

# TOM MBOYA & COMPANY ADVOCATES

## REVIEW OF KENYA'S ARTIFICIAL INTELLIGENCE BILL, 2026.

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### 1. INTRODUCTION



This week marks a turning point in Kenya's digital evolution.

Alongside investments and launches of national data infrastructure and digital hubs across the country, the introduction of the Artificial Intelligence Bill, 2026 (*hereinafter, the Bill*) signals a growing recognition that technological progress must be accompanied by thoughtful governance.

Most people mistakenly think Artificial Intelligence (AI) is not simply another technological tool. This author posits that it is an infrastructure technology that will increasingly influence people, creativity, governance, decision-making, markets, public services, et al. For this reason, regulatory frameworks must delicately balance two critical goals: Enabling innovation and protecting the public from harm.

The Bill attempts to begin this process.

### 2. WHAT THE BILL GETS RIGHT



The Bill has been carefully drafted and it addresses the establishment of an AI regulator and an advisory committee, governance of AI systems, and offenses and penalties. Thus, from a cursory read, the Bill already gets it right. This author will highlight a few of the clauses that are most pertinent as follows:

**Clauses 3** and **30** of the Bill acknowledges that Kenya does not only need to create an enabling environment that fosters innovation but also that AI systems require oversight structures capable of addressing issues such as: algorithmic transparency, accountability for automated decisions, ethical deployment of AI technologies.

Thus embedding principles of fairness, accountability, and transparency within the legislative framework reflects a growing global consensus that responsible AI development must extend beyond voluntary guidelines.

Moreover, **Clause 4** of the Bill establishes the Office of the AI Commissioner whose importance cannot be overstated as Kenya is rapidly expanding its digital infrastructure while simultaneously nurturing a vibrant technology ecosystem. An independent regulator that provides clarity around AI deployment will help support both investor confidence and responsible innovation. The ensuing clauses enunciate the qualifications, appointment, tenure and removal from office, which are standard provisions.

**Clause 10** of the Bill goes further to provide at least sixteen (16) functions of the office. This clause aligns with Kenya's broader strategy of expanding the digital economy. **Kenya's National AI 2025-2030 Strategy** aims to leverage AI to accelerate innovation and socio-economic development and legislation that clarifies regulatory expectations supports this ambition.

This author contends that whilst other parts of the Bill are pivotal, Part IV is most pivotal as it encompasses AI governance frameworks that not only regulate but also enable innovation ecosystems. Further, it addresses the classification of AI systems, Obligations of deployers and users of these systems, AI transparency safeguards, Regulatory sandboxes, ethical guidelines and AI literacy.

### 3. AREAS TO STRENGTHEN



While the Bill establishes an important starting point, several areas may benefit from further refinement.

First, is the very heart of AI regulation: Data governance.

AI systems are fundamentally dependent on data quality. Issues such as dataset bias, data provenance, and algorithmic fairness are often rooted in the datasets used to train these systems. Strengthening provisions around data accountability would help ensure that AI deployment in Kenya remains both ethical and reliable.

Second, the Bill has only addressed AI systems built within Kenya's jurisdiction, it has gravely overlooked our realities that most of the underlying AI infrastructure we use are

largely designed, trained, and governed in the Global North.

Thus a most pressing question plagues this author, what mechanisms ensure that our regulatory ambitions are not undermined by jurisdictional and technological asymmetries?

For that, this author offers two practical solutions: The Bill needs to strengthen its data governance clauses and include clauses for the strategic usage of public procurement to require; explainability standards, auditability, local partnerships, capacity transfer and compliance with domestic ethical frameworks for even global firms adapt when market access depends on it. Market access is leverage.

Third, the important role that introducing a risk-based classification framework plays cannot be overstated as it will be the basis upon which regulators focus oversight where it is most needed while allowing low-risk innovation to flourish. For example, recommendation algorithms used in entertainment platforms present far fewer societal risks than AI systems used in healthcare, financial services, or public administration.

Although *Clause 25* classifies different types of AI applications according to their different levels of potential harm, no definition is provided for the four types of risk, leaving much for speculation.

## 4. CONCLUSION



As this author gracefully pens off, she reaffirms the fact that Kenya is positioning itself as a regional leader in the digital economy.

From mobile financial innovation to startup ecosystems and now expanding AI infrastructure, the country has demonstrated a consistent ability to adopt emerging technologies. However, technological infrastructure alone does not determine the success of digital economies.

Governance frameworks play an equally important role and a well-designed AI governance framework can:

- 1) Encourage responsible innovation;
- 2) Bolster the digital economy;
- 3) Protect citizens' rights;

4) Strengthen international partnerships; and

5) Create regulatory certainty for businesses.

Thus AI governance should not be viewed as a single legislative event but as an evolving process. As the technology continues to develop, regulatory frameworks must remain adaptable and responsive to emerging risks and opportunities.

Kenya is building the infrastructure for the AI economy. The next challenge is ensuring that governance structures allow innovation to flourish while safeguarding the public interest. Are we ready?

## ABOUT THE AUTHOR .



**Adv. Elizabeth Mboya** is a Kenyan advocate with a focused practice at the intersection of **intellectual property, innovation, and emerging technologies**. She advises innovators, entrepreneurs, and growth-oriented businesses on how to protect, value, and commercialise intellectual property in today's digital economy.

Her work is grounded in a strong understanding of **IP valuation and commercialisation**, moving beyond traditional registration to position intellectual property as a **strategic commercial asset** capable of driving revenue, investment, and long-term enterprise value. She brings a practical, business-minded approach to legal advisory, informed by both local realities and global best practices.

Elizabeth holds **specialised certifications in Intellectual Property from the World Intellectual Property Organization (WIPO)** and **Artificial Intelligence from the University of Helsinki**, equipping her with the technical and commercial insight required to advise in innovation-driven and technology-enabled sectors.

A strong advocate for a future where **law, innovation, and humanity intersect**, Elizabeth believes the legal profession must evolve from a reactive role to a value-creating one. Through her writing, advisory work, and thought leadership, she champions practical, human-centred, and commercially relevant legal solutions that create lasting impact.

# CONTACT INFORMATION



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