The Clerk Kenya National Assembly,
Parliament Buildings,
P.O. Box, 41842–00100,
Nairobi, Kenya.

Attn: Departmental Committee on Communication, Information and Innovation Committee

Dear Mr. Michael R. Sialai-EBS,

**RE: Memorandum Submission-Data Protection Bill (National Assembly Bill No. 44 of 2019)**

Greetings from the Centre for Intellectual Property and Information Technology law (CIPIT) at Strathmore Law School. CIPIT is a Think Tank established under Strathmore Law School. CIPIT was launched in 2012, and the scope of our work includes evidence-based research and training in intellectual property, information technology law and policy, especially as they contribute to African law and human rights. Research on data protection and information controls in Kenya is a vital component of our work.

In response to your call for memoranda, we wish to submit our views on the Data Protection Bill. Our attached memorandum outlines our views on several matters prescribed within the Bill. We would, however, like to focus your attention to our recommendations on the following vital clauses within the proposed Bill:

- **Section 18 (1)** of the Bill, which provides for the registration of data controllers and data processors potentially places heavy compliance requirement on small and medium sized enterprises. We recommend a tiered registration system that considers the amount and type of data being handled by these processors and controllers;

- **Section 31** should be strengthened and expanded in scope. Specifically, we recommend that all proposed government programs involving personal data collection and processing by any government entity should be submitted to the Data Commissioner for review and approval on the basis that such proposed program complies with the requirements of the Bill. The current requirement of an impact assessment is too lenient, requiring the assessment only in cases of “high risk” to the data subject. Given that risk is often extremely difficult to assess or predict, the requirement of a data protection impact assessment should apply to all government programs. Such a regulatory approval requirement has been effectively demonstrated in certain countries in West Africa and is highly desirable in this context

- **Section 43** should be substantially strengthened in favor of the data subject. Breaches of data are the single greatest risk to widespread data processing, and public awareness of data breaches is critically important as a tool to reduce their frequency, severity, and harmful impact. Accordingly, this section should state that the Data Commissioner (or the entity suffering a data breach) shall be **required to make public the details of any**
security/data breach. This requirement should be regardless of whether the data is encrypted or anonymized, since decryption algorithms and de-anonymization algorithms are increasingly available.

- **Section 54** of the Bill provides for the power of the Data Commissioner to prescribe instances where persons may be exempted from provisions of the Act. It is our view that the power to exempt should be strictly limited by Section 25 (the rights provisions in the Bill), and subject to judicial review/appeal.

- **Section 75** considers consequential amendments; we recommend the inclusion of the *Registration of Persons Act* due to the increased incidences of the recording of personal identification data. The government is in this regard a data collector and processor, and as such would ideally be considered under the provisions of the Bill.

Finally, we recommend removal of the statement on the final page of the published bill that the bill “does not contain matters that affect the functions of the county governments”. This statement could be interpreted as indicating that county governments are not subject to the provisions regulating data processors and control controllers.

Generally, CIPIT is greatly encouraged by the development of this legislative and regulatory framework relating to the right to privacy and regulation of personal data, as contemplated by the Bill. We are in complete support of these efforts and entreat you to get in contact if there is any way that we can assist further. You may contact CIPIT at cipit@strathmore.edu or +254 0703 034 612.

Yours Sincerely,
CIPIT, Strathmore Law School

(Attachment: CIPIT’s proposed changes to the Data Protection Bill 2019)