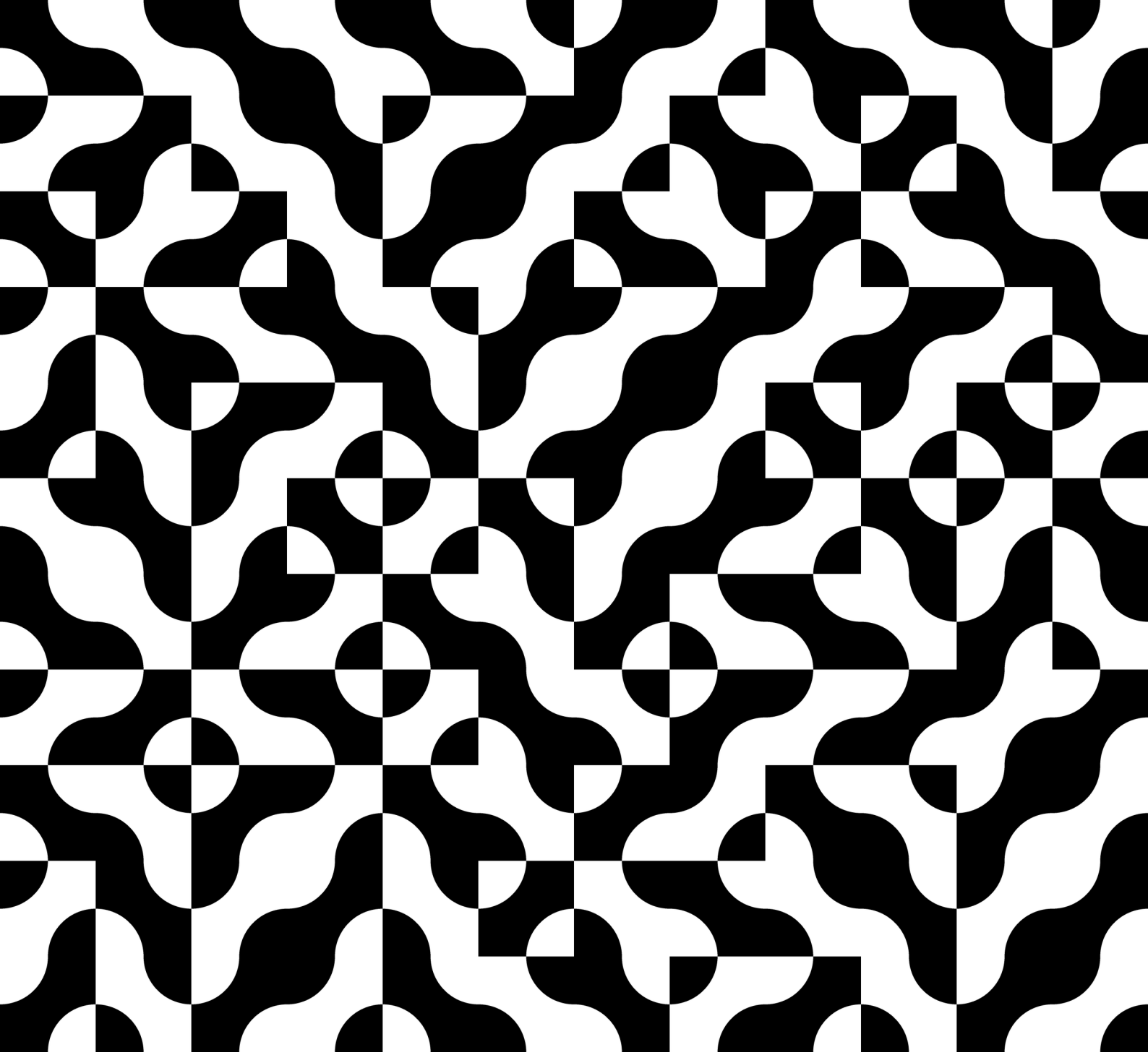


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KENYA'S AI BILL ROADBLOCK

The question is not whether to regulate AI, but how.

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Kenya’s first dedicated AI law has stalled, but this is not necessarily the end of the Bill. The Senate’s ICT Committee recommended that the Senate not go ahead with the Artificial Intelligence Bill, 2026 in its current form after receiving views from various stakeholders, including government agencies, multinationals, professional bodies, and civil society. Its main concern was that the Bill’s penalties were too harsh and its rules too heavy for a sector still finding its footing. However, the Senate would need to either reject the committee’s recommendation or revise the Bill before it can move forward. For now, Kenya has no dedicated AI law. The challenge now is to regulate AI without stifling the innovation Kenya wants to grow.

Why the Bill stalled

The sharpest criticism was about punishment: fines of up to five million shillings, up to two years in prison, or both. The institutional design drew equal scrutiny, as the proposed Commissioner’s powers risk overlapping with the Office of the Data Protection Commissioner and the Communications Authority. The Bill was also partly modelled on the EU’s AI Act despite Kenya’s smaller regulatory capacity.

A chance to take part

Artificial intelligence is widely seen as the technology that will define the Fourth Industrial Revolution. Europe, North America and later Asia built their economic strength on the earlier revolutions, while Africa mostly watched from the sidelines. AI gives the continent a chance to compete on more equal terms, and Kenya is well placed to be part of that, with its success in mobile money, its growing digital government services and a young, well-connected population. Its National AI Strategy 2025–2030 calls for adaptive governance, so regulation should do more than police AI: it should help Kenya build local talent, attract investment and become a regional AI hub.

The danger on both sides

Every debate on AI regulation sits between two risks. Too much regulation makes compliance expensive, scares off startups, drives talent and capital elsewhere, and produces rules that are outdated on arrival. Too little leaves people exposed to deepfakes, identity theft, biased decisions and the misuse of personal data. With the 2027 general elections approaching and deepfakes easy to produce, harms like these make the strongest case for firm, enforceable rules. Kenya therefore needs a law that answers both risks.

Why small players feel it first

Startups, developers and researchers rarely have legal departments able to handle licensing regimes, long reporting duties or heavy penalties, and Kenya's AI scene is mostly small teams on thin margins, often building on open-source tools to solve problems in farming, health, lending and education. The Bill's risk tiers were a sound idea, but the classification added to the uncertainty, since it treated sectors such as health, education, banking and law enforcement as high-risk.

The pace of change makes this harder: AI job titles are still settling, from prompt engineering to context engineering, and tools and business models can be overtaken within months, so a startup built around one model can be undone by a single new release. Even the people building these systems cannot say which careers and industries will follow. A rigid law written today cannot cope with that, so Kenya needs rules that can be tested, reviewed and updated.

What agile governance means

Agile governance treats regulation as something that develops alongside the technology, so government, industry, researchers and civil society keep assessing risk, issuing guidance, testing safeguards and revising rules instead of waiting years for a new statute each time AI shifts. Japan is the clearest example: its AI Promotion Act sets national direction without direct penalties, and the working rules sit in business guidelines issued by the relevant ministries.

In Kenya, this would start with risk. Everyday tools like writing assistants and simple chatbots would face light obligations, while credit scoring, hiring, health decisions, biometric identification and policing would face stricter standards for transparency, human oversight and accountability. Startups could test products in a supervised sandbox, which the Bill already contemplated, provided it is paired with proportionate rules and not criminal exposure.

Enforcement should match the seriousness of the harm: fraud, identity theft, discrimination, non-consensual deepfakes and misuse of personal data deserve real penalties, while minor lapses should first draw correction notices. The law should also carry a built-in review every few years, so it does not age out. Agile does not mean soft, because it depends on strong institutions and a business culture that takes guidance seriously, so Kenya would need real monitoring and a clear route to firmer rules if voluntary compliance fails.

Dependence on foreign models

Most of the AI used in Kenya runs on models built abroad, and critics have pointed out that the Bill did not clearly address how such cross-border systems would be regulated. A revised bill would not start from scratch, since Kenya already has the Data Protection Act 2019 and the Constitution.

Japan offers a useful comparison on dependence. Its AI Basic Plan says the country must avoid excessive reliance on any country or company and aims to establish an open approach to AI sovereignty. For Kenya, the aim should not be to shut out foreign technology, but to avoid becoming only a consumer of it, absent from the value chain.

Conclusion

Kenya should go back to the drawing board, but it should not abandon regulation. The country needs a law, and the question is what kind. A revised bill should be narrower and agile, leaving room for the rules to be reviewed and updated as the technology changes, and above all it should carry the National AI Strategy's vision forward instead of working against it.

The choice facing Kenya, and much of Africa, is not whether to regulate but how. A law written once and left alone will age within months, protecting no one and burdening the people who are trying to build. Agile governance offers a better path, one that stays firm on serious harm, flexible where the technology is still moving, and willing to learn as it goes.

Done well, it would protect Kenyans from the worst of AI while giving local builders room to compete, and it would help Kenya take part in the Fourth Industrial Revolution as a participant rather than a spectator.

Sources: Parliament of Kenya, *The Artificial Intelligence Bill, 2026* (Senate Bills No. 4 of 2026); Parliament of Kenya, Senate Standing Committee on Information, Communication and Technology, *report and recommendations on the Artificial Intelligence Bill, 2026*; Ministry of Information, Communications and the Digital Economy, *Kenya National AI Strategy 2025–2030*; Office of the Data Protection Commissioner, *Data Protection Act, 2019*; Government of Japan, Cabinet Office, *Artificial Intelligence Basic Plan*; Government of Japan, *Act on Promotion of Research and Development, and Utilization of AI-related Technology (AI Promotion Act)*.