

THE 21ST EACO CONGRESS
22ND TO 26TH JUNE 2015 AT
SHERATON HOTEL, KAMPALA,
UGANDA.

PREPARED BY:

**WG01: ICT POLICY AND
REGULATORY HARMONIZATION
for the ASSEMBLY OF
REGULATORS**

2013 -2015

Introduction

This is a report on the proposed harmonization of ICTs policy and regulation within the East African Community. The report is a result of the work of the Working Group 1 which was tasked by 20th Congress on 28th June, 2013 to assess the existing Member States' Policy and Regulatory Frameworks and develop broad recommendations for the development of greater harmonization within the context of increased EAC cooperation.

Working Group I is one of the eleven (11) EACO Working Groups constituted by Member States to execute the EACO 3-year Strategic Plan. The Group is composed of professionals from all five member states including regulators, operators and associates.

The report is divided into three parts as per the approved Terms of Reference by the 20th Congress.

Part 1 of the Report is concerned with the context of the harmonization of the ICT Policies in the region.

- Chapter I describes the findings of review the existing EAC member states ICT policies
- Chapter II provides a summary of the proposed regional model ICT Policy Framework

Part 2 of the Report is considers the harmonization of ICT regulation in the region.

- Chapter I describes the findings review the existing EAC member states' ICT laws and Regulations
- Chapter II provides a summary of the proposed regional model ICT regulatory Framework

Part 3 of the Report is a highlight of the proposed regional EAC policy implementation, monitoring and evaluation framework.

1.0

**A regional EAC
model ICT
Policy**

1.1.1 Study

An in-depth review was conducted with focus on the internationally accepted priority policy areas as follows:

- Legal and regulatory framework in ICTs
- ICT Infrastructure Development
- Cross border Infrastructure Connectivity
- Human Resources Development
- ICT Industry Development
- E- Governance
- ICT and economic development
 - Agriculture
 - Trade and Commerce
 - Tourism
 - Minerals, oil and natural gas
- ICT and social development
 - Education
 - Health
 - Government
 - Gender
 - Safety and Environment (i.e. E-waste management, Climate Change)
- Rural connectivity and Universal access
- Research and Development in ICT
- Norms and Standards
- Content Development
- ICT Awareness
- Cyber security

Upon conclusion of the review, the following similarities and differences in the ICT policies were noted:

a) Similarities

- i. **Policy Maker:** In Kenya, Rwanda and Uganda, the Policymaker is the Minister in charge of ICT.
- ii. **National policy:** All countries have an ICT policy with different approach in policy formulation. Uganda has two policies governing ICT. The ICT sector is regulated by two separate autonomous bodies; Communications is regulated by UCC while IT is regulated by NITA-U. Tanzania also has two policies on ICT matters (The National Telecom Policy, 1997 and The National ICT Policy, 2003).
- iii. **Regulator:** In Kenya, Rwanda and Tanzania each have one regulator for all ICT services, while in Burundi has a separate regulator (“Conseil National de la Communication”) for Broadcasting Content and postal services are not

regulated by a specific regulatory body. In Uganda, UCC regulates Communications while NITA-U regulates ICT services.

- iv. **Broadcasting policy:** Rwanda, Tanzania and Uganda have specific policies.
- v. **Cyber-security:** The ICT policies in Kenya and Tanzania provide for Cyber security issues.
- vi. **Broadband policy:** Rwanda and Kenya have Broadband Policies/Strategies. Burundi, Tanzania and Uganda do not have any in place though there are some initiatives around broadband matters taking place.
- vii. **Cyber-security:** The ICT policies in Kenya and Tanzania provide for Cyber security issues.
- viii. **Postal policy:** Tanzania and Uganda have separate Policies while in Kenya it is provided for under the sector Policy.
- ix. **E-waste:** All countries are in the process of developing the policy on e-waste.

b) Differences

- i. **Broadcasting policy:** Three countries (Rwanda, Tanzania and Uganda) have specific policies while in Kenya they are provided for under the ICT Policy, 2006.
- ii. **Broadband policy: Two countries** (Rwanda and Kenya) have Broadband Policies while Burundi, Tanzania and Uganda do not have any in place though there are some initiatives around broadband matters taking place.
- iii. **Cyber-security Policy:** Two countries (Kenya and Tanzania) have provisions in their ICT policies.

1.1.2 Findings

The review exercise further identified Policy Issues arising from analysis of the ICT policies across EAC as follows:

Focus Areas	Policy Issue
Legal and regulatory frameworks in ICTs	<ul style="list-style-type: none"> i. Inadequate law and regulatory frameworks particularly on emerging areas like: cyber-security, data protection, e-transaction, convergence ii. Slow response of the law to technology and industry developments iii. Limited stakeholder participation in the development of the legal and regulatory framework. iv. Duplex regulators in the ICT Sector
ICT infrastructure Development	<ul style="list-style-type: none"> i. Limited Interoperability of infrastructure ii. Limited Infrastructure sharing and collocation

Focus Areas	Policy Issue
	<ul style="list-style-type: none"> iii. Interconnectivity Challenges iv. Capacity Challenges
Cross border Infrastructure connectivity	<ul style="list-style-type: none"> i. Lack of framework on cross border connectivity ii. Inadequate cross border connectivity
Complimentary Services	Limited complimentary services e.g. Roads, Electricity, Water
Human Resources Development	<ul style="list-style-type: none"> i. Low competencies and skills in ICTs ii. Poor mechanism in evaluation and certification of ICT trainings and programs iii. Lack of incentives for private sector to organize/support IT capacity-building; iv. Migration of ICT workers from EAC.(brain drain)
ICT Industry Development:- Ensuring sustainable investment in the ICT sector	<ul style="list-style-type: none"> i. Insufficient finance and investment in the ICT sector (High cost of ICT infrastructure , services) ii. Limited Technological transfer iii. Limited use of local and open source software. iv. Limited capacity-building of SMEs in the ICT sector;
E- Government, e-governance	<ul style="list-style-type: none"> i. Limited interoperability of government ICT systems ii. Duplication and inefficient resource management. iii. Government processes are to a large extent paper- based
ICT and economic development <ul style="list-style-type: none"> • Agriculture • Trade and Industry • Services • Minerals, oil and natural gas 	<ul style="list-style-type: none"> i. Lack of Coordination of trade links and e-markets. ii. Need for integration of ICTs in productive sectors iii. Unavailability of timely and reliable information iv. Lack of information sharing amongst key productive sectors v. Multiple taxes and levies in the ICT sector
ICT and social development <ul style="list-style-type: none"> • Education • Health • Culture 	<ul style="list-style-type: none"> i. Lack of awareness on the opportunities offered by ICTs for social development ii. Unavailability of affordable ICT services for social development
Rural connectivity and Universal access/Universal access fund	<ul style="list-style-type: none"> i. Limited and Poor rural connectivity ii. Affordability and availability of ICTs in underserved areas iii. Lack of knowledge-sharing networks at grass root level
Research and Development in ICT	<ul style="list-style-type: none"> i. Limited R&D and insufficient institutional capacity to innovate ICT products and services. ii. Insufficient Financial resources in R&D iii. Poor protection of Intellectual Property rights
Norms and standards	<ul style="list-style-type: none"> i. Absence of standards ii. Insufficient standards, where they exist iii. Limited capacity to develop, monitor and enforce standards
Ecommerce/ e-Transaction	<ul style="list-style-type: none"> i. Lack of awareness about E-commerce ii. Lack of privacy and security as regards e-commerce iii. Unreliability of payment and delivery networks
E-Content Development	<ul style="list-style-type: none"> i. Insufficient Local Content ii. Limited digitization and access to local content

Focus Areas	Policy Issue
Health, Safety and the Environment i.e. E-waste management, Climate Change,	<ul style="list-style-type: none"> i. Lack of policy and Legal frameworks on e-waste ii. High cost of e-waste management iii. Limited application of ICTs to minimize environmental degradation and manage natural disasters; iv. Limited use of ICT in providing solutions for mitigating climate change
Cyber security	<ul style="list-style-type: none"> i. Inadequate capacity to address cyber-security threats and incidents ii. Limited awareness among ICT users on cyber-security iii. Limited collaboration between iv. n countries on cyber-security: v. Limited national institutional/sector collaboration on cyber-security

1.1.3 Recommendations

The analysis unearthed fundamental policy issues that need to be addressed by policymakers. The Working Group therefore proposes the following recommendations:

Focus Areas	Recommendations
Legal and regulatory frameworks in ICTs	<ul style="list-style-type: none"> i. Member states to enact laws on: cyber-security, data protection, e-transaction, convergence and other emerging issues ii. Member states to enhance capacity for research and development in ICTs to ensure prompt response to legal and regulatory issues iii. Member States to put in place a mechanism for public consultation in the development of the legal and regulatory framework iv. Member States to have a single regulator in the ICT Sector
ICT infrastructure Development	<ul style="list-style-type: none"> i. Member States to put in place a framework for interoperability of infrastructure ii. Member States to put in place a framework for infrastructure sharing and collocation iii. Member States to put in place a framework on interconnectivity iv. Member States to encourage the sharing of the capacity of public and private utility providers to develop the national information infrastructure v. Member States to enhance capacity to promote convergence of voice, data, computing, video, etc.
Cross border Infrastructure connectivity	<ul style="list-style-type: none"> i. Member States to put in place frameworks for cross-border connectivity issues including: infrastructure standards, maintenance, infrastructure planning, No-man's land management, Interoperability, etc.
Complimentary Services	Member States to align provision of supportive infrastructure utilities to enhance provision of ICT

Focus Areas	Recommendations
	Services
Human Resources Development	<ol style="list-style-type: none"> i. Member states to incorporate ICTs in their educational curricular development and enhance computer literacy at all levels. ii. Member States to ensure standardization of ICT syllabus and Training Institutions iii. Member States establishes mechanism for skills transfer from multinational Corporations operating in the Region. iv. Member States establish incentives for Private sector to organize/support ICT capacity building v. Member States to develop mechanism for attracting and retaining skilled human resources
ICT Industry Development:- Ensuring sustainable investment in the ICT sector	<ol style="list-style-type: none"> i. Member States develop appropriate financing and fiscal mechanism for ICT entrepreneurs ii. Member States establishes mechanism for technology transfer iii. Member States to establish mechanisms for innovation , sensitization on available local and open source software and protection of the Intellectual Property Rights. iv. Member States establish incentives for SMEs capacity building (i.e. Investment incentives, Taxation, enabling Regulations,
E- Government, e-governance	<ol style="list-style-type: none"> i. Member States to digitize Government processes and Services to reduce transaction cost and ensure efficient and quality public service delivery ii. Member States to ensure accessibility and integration of government ICT Systems
ICT and economic development <ul style="list-style-type: none"> • Agriculture • Trade and Industry • Services • Minerals, oil and natural gas 	<ol style="list-style-type: none"> i. Member States to ensure coordination of trade links and e-markets at National and regional level ii. Member states to develop a framework for collaborating with private sector to accelerate development of e-commerce iii. Member States to harmonize taxation regimes related to the ICT sector. iv. Member States to put in place Infrastructure for accessing national, Regional and International market information. v. Member States to establish National Resource centers for Economic Activities
ICT and social development <ul style="list-style-type: none"> • Education • Health • Culture 	<ol style="list-style-type: none"> i. Member States to create awareness of the opportunities offered by ICT as a tool for social development. ii. Member States to ensure that ICT services are available and affordable to the public.
Rural connectivity and Universal access/Universal access fund	<ol style="list-style-type: none"> i. Member States to establish Universal Access Service Fund (UA/SF) for the ICT sector to meet Universal Access ii. Member States to use the UAF to subsidize the cost of ICT Infrastructure roll out and expansion to un-served and underserved areas by operators. iii. Member States to leverage on community access

Focus Areas	Recommendations
	points to provide smart services
Research and Development in ICT	<ul style="list-style-type: none"> i. Member states to develop Strategies to support R & D and Innovation ii. Member States to put in place a mechanism for financing R & D in ICTs iii. Member States put in place mechanism for protection of IP rights
Norms and standards	<ul style="list-style-type: none"> i. Members States to standardize Government systems and processes ii. Member States to put in place mechanism for developing, monitoring and enforcing standards
Ecommerce/ e-Transaction	<ul style="list-style-type: none"> i. Member State to put in place a mechanism to raise public awareness at all levels on the opportunities created by e-commerce. ii. Member states put in place Legal Framework and infrastructure required to ensure cyber-security and Data Protection.
E-Content Development	<ul style="list-style-type: none"> i. Member States promote electronic publishing, collection and preservation of local content ii. Member States to put in place Strategies to support development and use of local content iii. Member States put in place legal framework for protection of local artistic works iv. Member States to Develop and Manage Knowledge Resources for the purpose of their National heritages.
Health, Safety and the Environment i.e. E-waste management, Climate Change,	<ul style="list-style-type: none"> i. Member States to put in place policy and legal frameworks on e-waste ii. Member States to put in place strategies for Management of e-Waste iii. Member States to establish systems using ICTs to provide solutions to mitigate climate change and monitor Natural and manmade disasters
Cyber security	<ul style="list-style-type: none"> i. Member States to establish adequate policy and legal frameworks to deal with Cyber-security. ii. Member States to promote information sharing/awareness on cyber-security. iii. Member States to establish mechanisms for Regional and International cooperation on cyber-security. iv. Member States put in place mechanism for cooperation amongst national institutions dealing with cyber-security.

2.0

A regional EAC Model Regulatory Framework

2.1.1 Study

The WG 1 undertook an in-depth review of the existing regulatory frameworks of the ICT sector in the EAC focusing on the following issues:

1. Licensing
2. Tariff regulation
3. Setting interconnection rates
4. Numbering
5. Frequency Spectrum Management
6. Promotion of Competition
7. Consumer protection
8. Quality of Service
9. Universal Service obligation
10. Infrastructure sharing and collocation
11. Standards
12. Cybersecurity
13. SIM card registration
14. Data protection

A comprehensive study was undertaken on the core legislation and regulations as indicated in the attached **table 1**.

2.1.2 Findings

The review exercise further identified similarities and difference on the existing regulatory framework as follows:

a) Similarities in the Regulatory Frameworks in East Africa

The following similarities were identified:

- i. Regulatory bodies in place
- ii. Licensing
- iii. Enforcement
- iv. Setting interconnection rates
- v. Numbering
- vi. Frequency Spectrum Management
- vii. Promotion of Competition
- viii. Consumer protection
- ix. Quality of Service
- x. Privacy and confidentiality-all Member States have a legislation or Bill for Privacy and/or data protection except Uganda which provides for same in the Licence Conditions
- xi. Financial autonomy-except ARCT of Burundi which draws its funds from Treasury

b) Differences in the Regulatory Frameworks in East Africa

Five differences were identified as follows:

i. Independence in Decision Making

Regulatory bodies in Kenya and Uganda have independence in decision making while in Burundi, Rwanda and Tanzania, have limitations as indicated below:

- Burundi- Decisions subject to approval by the Office of the President.
- Rwanda- Article 30 of the RURA Act gives powers to the Prime Minister to nullify the decision of RURA on grounds of threat to security of Rwanda or a foreign country.
- Tanzania- Section 6 (4) of the Tanzania Communications Regulatory Authority Act provides power to the Minister responsible for Communications to give directions to the TCRA arising in relations to any sector, for the purpose of securing performance by the Authority of its policy, functions and compliance with the Code of Conduct.

ii. Licensing

All regulators receive and process all licence applications. With regard to the issuance of licences, Regulators in Kenya and Uganda issue the same while in Burundi, Rwanda and Tanzania, licences are issued, subject to approvals/consultations as indicated below:

- Burundi- Licence applications for Mobile and Internet Services are subject to Cabinet approval, thereafter the Licences are issued by the President of the Republic.
- Rwanda- Individual Licences are issued by the Minister in charge of ICT upon recommendations from RURA.
- Tanzania- Issuance of Individual Licences with duration of five (5) or more years, subject to consultation with the Minister responsible for Communications.

Another difference in Licensing is the recent Electronic and Postal Communications (Licence Procedure) Rules, 2014, issued in Tanzania under the **Government Notice No.422 of 24 October, 2014**, in which a competitive tender process will be used in receiving and handling licence applications for the provision of Network Facilities, Network Services and Content Services Applications. In the case of applications for Application Services Licences and Community Content Services Licences, TCRA will continue to receive and process the same under the current procedure.

In the new licensing procedure, TCRA shall be announcing in its website and other media, the locations, radio frequency spectrum available and time frame within which interested parties may submit applications for the Network Facilities, Network Services and Content Services Licences.

iii. Dispute Resolution

There are different processes in the region for handling disputes in the ICT Sector between:

- Consumers and Operator;
- Operators and Operators; and
- Operator and Regulator.

	Burundi	Kenya	Rwanda	Tanzania	Uganda
Consumers and Operator	ARCT Appeals to Court	CA Communications and Multimedia Appeals Tribunal High Court The above bodies have original jurisdiction with regard to dispute resolution	RURA Appeals to High Court	Complaints Committee under TCRA Appeals to Fair Competition Tribunal	Communications Tribunal
Operators and Operator	ARCT Appeals to Court	CA Communications and Multimedia Appeals Tribunal High Court	RURA Appeals to Courts	TCRA High Court The above bodies have original jurisdiction with regard to dispute resolution	Communications Tribunal
Regulator and Operators	Office of the President Court	Communications and Multimedia Appeals Tribunal High Court	High Court	Fair Competition Tribunal	Communications Tribunal

iv. Management of Universal Access

In Kenya, Rwanda, and Uganda, the Universal Access Funds are managed by the Regulators, while in Tanzania; it is managed by the Universal Communications Access Fund (UCAF) which is a separate entity from the Regulator. Burundi has not established a framework for UCAF.

v. Infrastructure Sharing

Kenya, Rwanda and Tanzania promote and enforce infrastructure sharing through legislation, while Burundi and Uganda only promote the same.

- Kenya-Section 34 of the Kenya Information and Communications Act, 1998.

- Rwanda-Article 20 of the RURA law.
- Tanzania- Section 29 & 30 of EPOCA and the Electronic and Postal Communications (Access, Co-location and Infrastructure Sharing) Regulations, 2011.

2.1.3 Recommendations

On the basis of the above findings and based on international standards and best practices, the WG1 makes recommendations towards a harmonised approach for the regulation of ICT services and networks in the EAC. It lays down tasks for Member States national to ensure the harmonised application of the regulatory framework throughout the Community as follows:

Regulatory area	Recommendation
Separation of powers	Member States should guarantee the separation of functions relating to policymaking, regulation and service provision. The law must clearly define the responsibilities each player in the sector
Establishment and functions of The National Regulatory Authorities (NRAs)	<p>a) Establishment of the NRAs Law establishing NRAs to be clear and precise on the mandate and powers.</p> <p>b) Independence of the NRAs Guarantee the regulatory, financial and administrative independence and autonomy of the NRAs.</p> <p>c) Board members and CEOs of NRAs NRAs Board Members and CEOs, appointed on the basis of competence and integrity, in consultative manner and with appropriate professional qualifications.</p> <p>Other issues that law should cover include:</p> <ul style="list-style-type: none"> • Vacation from office. • Meetings of the Board of NRA. • Remuneration of Board Members.
Staff of the NRAs	<ul style="list-style-type: none"> • Appointment on the basis of their competence and competitive manner. • Protection of employees.
Financial and related provisions	Member States to ensure that the law establishing NRAs provides sufficient power, independence and authority to the NRA for it to gather information and acquire the human and financial resources for it to impartially, swiftly and transparently carry out the will of the legislature.
Licensing	<p>The provisions relating to licensing should include:</p> <ul style="list-style-type: none"> • Licence categories • Procedure for license application. • Obligations with respect to licences. . • Suspension and revocation of licences. • Transfer of license • Amendment of licences. • Renewal of licences.
Inter-connection and access to facilities –	<p>The provisions should include terms and conditions:</p> <ul style="list-style-type: none"> • Interconnection. • Access to facilities. • Infrastructure Sharing.
Universal Service/Access and	<p>The provisions should include:</p> <ul style="list-style-type: none"> • Set up of the Fund

Prices	<ul style="list-style-type: none"> • Management of the Fund • Sources of the Fund. • Application of the Fund • Fund's annual returns and audit
Spectrum Management,	<ul style="list-style-type: none"> • Allocation of frequency bands. • Harmful interference. • Retrieval of spectrum
Numbering.	<ul style="list-style-type: none"> • Numbering plan. • Allocation of numbers • Number portability
Consumer rights and obligations	<ul style="list-style-type: none"> • Consumer Rights. • Consumer Obligations
Sanctions	<p>Ensure that the ICT Law provides the regulatory authority with a wide range of sanctions for breach of the law and licence conditions including:</p> <ul style="list-style-type: none"> • Fines • Suspension • Revocation of licence • Compensation
Fair competition and equality of treatment	<p>The provisions should include:</p> <ul style="list-style-type: none"> • NRA to encourage fair competition. • Prohibition of acts exhibiting unfair competition. • Exceptions to fair competition. • Breach of fair competition. • Equality of treatment. • Significant market power •
Enforcement	<p>The provisions should include:</p> <ul style="list-style-type: none"> • Power to request information. • Entry, search and seizure of equipment • Inspection • Investigation • Compliance hearing procedures • Sanctions
Technical Standards	<p>The provisions should include standards for:</p> <ul style="list-style-type: none"> • The provision of services; • Type approval of electronic communications equipment; and • Technical interfaces and all network functions to the extent strictly necessary to ensure interoperability of services and to improve freedom of choice for users.
Dispute resolution	<p>The Law should provide for dispute resolution mechanism involving:</p> <ol style="list-style-type: none"> i) Consumers and Operator; ii) Operators and Operators; and iii) Operator and Regulator. <p>For disputes concerning:</p> <ol style="list-style-type: none"> i) Consumers and Operator; ii) Operators and Operators. <p>[NRAs to be first instance of hearing and Appeal to Court while for disputes concerning Operator and Regulator should go to court.]</p>

Tariff regulation	Member States need to ensure that licensees in their jurisdictions, set tariffs of ICT services that are non-discriminatory, just, reasonable and cost oriented. Tariffs need to be clear so as to enable the end user to determine the description of the service, the details relating to the nature of the service, amounts and charges payable for such service.
Miscellaneous provisions	<ul style="list-style-type: none"> • Transitional provisions. • Emergency Communications. • Road works. • Repair and restoration. • Right of way • Access to lands for inspection and maintenance. • Installation of facilities on private land or buildings

3.0 A regional EAC implementation, monitoring and evaluation strategy.

3.1.1 Policy Implementation and Monitoring

In order to effectively coordinate and harmonize efforts and activities undertaken by many institutions in different locations, there is a need to put in place a mechanism which will ensure that the policy is updated from time to time and that implementation strategies and plans are drawn and carried out in the most efficient and effective manner. The final goal should be the deployment of ICT in all sectors of the economy and to all communities in the EAC.

The implementation, Monitoring and Evaluation of this policy and achievement of its goals and objectives will be the responsibility of:

- i. Government;
- ii. National Regulatory Authorities (NRAs);
- iii. Operators;
- iv. Other stakeholder institutions i.e. Consumer bodies, Higher Learning Institutions, NGOs, R&D Institutions;
- v. Individuals

3.1.2 Institutional Framework

- i. Identification of stakeholders at different levels (at both regional and national levels)
- ii. Roles and responsibilities of key stakeholders (separation of functions)

The implementation of this framework will be spearheaded by Ministries of ICT's and regulators of Member States, in accordance with / reference to existing legal and administrative provisions likes the EAC Treaty and EAC ICT Protocol.

2.0 CONCLUSIONS

The concluded Framework by the EACO Working group ONE, brings in a professional perception of the Regional need in view to develop an integrated approach on Policy and Regulatory Harmonized frameworks for the members ease of pioneering, developing and enhancing ICTs uptake in the Region.

3.0 REQUEST TO CONGRESS

3.1 To NOTE the REPORT

3.2 To APPROVE/ADOPT the Decisions/Recommendations/Report

Comment [LC1]: Madam Chair, Please advise if we require conclusion.