

Journal of Conflict Management & Sustainable Development



Fostering Climate Justice for Sustainable Development	Hon. Prof. Kariuki Muigua
The Proposed Regulation of Artificial Intelligence and Robotics in Kenya: An Appraisal of the Kenya Robotics and Artificial Intelligence Association Bill, 2023	Michael Sang
Towards Net Zero Carbon Construction in Africa: A Systems Thinking	Dr. Cyrus Babu Ongondo
Realizing Equitable Benefit Sharing in Kenya	Hon. Prof Kariuki Muigua
The Case for Reform of Kenya's Firearms Licensing Law: Lessons from Comparative Experience	Michael Sang
Mandate and Jurisdiction of the Land Acquisition Tribunal, Kenya	Bernard Kibet Sang
Carbon Credits Trading: A New Frontier in Climate Change	Brian Okoth
Book Review: Actualizing the Right to a Clean and Healthy Environment	Anne Wairimu Kiramba
The Case for Decriminalization of Attempted Suicide in Kenya: Lessons from Comparative Experience	Michael Sang

Volume 11

Issue 3

2024

ISBN 978-9966-046-15-4

The Proposed Regulation of Artificial Intelligence and Robotics in Kenya: An Appraisal of the Kenya Robotics and Artificial Intelligence Association Bill, 2023

*By: Michael Sang **

Abstract

This paper provides a comprehensive exploration of the regulatory landscape for artificial intelligence (AI) and robotics, focusing on the proposed "Kenya Robotics and Artificial Intelligence Association Bill, 2023." The analysis begins with an examination of the inherent challenges in adapting legal frameworks to the dynamic nature of technology, followed by a review of global regulatory trends to inform the Kenyan context. The proposed bill's merits, such as the establishment of a professional body, are scrutinized, alongside identified demerits, including limited regulatory scope and enforcement powers. Drawing inspiration from international best practices, the paper proposes amendments to fortify the bill, encompassing clear regulatory guiding principles, enhanced enforcement mechanisms, mandatory AI system inventory and disclosure, and mandatory inter-agency collaboration. This discussion contributes to the ongoing dialogue on responsible AI governance in Kenya, recognizing the significance of striking a balance between innovation and ethical considerations.

Key Words: Artificial-Intelligence; Robotics; Regulation; Kenya; Technology; Robotics-And-Artificial-Intelligence-Association-Bill-2023

1. Introduction

In the rapidly advancing landscape of artificial intelligence (AI) and robotics, the regulatory frameworks governing their development and

** LLB, Moi University; LLM, University of Cape Town, South Africa; PG Dip. in Law Kenya School of Law. The views expressed in this article are, of course, the authors' own and do not express the views of the institution to which he is affiliated.*

deployment have become increasingly crucial in shaping ethical, secure, and accountable practices.¹ This discussion delves into the critical examination and appraisal of the proposed legislation in Kenya, namely the "Kenya Robotics and Artificial Intelligence Association Bill, 2023." As I navigate through this analysis, I scrutinize the challenges inherent in regulating AI and robotics through legal means, explore global regulatory trends, and evaluate the merits and demerits of the proposed Kenyan bill. The intricacies of adapting existing legal frameworks to accommodate the dynamic nature of AI and robotics pose a considerable challenge. The paper delves into the nuances involved in aligning legal statutes with the swift advancements in technology, highlighting the need for agile and adaptive regulatory approaches. An exploration of regulatory trends on the global stage sheds light on the diverse approaches taken by nations in grappling with the complexities of AI and robotics governance. Drawing insights from international initiatives, this discussion aims to distill best practices and benchmarking standards that may inform and enrich the Kenyan regulatory landscape.

Turning my focus to the proposed Kenya Robotics and Artificial Intelligence Association Bill, 2023, I examine its provisions, functions, and powers, with an emphasis on its role in advising the government on emerging trends and formulating industry standards. Additionally, I scrutinize the bill's merits, such as the establishment of a professional body and the delineation of the Association's functions, and delve into potential demerits, including limitations in regulatory scope and the absence of guiding principles, enforcement power, and provisions for inventory and disclosure.

¹ Jackline Akello (2022) 'Artificial Intelligence in Kenya' Policy Brief *Paradigm Initiative* <https://paradigmhq.org/wp-content/uploads/2022/02/Artificial-Intelligence-in-Kenya-1.pdf> accessed 17 November 2023

Armed with insights from global regulatory paradigms, this discussion proposes enhancements to fortify the Kenya Robotics and Artificial Intelligence Association Bill, 2023. Recommendations span from clearly defined regulatory guiding principles to bolstered enforcement mechanisms, mandatory inventory and disclosure of AI use, and the promotion of mandatory inter-agency collaboration. This comprehensive exploration aims to contribute to the ongoing dialogue surrounding the responsible governance of AI and robotics in Kenya and beyond.

2. The Challenge of Regulating Artificial Intelligence and Robotics through Law

2.1 The Challenge of Adapting the Law to New Technology

One significant challenge is the rapid pace of technological advancements in the field of AI and robotics.² Laws and regulations often struggle to keep up with the speed at which new technologies emerge and evolve.³ This can result in outdated regulations that may not effectively address the unique characteristics and risks associated with AI and robotics.⁴

AI and robotics technologies are often complex and multifaceted.⁵ Understanding and regulating these technologies require a deep

² IMF, "I. Introduction," 2021 166 IMF Staff Papers A001 <https://www.elibrary.imf.org/view/journals/001/2021/166/article-A001-en.xml> accessed 19 November 2023

³ Bennett Moses, Lyria, "Recurring Dilemmas: The Law's Race to Keep Up With Technological Change" (April 11, 2007) UNSW Law Research Paper No. 2007-21, available at SSRN: <https://ssrn.com/abstract=979861> or <http://dx.doi.org/10.2139/ssrn.979861> (accessed 19 November 2023)

⁴ Ibid

⁵ Demetris Vrontis et al, "Artificial intelligence, robotics, advanced technologies and human resource management: a systematic review" (2022) 33 International Journal of Human Resource Management

understanding of not only the technology itself but also its potential societal impacts. Lawmakers may find it challenging to create regulations that strike a balance between encouraging innovation and addressing potential ethical, privacy, and security concerns.⁶

AI and robotics involve a convergence of various disciplines, including computer science, ethics, law, and philosophy. Developing comprehensive regulations requires collaboration among experts from different fields, and traditional legal frameworks may struggle to accommodate such interdisciplinary considerations.⁷

Technology often transcends national borders, and AI and robotics are no exception. The challenge lies in creating regulations that are not only effective within a specific jurisdiction but also capable of addressing global challenges and ensuring a harmonized approach to ethical and legal standards. In addition, the potential impacts of AI and robotics on society are still unfolding, and some consequences may be unpredictable. This uncertainty makes it challenging to draft laws that anticipate and effectively address all potential risks and benefits associated with these technologies.⁸

AI and robotics raise significant ethical and moral questions, such as issues related to bias in algorithms, the potential for job displacement, and the use of autonomous systems in critical decision-making processes.⁹ Crafting laws that navigate these complex ethical landscapes is a

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Harvard Gazette, "Ethical Concerns Mount as AI Takes Bigger Decision-Making Role" (2020) Harvard Gazette <https://news.harvard.edu/gazette/story/2020/10/ethical-concerns-mount-as-ai-takes-bigger-decision-making-role/> accessed 18 November 2023.

formidable task. Effective regulation requires an informed public and policymakers. Ensuring that lawmakers, regulators, and the general public have a sufficient understanding of AI and robotics is crucial to developing well-informed and balanced regulations.¹⁰

2.2 Regulatory Trends Relating to AI and Robotics Across the World

The regulatory landscape for AI and robotics is evolving globally, with several countries and regions taking steps to address the challenges associated with these technologies.

1. Ethical Guidelines and Principles:

Many countries and organizations are adopting ethical guidelines and principles to govern the development and use of AI and robotics. These guidelines often emphasize transparency, fairness, accountability, and human-centric design.¹¹

2. Sector-Specific Regulations

Some jurisdictions are focusing on sector-specific regulations rather than overarching AI laws. For example, regulations might be tailored to address AI applications in healthcare, finance, or autonomous vehicles, recognizing the unique challenges and considerations in each domain.¹²

3. Data Protection and Privacy Laws

Given the importance of data in training AI systems, data protection and privacy regulations are becoming increasingly relevant. General Data

¹⁰ Ibid

¹¹ Akanksha Sharma, Sam Ajadi, Andreas Beavor, 'Artificial Intelligence and Start-Ups in Low-and Middle-Income Countries: Progress, Promises, and Perils' (GSM Association 2020) 6 <https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2020/10/Artificial-Intelligence-and-Start-Ups-in-Low-and-Middle-Income-Countries-Progress-Promises-Perils-Final.pdf> accessed 17 November 2023

¹² Ibid

Protection Regulation (GDPR) in the European Union is a notable example that impacts AI applications by emphasizing data subjects' rights and the need for transparent data processing.¹³

4. Transparency and Explainability

There is a growing emphasis on transparency and explainability in AI systems. Regulations may require companies to provide clear explanations of how their AI algorithms operate, especially in contexts where automated decision-making affects individuals.¹⁴

5. AI Impact Assessments

Some regulatory frameworks propose the implementation of AI impact assessments to evaluate the potential social, economic, and ethical implications of deploying AI systems. This approach aims to proactively identify and mitigate risks associated with AI technologies.¹⁵

6. International Collaboration

Recognizing the global nature of AI, there is a trend towards international collaboration on regulatory frameworks. Efforts such as the OECD's AI Principles and collaborations between countries aim to create common standards and guidelines for responsible AI development and deployment.¹⁶

7. Robotics-Specific Laws

Some regions are considering or implementing laws specifically addressing robotics. These laws may cover issues such as liability for

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

autonomous systems, safety standards for robotic devices, and the ethical use of robots in various applications.¹⁷

2.3 The Regulatory Approach in Kenya

The Kenya Robotics and Artificial Intelligence Association Bill, 2023, represents a legislative effort in Kenya to address the challenges associated with the development and application of robotics and artificial intelligence (AI) technologies. The bill aims to establish the Kenya Robotics and Artificial Intelligence Association and outlines its functions and powers¹⁸.

The bill proposes the creation of the Kenya Robotics and Artificial Intelligence Association as a regulatory body,¹⁹ indicating a recognition of the need for a dedicated entity to oversee and govern activities related to robotics and AI in the country. The bill outlines the specific functions and powers of the Kenya Robotics and Artificial Intelligence Association.²⁰ A key emphasis of the bill is on promoting responsible and ethical development and application of robotics and AI technologies within Kenya.²¹ This reflects a commitment to ensuring that advancements in these fields align with ethical principles and contribute positively to society.

¹⁷ Ibid

¹⁸ The Kenya Robotics and Artificial Intelligence Association Bill, 2023, Long title

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

3. Merits and Demerits of Kenya's Robotics and AI Association Bill, 2023

3.1 Merits of the Robotics and AI Association Bill, 2023

3.1.1 Establishment of a professional body

The provisions outlined in Clause 4 of the Kenya Robotics and Artificial Intelligence Association Bill, 2023, highlight the establishment and powers of the proposed Association. ²²This clause formalizes the creation of a dedicated professional body, the Kenya Robotics and Artificial Intelligence Association, indicating a proactive approach by the government to address the challenges and opportunities presented by robotics and AI technologies.

3.1.2 Mixed Approach of Regulation, Standard-Setting and Education

The functions outlined in Clause 11(a), (g), (i), and (j) of the Kenya Robotics and Artificial Intelligence Association Bill, 2023, indicate a mixed approach of regulation, standard-setting, and education within the proposed regulatory framework.

Function (a) ²³: "Regulate and promote the development of the robotics and artificial intelligence (AI) industry."

This function reflects the regulatory aspect of the Association. It implies the establishment of guidelines, rules, and oversight mechanisms to ensure the responsible and ethical development of the robotics and AI industry in Kenya. The regulatory role aims to address potential risks and promote positive contributions of these technologies to society.

Function (g): ²⁴ "Formulate robotics and artificial intelligence (AI) national standards acceptable internationally."

²² Ibid, clause 4

²³ Ibid, clause 11 (1) (a)

²⁴ Ibid, clause 11 (1) (g)

This function emphasizes the importance of setting national standards for robotics and AI technologies. By formulating standards that align with international best practices, the Association aims to ensure interoperability, quality, and ethical considerations in the development and deployment of these technologies.

Function (i):²⁵ "Establish linkages with local and international training and research institutions to conduct scientific research and investigations in all areas pertaining to the development of the robotics and artificial intelligence (AI)."

This function highlights the educational and research-oriented aspect of The Association. By establishing linkages with institutions, The Association aims to foster scientific research and investigations. This collaboration can contribute to the continuous improvement of knowledge and skills in the field of robotics and AI.

Function (j):²⁶ "Undertake technology transfer and provide technical assistance to county governments on matters relating to robotics and artificial intelligence (AI) industry."

This function underscores The Association's role in knowledge transfer and capacity building. By providing technical assistance to county governments, The Association can contribute to the responsible integration of robotics and AI technologies at the local level. This may include supporting the implementation of AI applications and ensuring that county governments have the necessary expertise.

The mixed approach represented by these functions recognizes the multifaceted nature of regulating robotics and AI. It involves not only regulatory oversight but also the establishment of standards, collaboration with educational and research institutions, and the

²⁵ Ibid, clause 11 (1) (i)

²⁶ Ibid, clause 11 (1) (j)

facilitation of technology transfer for broader societal benefits. This integrated approach reflects a comprehensive strategy to address the challenges and opportunities presented by robotics and AI technologies in Kenya.

3.1.3 Provision for County-Specific Legislation

Clause 32 of the Kenya Robotics and Artificial Intelligence Association Bill, 2023, addresses the provision for county-specific legislation, allowing individual counties to enact their own regulations pertaining to the robotics and artificial intelligence (AI) industry²⁷.

Criteria for Registration and Licensing

This provision grants county governments the authority to establish specific criteria for the registration of robotics and AI industries within their respective jurisdictions. It includes the criteria for the issuance of licenses to applicants operating within the county.²⁸ This recognizes the diverse nature of counties and allows for tailored regulations that consider local contexts and needs.

2. Information Required for Registration and Licensing

County-specific legislation may specify the information that applicants need to submit for the registration or issuance of a license. This ensures transparency and clarity for industry participants, outlining the documentation and details required by the county authorities.²⁹

3. Process of Determination and Renewal

Counties are empowered to define the process for determining applications for registration or license issuance, as well as the process for

²⁷ Ibid, clause 32

²⁸ Ibid

²⁹ Ibid

the renewal of licenses. This provides a framework for procedural aspects, including timelines, review processes, and conditions for renewal, contributing to the effective and consistent administration of regulations.³⁰

4. Conditions for Issuance or Renewal

County-specific legislation outline conditions that must be met for the issuance or renewal of a license under the Act. This includes compliance with certain standards, ethical considerations, or other factors deemed important by the county government to ensure responsible industry practices.³¹

5. Grounds for Rejection or Cancellation

The legislation allows counties to specify the grounds for the rejection of an application or the cancellation of a license.³² This provides clarity on the circumstances under which an application may be denied or a license may be revoked, promoting accountability and fairness in regulatory processes.

6. Process of Renewal and De-registration

Counties have the authority to define the process for the renewal of registration and the de-registration of entities. This ensures that there are clear procedures in place for ongoing compliance and, if necessary, the removal of entities from the registry.³³

3.1.4 Collaboration with Other Agencies

Clause 11(n) of the Kenya Robotics and Artificial Intelligence Association Bill, 2023, emphasizes the importance of collaboration with other key

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Ibid

agencies, specifically the ICT Authority of Kenya and the Office of the Data Protection Commissioner.³⁴

This provision highlights the recognition that the development and enforcement of standards in the robotics and AI industry require a collaborative effort involving multiple stakeholders. By explicitly naming the ICT Authority and the Data Protection Commissioner, the bill acknowledges the expertise and authority these agencies bring to the regulatory landscape.

Given the sensitivity of data in AI applications, collaboration with the Data Protection Commissioner is crucial. This collaboration implies a commitment to ensuring that standards and practices in the robotics and AI industry align with data protection regulations, promoting responsible and ethical use of data.

The mention of collaboration with "other relevant government agencies" indicates a broader scope of engagement. This collaborative approach ensures that the standards and code of practice are developed in consultation with various governmental bodies, fostering a well-rounded and inclusive regulatory framework.

Collaboration with multiple agencies contributes to the coherence and consistency of regulatory efforts. By working together, these agencies can align their approaches, reduce redundancy, and create a more unified regulatory environment for the robotics and AI industry.

³⁴ Ibid, clause 11 (n)

3.2 Demerits of the Robotics and AI Association Bill, 2023

3.2.1 Limited Regulatory Scope

The bill may not cover all relevant aspects of the robotics and artificial intelligence (AI) industry or may lack the necessary depth to address emerging challenges comprehensively. Rapid advancements in AI and robotics may outpace the regulatory framework, leading to gaps in addressing new technologies and their associated risks.

The bill focuses on specific areas, such as industry standards or ethical considerations, while overlooking other crucial aspects like cybersecurity, privacy, or the societal impact of AI applications. The regulatory scope may unintentionally exclude certain actors within the industry or specific AI applications, potentially leaving regulatory blind spots.

If the regulatory framework lacks interdisciplinary considerations, it may not effectively address the complex interplay of technological, ethical, legal, and societal factors associated with AI and robotics.

Limited regulatory scope poses the risk of leaving gaps in oversight, potentially allowing for unethical practices, inadequate safety measures, or insufficient protection of stakeholders.³⁵ If the bill does not cover a broad range of relevant issues, enforcement challenges may arise, as regulators might struggle to address unforeseen developments or emerging risks not explicitly covered in the legislation.

³⁵ Maya Medeiros, 'Artificial Intelligence and the Future of Agriculture' (Norton Rose FullBright 2018) 10
<https://www.nortonrosefulbright.com/en-us/knowledge/publications/6400e1ea/artificial-intelligence-and-the-future>
accessed 17 November 2023

The lack of a comprehensive regulatory approach may hinder the framework's adaptability to evolving technologies and industry dynamics, potentially rendering it outdated relatively quickly.

3.2.2 No Guiding Regulatory Principles

The absence of guiding regulatory principles in the Robotics and AI Association Bill, 2023, may present a potential demerit. There is a lack of overarching principles or fundamental guidelines that should inform the development and application of regulations within the bill. Without explicit guiding principles, the bill may lack a clear ethical foundation, raising concerns about the ethical considerations that underpin the regulatory decisions and actions. The absence of guiding principles may result in unclear policy objectives, making it challenging for stakeholders to understand the rationale behind specific regulatory measures.

The lack of overarching principles may lead to inconsistencies in decision-making, potentially creating confusion among industry players, regulators, and the public. The absence of guiding principles may make it challenging to strike a balance between encouraging innovation in the robotics and AI industry and ensuring responsible and ethical development.

The absence of guiding principles may leave ethical considerations open to interpretation, potentially leading to varying ethical standards or perceptions within the industry. Stakeholders may face uncertainty about the regulatory direction and the criteria used for decision-making, hindering their ability to proactively comply with regulations. In the absence of clear guiding principles, regulatory measures may be reactive rather than proactive, addressing issues as they arise rather than preventing potential problems.

3.2.3 Lack of Enforcement Power

The provisions in Clauses 33, 27, and 29 of the Kenya Robotics and Artificial Intelligence Association Bill, 2023, raise concerns about the potential lack of enforcement power, which could limit the effectiveness of the regulatory framework.

Clause 33 - Penalties:³⁶

The prescribed penalties in Clause 33 may be considered relatively weak, potentially not serving as a sufficient deterrent for non-compliance or offenses under the Act. The minimum fine of twenty thousand shillings may not be proportionate to the potential economic gains or risks associated with violations of the Act. The maximum imprisonment term of six months may be perceived as lenient, and it may not effectively deter serious offenses. The relatively low penalties may not effectively discourage individuals or entities from engaging in activities that contravene the provisions of the Act.

Clause 27 - Renewal of License:³⁷

The procedures outlined in Clause 27 for the renewal of a license do not explicitly address stringent criteria or ongoing compliance assessments, potentially allowing for automatic renewals without adequate scrutiny. The criteria for license renewal are not explicitly detailed, leaving room for ambiguity and potential oversight in assessing ongoing compliance. While a notice period is provided before revoking a license, the fourteen-day period may be considered relatively short for licensees to address and rectify compliance issues. The lack of robust renewal procedures may result in the continuation of licenses even if there are persistent compliance issues.

³⁶ Ibid, clause 33

³⁷ Ibid, clause 27

Clause 29 - Effects of Revocation:³⁸

While the clause addresses the revocation of a license, it may lack specific provisions for immediate or interim measures to address potential harms or risks associated with the revoked license. The clause does not specify interim measures or actions that The Association can take in case of immediate risks or harms resulting from the revoked license. In the absence of clear provisions for interim measures, there may be delays in addressing potential negative consequences resulting from the revocation of a license.

3.2.4 No Provision on Inventory and Disclosure of AI uses

The absence of provisions related to the inventory and disclosure of AI uses in the Robotics and AI Association Bill, 2023, presents a potential demerit. This suggests that the bill may lack specific requirements for entities utilizing AI technologies to maintain an inventory of their AI systems and disclose relevant information regarding their deployment. Without provisions for inventory and disclosure, there may be a lack of transparency regarding the extent and nature of AI applications in various sectors. The absence of disclosure requirements may result in the potential misuse or unintended consequences of AI systems, as stakeholders, including the public and regulators, may be unaware of the technology's scope and implications.

Regulators may face challenges in monitoring and regulating the diverse uses of AI if there is no mandatory inventory or disclosure mechanism in place. Limited visibility into AI applications may hinder the ability to assess and mitigate potential ethical, legal, or societal risks associated with these technologies. Stakeholders, including the public and regulatory bodies, may lack crucial information needed for informed decision-making and oversight.

³⁸ Ibid, clause 29

3.2.5 Limited Focus on Inter-Agency Collaboration

This suggests that the bill may not adequately emphasize or provide mechanisms for collaboration between different government agencies involved in regulating or overseeing aspects of AI and robotics. Lack of emphasis on inter-agency collaboration could lead to fragmented oversight, where different agencies operate independently, potentially resulting in inconsistencies or gaps in the regulatory framework. Without clear provisions for collaboration, agencies may duplicate efforts, resources, and processes, leading to inefficiencies and redundancies in regulating the robotics and AI industry.

Collaboration among agencies with diverse expertise is crucial for addressing the multidisciplinary nature of AI and robotics. Limited focus on collaboration may miss opportunities for synergy in addressing complex challenges.

4. Proposals for Strengthening Kenya's Robotics and AI Association Bill, 2023

4.1 Enhance and better define Scope of Regulation

4.1.1 European Union AI Act

To enhance and better define the scope of regulation in Kenya's Robotics and AI Association Bill, 2023, one can draw inspiration from the European Union AI Act and propose amendments that align with best practices in AI regulation.

Kenya should define key terms such as "artificial intelligence," "high-risk AI systems," and other relevant terms to provide clarity on the scope of the regulation. This can help avoid ambiguity and ensure a common understanding among stakeholders. Kenya should adopt a risk-based approach similar to the European Union AI Act, which categorizes AI

systems based on risk levels³⁹. Kenya should identify and define high-risk AI applications that require specific regulatory scrutiny, such as those in critical infrastructure, healthcare, and biometric identification.

Kenya should clearly outline exemptions for low-risk AI systems to avoid unnecessary regulatory burdens on applications that pose minimal risks. This can promote innovation in less critical areas while focusing regulatory efforts on high-risk applications. Kenya should introduce provisions requiring human oversight and transparency for certain AI systems. We should consider specifying circumstances where human intervention is necessary, especially in high-risk applications that impact fundamental rights or safety.

In addition, Kenya should incorporate provisions addressing data governance and privacy concerns associated with AI systems. We should align regulations with existing data protection laws and ensure that AI applications comply with principles of data minimization, purpose limitation, and user consent. We should establish clear conformity assessment procedures for high-risk AI systems. This includes defining the criteria for assessing conformity, including technical documentation, third-party audits, and ongoing monitoring to ensure compliance.

Kenya should strengthen oversight and enforcement mechanisms, providing the regulatory authority with the necessary powers and resources to enforce compliance. We should specify penalties for non-compliance, taking into account the severity of the violation.

³⁹ Arthur Gwagwa, Recommendations on the Inclusion of sub-Saharan Africa in Global AI Ethics (Research ICT Africa 2019) <https://researchictafrica.net/wp/wp-content/uploads/2020/11/RANITP2019-2-AI-Ethics.pdf> accessed 17 November 2023

4.2 Articulate the Regulatory Guiding Principles

4.2.1 US Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

Kenya should draw inspiration from the U.S. Executive Order and its Section 2, which outlines guiding principles for AI development and use.⁴⁰ Kenya should introduce a section in the Robotics and AI Association Bill explicitly articulating the guiding principles that will underpin the regulation of AI technologies in Kenya.

The US Executive Order emphasizes on the importance of fostering public trust and confidence in AI technologies.⁴¹ Kenya should articulate principles that prioritize transparency, accountability, and mechanisms for building and maintaining public trust in the deployment and use of AI.

The US Executive Order emphasizes public participation in the development of AI regulatory policies.⁴² Kenya should include provisions that encourage public engagement, ensuring that diverse perspectives are considered in the formulation and review of AI regulations.

US Executive Order acknowledges the importance of international collaboration in AI development and governance.⁴³ Kenya should introduce language that promotes collaboration with international

⁴⁰US Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/> accessed 17 November 2023

⁴¹ Ibid, Section 2(a)

⁴² Ibid, Section 2(b)

⁴³ Ibid, Section 2(c)

entities, aligning Kenya's AI regulations with global best practices and fostering interoperability.

US Executive Order Reference highlights the need for AI systems to be designed and used ethically.⁴⁴ Kenya should explicitly incorporate ethical considerations, emphasizing fairness, equity, and the avoidance of discriminatory practices in AI applications.

In addition, the US Executive Order stresses the importance of risk assessment and mitigation in the deployment of AI systems.⁴⁵ We should introduce provisions that mandate thorough risk assessments for AI applications, especially in high-risk contexts, and outline mechanisms for risk mitigation.

4.3 Bolster Enforcement

4.3.1 US Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence

Kenya should acknowledge the importance of strong enforcement mechanisms to ensure the safe and secure development and use of AI. We should introduce provisions in the Robotics and AI Association Bill that enhance the enforcement capabilities of regulatory authorities, providing them with the necessary tools and authority to oversee compliance.

Kenya should refer to the penalties outlined in the U.S. Executive Order as a benchmark for addressing non-compliance. We should clearly define penalties for violations of AI regulations, considering both monetary fines and potential criminal sanctions based on the severity of the offense.

⁴⁴ Ibid, Section 2(d)

⁴⁵ Ibid, Section 2(e)

Kenya should consider the graduated approach to enforcement outlined in the U.S. Executive Order.⁴⁶ We should establish a tiered enforcement system that takes into account the nature and severity of AI-related violations. This can include warnings, fines, suspension of licenses, and other appropriate measures.

Kenya should consider provisions for whistleblower protections, as highlighted in the U.S. Executive Order.⁴⁷ We should introduce measures to protect whistleblowers who report violations of AI regulations. This can include safeguards against retaliation and mechanisms for reporting violations anonymously. Kenya should also include provisions for regular audits and inspections of entities involved in AI development and deployment. This can help identify and rectify potential compliance issues.

4.4 Requirement to inventory and disclose AI use

4.4.1 USA Approach

Kenya should consider the U.S.A approach, where certain federal agencies are required to maintain an inventory of AI systems.⁴⁸ We should introduce a provision in the Robotics and AI Association Bill mandating entities deploying AI systems to maintain an inventory. This inventory

⁴⁶ US Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/> accessed 17 November 2023

⁴⁷ Ibid

⁴⁸ Nicole Turner Lee, Paul Resnick, Genie Barton, Algorithmic bias detection and mitigation: Best Practices and Policies to Reduce Consumer Harm (Brookings 2019) <https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/> accessed 17 November 2023

should include details such as the purpose, capabilities, and potential risks associated with each AI system.

Kenya should implement transparency requirements that mandate entities to disclose information about their AI systems. This may include making information accessible to the public, regulatory bodies, or other relevant stakeholders.

4.5 Mandatory Inter-Agency Collaboration

4.5.1 UK Approach

Kenya should draw inspiration from the UK approach, which emphasizes the importance of collaboration between different government agencies involved in AI oversight⁴⁹. Kenya should introduce a specific section in the Robotics and AI Association Bill mandating inter-agency collaboration. This can involve relevant government bodies, regulatory authorities, and specialized agencies to work together on AI regulation and oversight. We should clearly define the roles and responsibilities of each participating agency in the collaborative framework. This ensures that there is a clear understanding of the contributions and expectations of each agency involved.

We should establish mechanisms for coordination, including regular meetings, joint working groups, and information-sharing platforms. This ensures that agencies are well-informed and coordinated in their approach to AI regulation. We should also emphasize the importance of harmonizing standards and practices related to AI regulation. This ensures consistency and avoids duplication of efforts among collaborating agencies.

⁴⁹ Ibid

Conclusion

The discourse on the proposed "Kenya Robotics and Artificial Intelligence Association Bill, 2023" provides a comprehensive examination of the challenges and opportunities associated with regulating artificial intelligence (AI) and robotics in Kenya. The global landscape of AI governance serves as a backdrop, offering insights into diverse regulatory trends and practices that have informed the development of this proposed legislation. The challenges of adapting legal frameworks to the dynamic nature of technology underscore the need for agile and adaptive regulatory approaches. While the proposed bill marks a significant step forward by establishing the Kenya Robotics and Artificial Intelligence Association, its merits and demerits warrant careful consideration.

The merits of the bill, including the establishment of a professional body with defined functions and powers, showcase a commitment to fostering responsible and ethical development of AI technologies in Kenya. The proposed functions of The Association, such as advising the government on emerging trends and formulating industry standards, reflect a proactive approach to staying abreast of technological advancements.

However, the demerits, such as limited regulatory scope and the absence of guiding principles and enforcement powers, point to areas that require attention and enhancement. The discussion on global regulatory trends and practices provides a valuable resource for proposing amendments to fortify the bill, incorporating elements such as clear regulatory guiding principles, strengthened enforcement mechanisms, mandatory inventory and disclosure of AI use, and mandatory inter-agency collaboration. In shaping the regulatory landscape for AI and robotics, the proposed amendments draw inspiration from international best practices, aligning the Kenyan framework with the evolving global standards. The emphasis on transparency, accountability, and collaboration underscores the

The Case for Decriminalization of Attempted Suicide in (2024) Journalofcmsd Volume 11(3)
Kenya: Lessons from Comparative Experience:
Michael Sang

importance of responsible AI governance that considers the interests of the public, industry stakeholders, and the government.

As Kenya moves forward in navigating the intricate terrain of AI regulation, the proposed amendments stand as catalysts for fostering an environment that encourages innovation while safeguarding ethical considerations. This discourse contributes to the ongoing dialogue on the responsible and effective regulation of AI and robotics in Kenya, recognizing the pivotal role these technologies play in shaping the future of the nation.

The Case for Decriminalization of Attempted Suicide in Kenya: Lessons from Comparative Experience: (2024) *Journalofcmsd Volume 11(3)*
Michael Sang

References

Akanksha Sharma, Sam Ajadi, Andreas Beavor, 'Artificial Intelligence and Start-Ups in Low-and Middle-Income Countries: Progress, Promises, and Perils' (GSM Association 2020) 6

<https://www.gsma.com/mobilefordevelopment/wp-content/uploads/2020/10/Artificial-Intelligence-and-Start-Ups-in-Low-and-Middle-Income-Countries-Progress-Promises-Perils-Final.pdf>

Arthur Gwagwa, Recommendations on the Inclusion of sub-Saharan Africa in Global AI Ethics (Research ICT Africa 2019)

<https://researchictafrica.net/wp/wp-content/uploads/2020/11/RANITP2019-2-AI-Ethics.pdf>

Jackline Akello (2022) 'Artificial Intelligence in Kenya' Policy Brief Paradigm Initiative <https://paradigmhq.org/wp-content/uploads/2022/02/Artificial-Intelligence-in-Kenya-1.pdf>

Maya Medeiros, 'Artificial Intelligence and the Future of Agriculture' (Norton Rose FullBright 2018) 10

<https://www.nortonrosefulbright.com/en-us/knowledge/publications/6400e1ea/artificial-intelligence-and-the-future>

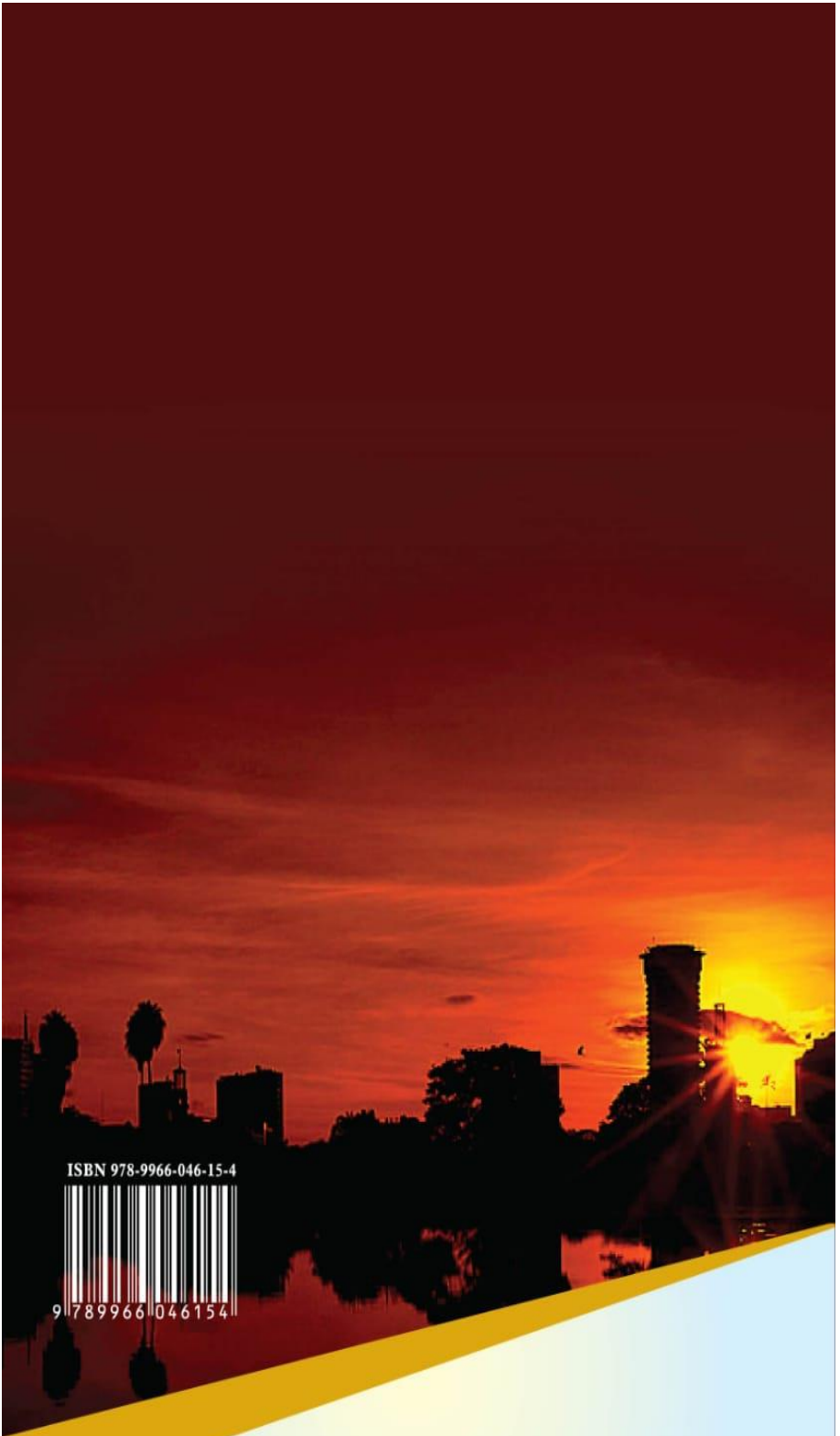
Nicole Turner Lee, Paul Resnick, Genie Barton, Algorithmic bias detection and mitigation: Best Practices and Policies to Reduce Consumer Harm (Brookings 2019)

<https://www.brookings.edu/research/algorithmic-bias-detection-and-mitigation-best-practices-and-policies-to-reduce-consumer-harms/>

The Kenya Robotics and Artificial Intelligence Association Bill, 2023
US Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence available at

The Case for Decriminalization of Attempted Suicide in Kenya: Lessons from Comparative Experience: (2024) *Journal of CMSD* Volume 11(3)
Michael Sang

<https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/>



ISBN 978-9966-046-15-4



9 789966 046154