

GLOBAL INFORMATION SOCIETY WATCH 2007

Focus on Participation



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MONOCROMO

Graphic design

MONOCROMO

Myriam Bustos, José de los Santos, Valentina Ordoqui, Pablo Uribe
info@monocromo.com.uy

Phone: +598 (2) 400 1685

Cover illustration

Matías Bervejillo

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KENYA

Kenya ICT Action Network (KICTANet)¹

Alice W. Munyua, Muriuki Mureithi



Introduction

There have been significant changes in the information and communications technology (ICT) sector in Kenya over the last ten years, despite the lack of a legislative framework to guide it. While it is difficult to capture all the developments in detail, the formation of the multi-stakeholder Kenya ICT Action Network (KICTANet) has been a remarkable achievement. Through the network, an inclusive policy process has been catalysed, resulting in the country's first draft ICT policy document, approved by cabinet in February 2006.

This report provides an overview of the ICT policy process in Kenya and the role of KICTANet in this process. It has been prepared by KICTANet through desktop research and by drawing on various documents from KICTANet meetings. Key policy documents were also reviewed.

Country situation

According to Brock (1994), public policy creates public good by creating a predictable framework that results in the production of goods. The point is that a policy framework should be predictable and should not easily be changed once implemented. This is the logic that drove US telecommunications policy development. Developing countries like Kenya appear to be driven by the same desire. Conscious of the poor and unpredictable quality of services, the rapid policy evolution in Kenya over the past few years is based upon the recognition that in order to create public good, it is important to create a predictable policy environment.

Despite the lack of a legislative framework to guide the ICT sector, there has been a massive change in the ICT landscape over the last decade. Once characterised by an expensive state propaganda organ in broadcasting and by a highly indebted and inefficient state telecommunications monopoly, it was the broadcast media sector that started the breakaway from state monopoly provision to a liberalised communication sector by lobbying for media freedoms.

The Kenya Postal and Telecommunications Corporation (KPTC) previously operated as the sole service provider and regulator of telecommunications services. With pressure from global forces – specifically the World Trade Organisation (WTO), but to a lesser extent regional blocs – to change policies and accommodate global trading activities, the government began to embrace global trends in recognition of the significant role played by ICTs in achieving development and socioeconomic objectives.

In 1998 parliament passed the Kenya Communications Act No. 2 of 1998, which liberalised the telecommunications sector. This Act is by far the most influential policy paper that affects the ICT sector. It is a unique piece of legislation that has enabled Kenya to successfully move from a monopoly market structure to a multi-operator structure.²

The Act unbundled the KPTC into five separate entities: the Communications Commission of Kenya (CCK), which is the regulator; the National Communications Secretariat (NCS), which serves as the policy

advisory arm of the government on all matters pertaining to the information and communications sector; the fixed-line operator, Telkom; the Postal Corporation of Kenya (POSTA); and a Communications Appeals Tribunal.

In December 2001, the Ministry of Transport and Communications issued the Telecommunications and Postal Sector Guidelines (CCK, 2001). This recognised convergence trends, which were making it difficult to clearly separate telecommunications and broadcasting concerns. As a result, the government had to review policies that affected licensing processes, frequency management and signal transmission requirements. The aim of the review was to combine broadcasting and telecommunications policy and to eventually develop a combined ICT policy document.

The intention of the policy reform process was to position ICTs as a service to the economy. Yet the reform process itself took a while to get going. Attempts by the government to review the sector's policy, to widen its scope and to integrate it with socioeconomic endeavours only bore fruit in 2006. The slow pace of ICT policy development encouraged other sectors to produce sector-specific strategies, with a consequent loss of synergy between the sectors.

Key strategy and policy developments (1996-2006)

Key structural changes during the period from 1999 to 2006 were:

- The elucidation of a long-term vision for the ICT sector as a contributor to socioeconomic development.
- The redefinition and clarification of roles in telecommunication sector development. Distinct roles for policy-making, market regulation in a competitive environment, dispute resolution and the operation of services among multiple players have been identified.
- The promulgation of a new market structure driven by the private sector in a competitive environment. The private sector is considered the key investor in the ICT sector with profit its main incentive. Government is to withdraw as an investor through the privatisation of the incumbent telecommunications service provider. Competition is expected to safeguard consumer interest.

Within the country's Economic Recovery Strategy (2003-2007) the government identified key ICT-related goals. These included investing in adequate ICT education and training; reviewing the legal framework to remove impediments that have discouraged the adoption and use of e-commerce; implementing tax reductions and tax incentives on both computer software and hardware to make them affordable to micro-enterprises and low-income earners; establishing an interministerial committee to incorporate ICT into government operations; and developing a master plan for e-government by the end of June 2004 (MPND, 2003).

The government published an e-government strategy in March 2004. The strategy aims to use ICTs to improve service delivery and "transform government operations and promote democracy" (Government of Kenya, 2004). A multi-stakeholder team from various organisations and government agencies developed the strategy, which

¹ <www.kictanet.or.ke>.

² A commentary on the Kenya Communications Act is available from: <www.cck.go.ke/sector_legislation_in_policy_and_legislation>.

included an e-government directorate consisting of a committee of permanent secretaries.

The CCK also worked in partnership with the International Development Research Centre (IDRC) to conduct a universal access study. The general objective of the study was to help articulate a strategy for universal access in Kenya. This report is essential in guiding policy decisions on universal access mechanisms.³ It recommends the establishment of telecentres and ICT training institutions with a focus on the affordability of communications services in rural areas. It also recommends the establishment of a Universal Access Fund financed by the government, telecommunications operators and service providers, as well as development partners. One of the challenges the CCK/IDRC strategy faces is that it focuses on access to communication infrastructure and tools rather than on the broader issue of communications rights.

In implementing its mandate to facilitate affordable universal access to ICTs, the CCK has undertaken a series of regulatory and structural reform initiatives meant to enhance the development of the ICT sector. Apart from the policy liberalisation of the sector, the commission has also started to involve itself in developing ICT infrastructure. Noteworthy among its initiatives are the development of a national backbone and the commission's engagement in the East African Submarine System (TEAMS). TEAMS is a government-led initiative to build a fibre link to Fujairah in the United Arab Emirates. The project is expected to be finalised by November 2007, according to a statement issued by Telkom Kenya. These initiatives will provide greater access to low-cost broadband internet connectivity and ultimately contribute significantly to the country's ICT development.

Participation

The World Summit on the Information Society (WSIS) has been influential in building a multi-stakeholder culture for policy formulation in Kenya. It provided an excellent window of opportunity to integrate the multi-stakeholder approach into ICT policy frameworks.

The national ICT policy process had generally lacked political will and leadership. This was reflected in the absence of a national ICT policy, but also in the ineffective coordination between different government departments and agencies with ICT responsibilities. There was also a reluctance to opening up the ICT policy process for participation by all stakeholders.

A number of civil society organisations (CSOs), private sector players and media groups had been actively attempting to contribute to the development of an ICT legislative and regulatory framework in Kenya, even prior to the WSIS process. Initial key advocacy concerns were fundamental issues of access and the removal of the monopoly in telecommunications service provision, as well as the integration of telecommunications into the national economic development programme.

The private sector umbrella body for internet service providers (ISPs), the Telecommunication Service Providers of Kenya (TESPOK), was by far the most mobilised and organised lobbying group. TESPOK had been engaged in advocacy and lobbying the government, and had several achievements which had led to significant changes in the ICT sector. It had also consistently expressed concerns around the failure of the government to include the private sector in policy formulation and lamented that a policy draft of 2003 had failed to include private sector input.

However, while private sector operators had been very enthusiastic about pinning the government down in order to liberalise the sector and finalise the national ICT policy, they were caught up in the narrow perception of assuming that growth in ICT-enabled services would amount to economic and social development. Their biggest failure was their tendency to forget about the wider development context in their lobbying strategies.

The role of KICTANet

Research conducted in 2003 by Muriuki Mureithi for the Association for Progressive Communication's (APC's) Africa ICT Policy Monitor project indicates that civil society played a significant role in the development of ICTs by creating awareness, training, and introducing ICT services in the early 1990s (APC, 2003). CSO involvement in ICT policy processes was in the form of a caucus, the Kenya WSIS Civil Society Caucus, with a secretariat based at the Arid Lands Information Network (ALIN-EA), an APC member in Kenya.

While the work of the caucus had been laudable in the WSIS process, it had been driven by a very small group of CSOs that were directly and actively involved in the ICT sector. Similar to the private sector, CSOs had lamented that the government did not take them into consideration when developing various legal and regulatory frameworks for the sector. While civil society and private sector lobbies had achieved results,⁴ there had not been a collective effort towards encouraging the government to speed up the ICT policy process in an open and inclusive manner. Many of the organisations that had been involved in ICT policy advocacy felt that there was a need to form a network that would attract all role players in the sector, and, by working with government, increase the legitimacy and social capital of the ICT policy process.

The decision to form a multi-stakeholder network was reached during a meeting held in October 2004, organised jointly by the Media Council, a non-statutory, self-regulatory body set up by journalists, editors and media owners in 2002; the APC; the Catalysing Access to ICTs in Africa (CATIA) programme (a three-year ICT intervention in Africa by the UK Department for International Development, DFID); TESPOK; a communications research firm called Summit Strategies; and the Kenya WSIS Civil Society Caucus.

Participants unanimously agreed that the vacuum in the ICT policy process was compelling enough for the creation of a network that would work towards encouraging the government to speed up the development of an ICT regulatory framework for Kenya in an open, inclusive and participatory process. The proposal for a multi-stakeholder network was also based on the perceived strength and effectiveness of collaborative policy advocacy activities, which would be based on pooling support and resources. Initial members of the network were the APC-led CATIA project in Kenya, TESPOK, Summit Strategies, the IDRC, the Kenya ICT Federation (KIF), and the Civil Society Caucus.

A window of opportunity for KICTANet to encourage a multi-stakeholder process of policy dialogue was created when the National Rainbow Coalition (NARC) – the political party that won the 2002 elections – launched an official draft of the country's ICT policy in November 2004 (it was published for comment in February 2005).

3 <www.cck.go.ke/universal_access>.

4 For instance, lobbying for the liberalisation of the telecommunications sector had resulted in the formulation of the Kenya Communications Act (1998), which ended the monopoly of Telkom Kenya, as well as the full liberalisation of very small aperture terminal (VSAT) services.

KICTANet lobbied, agitated and advocated for the involvement of non-governmental actors in the policy process. As a result, the network was tasked with coordinating civil society, private sector, media and development partners' input into the policy development process, and "dialoguing" with the government.

KICTANet mobilised groups from the various stakeholders for workshops, seminars, electronic mailing list and roundtable discussions, and constituency-level forums, which aimed at collecting and consolidating substantive comments on the ICT policy. The network also worked with the Ministry of Information and Communications, the NCS, the CCK and the Kenya ICT Donor Roundtable to organise a national ICT policy workshop to finalise the ICT policy. The workshop was held in Mombasa in June 2005. The workshop's output was incorporated into the draft.

The content of submissions from various KICTANet groups was not surprising and was in line with the interests and positions that each sector held. For example, while the private sector was in favour of the fast liberalisation of the sector, civil society was more concerned with issues of universal affordable access and the right to communicate.

Contributions from media groups were disappointing. Prior to the telecommunications legislation of 1998, pluralism existed only in the print media – a result of intense lobbying and advocacy from media owners and practitioners. However, the media has been slow in taking on the developments within the context of the knowledge economy. Despite the fact that the policy document was addressing issues that will affect content, cross-media ownership and the licensing of broadcast equipment, media owners and practitioners hardly contributed to the process.

The document covers many issues such as universal access, radio frequency spectrum management, market structure, and telecommunication services. It represents a broad consensus reached between the different stakeholders on most issues. And although the content is not revolutionary, the broad participation process initiated by the Ministry of Information and Communications was innovative and participatory when compared to other policy processes in the ICT sector in other countries. According to the CCK, the policy replaces the Telecommunications and Postal Sector Guidelines of December 2001 (CCK, 2001). The final document was submitted in December 2005 and gazetted by the government in March 2006 (MIC, 2006a).

In April 2006, the ministry released an Information and Communications Bill 2006 for comments from the public (MIC, 2006b). In addition, a Media Bill and Code of Conduct for broadcasters were released for discussion and finalisation. KICTANet has been instrumental in facilitating discussions around these bills and consolidating input, which has been officially submitted to the government with financial support from the IDRC, the Embassy of Finland in Kenya, the APC, and more recently the Open Society Initiative for East Africa (OSIEA).

Conclusions

Both the ICT policy and the Information and Communications Bill processes recognise the role of civil society, media and the private sector in the policy process, and seek to include them as equal partners in the appropriation of ICTs for development. If enacted, the bill will, for the first time, provide a legal framework for meaningful partnerships in development.

It is because of KICTANet – and an open government – that the national ICT policy process became participatory. The network

provided mechanisms and a framework for cooperation and collaboration among civil society, private sector, academic, media and government stakeholders. As a result, it helped increase the legitimacy of the policy process.

The multi-stakeholder ICT policy development process in Kenya confirms the need for a more inclusive and effective manner to discuss critical policy issues. It also demonstrates that the government, private sector, media, development partners and non-government entities working on ICT issues are keen to work together to provide an enabling ICT policy environment and an implementation framework.

For its part, the Kenyan government is finally acknowledging the important role the various stakeholders play in the communications sector. There is now a more democratic space for participation in governance processes. (It is worth noting that recent KICTANet policy discussions are graced by the new Ministry of Information and Communications permanent secretary, which goes to demonstrate the goodwill that KICTANet enjoys from policy-makers in the sector.)

However, civil society's engagement with the policy processes has not been as active as the private sector's. And while a few CSOs engaged in the ICT sector have managed to articulate the complexities of interactions between ICTs, poverty reduction and development, and have managed to link ICTs to human rights and social justice, these organisations are not adequately represented.

There is also a need for civil society to engage in more outreach and mobilisation activities to include CSOs that work in sectors other than ICTs. Currently there is a culture where many CSOs feel they are not part of a process or do not need to act on ICT issues because they are not directly involved in the sector. NGOs working in areas such as agriculture or human rights still do not recognise how ICT policy impacts on their work.

Despite its poor participation in the ICT policy process, the media sector is aware of its vulnerability to the state in the absence of legislation. As a result it has created a number of institutions, which seek to establish self-regulatory systems. They are also engaging KICTANet stakeholders to ensure that they are included in policy processes as part of a larger multi-stakeholder network. ■

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GLOBAL INFORMATION SOCIETY WATCH is the first in a series of yearly reports covering the state of the information society from the perspectives of civil society and stakeholders in the global South.

GLOBAL INFORMATION SOCIETY WATCH has three interrelated goals:

- survey the state of the field of ICT policy at the local and global levels
- encourage critical debate, and
- strengthen networking and advocacy for a just, inclusive information society.

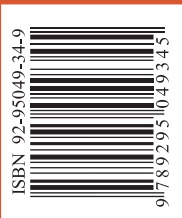
The report discusses the World Summit on the Information Society (WSIS) process and a range of international institutions, regulatory agencies and monitoring instruments.

It also includes a collection of country reports which examine issues of access and participation within a variety of national contexts.

Each year, the report will focus on a particular theme. In 2007

GLOBAL INFORMATION SOCIETY WATCH *focuses on participation.*

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