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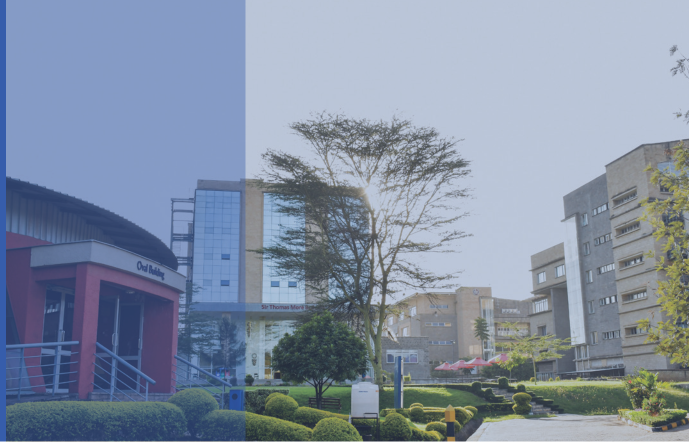

KENYA'S ARTIFICIAL INTELLIGENCE BILL, 2026: ALIGNING WITH GLOBAL AI GOVERNANCE STANDARDS

Joseph O. Onyango

Executive Summary

Kenya's Artificial Intelligence Bill, 2026, tabled in the Senate on 19 February 2026, marks a historic milestone as Africa's first comprehensive and legally enforceable framework for governing artificial intelligence. As artificial intelligence rapidly reshapes economies, workplaces, and public services across the continent, Kenya has taken a decisive step to establish clear rules for its responsible development and use.

A comparative review of nine key global standards finds that the Bill has strong alignment across ten governance dimensions. The Bill has been benchmarked against UNESCO's Ethics of AI Recommendation, the EU AI Act, the NIST AI Risk Management Framework, and the OECD AI Principles. Its key policy innovation milestones include constitutional independent AI Commissioner, risk-based regulatory framework, and pioneering workforce protection obligations.

However, seven critical gaps must be addressed in the Bill before its enactment. These include the absence of independent conformity assessment bodies, insufficient enforcement sanctions, and a lack of protections for cultural and linguistic diversity.

This brief presents evidence-based options and concrete recommendations for members of Parliament, regulators, civil society, and the private sector to strengthen the Bill and position Kenya as a global leader in responsible AI governance.

Background

Key Highlights

- Kenya's AI Bill, 2026, is Africa's first binding, comprehensive AI governance law
- The Bill achieves strong alignment with UNESCO, EU Ethics Guidelines, NIST, and OECD principles
- A constitutionally anchored AI Commissioner provides institutional independence unmatched on the continent
- Mandatory workforce displacement assessment provisions position Kenya ahead of the EU AI Act
- Seven targeted amendments are needed to achieve full international alignment before enactment

Background

Artificial intelligence is already part of Kenya's healthcare, agricultural services, credit scoring, judicial administration, and public-sector decision-making. Before the Bill's tabling, there was no binding legal framework governing the development, deployment, or auditing of AI systems.

Africa's engagement with AI governance has been limited to national AI strategies and continental policy frameworks. However, these are aspirational documents without enforceable obligations. Globally, the European Union's AI Act (2024), UNESCO's Ethics Recommendation (2021), and the OECD AI Principles (updated 2024) have established clear governance standards.

Kenya can now translate these standards into binding law and become a continental pioneer with a model that can be replicated across Africa. The Bill's passage through Parliament is both a domestic policy priority and matter of regional and global significance for AI governance across the Global South.

Problem Statement

Despite its landmark status, the Bill contains significant governance gaps that could undermine its effectiveness, expose Kenyans to AI risks, and diminish the country's credibility in international regulatory forums. The Bill presents four major problems:

First, enforcement sanctions are inadequate. The Bill's maximum fine of Shs5 million (approximately USD 38,000) is grossly insufficient for multinational technology companies. This amounts to less than an hour's global revenue for the largest AI firms, compared with the EU AI Act's fines of up to 7% of global annual turnover. Without stronger penalties, compliance is likely to remain weak.

Second, conformity assessment is too centralized, at the AI Commissioner's Office. This creates structural bottlenecks and potential conflicts of interest — particularly when government agencies use high-risk AI systems and are assessed by a government-appointed regulator. An independent, accredited third-party assessment framework is entirely absent.

Third, Kenya's more than 44 languages and constitutionally protected linguistic minorities do not feature in the Bill. AI systems in natural language processing, speech recognition, and computer vision routinely exhibit documented performance disparities across languages and ethnic groups — a form of algorithmic discrimination with direct human rights implications under Articles 27 and 56 of the Constitution of Kenya.

Fourth, there are no clear standards for measuring AI risk. Risk measurement standards are left to future regulations, with no timelines or minimum specifications. Without concrete metrics and testing protocols, the Commissioner will lack the methodology to consistently assess whether high-risk AI systems in healthcare, finance, or criminal justice meet their legal obligations. This leaves citizens exposed to AI risks that are not clearly defined or measured from the start.

Criterion	Option 1 Enact as Drafted	Option 2 Recommended Targeted Amendments	Option 3 Delay for Full Redraft
Description	Pass the Bill with all implementation details to be addressed in future subsidiary regulations.	Adopt seven targeted amendments before enactment while maintaining the Bill's core institutional architecture.	Withdraw the Bill for a comprehensive 12–18-month redraft to ensure full alignment with global benchmarks.
Timeline to Law	Immediate — current parliamentary calendar.	One additional legislative session (~3–6 months).	18–24 months minimum.
Enforcement Strength	Weak — Shs5 million cap is negligible for multinationals.	Strong — revenue-proportionate fines introduced.	Potentially strong, but uncertain until redraft outcome.
Conformity Assessment	Centralised in Commissioner's Office — bottleneck and conflict-of-interest risk.	Independent KENAS-accredited bodies established.	Could be fully redesigned — no guarantee.
Language & Cultural Protections	Absent — 44+ language communities unprotected at commencement.	Added — equitable performance testing across Kenya's languages required.	Could be comprehensive — timeline risk.
Key Risk	Governance gaps entrenched from day one; constitutional challenges likely.	Slight delay; risk of scope creep if amendment debate broadens.	First-mover advantage lost; AI remains unregulated during redraft; political consensus may erode.
Global Benchmark Alignment	Partial — strong architecture but critical operational gaps.	Substantially full — aligns with UNESCO, EU AI Act, NIST, OECD.	Potentially full — subject to redraft quality.
Verdict	Not recommended.	Recommended.	Not recommended.

Policy Options

This policy brief provides three policy options to Parliament and key stakeholders. Each option recommends distinct trade-offs among speed of enactment, enforcement credibility, alignment with global benchmarks, and protection of Kenyans' constitutional rights. Table 1 presents a structured side-by-side comparison across eight evaluative criteria.

Table 1: Comparisons across eight criteria

Option 1: Enacting the Bill as Currently Drafted

This is the fastest route to continental AI governance leadership, and its symbolic value should not be underestimated. However, the structural gaps it leaves in place are not minor procedural issues. Shs5 million enforcement ceiling sends a clear signal to multinational AI companies that Kenya's regulatory environment can be navigated without significant investment in compliance.

Concentrating all conformity assessments within a single government office will create a backlog that could delay effective oversight for years. These are serious governance issues that will be difficult and politically costly to fix after enactment.

Option 2: Adopt Seven Targeted Amendments (Recommended)

This is evidence-based recommendation. The seven amendments identified in this brief are carefully targeted. They strengthen enforcement, introduce structural independence, protect linguistic minorities, and make risk measurement more practical, without reopening the core institutional architecture of the Bill. A single additional legislative session is a proportionate investment given the quality of governance it delivers.

Option 3: Redrafting the Bill Comprehensively

This option is intellectually appealing but strategically risky. The 18 to 24-month regulatory vacuum it creates is not neutral: AI systems affecting Kenyans' rights will continue to be deployed without any binding governance framework. The political consensus and stakeholder alignment currently supporting the Bill may not hold during a prolonged redraft. Previous African technology governance initiatives have stalled at similar points.

Recommendations

This brief recommends Option 2 — targeted pre-enactment amendments. The following seven amendments, grounded in the benchmark analysis, are recommended for Parliament, the Ministry of ICT, and the AI Commissioner-designate:

1. Introduce proportionate enforcement penalties, scaling administrative fines to at least 2% of annual Kenyan revenue or global turnover, whichever is higher. A separate capped regime should apply to SMEs and public bodies.
2. Establish a KENAS-accredited system for independent AI auditors, enabling third-party auditing of high-risk AI systems and eliminating the structural conflict of interest in government-deployed AI oversight.
3. Amend Section 3 to include jurisdiction over foreign AI systems affecting people in Kenya, regardless of where the provider is located. This is consistent with the EU AI Act's market-effects approach.
4. Amend Section 30 to require fair performance of AI systems across Kiswahili, English, and county languages, operationalising constitutional rights under Articles 27 and 56.
5. Require the Commissioner to publish a clear national framework for measuring AI risks within 12 months of the commencement date, specifying minimum

Stakeholder	Role and Interest	Priority Action
Senate Committee on ICT and Innovation	Primary legislative custodians; responsible for clause-by-clause review and amendment before Third Reading.	Adopt the seven targeted amendments; commission a technical review on revenue-proportionate sanctions.
National Assembly Committee on Communication	Secondary legislative review body; ensures alignment with national ICT policy objectives.	Hold public participation hearings on enforcement adequacy and linguistic diversity provisions.
Ministry of ICT, Innovation & Digital Economy	Policy lead for Kenya's National AI Strategy 2025–2030; responsible for implementing the regulatory framework.	Develop a subsidiary regulations roadmap within 60 days of enactment with timelines for the Risk Measurement Framework.
Office of the Data Commissioner	Existing data protection regulator; interacts with AI governance on data processing and profiling.	Develop a joint operational protocol with the incoming AI Commissioner to prevent regulatory overlap.
Communications Authority of Kenya	Digital infrastructure regulator; AI intersects broadcasting, telecoms, and digital platforms.	Participate in the AI Advisory Committee under Section 9; flag AI-driven content moderation issues.
Kenya National Commission on Human Rights	Constitutional watchdog: algorithmic discrimination and AI-driven surveillance carry direct rights implications.	Develop a human rights impact assessment template for high-risk AI under Section 26(b) of the Bill.
Kenya Accreditation Service (KENAS)	National accreditation body; central to establishing an independent conformity assessment infrastructure.	Begin scoping an AI auditor accreditation framework consistent with Amendment 2 of this brief.
Private Sector & Tech Industry	Primary regulated entities developing and deploying AI systems commercially in Kenya.	Engage with the sandbox framework (Section 29); prepare compliance programmes for revenue-proportionate obligations.
Civil Society & Consumer Advocacy	Accountability watchdogs representing communities most exposed to algorithmic discrimination and AI displacement.	Demand meaningful public participation in drafting subsidiary regulations, especially on linguistic and workforce protections.
County Governments & Devolved Units	Front-line deployers of AI in public health, agriculture, and social protection at sub-national level.	Engage with the national AI literacy rollout (Section 31); establish county-level AI readiness assessments.

Conclusion

Kenya's Artificial Intelligence Bill, 2026, is a landmark instrument. It is the most advanced AI governance legislation on the African continent and a credible contribution to the global project of responsible AI institutionalisation. Its constitutionally anchored AI Commissioner, risk-based classification architecture, human-centric mandate, and protections against workforce displacement represent policy innovations that advanced economies are still struggling to achieve. The gap between the Bill's current form and full alignment with global standards is real but bridgeable.

The seven targeted amendments recommended in this brief are proportionate, technically achievable within a single parliamentary session, and collectively sufficient to bring the Bill into substantial alignment with the benchmarks of UNESCO, the EU, NIST, and the OECD. The choice before Parliament, regulators, and civil society is not between a good Bill and a better one — it is between enacting Africa's most credible AI governance law and enacting it with the institutional teeth to enforce it. Kenya has an opportunity to demonstrate that the Global South is not merely a recipient of AI governance norms but an active architect of them. The time to act is now.

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