

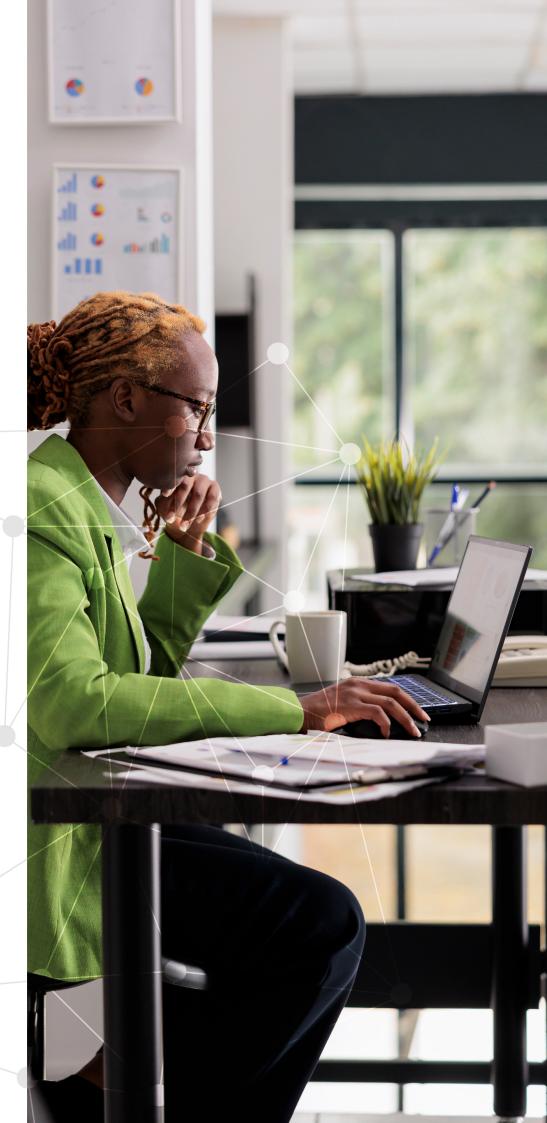
Digital Policy Digest

No. 2 of 2023



Analysis of The Seychelles Data Protection Bill

An Analysis of the Mauritius Artificial Intelligence Strategy





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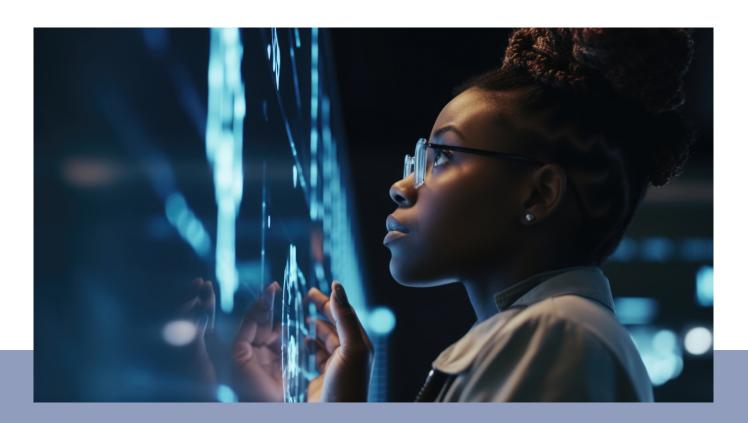
This Digital Policy Digest (DPD) documents digital rights policies and laws and presents guidance on areas needing reform. This edition features an analysis of the Seychelles Data Protection Bill and the Mauritius Artificial Intelligence Strategy.

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Analysis of the Seychelles Data Protection Bill

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Nature and Scope of Data Protection in Seychelles



On March 16, 2023, the Department of Information and Communications Technology introduced the Data Protection Bill (No 19 of 2023)¹ which was approved by the Cabinet of Seychelles on June 22, 2023. On October 20, 2023, the Department of Information and Communication Technologies in the Republic of Seychelles published the Bill whose purpose is to provide for the protection of individuals with regard to the processing of personal data. The Bill clarifies the underlying principle for the protection of personal data stating that it seeks to recognise the right to privacy envisaged in Article 20 of the Constitution². The bill states that it is aimed at strengthening the control and personal autonomy of data subjects over their personal data in line with current relevant international standards and best practice. The Bill further states that it seeks to promote and facilitate a responsible and transparent flow of information by private and public entities while ensuring respect for individual privacy. The new data protection bill will replace the Data Protection Act (Act No. 9 of 2003)³. In 2003 Seychelles became the second country to develop a Data Protection Bill after Cape Verde in 2001. Despite enacting the law in 2003, by 2021, the law was still not in force⁴.

^{1.} The National Assembly of Seychelles. Data Protection Bill (2023) Data Protection Bill, 2023 (Bill No. 19 of 2023) | The National Assembly of Seychelles (Accessed 04 November 2023.)

^{2.} The Republic of Seychelles. Constitution of the Republic of Seychelles (2021) (Accessed on 06 November, 2023.)

^{3.} Open Law Africa. Data Protection Act (Act No. 9 of 2003). (Accessed 03 November 2023.)

^{4.} US Department of State. Investment Climate Statement: Seychelles (2021) (Accessed on 07 November, 2023.)

Positive aspects of the Data Protection Bill (No 19 of 2023) in comparison to the Data Protection Act (Act No. 9 of 2003)

Structure and Model of the Data Protection Authority

The Data Protection Act (2003),(the DPA) envisaged the creation of the Office of the Data Protection Commissioner and the appointment of a Data Protection Commissioner who would be responsible for implementing provisions of the Data Protection Act. However, until its repeal, the DPA had not come into force and the envisaged pronouncements did not materialise. The new Bill on the other hand, endows the implementation and enforcement of the Act under the Information Commission which was created under Section 36 of the Republic of Seychelles' Access to Information Act⁵. The clause places the data protection authority as an add-on to an existing authority, as is the case of Zimbabwe where the data protection authority mandate was assumed by the Postal and Telecommunications Regulatory Authority of Zimbabwe and Rwanda where the data protection authority was assumed by the National Cyber Security Authority. Such a model may ensure that the data protection bill when enacted is swiftly implemented and enforced as the Information Commission is already in existence.

Appointment of Data Protection Officers

The Data Protection Act 2003 did not contain any legal requirement to appoint a Data Protection Officer. The new Bill in Section 46 (1) highlights that the Data Controller shall designate a Data Protection Officer and provide conditions for the designation of Data Controllers. The Bill further provides tasks for the Data Protection Officer. This is commendable as it is a best practice in Africa and globally to ensure the implementation of the Data Protection Act.

Data Breach Notification

The Data Protection Act 2003 had no mandatory requirements to report data security breaches or losses to the Commission. It only stipulated that the commissioner may consider complaints on provisions that have been contravened. The 2023 Data Protection Bill in Section 44 (1) stipulates that in the case of a personal data breach, the data controller shall not later than 72 hours after having become aware of it, notify the breach to the commission and where the notification is not made within 72 hours, the Data Controller should provide reasons for delay. This is a welcome clause as it will keep data controllers in check, ensuring that they protect data subjects' personal and sensitive data in line with Seychelles' Constitution which upholds individuals' right to privacy⁶. Despite the positive aspects of this clause, the bill should set a more stringent timeline for data breach notification which will compel data controllers to report a data breach within 24 - 48 hours to avoid risk/harm to the data subject.

^{5.} Internal Labour Organisation. Seychelles Access to Information Act 2018 (Act No 4 of 2018) (Accessed on 04 November, 2023)

^{6.} Intersoft Consulting, General Data Protection Regulations, (Accessed 05 November 2023.)

Negative Aspects of the Data Protection Bill

Direct marketing/ unsolicited electronic communications

Both the Data Protection Act 2003 and the Data Protection Bill do not have clauses on direct marketing or unsolicited electronic communications. The Data Protection Bill should emulate data protection laws from other African countries. Section 37 of the Kenya Data Protection Act⁷, section 69 of the South African Protection of Personal Information Act (POPIA)⁸ and section 36 of the Nigeria Data Protection Act⁹ stipulate the use of personal data for commercial purposes or unsolicited electronic communications. Section 6 (2j) of Seychelles' Data Protection Bill 2023, gives powers and duties to the Information Commission, specifying that the Commission shall undertake research and monitor relevant developments that can impact the protection of personal data, in particular the development of ICTs and commercial practices. Although this clause may cover direct marketing, data controllers may abuse their authority before the Commission undertakes research and monitoring practices. Therefore the Bill should specify such a provision to limit abuse of personal data.

Personal and Sensitive Data

Under the Data Protection Act 2003, sensitive data is not treated differently from personal data and biometric data is not separately protected. The Act provided the Minister of the Department of ICT to modify or supplement data protection principles in the Act, for purposes of providing safeguards for personal data relating to race, religion, mental or physical health, sexual life and criminal convictions. In the new bill, personal data is distinguished under Part 3 of the Bill on data protection and Part 4 on processing special categories of personal data which include sensitive data relating to race, ethnic origin, biometrics, genetics, political opinions, religious an philosophical beliefs, health or sex life. The bill provides in section 23 (2g) a problematic exception citing that the prohibition of processing sensitive data shall not apply where processing is necessary for reasons of substantial public interest, on the basis of Seychelles law. The disadvantage of this is that there is no clear definition of what constitutes public interest and may purposefully or inadvertently result in potential overreach and abuse. The bill further states another problematic exemption in section 23 (2j) where it stipulates that the prohibition of processing sensitive data shall not apply where processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes. This aspect falls short of international standards as it does not elaborate on the need for safeguards for the rights and freedoms of data subjects. Such a clause should specify the need for data minimisation or pseudonymisation so as to avoid overreach.

- 7. Kenya Trade Network Agency (2022). Kenya Data Protection Act. (Accessed 07 November 2023.)
- 8. POPIA (2019). Protection of Personal Information Act. (Accessed 10 November 2023.)
- 9. KPMG (2023). Nigeria Data Protection Act 2023. (Accessed 09 Noveber 2023.)

Data Breach Notification

It is disappointing that the urgency given for the Data Controller to report a breach to the Commission is not the same urgency given to notify the data subject of any breach. Section 45 (1) on the communication of a personal data breach to the data subject stipulates that if the data breach is likely to affect a significant number of individuals, their rights and freedoms, the Data Controller shall promptly inform the data subject of the breach. This section assumes that if a data breach affects one person then it is not important to notify them promptly. The section also does not specify the definition of promptly as this may be interpreted in various ways.

Structural and Financial Independence

Part 1 Section 4 of the Data Protection Act (2003) instituted the Data Protection Commissioner who in Subsection 2 was to be appointed by the President. There was also to be an Office of the Data Protection Commissioner. However, as mentioned above the latter did not materialise. In the Data Protection Bill, Section 5 places the role and functions of the DPA as an add-on to an already existing Commission - the Information Commission. While this is becoming common in African countries, the Data Protection Authority will have to rely on the policies and procedures of the Information Commission when pursuing its own activities. This takes away the Authority's independence to run its own activities and has an effect on the funding of the implementation of the Bill when it is eventually passed into law. Structural and financial independence will enable the DPA to pursue enforcement of Data Protection against public bodies, including the Information Commission. The Bill does not stipulate how the provisions in the Bill will be funded yet in Sections 6 (1 and 2), the bill places a duty upon the Information Commission to appoint its own officers and staff, consultants or such other persons as the Commission considers necessary, powers and duties of the Commission. There is a need for the Bill to emulate laws such as the Kenya Data Protection Act - which in Part 9 stipulates its funding provisions - to ensure enforcement and implementation of the Bill.

Investigations and Audit

Section 7 (10) of the Data Protection Bill highlights that the Commission has the authority to carry out periodic/preemptive audits of data controllers or processors to ensure compliance with the Act. However, the document does not outline the frequency or scope of these audits, raising concerns about the effectiveness of monitoring and enforcement.

Issuance of Guidelines/Regulations

The Data Protection Bill in Section 6 (3) highlights that the Commission shall in consultation with relevant public and private sector stakeholders, issue guidelines to facilitate the implementation of the act. This is commendable. However, the Act should stipulate the time in which the regulations will be developed after the Act is passed into law.

Gender

The Data Protection Bill is silent on gender and should include gender-by-design clauses to encourage Data Controllers to take into account the gender responsiveness of the technology available, purposes for processing and the likelihood and severity of gendered risks that come with the processing to the gender-specific rights and freedoms of natural persons' personal data. The data controller should take into account if the processing of personal data will lead to harm or discrimination on the data subject.

Conclusion

The proliferation of regulatory changes globally and regionally particularly the introduction of the GDPR of the European Union, Convention 108+, the African Union Cyber and Data Protection Convention (Malabo Convention), the African Continental Free Trade Area (AfCTA), African Union Data Policy Framework, and model laws by the Regional Economic Communities within Africa have likely spurred an increased interest in updating and adopting laws on personal data and privacy throughout Africa. Seychelles' new Data Protection Bill which comes 10 years after the adoption of the Data Protection Act of 2003 reflects Seychelles' efforts to modernise its data protection policies in line with recent data protection changes at the global and regional levels. The Bill introduces new concepts such as data protection impact assessments, data breach notification, and the introduction of Data Protection Officers, all of which were previously not there in the Data Protection Act 2003. Several of the changes made in the new Bill are becoming common practice amongst countries adopting second-generation data protection legislation.

An Analysis Of The Mauritius Artificial Intelligence Strategy (2018)

Researchers: Miriam Beatrice Wanjiru and Sani Suleiman Sani



Introduction

In recent years, the rapid advancement of Artificial Intelligence (AI) has ignited transformative changes across diverse sectors, reshaping economies and societies worldwide. Within the African context, this technological evolution holds unique implications due to its potential to address long-standing challenges and drive inclusive growth. For instance, with the continent's diverse linguistic, cultural, and economic landscape, Initiatives like AI-powered agriculture techniques for sustainable food production, and personalised learning platforms have showcased the transformative capabilities of AI. Be that as it may, a number of factors hinder proper adoption of AI in Africa. Some of these challenges include infrastructural limitations, such as inadequate access to high-speed internet and reliable power sources. Socioeconomic disparities and digital divides further exacerbate the uneven distribution of AI benefits, leaving marginalised communities at a disadvantage. Ethical concerns, including data privacy, algorithmic bias, and cultural sensitivity, add another layer of complexity to adopting AI technologies in diverse African societies. Furthermore, a scarcity of local talent skilled in AI development and research poses a significant obstacle to achieving sustainable AI-driven growth on the continent.

Both these positive promises and the said challenges are considered key drivers to the growing need for regulation of AI by governments worldover. Currently, more than sixty countries either have a strategy or a task force in place on Artificial Intelligence (AI)¹⁰. As it so happens, most of these countries are developed economies. Using a globally recognised policy analysis tool, this article aims to explore the evolving landscape of AI, shedding light on the Mauritius policy framework. Given the rapidly evolving nature of AI, information presented in this article is confined to developments up until August 2023.

10. https://link.springer.com/article/10.1007/s00146-023-01779-x

An Overview of the Evaluative Framework

The evaluative tool used for analysis, which is annexed in this paper, is a globally recognized policy analysis framework which outlines a comprehensive set of criteria for assessing the effectiveness of a government's policy. With regard to the Mauritius Al Strategy, the framework incorporates four key dimensions. These are; 1. Technical Feasibility, 2. Economic and Budgetary Feasibility, 3. Political and Social Viability, and 4. Administrative Ease. Under Technical Feasibility, the framework considers factors such as technology adoption and uptake, achievement of strategy objectives, and capacity. The scoring definitions range from low to high, reflecting the level of reach, effect size, and impact on disparate populations. Economic and Budgetary Feasibility assesses Budgetary implications, Economic impact, and the cost-effectiveness of implementation. The scoring options include less favourable to more favourable. On the other hand, Political and Social Viability focuses on the likelihood of the strategy being adopted by successive regimes while administrative ease poses the question, 'Does Mauritius have the institutional capacity in terms of interpretation and implementation of the strategy?'

An Overview of the Mauritius Artificial Intelligence Strategy

The Mauritius AI strategy document of 2018 is a comprehensive document that outlines the government's approach to making AI the cornerstone of the country's next development model. The strategy is focused on five key areas: Prioritising sectors and identifying national projects, Capacity building and attracting skills, Incentives to catalyse implementation, Ethical considerations of AI and Development of strategic alliances in emerging technologies. In the years since the strategy was published, the government has made significant progress in implementing its recommendations. For example, the government has established an AI Center of Excellence at the University of Mauritius, and has launched a number of initiatives to support AI research and development. The government has also provided financial incentives to businesses to adopt AI technologies.

A Deep Dive of the Mauritius Artificial Intelligence Strategy

This section will examine the Mauritius AI strategy in detail to understand the extent at which it has been implemented and to identify key gaps while proposing recommendations for consideration to different stakeholders. The authors analysed the strategy's Technical Feasibility, Economic and Budgetary Feasibility, Political and Social Viability, and Administrative Ease.

Technical Feasibility

The Al strategy for Mauritius is well-written and comprehensive, but it could be improved by adding a technical assessment component. A technical assessment component is essential for ensuring that the Al strategy is achievable and that the country has the necessary resources and capabilities in place. The assessment should include an inventory of Mauritius's current Al capabilities, an assessment of its Al skills and expertise, an assessment of its risk tolerance and appetite for innovation, and an analysis of the competitive landscape and the latest trends in Al. Once the technical assessment is complete, Mauritius can develop a plan to address any gaps or deficiencies. The establishment of the Mauritius Al Council (MAIC) is a positive step towards the realization of this strategy. The MAIC will play a crucial role in overseeing the implementation of the Al strategy and providing guidance to the government. However, ensuring adequate resources and expertise for the MAIC remains a challenge, as evidenced by the lack of clear allocation in the previous and the current 2023 budget¹¹. Addressing this resource gap will be critical to the MAIC's success.

The strategy also relies heavily on the private sector. While this is a good thing in general, it is important to ensure that the government has a strong role to play in coordinating and overseeing the implementation of the strategy. Additionally, the government needs to make sure that the private sector is investing in AI technologies that are aligned with the country's national priorities listed in the strategy document.

Despite these challenges, there are a number of positive aspects to the countries AI Strategy. Mauritius is committed to developing a skilled workforce in AI through various initiatives, including the establishment of the Mauritius AI Academy. This commitment is reflected in the country's strong performance on the Global AI Readiness Index¹², where it ranks 57th globally and first in Africa." This suggests that the country has a strong foundation to build on.

Economic and Budgetary Feasibility

The Mauritius AI strategy is ambitious and also economically viable given that the country has a

- 11. https://budgetmof.govmu.org/expenditure.html
- 12. https://www.oxfordinsights.com/government-ai-readiness-index-2022

number of factors in its favour like a favorable regulatory landscape, relatively good economy and a political will. Moreover, Mauritius has a number of policies in place that support innovation and investment. For example, the country has a foreign direct investment (FDI) policy that is open and welcoming.

However, the budgetary feasibility of the Mauritius AI Strategy is a more complex issue. The government has not yet released a detailed budget for the strategy, but it is clear that it will require a significant investment. The government will need to balance the need to invest in AI with the need to maintain fiscal discipline. Moreover, the fact that the strategy document does not factor in other economic laws in the country is also a concern. This suggests that the government has not fully thought through the economic implications of the AI strategy. For example, the strategy does not address the impact of AI on employment, competition, and taxation.

One way to make the AI strategy more budgetarily feasible is to partner with the private sector. The government can provide tax breaks and other incentives to encourage private companies to invest in AI which Mauritius is already doing with initiatives like the investor's occupation permit, Social Innovation Research Grant Scheme (SIRGS), National SME Incubator Scheme and so on. The government can also collaborate with private companies on joint research and development projects. Another way to make the AI strategy more budgetarily feasible is to focus on developing AI solutions that can generate economic benefits in the near term. For example, the government could focus on developing AI solutions that can improve the efficiency of public services or that can boost productivity in the private sector.

Political and Social Viability

The Mauritius Artificial Intelligence Strategy came to fore as a result of political goodwill by the government of the day. The motivation behind this was to make AI the cornerstone of development in Mauritius. Interestingly, it is the recommendations put forth by the AI Working Group, which was set up under the Chairmanship of the Secretary to the Cabinet, that defined the contents of the strategy document. With this level of involvement by state and state representatives, the strategy ranks highly on political viablity given its overwhelming support from political elites. While this might be questioned by some scholars who are against 'elitist approaches' to policy making, arguing that it is western and capitalistic in nature, others might argue that this approach is beneficial in the long-run, especially if successive regimes adopt the strategy or policy in question.

In view of whether the strategy is widely accepted within public circles, there is scanty data that is backed by government or independent surveys conducted to gauge public mood. However, going by the number of Al powered projects proposed to support land registration, managing health insurance, improving the energy and manufacturing sectors, and employing Al in agro-industry, it is safe to pronounce that these positive impacts are highly likely to translate to public buy-in as they directly contribute to improved quality of life for an average citizen in Mauritius.

Administrative Ease

From the onset, the Mauritius AI working Group was composed of four members who are directly affiliated with mainstream government and state departments, i.e. representatives from the Prime Minister's office, the Ministry of Finance and Economic Development and the Ministry of ICT. Two other members were affiliated with state agencies and parastatals, i.e. the Economic Development Board, one was a representative of academia and two represented the research and informatics sectors. This rich composition reflets high institutional capacity in terms of strategy development

and interpretation. Additionally, the establishment of the Mauritius Al Council (MAIC) in 2019 was a step in the right direction as the ten member group helped to bring the strategy to life based on their technical expertise and experience in the field. Currently, it is this council which facilitates and oversees project implementation as well as quantifies the strategy's socio-economic impact.

On the flipside, however, questions on inclusivity have been raised as the nine member Working Group had one female representative amidst eight men. From an equality and representation perspective, the composition of the working group fell short in terms of proper inclusion of people with disabilities, special rights of migrants, and indigenous peoples' linguistic diversity. There was also little involvement by actors from the private sector.

Identified Policy Gaps and Recommendations

Based on the analysis, the following are the gaps identified and recommendations proposed

Gaps

- There are no readily accessible government-led policy evaluation reports that could be used for this analysis to track progress in formulation and implementation of the strategy..
- The strategy is very tech oriented and does not adequately pursue social and ethical needs. It puts more emphasis on research, development, and infrastructure, as compared to addressing social and ethical considerations.
- There was also visible gender inequality in the composition of the working group that developed the strategy.
- The strategy does not provide an actionable plan or explicit reference to the integration of data protection and privacy.

Recommendations

- The Ministry of Information Technology, Communication and Innovation in collaboration with the Mauritius Al Council should consider adopting the strategy to formal legislation so that it becomes binding.
- The Mauritius Al Council should continually consult with a wider range of stakeholders on the Al strategy in order to promote inclusivity throughout the implementation.
- The Council should also develop a technical assessment strategy to evaluate the country's strengths and weaknesses in actualising the goals of the strategy
- The Working Group should outline plans on how to integrate data protection measures in each of the proposed applications of AI in the document.

Conclusion

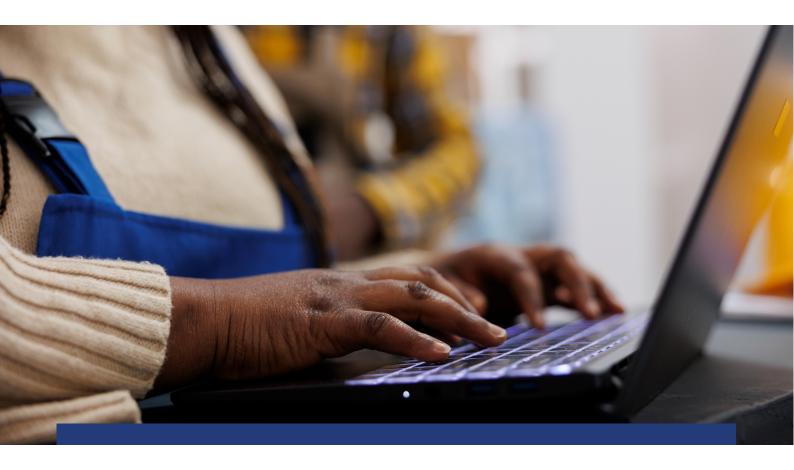
This article provides an overview of the legal and regulatory frameworks on AI in Mauritius. By analysing the strengths and limitations of the Mauritius Artificial Intelligence Strategy, key hits and misses of the strategy document are assessed and recommendations offered for consideration by policymakers and stakeholders that seek to advance the development, deployment and adoption of Artificial Intelligence in Africa.

Annex: Evaluative Framework to assess the Mauritius Al Strategy

EVALUATIVE CRITERIA	TECHNICAL FEASIBILITY	ASIBILITY	ECONOMIC AND FEASIBILITY) BUDGETARY	POLITICAL AND SOCIAL VIABILITY	CIAL VIABILITY	ADMINISTRATIVE EASE	SE
	Technology Adoption/ Uptake	Achievement of strategy objectives	Budgetary implications	Economic impact	Political viability	Social viability	Capacity	Institutional com- mitment
Scoring Definitions	Low: low up- take, effect size, and impact on disparate populations Medium: low reach with large effect size or large reach with small effect size High: high reach, effect size, and im- pact on dispa- rate population	Low: small or no achievements of strategy objectives Medium: Moderate achievement of strategy objectives. High: Strategy objectives achieved to a larger extent.	Less favourable: High costs to implement Moderate costs to implement in implement wourable: More favourable: Low costs to implement implement	Less favourable: costs are high relative to benefits Favourable: costs are moderate relative to benefits (benefits justify costs) More favourable: costs are low relative to benefits	Low: No/small likelihood of being supported by the political elites Medium: Moderate likelihood of being supported by the political elites High: High likelihood of being supported by the political elites by the political elites of being supported by the political elites	Low: No/small likelihood of being supported by the public. Medium: Moderate likelihood of being supported by the public. High: High likelihood of being supported by the public.	Low: no or little institutional capacity in terms of strategy interpretation and implementation. Medium: Moderate institutional capacity in terms of strategy interpretation and implementation. High: High institutional capacity in terms of strategy interpretation and implementation.	Low: No/small likelihood of support by subsequent political regimes. Medium: Moderate likelihood of support by subsequent political regimes. High: High likelihood of support by subsequent political regimes.
Mauritius Artificial Intelligence Strategy (2018)	□ Low □ Medium ■ High Concerns about the amount or quality of data? (Yes / No)	□ Low ■ Medium □ High Concerns about the amount or quality of data? (Yes / No)	■ Less favourable ■ Favourable □ More favourable Concerns about the amount or quality of data (Yes / No)	☐ Less favourable ☐ Favourable ☐ More favourable Concerns about the amount or quality of data (Yes / No)	□ Low □ Medium ■ High Concerns about the amount or quality of data (Yes / No)	□ Low □ Medium ■ High Concerns about the amount or quality of data (Yes / No)	 Low Medium High Concerns about the amount or quality of data (Yes / No) 	 Low Medium High Concerns about the amount or quality of data (Yes / No)

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Paradigm Initiative has worked in communities across Nigeria since 2007 and across Africa since 2017, building experience, community trust, and an organisational culture that positions us as a leading non-governmental organisation in ICT for Development and Digital Rights on the continent. Across our regional offices in Kenya, Nigeria, Senegal, Zambia, Zimbabwe, Cameroon, the Democratic Republic of Congo (DRC), and beyond, we have impacted youth with improved livelihoods through our digital inclusion and digital rights programs. The organisation's programs include Life Skills. ICTs. Financial Readiness. Entrepreneurship (LIFE) Training Program, a digital readiness workshop for girls, and Life@School Club Program. PIN has also built online platforms that educate and serve as safe spaces for reporting digital rights violations. These mediums, in the form of reports, short films, and educational online platforms, include Ayeta, Londa, and Ripoti. The organisation is also the convener of the annual Digital Rights and Inclusion Forum (DRIF), a pan-African platform where conversations on digital policy in Africa are shaped, policy directions debated, and partnerships forged for action. The forum has been held since 2013.





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