-11/MyGov%20November%203,%202026.pdf

[25] Constitution of Kenya, Art. 24(2). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[26] TechTrendsKE. (2026, November 6). *[Report on the Online Safety Bill, 2026 (Kenya)].* https://techtrendske.co.ke/2026/11/06/kenya-online-safety-bill/

			Legality under Article 19(3) ICCPR requires a law that is accessible and precise enough for persons to regulate their conduct.[27]
3.	**Cl. 59 (Memo cl. 54)** New s.85C – scope and definition of "digital platform"	Delete s.85C from this Bill and legislate platform duties exclusively in the Online Safety Bill (or a single standalone Act), with the safeguards below. **Alternative:** Retain a platform provision only if rewritten to: (i) define "digital platform" by service type (e.g., social media, video-sharing and large marketplaces) and apply duties only above a published user threshold set in the Act; (ii) exclude private messaging, email, cloud storage, non-commercial, educational, research, news and civil-society services and micro-enterprises; (iii) replace the registration requirement with a one-time notification and a local point of contact for providers above the threshold; (iv) state that notification is not a licence or approval, and that the Authority may not condition service on notification.	The definition ("an online environment that facilitates interactions, transactions and content sharing among users") would capture almost every website, app, forum and comment section in Kenya, and applies extraterritorially to any provider "delivering services to users in Kenya". Proportionality requires the least restrictive means under the Constitution.[28] The EU Digital Services Act tiers obligations by service type and size and reserves systemic-risk duties for the largest platforms.[29] Nigeria's platform code confines its heaviest obligations to "large service platforms", defined by registered users in Nigeria.[30] Registration regimes for online content have operated as licensing gates elsewhere in the region, and the Executive has already treated platform presence in Kenya as dependent on "approval".[31] A statutory register without limits would anchor that practice. Both options are offered because the drafting risk of partial adoption (duties kept, safeguards dropped) is real.
4.	**Cl. 59 (Memo cl. 54)** New s.85C(5)(b),	Delete the duty to "report to the Authority any unlawful activity". Substitute:	ACHPR Principle 39 provides that States shall not require internet intermediaries to proactively monitor content they have not authored, and that removal orders must be clear, imposed by an independent and

[27] General Comment 34, para. 25. United Nations Human Rights Committee. (2011). *General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34).* https://www.refworld.org/docid/4ed34b562.html

[28] Constitution of Kenya, Art. 24(1)(e). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[29] European Union. (2022). *Regulation (EU) 2022/2065 on a single market for digital services (Digital Services Act).* https://eur-lex.europa.eu/eli/reg/2022/2065/oj

[30] Mondaq. (n.d.). *Nigeria issues 2024 online trust and safety compliance report.* https://www.mondaq.com/nigeria/it-and-internet/1703686/nigeria-issues-2024-online-trust-and-safety-compliance-report

[31] Amnesty International Kenya. (2026, June 4). *Kenya orders X to open a Nairobi office: Is it protection or a leash?* https://www.amnestykenya.org/kenya-orders-x-to-open-a-nairobi-office-is-it-protection-or-a-leash/

	(d), (e) – provider duties, including "report to the Authority any unlawful activity"	(i) a duty to act on orders of a court of competent jurisdiction and on specific, lawful requests under a warrant; (ii) a notice-and-action procedure for illegal content, with a statement of reasons to the affected user and an internal appeal; (iii) annual transparency reports; (iv) an express statement that providers have no general obligation to monitor content or actively seek facts indicating illegal activity; (v) a limited, defined mandatory-reporting duty confined to child sexual abuse material, reported to law enforcement. **Alternative:** If a reporting duty is retained, confine it to defined serious offences listed in the Act, require reports to be made to law enforcement (not the Authority), prohibit disclosure of user identity or communications content without a court order, and apply the Data Protection Act.	impartial judicial authority, subject to due process, transparent and appealable.[32] The UN Special Rapporteur has warned that vague "unlawful" standards and regulator-driven removals lead to over-removal, and has recommended judicial authorisation and due process for takedowns.[33] The Santa Clara Principles set the benchmark for notice, appeal and transparency.[34] As drafted, platforms must judge legality and report users to a regulator, with no threshold, no judicial check and no data-protection safeguards. Commentators note the drafters should define what must be reported and at what threshold.[35] Brazil's Supreme Court, even when it widened platform liability in 2025, retained due-process and transparency duties and kept the court-order rule for certain categories.[36]
5.	**Cl. 59 (Memo cl. 54); Cl. 71 (Memo cl. 66)** New s.85C(5)(a) "availability and safety"; s.85C(3)(c)	(i) Define "safety" narrowly in the Act by reference to specified, serious harms; delete "availability" as a compliance duty or restate it as a consumer-facing continuity duty with no regulatory power to suspend. (ii) Add an express provision that no provider or licensee may be directed to suspend, block, throttle or restrict access to a platform, service or network except under a specific order of the High Court made on notice, on specified grounds and for a stated period.	Section 85C creates no offence and states no sanction. On our reading of the Act, there is no general offence of contravening its provisions, s.83A reaches only licensees (platforms are not licensees), and s.96A applies only to "offences under this Act". Enforcement is therefore undefined: it would be filled either by regulations under s.106 or by an ambiguous resort to s.96A (up to KES 1m and/or three years). Constitutional

[32] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[33] Kaye, D. (2018). *Promotion and protection of the right to freedom of opinion and expression: Report of the Special Rapporteur (A/HRC/38/35).* https://undocs.org/A/HRC/38/35

[34] Santa Clara Principles. (n.d.). *The Santa Clara Principles on transparency and accountability in content moderation.* https://santaclaraprinciples.org

[35] CEA Digital Law. (2026, November 6). *[Commentary on the proposal that platforms report unlawful activity in Kenya].* https://ceadigilaw.org/en/blog/kenya-proposes-platforms-report-unlawful-activity/

[36] Kasznar Leonardos. (2025). *Brazil's Supreme Court partially strikes down internet law provision, imposes stricter duty of care on online platforms.* https://www.kasznarleonardos.com/en/brazils-supreme-court-partially-strikes-down-internet-law-provision-imposes-stricter-duty-of-care-on-online-platforms/

	monitoring; enforcement and sanctions	(iii) Set out in the Act the sanctions for breach of s.85C (graduated administrative penalties, no imprisonment) and state that s.96A does not apply. (iv) Require annual reporting to Parliament on all directives issued under s.85C.	provisions on legality (Art. 50(2)(n)) and Article 24(2) require sanctions to be defined in law. Kenya's recent record shows why the point matters. The High Court barred internet shutdowns and throttling pending determination of the shutdown petition,[37] quashed the Communications Authority's June 2025 directive to stop live coverage,[38] and on 2 July 2026 struck down the NC4 power to block websites without a court order.[39] A statutory "availability" duty must not recreate by regulation what the courts have already refused to read into the law. General Comment 34 treats generic bans on the operation of sites and systems as incompatible with Article 19(3).[40] Our organisations have already addressed this risk in practice. In November 2024, civil society organisations, in a statement published by KICTANet and CIPESA, called on the Authority to retract its reported letter directing operators to suspend Telegram, and urged rights-based alternatives to disruption.[41] CIPESA's 2025 policy brief records Kenya's first nationwide internet shutdown (June 2024) and the Minister's stated readiness to order another.[42]

[37] TechCabal. (2025, May 15). *Safaricom, Airtel, CA barred from future internet blocks.* https://techcabal.com/2025/05/15/safaricom-airtel-ca-barred-from-future-internet-blocks/

[38] Eastleigh Voice. (2025). *High Court nullifies Communications Authority's broadcast ban on June 25 demos.* https://eastleighvoice.co.ke/national/246859/high-court-nullifies-communications-authority's-broadcast-ban-on-june-25-demos

[39] The Star. (2026, July 2). *High Court strikes down State website-blocking powers in Cybercrimes Act.* https://www.the-star.co.ke/news/2026-07-02-court-strikes-down-state-powers-to-block-websites

[40] General Comment 34, para. 43. United Nations Human Rights Committee. (2011). *General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34).* https://www.refworld.org/docid/4ed34b562.html

[41] CIPESA. (2024, November 11). *Civil society statement on Kenya's Telegram shutdown [Statement].* https://cipesa.org/2024/11/civil-society-statement-on-kenyas-telegram-shutdown/

[42] CIPESA. (2025, February). *Surveillance, activism, and the urgent fight for digital rights in 2025 (Kenya's Digital Crossroads policy brief series).* https://cipesa.org/wp-content/files/briefs/Kenyas_Digital_Crossroads-_Surveillance_Activism_and_the_Urgent_Fight_for_Digital_Rights_in_2025_Policy_Brief.pdf

6.	**Cl. 59 (Memo cl. 54); Cl. 71** New s.85C(3) – Authority's functions; delegation under new s.106(2)(d)	(i) Confine the Authority's role to maintaining the notification register and handling user complaints that are first addressed to the provider. (ii) Give the Office of the Data Protection Commissioner a statutory role over personal-data aspects, and the Media Council of Kenya a role over journalistic content. (iii) Provide a right of appeal from any Authority decision to the Tribunal, with a right of further appeal to the High Court. (iv) Provide that any regulations on digital platforms are subject to affirmative approval by the National Assembly after public participation and a published impact assessment.	The Authority is an executive-aligned regulator that has acted unconstitutionally against broadcasters,[43] and Article 34(3)(b) and (5) require independence from government, political and commercial interests for the bodies that license and regulate media.[44] Courts have treated the Authority as the Article 34 body based on its 2013 functions,[45] so additional discretionary powers erode that basis. ACHPR Principle 17 requires independent, protected regulators.[46] Article 94(6) requires the Act itself to specify the purpose, limits, nature, scope, principles and standards of delegated lawmaking; the generic statement in s.106(3) does not meet that standard for rights-limiting content.
7.	**Cl. 32 (Memo cl. 27)** Repeal and replacement of s.46E – designation of the public broadcaster	(i) Delete the Authority's discretion to designate the public broadcaster by Gazette notice. (ii) Retain statutory designation of the Kenya Broadcasting Corporation pending a comprehensive Public Service Media Act. (iii) Any future designation must be by Act of Parliament, or by resolution of the National Assembly, against published criteria covering editorial independence, an independent board, protected funding, public accountability and pluralism. **Alternative:** If designation by notice is retained, require prior approval by the National Assembly, published criteria in the Act, a bar on	Article 34(4) requires State-owned media to be free to determine editorial content independently and to be impartial. ACHPR Principle 13 requires public service media to have editorial independence, an independent governing board, adequate funding and public accountability.[47] The Bill provides no criteria, no consultation and no review, and would let a regulator answerable to the Executive confer public-broadcaster status (with the funding and privileges that follow) on any licensee, especially ahead of the August 2027 general election, where balanced, independent and objective news and information is critical.

[43] Nairobi Wire. (2025, November). *High Court restores media freedom June 25 protests.* https://nairobiwire.com/2025/11/high-court-restores-media-freedom-june-25-protests.html

[44] Constitution of Kenya, Art. 34(3)(b), (5). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[45] Royal Media Services Limited v Attorney General & others (Court of Appeal, 28 March 2014). *Kenya Law.* https://new.kenyalaw.org/akn/ke/judgment/keca/2014/877/eng@2014-03-28

[46] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[47] Constitution of Kenya, Art. 34(4). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution; African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

		designating a commercial broadcaster that holds political-party or State-office-holder shareholding, a fixed term and judicial review.	
8.	**Cl. 34 (Memo cl. 29); Cl. 29** Repeal of s.46H and s.46A(h)	Adopt a co-regulation model. Do not repeal s.46H without replacement. Retain in the Act a statutory child-protection watershed and the duty to protect children from harmful content; transfer the setting and review of the general programming code to the independent co-regulatory framework under Article 34(5) (Media Council of Kenya and broadcasters' self-regulatory bodies), with the Authority limited to technical and licensing matters. **Alternative (retain narrow s.46H):** Retain s.46H but confine it to child protection, technical standards and the filing of industry codes, delete any power to set standards of "taste" or editorial content, and require consultation and Parliamentary tabling of the code.	Repealing the code and watershed while retaining broad duties in s.46I ("good taste and decency", "accurately and impartially") enforceable through licence suspension and higher fines would replace a consultative, reviewable code with case-by-case discretion, the weakest form of legal certainty (Art. 50(2)(n); ICCPR Art. 19(3)).[48] States must protect children from harmful media content (CRC Art. 17(e); Constitution Art. 53).[49] ACHPR Principle 16 favours self- and co-regulation of the media by independent bodies, in keeping with Article 34(5).[50] The Authority's Programming Code (4th ed., March 2024), including its 5 am–10 pm watershed, rests on s.46H, so repeal removes its statutory basis.[51] The Media Council's Code of Media Practice (Legal Notice 88 of 2025) also contains a watershed,[52] so the replacement regime must state which instrument governs it moving forward.
9.	**Cl. 35 (Memo cl. 30)**	(i) Confine s.46I(2) to broadcast services of licensed broadcasters and expressly exclude user-generated and online-only content.	Extending classification to "streaming" invites prior classification of online content and creators. Prior restraint is presumptively incompatible with Article 19 of the ICCPR.[53]

[48] General Comment 34, para. 25. United Nations Human Rights Committee. (2011). *General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34).* https://www.refworld.org/docid/4ed34b562.html

[49] United Nations. (1989). *Convention on the Rights of the Child.* https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

[50] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[51] Communications Authority of Kenya. (2024, March). *The programming code for broadcasting services in Kenya (4th ed.).* https://www.ca.go.ke/sites/default/files/CA/Programming%20Code/Programming%20Code%204th%20Edition%20March%202024.pdf

[52] Media Council (Code of Media Practice), Legal Notice No. 88 of 2025 (Kenya). *Kenya Law.* https://new.kenyalaw.org/akn/ke/act/ln/2025/88/eng@2025-08-01/source.pdf

[53] United Nations Human Rights Committee. (2011). *General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34).* https://www.refworld.org/docid/4ed34b562.html

	Amendment of s.46I(2) and s.46I(1)	(ii) Delete "good taste and decency" and "Kenyan identity" as enforceable duties, or define them objectively with reference to Article 33(2) limits. (iii) Provide that breach of s.46I is enforced only through the graduated procedure with a hearing and a right of appeal, never by summary suspension. **Alternative:** Retain s.46I(1) but enforce only through co-regulatory complaint mechanisms and publish guidance on each standard.	Article 33(2) limits expression only for propaganda for war, incitement to violence, hate speech and advocacy of hatred. Open-ended aesthetic standards go beyond those limits.[54]
10.	**Cl. 30 (Memo cl. 25)** Amendment of s.46B(2) and s.46C(3)(b)	(i) Retain the categories of broadcasting licence (public, commercial, and community) in the Act, and limit regulations to procedure, technical conditions and fees. (ii) Require licensing criteria to be published and transparent, and licensing decisions to be reasoned and appealable. (iii) Retain a local-content or production-fund mechanism in the Act or explain its removal.	Article 34(3) requires licensing procedures to be independent of control by government, political and commercial interests. Leaving the licensing categories to Cabinet Secretary regulations hands the Executive control over who may broadcast and how, and Article 94(6) requires such delegations to be tightly bounded.[55]
11.	**Cl. 3(h)** New para. (da) of s.2	(i) reserve spectrum and a licensing tier for community broadcasting; (ii) clarify that funding by donations, grants and membership fees (para. (d)) and faith-based and county-supported community stations are not disqualified by the independence test; and, (iii) set the test as an objective standard with a right to be heard before any licence is affected.	Pluralism and diversity, including community media, are required by ACHPR Principle 15 and Article 34. The test advances those aims but, without objective criteria, it could be used selectively to deny or withdraw community licences.[56]

[54] Constitution of Kenya, Art. 33(2). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[55] Constitution of Kenya, Arts. 34(3) and 94(6). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[56] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

12.	**Cl. 65 and 66 (Memo cl. 60, 61)** Amendment of ss.102A–102B	(i) Confine the Authority to first-instance consumer-complaint resolution (conciliation and directions to remedy). (ii) Separate investigation from decision, give written reasons, and provide that administrative sanctions imposed after a complaint are appealable as of right to the Tribunal with a stay pending appeal. (iii) State that the Authority has no jurisdiction over complaints concerning journalistic content. **Alternative:** Retain Tribunal first-instance jurisdiction for complaints that involve sanctions or content, and give the Authority a conciliation role only.	Vesting hearing and sanctioning of complaints in the same body that regulates and licenses the respondent offends the principle that no one should be a judge in their own cause (Arts. 47 and 50(1); Fair Administrative Action Act, 2015).[57] The Memorandum presents the change as securing an independent Tribunal. In practice, it moves first-instance adjudication to the regulator and leaves the Tribunal with appeals only.
13.	**Cl. 64 (Memo cl. 59); Cl. 12 (Memo cl. 7)** Amendment of s.102; deletion of s.19(2)(g)	Support appointment by the Judicial Service Commission. Add: (i) a Tribunal budget funded from the Consolidated Fund or the Judiciary vote, and not from the Authority; (ii) security of tenure and removal only for cause; (iii) rules of procedure made by the Tribunal itself. **Alternative:** Integrate the Tribunal into the Judiciary's tribunal framework under the Chief Registrar.	Independence in appointment is welcome (Art. 50(1); ICCPR Art. 14). Deleting s.19(2)(g) without a replacement funding source leaves the Tribunal unfunded and its independence unsecured, defeating the stated aim of the Memorandum.[58]
14.	**Cl. 68 (Memo cl. 63)** Amendment of s.102E; s.102A(1)(a)–(b)	Support the repeal. Add a provision that the Authority has no power to sanction journalists or media enterprises for content, and that the Media Council of Kenya (Article 34(5)) is the exclusive forum for journalistic-conduct complaints.	Section 102E allowed fines of up to KES 20 million on media enterprises and KES 500,000 on journalists and recommendation of de-registration by a body connected to the licensing regulator. Repeal removes a disproportionate sanction regime and reduces the risk of executive-linked control of the press (Art. 34; ACHPR Principle 22 on criminal and punitive sanctions).[59]

[57] Constitution of Kenya, Arts. 47 and 50(1). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[58] United Nations. (1966). *International Covenant on Civil and Political Rights.* https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights

[59] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

15.	**Cl. 50 (Memo cl. 45)** Amendment of s.83A	Support the hearing requirement and the lower penalty floor. Add: (i) minimum cure periods set in the Act; (ii) the factors of "gravity" (harm, intent, repeat conduct, size); (iii) written reasons; (iv) suspension or revocation of a broadcast licence only after a hearing and subject to an automatic stay pending Tribunal appeal; (v) a rule that suspension or revocation may not be imposed for content that is lawful expression.	Article 47 and the Fair Administrative Action Act require notice, a hearing and reasons. "Stipulated period" and "gravity" are undefined. Suspending or revoking a broadcast licence is the most severe interference with Article 34 freedoms and should be preceded by independent review.[60]
16.	**Cl. 49 (Memo cl. 44)** Amendment of s.81	Limit renewal conditions to published, generally applicable criteria; require reasons and a hearing before any new or varied condition is imposed at renewal; and prohibit conditions relating to editorial content.	Open-ended renewal conditions give the regulator a continuing lever over broadcasters' editorial lines. Article 34(2) provides that the State shall not exercise control over or interfere with any person engaged in broadcasting.[61]
17.	**Cl. 63 (Memo cl. 58)** New s.96A – general penalty	Delete imprisonment from s.96A; retain a fine only and state that s.96A does not apply to s.85C or to any speech-related obligation. **Alternative:** Confine imprisonment to an enumerated list of serious offences (e.g., unlicensed operation of telecommunication systems causing harm, vandalism of critical infrastructure), and require every other offence to carry its own penalty.	A residual catch-all offence with a custodial sanction applies to conduct whose elements are not defined, contrary to Article 50(2)(n) and the requirement of legality.[62] Imprisonment for regulatory non-compliance and speech-adjacent breaches is disproportionate (ICCPR Art. 19(3); ACHPR Principle 22).[63]
18.	**Cl. 15, 17, 21, 23, 27, 28, 31,**	(i) Tier fines by licence class and turnover, with a lower scale for community broadcasters, micro-couriers and small operators; (ii) Require published penalty guidelines;	Increases of three to ten times, applied uniformly, bear most heavily on community radio and small operators and can function as indirect

[60] Constitution of Kenya, Arts. 34 and 47. Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[61] Constitution of Kenya, Art. 34(2). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[62] Constitution of Kenya, Art. 50(2)(n). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[63] See also United Nations Human Rights Committee. (2011). *General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34).* https://www.refworld.org/docid/4ed34b562.html; African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

	36, 38, 42, 45–48, 51, 62 Increases in maximum fines (ss.24, 27, 28, 34, 41, 45, 46C, 46N, 46Q, 49, 67, 71, 75, 76, 83D, 89)	(iii) Align the penalty in s.85B (0.5% of turnover) with s.83A (0.2%); and (iv) Publish a Regulatory Impact Statement justifying each increase.	barriers to media pluralism and to market entry. Proportionality requires penalties to track harm and capacity to pay.[64]
19.	**Cl. 22 (Memo cl. 17)** Repeal of s.29	Support repeal. Add a savings clause discontinuing any pending prosecution under s.29 and directing that no new proceedings be commenced, and consider consequential repeal or review of any equivalent provision elsewhere that criminalises "grossly offensive" or "false" messages.	The High Court declared s.29 unconstitutional in Geoffrey Andare v Attorney General & 2 others [2016] eKLR for unjustifiably limiting freedom of expression.[65] Repeal brings the statute book into line with the judgment, and with international standards against criminalising vague "offensive" or "false" speech.[66]
20.	**Cl. 52–53 (Memo cl. 47–48)** Repeal of s.83Y and s.84D	We support the repeals. However, our support does not endorse the equivalent offences in the Computer Misuse and Cybercrimes Act, 2018 (as amended in 2025), parts of which remain under court challenge.	The Memorandum justifies the repeals on the basis that cybercrime is now provided for in the Computer Misuse and Cybercrimes Act. The 2025 amendments have been in litigation since October 2025: the High Court suspended key sections that month,[67] a further petition by the Bloggers Association of Kenya, ICJ Kenya and ARTICLE 19 Eastern Africa followed,[68] and on 2 July 2026 the High Court declared provisions empowering the

[64] Constitution of Kenya, Art. 24(1)(e). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

[65] Geoffrey Andare v Attorney General & 2 others, Petition 149 of 2015 [2016] eKLR. *Kenya Law.* https://new.kenyalaw.org/akn/ke/judgment/kehc/2016/7592/eng@2016-04-19

[66] General Comment 34, para. 25. United Nations Human Rights Committee. (2011). *General comment No. 34: Article 19: Freedoms of opinion and expression (CCPR/C/GC/34).* https://www.refworld.org/docid/4ed34b562.html

[67] The Star. (2025, October 22). *Court suspends key sections of new cybercrime law.* https://www.the-star.co.ke/news/2025-10-22-court-suspends-key-sections-of-new-cybercrime-law

[68] Bloggers Association of Kenya. (2025). *BAKE, ICJ-Kenya & Article 19 challenge the enforcement of the Cybercrime Amendments Act 2025.* https://blog.bake.co.ke/?p=10804

			National Computer and Cybercrimes Coordination Committee (NC4) to block websites without a court order unconstitutional.[69] We ask the Ministry to confirm the position before relying on the Cybercrimes Act as the replacement regime. Repeal must not leave a gap, nor migrate contested speech offences into a second statute.
21.	**Cl. 18–20 (Memo cl. 13–15)** Amendment of ss.27A and 27D; repeal of s.27B – subscriber registration	Support the shift to subscriber registration (to accommodate eSIMs), but: (i) list the personal-data fields in the Act, delete "such other information as may be prescribed", and prohibit collection of biometric data; (ii) require a court order (on reasonable suspicion, specified scope) before disclosure of registration particulars under s.27A(3)(b); (iii) set retention and deletion limits; (iv) require a Data Protection Impact Assessment under s.31 of the Data Protection Act before rollout; (v) replace s.27B with accountability rules for any person who registers subscribers (licensing, audit, liability for breaches); (vi) add SIM-swap and remote-registration fraud protections.	Mandatory SIM registration removes anonymous communication and facilitates surveillance; CIPESA's regional research has documented these effects.[70] ICCPR Art. 17 and Constitution Art. 31 require interference with privacy to be lawful, necessary and proportionate; ACHPR Principles 40–41 require prior judicial authorisation for access to communication data.[71] The UN Special Rapporteur has linked identification requirements to threats to anonymity.[72] Subscriber registration regulations were recently under review and have been published. Repealing s.27B removes the existing accountability regime for agents without replacing it. Section 31 of the Data Protection Act requires a DPIA where processing is likely to pose a high risk to rights.[73]

[69] ICJ Kenya. (2026). *Court strikes down unconstitutional provisions of Kenya's Cybercrimes Amendment Act [Press release].* https://icj-kenya.org/news/for-immediate-release-court-strikes-down-unconstitutional-provisions-ofkenyas-cybercrimes-amendment-act/; The Star. (2026, July 2). *High Court strikes down State website-blocking powers in Cybercrimes Act.* https://www.the-star.co.ke/news/2026-07-02-court-strikes-down-state-powers-to-block-websites; Dawan Africa. (2026, July 2). *High court blocks government's powers to shutdown websites in Kenya.* https://www.dawan.africa/news/high-court-blocks-governments-powers-to-shutdown-websites-in-kenya; Kambua, R. (2026, October 28). *Kenya's 2027 elections will test its commitment to digital and media rights. CIPESA.* https://cipesa.org/2026/10/kenyas-2027-elections-will-test-its-commitment-to-digital-and-media-rights/

[70] CIPESA. (2021). *How African governments undermine the use of encryption.* https://cipesa.org/wp-content/files/briefs/How_Africa_Government_Undermine_the_Use_of_Encryption_2021.pdf

[71] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[72] Kaye, D. (2015). *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/29/32).* https://undocs.org/A/HRC/29/32

[73] Data Protection Act, No. 24 of 2019 (Kenya). *Kenya Law.* https://new.kenyalaw.org/akn/ke/act/2019/24

22.	**Cl. 58 (Memo cl. 53)** New s.85B – national ICT infrastructure mapping	Support mapping with amendments: (i) purpose limitation in the Act (planning, infrastructure sharing, and universal service); (ii) security classification, access controls and access logs, and protection of commercially sensitive and critical-infrastructure data, not only personal data; (iii) a prohibition on using the system for traffic management, throttling or disruption of services; (iv) consistency with the Access to Information Act, 2016; (v) align the penalty at 0.2% of turnover (s.83A).	The Data Protection Act protects personal data only, so the reference in s.85B(3) offers little protection for infrastructure data.[74] A granular, central map of existing and planned networks lowers the technical cost of targeted disruption. Kenya has experienced internet disruption and blocking, and the courts have restrained them.[75] Safeguards are therefore needed in the statute. For transparency, CIPESA is a petitioner in HCCHRPET 276 of 2025 on internet shutdowns; this entry refers only to publicly reported orders and does not comment on the merits of the pending case.[76]
23.	**Cl. 24 (Memo cl. 19)** New ss.34A–34B	(i) We support type approval of radio and terminal equipment. (ii) Define "systems" as hardware and radio-frequency equipment; exclude software, encryption, VPNs and platform architecture; (iii) Prohibit any standard requiring weakened encryption or interception capability beyond existing law; and coordinate with the Kenya Bureau of Standards; (iv) Require regulations under s.34B to be tabled with an impact assessment and to provide a micro-operator tier and an appeals route.	The Memorandum describes the aim as curbing substandard, counterfeit or harmful equipment, a legitimate aim.[77] The undefined term "systems" could extend standard-setting into software and security design. Encryption is protected as an enabler of privacy and expression (ACHPR Principles 40–41; UN Special Rapporteur).[78]

[74] Data Protection Act, No. 24 of 2019 (Kenya). *Kenya Law.* https://new.kenyalaw.org/akn/ke/act/2019/24

[75] TechCabal. (2025, May 15). *Safaricom, Airtel, CA barred from future internet blocks.* https://techcabal.com/2025/05/15/safaricom-airtel-ca-barred-from-future-internet-blocks/

[76] ICJ Kenya, Bloggers Association of Kenya, Kenya Union of Journalists, & CIPESA v Communications Authority of Kenya & others, HCCHRPET 276 of 2025 (petition). *ICJ Kenya.* https://icj-kenya.org/?p=10172; CIPESA. (2025, May). *CIPESA joins six civil society organisations in landmark case challenging internet shutdowns in Kenya [Press release].* https://cipesa.org/2025/05/cipesa-joins-six-civil-society-organisations-in-landmark-case-challenging-internet-shutdowns-in-kenya/; ICJ Kenya. (2025). *ICJ Kenya, 6 others file landmark case challenging internet shutdowns in Kenya [Press release].* https://icj-kenya.org/news/icj-kenya-6-others-file-landmark-case-challenging-internet-shutdowns-in-kenya-in-landmark-public-interest-case/

[77] Entirety. (2026, November 13). *Kenya proposes telecom type approval rules.* https://www.entirety.biz/kenya-proposes-telecom-type-approval-rules/

[78] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10; Kaye, D. (2015). *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/29/32).* https://undocs.org/A/HRC/29/32

24.	**Cl. 26 (Memo cl. 21)** New s.37(4)	Add safeguards in the Act, including: (i) Published eligibility criteria; (ii) A public register of authorisations; (iii) Time limits and review; (iv) Mandatory Data Protection Impact Assessment and Human Rights Impact Assessment for trials that involve personal data, biometrics, facial recognition or AI; (v) Informed consent and effective redress for participants; (vi) Consultation of the ODPC.	The provision has no participant protections or transparency. Businesses must respect human rights in their operations,[79] and trials involving personal data engage section 31 of the Data Protection Act.[80]
25.	**Cl. 62 (Memo cl. 57)** New s.89(1A)	(i) Delete "so far as may be practicable". (ii) Require warrants to specify the premises, items and data sought; (iii) Prohibit seizure or imaging of devices beyond the warrant; (iv) Protect journalistic sources and legally privileged material; (v) Require inventories, and return or deletion of data not required.	"So far as practicable" is an escape clause that weakens the stated safeguard. Searches of devices engage Article 31 and the protection of journalistic sources (Art. 34; ACHPR Principle 25).[81]
26.	**Cl. 71 (Memo cl. 66); Cl. 24; Cl. 30** New s.106; s.34B; s.46B(2)	(i) Delete the general power "for the better carrying into effect of the provisions of this Act". (ii) Specify each head of regulation and its limits. (iii) Move rights-limiting content (platform duties, sanctions, licensing categories) into the Act.	Article 94(6) requires the Act to specify purpose, limits, nature, scope, principles and standards; the s.106(3) statement is a formula. Evidence from existing KICA regulations shows that leaving substance to regulations does not secure timely or participatory rules. KICTANet's review of the 2025 regulations found weak treatment of alternatives, cost-benefit analysis and public participation.[82]

[79] United Nations. (2011). *Guiding principles on business and human rights.* https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

[80] Data Protection Act, No. 24 of 2019 (Kenya). *Kenya Law.* https://new.kenyalaw.org/akn/ke/act/2019/24

[81] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[82] Constitution of Kenya, Art. 94(6). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution; KICTANet. (2025). *Kenya ICT regulations 2025: Impact assessment review explained.* https://www.kictanet.or.ke/kenya-ict-regulations-2025-impact-assessment-review-explained/;

		(iv) Require affirmative resolution of the National Assembly for regulations on digital platforms and broadcast licensing, a Regulatory Impact Statement, and a sunset and review clause.	
27.	**Cl. 16, 41, 54, 5, 14 (Memo cl. 11, 36, 49, 5, 9)** Ss.25A	(i) Publish a Regulatory Impact Statement on affordability, rural coverage and market concentration before removing instalment payment for large spectrum fees (or retain it with safeguards and coverage obligations). (ii) Set criteria and a time limit for postal "areas of exclusivity". (iii) Require an MoU with the Competition Authority and consultation before competition remedies are imposed. (iv) Ensure fee waivers are transparent and support universal access.	Reports indicate that requiring full upfront payment favours large incumbents and may raise costs for rural rollout.[83] Access and affordability are rights-relevant (Arts. 43 and 46; ACHPR Principle 37 on universal, equitable, and affordable access). The evidence base is limited, hence the request for an impact assessment.[84]
28.	**Cl. 40–44 (Memo cl. 35–39)** Extension of postal provisions to courier services (ss.47, 49, 51, 52)	We support regulation of couriers, subject to: (i) inspection of parcels and correspondence should only be under warrant or a defined customs or security law; (ii) a micro-operator licensing tier with reduced fees; (iii) data-protection obligations on couriers handling recipient data.	Article 31(c) protects the privacy of communications, including correspondence. Licensing costs fall disproportionately on micro-couriers serving online sellers.[85]
29.	**Cl. 72 (Memo cl. 67)**	Before deleting, confirm in the Memorandum where administration of the .ke domain name space now lies, and ensure that existing rights and licences granted under the Schedule are saved.	The Schedule includes provisions on the .ke domain name space. Deletion without a savings clause or an identified successor framework creates legal uncertainty over critical internet resources.

[83] Rio Times. (2026). *Kenya draft bill: Spectrum fees upfront.* https://www.riotimesonline.com/kenya-draft-bill-spectrum-fees-upfront/

[84] African Commission on Human and Peoples' Rights. (2019). *Declaration of principles on freedom of expression and access to information in Africa.* https://africanlii.org/akn/aa-au/statement/declaration/achpr/2019/principles-on-freedom-of-expression-and-access-to-information/eng@2019-11-10

[85] onstitution of Kenya, Art. 31(c). Constitution of Kenya. (2010). *Kenya Law.* https://kenyalaw.org/akn/ke/act/2010/constitution

	Deletion of the Fifth Schedule		