

Kenya should Use UGAI as the Basis for a its AI Policy and Legislation

By Claudio Ndeleva Mutua¹

Introduction

In an era marked by the exponential growth of Artificial Intelligence (AI), nations are faced with the critical task of building comprehensive AI legislative and AI frameworks. These frameworks are more than just regulatory tools; they are at the forefront of preserving core principles of fairness, accountability, and transparency in an increasingly AI-driven world. While scholars and policymakers have proposed global approaches to AI governance the regulation of AI at the national level is just as important for the protection of human rights. In this brief article, I will critically examine the potential of using the Universal Guidelines for Artificial Intelligence (UGAI) as a fundamental paradigm for the development of robust AI frameworks in countries that have yet to formalize their AI governance strategies, such as Kenya.

What is UGAI?

UGAI, launched in Brussels in October 2018, marks a watershed moment in the debate over AI governance. The Guidelines, developed with the lofty goal of informing and improving the design and implementation of AI systems, are deeply entrenched in the broader goal of protecting human rights and mitigating the numerous risks connected with deploying AI technologies. Nations must entrench these principles in the corpus of ethical standards, incorporate them into national legislation, and delicately embed them throughout the design of AI systems. The entities that finance, build, and deploy AI systems must endure most of the responsibility for complying with these rules.

¹ I am an Advocate with 5 years post-admission experience at Sian Mutua Advocates, Nairobi, specializing in the intersection between human rights and privacy. I am also currently an LLM student at the University of Nairobi working on a thesis on the right to genetic privacy in the era of the intersection between direct-to-consumer genetic testing and digitization of genetic records.

Legislation and Policy: Differences in Approach at the National/Regional Level

According to Marc Rottenberg, there are three primary schools of thought on AI regulation: the market-led strategy promoted by the US, the human rights-focused approach supported by the EU, and the state-led approach favoured by China. However, I would also argue that a fourth option, the "wait-and-see-approach" exists. This fourth approach is frequently used by developing countries like Kenya. The strategy, however, could present difficulties because it might lead to lose of initiative to play a significant role in shaping global norms on AI slip while exposing the citizenry to the negative consequences of rapidly evolving AI. Thus, rather than adopting the wait-and-see approach, adopting the Chinese or American approaches that have inherent ethical limitations, or copy the EU AI Act like it happened with the Data Protection Act 2019, adopting UGAI as the basis for the present development of AI policy frameworks and legislation is the better choice for Kenya.

Reasons why Kenya should Use the UGAI as the Fundamental Basis for its AI Policy and Legislation

There are several reasons why UGAI offers the best philosophical template for its AI framework. First, Kenya's commitment to enshrining its AI legislation on the UGAI framework would be more than just a show of solidarity; it would be a strategic stance within the global arena of AI governance. Kenya would be catapulted to one of the few active participants in international AI governance from the developing world. It would establish Kenya as a responsible and collaborative global participant in defining artificial intelligence technology's ethical and responsible development. It would even offer the country a chance to offer a developing world and an African perspective on the AI governance at a time when the issue is still ill developed.

Secondly, UGAI is a globally recognized ethical compass for AI governance. It includes a complete set of principles, including openness, fairness, and accountability, all essential for the responsible development and deployment of AI systems. Notably, these principles are reflected in Kenya's Bill of Rights and enshrined in Article 10 of the Constitution as national values and principles of governance. Adopting UGAI principles into its AI policy framework would demonstrate the country's unwavering commitment to ethical AI practices. It would ensure that the nation's native AI technologies and those imported into the country adhere to a strict ethical standards and emphasize the well-being of its citizens. It establishes a clear benchmark for responsible AI innovation and ensures that AI development is consistent with ethical standards.

Thirdly, UGAI places a high value on protecting individual rights within the AI ecosystem. These reflect the Kenyan constitutional framework that significantly emphasizes individual rights, as seen in Articles 19, 20, 27 and 47. Including UGAI principles in Kenya's AI Act would strengthen the protection of fundamental rights, such as human dignity, the right to know, the right to human determination, and the right to be free of discriminatory AI systems as the basis of AI development and implementation. This approach would empower individuals by giving them the legal means to hold AI creators and users accountable for rights violations. The approach would promote an environment in which AI technologies coexist and promote, rather than limit, individual rights and dignity.

Fourthly, in implementing AI technology, the UGAI framework highlights the significance of proactive risk assessment and accountability. Thus, Kenya's choice to incorporate these risk-mitigation strategies into its AI framework would further demonstrate a proactive commitment to tackling the potential negative repercussions of AI. Such an incorporation would create a

framework where AI stakeholders must evaluate and manage risks connected with AI implementation, thus protecting human rights enshrined in the Constitution.

Fifth, Kenya would also have a clear and well-recognized framework for industry compliance by using UGAI as the cornerstone for its AI Act. Transparency is crucial for directing AI creators and users, giving them a thorough awareness of their obligations and expectations regarding the law. A clear legislative framework would encourage ethical AI innovation and investment nationwide. The framework offers a road plan for state and business players to confidently negotiate the challenging terrain of AI governance while staying within predetermined legal restrictions.

The sixth reason is that UGAI framework's capacity to evolve with technological improvements is one of its unique qualities. Thus, a decision by Kenya to base its AI Act on UGAI secures the regulatory framework's long-term viability. Due to UGAI's versatility, Kenya can successfully traverse the fast-evolving AI world without having to amend its laws frequently. Addressing new AI opportunities and problems ensures Kenya's AI governance is current and effective. It presents Kenya as a progressive country ready to adapt to the changing face of AI technologies.

To conclude, UGAI-based approach to Kenya's AI and policy framework would exemplify the country's forward-thinking and comprehensive approach to AI regulation. The strategic benefits of such a strategy are emphasized in this proposal, with particular attention paid to global leadership, industry compliance, proactive risk mitigation, international alignment, ethical underpinnings, and individual rights protection. Thus, using UGAI as the basis for its AI law would be a significant step toward realizing AI's revolutionary promise and assuring ethical

and responsible AI development and deployment for the benefit of society and the larger community.