

Building Partnerships for Kenya's Digital Transformation



**Center for International
Private Enterprise**

White Paper

About this White Paper

The digital economy, including cross-border services, digital trade, and electronic commerce (e-commerce), contributes to democratic and economic development by expanding market access for local business, promoting inclusive trade, creating jobs, and expanding the tax revenue for governments to provide essential services. As the scope of digital innovation expands around the globe, so must national policies and regulations that facilitate competitiveness and equity in the digital sphere. As a leader of emerging technologies and innovation in Africa, Kenya is at the forefront of discussions around how to ensure institutions and policy frameworks promote democratic participation, good governance, and inclusive economic growth in the digital era.

It is in this regard that the **Center for International Private Enterprise (CIPE)**, in the spirit of the Ouagadougou Declaration¹ to strengthen the voice of business in democratic governance through dialogue with civil society and government, hosted a forum on *Building Partnerships for Kenya's Digital Transformation* on October 8, 2018 in Nairobi, Kenya. The event was held in cooperation with the Kenya National Chamber of Commerce and Industry (KNCCI) and featured industry insights from KNCCI's National Chairman, Kiprono Kittony and Nicholas Nesbitt, Chairman of the Kenya Private Sector Alliance (KEPSA) and General Manager of IBM East Africa.

Key Issues Discussed:

- *Legal Frameworks to Strengthen the Digital Economy*
- *Cybersecurity: Protecting Kenya On- and Offline*
- *Entrepreneurship in the Digital Age*
- *Data Protection: 2018 Data Protection Bills*

The objective of the event was to bring together stakeholders in the private sector, civil society, and government to discuss opportunities for Kenya's digital development and expectations for the governance of digital spaces. The goal of each roundtable discussion was to identify the top policy issues around each panel topic and make two to three corresponding recommendations on policy or commitment to support effective democratic governance of the digital economy. This paper includes summary recommendations stemming from discussions and comments by participants.

To help facilitate multi-stakeholder conversations regarding the digital economy in Kenya and around the globe, CIPE launched an in-depth advocacy and legal guide, ***Digital Economy Enabling Environment Guide: Key Areas of Dialogue for Business and Policymakers***², which was developed in partnership with New Markets Lab (NML). This guidebook serves as both a tool for approaching the advocacy process and as a regulatory and legal resource for private and public sector counterparts to develop a shared language for the initial stages of dialogue. It covers four pressing digital economy issues: data protection, electronic transactions (e-payments and e-signatures), consumer protection, and cybersecurity.

¹ <https://www.tralac.org/news/article/12606-governance-democracy-and-business-ouagadougou-declaration.html>

² Visit <https://www.cipe.org/resources/digital-economy-enabling-environment-guide-key-areas-of-dialogue-for-business-and-policymakers/> to download a copy of the guide.

Summary Recommendations

Multi-stakeholder Recommendations

The following are high-level recommendations towards key stakeholders involved in shaping the digital economy enabling environment in Kenya. These recommendations were formulated by the stakeholders present in the forum on Building Partnerships for Kenya's Digital Transformation on October 8, 2018 in Nairobi, Kenya.

Lawmakers Involved in the Creation of the Privacy and Data Protection Act in Kenya

To harmonize the Data Protection Act in Kenya, Lawmakers should:

- *Define data versus personal data.* Personal data is any information that can be used to identify a person. It remains to be seen how well anonymization functions will be implemented. Lawmakers need to identify what constitutes personal data versus general data – acknowledging this may evolve overtime.
- *Define national security.* The definition must be consistent with its definition in the Constitution of Kenya, 2010 (Clause 238, principles of national security).
- *Promote independence and multi-stakeholder buy-in.* Civil society and academia have called for an independent commission to develop and implement data protection frameworks. In particular, the complaints-handling committee needs to be independent.
- *Clarify roles.* There is confusion about the description and responsibilities of the controller and the processor of data roles. This needs to be unbundled as the obligations of each of these government roles are distinct. The current bills give too much power and authority to the administrator.
- *Regulate public sector data usage.* The Senate Bill exempted government institutions from data protection, however government data also requires rules and clear frameworks. There is a need to limit silos within government as parastatals under the ministries do not share data, making access to data cumbersome.

Government

- *Enforcement.* Kenya needs better implementation and enforcement of laws, requiring one data protection framework and a consistent data authority to streamline governance and facilitate freedom of information laws.
- *Enabling environment.* Kenya must prioritize an enabling policy environment to grow jobs and skills, and avoid putting up barriers such as taxation of internet access. Bills should not be punitive towards business. Kenya needs a clear and enforceable cybersecurity policy that outlines data privacy, protection, and national security. The policy should be appropriate in scope and purpose. Clear frameworks on public use of data allow the state (county and national governments) to collect and process data for purposes of public use: to inform policy, for national security (which is key for investigations and judicial functions) and/or emergency

(natural disasters and health crises, among others). There should be clear exemptions based on public interest. Government(s) should focus on protection of rights as opposed to control, surveillance, and unnecessary bureaucracy.

- *Access.* The ability to access the internet is now a human right, and more Kenyans must be brought online. Without connectivity, one cannot access certain government services. The Kenyan Government must prioritize connectivity and access to the internet for all citizens.
- *Democratization of capital.* Access to capital is crucial for Kenya's global competitiveness. There needs to be a combination of good policy and government interventions, especially for critical infrastructure to facilitate start up growth and success.
- *Education.* Training for judges on how to review digital evidence and conduct cyber-investigations so they can adjudicate appropriately.

Private Sector

- *Ethics.* The private sector must promote ethical business and ICT management, with the capacity to support business growth and compliance costs in mind. Business must take responsibility for effective cybersecurity training and capacity building. The legal frameworks should allow businesses to collect, process, and store data in a way that is not punitive, but rather promotes best practice.
- *Participation.* Private sector should collaborate with civil society to address legal and implementation gaps through the judiciary; there are many common risks and opportunities to be explored. When laws discussed (and agreed on in the public sphere) are later amended without due process, the voices of the private sector must be raised along with civil society.

Civil Society

- *Education.* Civil society should ensure that information and recommendations made at the highest levels are shared with the public with clear channels of accountability in government when gaps persist. Civil society should continue to collaborate with government and the private sector in creating awareness and educating stakeholders and users in order to enhance data protection and cybersecurity awareness and training.
- *Participation.* Independence and multi-stakeholder buy-in are needed: civil society and academia called for an independent commission to develop and implement data protection and were told it is expensive.
- *Awareness.* Promote good practice among Kenyans especially related to personal data security and cybersecurity risks.

About CIPE

The **Center for International Private Enterprise (CIPE)** strengthens democracy around the globe through private enterprise and market-oriented reform in order to expand access to opportunity for all citizens and create “democracy that delivers.” By improving the business climate for entrepreneurs and tearing down legal and regulatory barriers through policy advocacy, including the use of technology, CIPE has supported the private sector to be driving forces for reform. By working with private sector organizations globally, CIPE is helping businesses find their voice in policymaking on a range of digital economy issues, including open internet. www.cipe.org

The dialogue process, its lessons, and outcomes offer important insights for other reformers in other countries working towards enabling a more inclusive digital economy. CIPE encourages those participating in dialogue and advocacy regarding the digital economy to share insights and stories with CIPE by tweeting at @CIPEglobal with the hashtag #DigitalEconomyDialogues.

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