



GLOBAL DATA ALLIANCE SUBMISSION ON KENYA'S DRAFT DATA GOVERNANCE OUTLINE

To the Ministry of Information, Communications and the Digital Economy (MICDE)

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The Global Data Alliance (GDA)¹ thanks the Ministry of Information, Communication and Digital Economy (MICDE) for the opportunity to provide feedback on Kenya's Draft Data Governance Outline.

I. Introduction

The Global Data Alliance is a cross-industry coalition of companies headquartered across multiple regions of the world that are committed to high standards of data privacy, security, and responsible data use. GDA members share a long-standing commitment to supporting economic development, building trust in the digital economy, and protecting personal and non-personal data across jurisdictions, technologies, and business models. Alliance member companies rely on the ability to transfer data responsibly across borders in order to innovate, create jobs, and make industries more competitive both in their home markets and abroad.

Kenya's Draft Data Governance Policy Outline sits at the intersection of several of Kenya's most important long-term economic and development strategies, including Kenya Vision 2030, the Digital Economy Blueprint, and Kenya's commitments under the African Continental Free Trade Area (AfCFTA), including emerging digital trade and services trade objectives. Each of these frameworks recognizes that digital connectivity, data-driven innovation, and integration into regional and global markets are central to Kenya's ambition to become a competitive, inclusive, and knowledge-based economy.

Cross-border data transfers are a foundational enabler of these objectives. They support growth across all sectors of the economy—from agriculture, fisheries, and mining, to manufacturing and digitally enabled services—while enhancing productivity, safety, cybersecurity resilience, and environmental sustainability. These benefits are particularly important for micro, small, and medium-sized enterprises (MSMEs), which depend on affordable access to global digital infrastructure, cloud services, and analytical tools to scale beyond domestic markets and to participate in regional and continental value chains envisioned under AfCFTA.

At a time of rising geopolitical tensions and regulatory divergence, policies that unnecessarily restrict data flows risk fragmenting the global digital economy and limiting the ability of Kenyan firms to access regional and global markets. By contrast, data governance frameworks that enable data to move freely with trust help economies integrate into global value chains, support services exports, and advance shared prosperity. In this context, Kenya's Draft Data Governance Policy Outline represents an important opportunity to reinforce Kenya's leadership as a regional digital hub while advancing its Vision 2030, Digital Economy Blueprint, and AfCFTA-aligned digital trade objectives.

¹ The GDA is a cross-industry coalition of companies that are committed to high standards of data responsibility and that rely on the ability to access and transfer information across borders to innovate and create jobs. GDA member companies are active in the accounting, agriculture, automotive, aerospace and aviation, biopharmaceutical, consumer goods, energy, film and television, finance, healthcare, hospitality, insurance, manufacturing, medical device, natural resources, publishing, semiconductor, software, supply chain, telecommunications, and transportation sectors. For more information, see <https://www.globaldataalliance.org>

II. Support for Key Elements of Draft Policy Outline

The Global Data Alliance welcomes several constructive and forward-looking aspects of the Draft Data Governance Policy Outline.

First, some sections of the Draft Policy rightly recognize the importance of cross-border access to transnational network infrastructure and technology, regulatory interoperability, and support for voluntary, international, industry-led standards. By referencing these elements, the Policy will help ensure that Kenya remains integrated within a larger global and regional ecosystem of digital infrastructure and digitally focused legal mechanisms and standards.

Second, some sections of the Draft Policy acknowledge the importance of secure and responsible cross-border access to knowledge, information, and data, as well as cross-border data transfers. These principles are particularly important given the role of cross-border data transfers in promoting cyber, data, and network resilience, as well as health, safety, science, security, and economic opportunity for all Kenyans. For example, by referencing Data Free Flow with Trust (DFFT) principles, the Policy signals Kenya's recognition of the critical role of data transfers in maintaining connectivity to the global exchange of knowledge and information.

Finally, the Policy's emphasis on institutional coordination, capacity building, and multi-stakeholder engagement reflects an understanding that effective data governance requires not only legal frameworks, but also skills, accountability, and collaboration across government, industry, academia, and civil society.

III. Areas for Improvement and Clarification

While the Draft Policy is ambitious and forward-looking, several provisions would benefit from further clarification or recalibration to ensure that Kenya's data governance framework continues to support cross-border access to knowledge, information, and technology, and avoids unintended regulatory fragmentation.

III.1 Data Sovereignty and Localization Provisions

Several provisions of the Draft Policy raise concerns related to data sovereignty and localization, particularly the **Data Governance Principle on “Sovereignty and National Interest”** and the **Policy Objectives and Interventions under Theme 7: Data Sharing, Exchange and Monetization**, including **Policy Objective 7.3**, which contemplates enforceable national data residency and localization categories and standardized approval workflows for cross-border data sharing.

While the GDA recognizes that narrowly defined categories of data – such as military or national defense datasets – may warrant heightened protections, broad assertions of sovereignty over all data generated within Kenya risk creating pathways toward expansive localization requirements. Such approaches could undermine Kenya's integration into regional and global digital infrastructure and restrict access to globally distributed cloud services, analytics platforms, and AI infrastructure that depend on cross-border architectures.

Mandatory or default localization obligations may also limit Kenyan firms' access to international datasets, research collaborations, and digital tools that are essential for participation in global trade, science, and innovation ecosystems. Instead, a policy of strictly avoiding undue or unnecessary interference with trusted cross-border data flows may better support Kenya's commercial and development objectives.

III.2 Governance of Non-Personal Data and Data as a “Factor of Production”

The Draft Policy proposes the development of a **Data Governance Law for non-personal and administrative data under Theme 3: Legal and Regulatory Frameworks**, including provisions recognizing data as a “factor of production” and establishing default property rights.

The introduction of state-led or government ownership-style concepts for non-personal data risks creating legal and operational challenges in commercial, educational, and scientific domains. These legal and operational concerns may also arise in various sectoral contexts – from the agricultural, automotive and aerospace sectors to health and safety to telecommunications and transportation. These data are often generated collaboratively across jurisdictions and processed within globally connected environments, making rigid ownership frameworks difficult to apply in practice.

In addition, greater clarity would be beneficial regarding the treatment of derived, anonymized, pseudonymized, tokenized, and transactional data, which are foundational to modern digital payments, fraud prevention, cybersecurity, and advanced analytics. Such data are typically generated through complex, global processing environments and derive their value from aggregation, transformation, and cross-border analysis. Overly expansive assertions of sovereignty or ownership over these data categories risk constraining legitimate, privacy-enhancing uses that support financial stability, consumer protection, and systemic resilience. We advocate for a risk-based and functionally differentiated approach- one that clearly distinguishes personal data from responsibly managed non-personal and privacy-enhanced datasets- would better support innovation while preserving appropriate safeguards.

International experience suggests that safeguarding private sector and individual autonomy and control – including in a cross-border context – will be critical to ensuring that Kenya’s data ecosystem remains connected to global innovation, research, and commercial networks.

III.3 Regulated Data Marketplaces and State-Led Monetization

The Draft Policy proposes the establishment of a **regulated national data exchange platform and associated monetization mechanisms under Theme 7, Policy Objective 7.4**. Efforts to expand access to high-quality open government data and to improve the usability and machine readability of public-sector datasets are broadly beneficial for innovation, scientific endeavor, and public benefit.

At the same time, centralized, state-managed data marketplaces – particularly where they mandate the regulation, contribution, or localization of private-sector data – may raise significant cross-border data policy concerns. Such frameworks risk deterring private investment, increasing cybersecurity exposure, and fragmenting Kenya’s integration into broader commercial, educational, scientific, and research communities that rely on seamless and secure cross-border data flows.

Overly stringent or compulsory approaches to private-sector data participation may increase the risk premium for Kenya’s innovative sector, discouraging startups and international firms from engaging in cross-border collaboration with Kenyan entities or from locating data-intensive activities in Kenya. A more effective approach might emphasize interoperability and alignment with international standards, while preserving and safeguarding Kenya’s continued participation in an open cross-border data policy environment.

III.4 Institutional Authority, Cross-Border Data Flows, and Participation in Global AI Ecosystems

The Draft Policy establishes a **National Data Governance and Emerging Technologies Council under Theme 2: Institutional Coordination and Governance Architecture**, with broad authority to oversee data governance and to follow up on political decisions regarding the release of high-profile, high-value datasets, including from private entities.

While coordination and strategic oversight are important, these powers would benefit from clearer substantive and procedural limits to ensure predictability, trust, and continued cross-border engagement. These concerns are particularly acute in the context of artificial intelligence. Kenya's ability to participate meaningfully in global AI ecosystems – and to benefit from advances in AI for healthcare, agriculture, education, public services, and economic growth – depends on ongoing, seamless access to cross-border data, compute resources, and training datasets. A restrictive, top-down approach to cross-border data governance risks isolating Kenyan developers and researchers from international AI communities and slowing domestic adoption of advanced technologies.

The Draft Policy would also benefit from clearer guardrails governing government access to private-sector datasets, particularly where such access may have cross-border implications. Predictable, transparent, and legally bounded access frameworks grounded in principles of necessity, proportionality, due process, and independent oversight are critical to sustaining trust in Kenya's data ecosystem. Absent such safeguards, broad or discretionary access powers risk discouraging cross-border partnerships, private investment, and the use of advanced digital services. Explicit procedural protections would strengthen confidence while preserving the State's legitimate public interest functions.

To further support interoperability, the Policy could more explicitly reference alignment with existing global technical and sectoral standards, including those applicable to financial infrastructure, cybersecurity, and data management. Internationally recognized frameworks like ISO standards, global payment security requirements, and cross-border data governance guidelines- already underpin trusted digital and financial ecosystems. Leveraging these established standards, rather than creating Kenya-specific requirements that diverge in scope or application, would reduce compliance complexity, support regional and global integration, and reinforce Kenya's position as a predictable and attractive hub for data-driven investment.

We urge Kenya to avoid instituting rigid controls that could unintentionally constrain the free and trusted flow of knowledge and information across borders.

IV. Conclusion

Kenya's Draft Data Governance Policy Outline reflects a strong commitment to harnessing data for development, innovation, and inclusive growth. With targeted refinements, the Policy will continue to ensure Kenyan businesses, researchers, and citizens can fully benefit from participation in the global educational, scientific, and technology ecosystem. The Global Data Alliance appreciates the opportunity to provide these comments and stands ready to continue engaging with MICDE. Should you have any questions or comments, please feel free to contact Joseph Whitlock, Executive Director, Global Data Alliance at josephw@bsa.org.