Kenya Diaspora Alliance (KDA)

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Our Ref: KDA/17/01 3rd January, 2017

Clerk to the Senate

Senate of the Republic of Kenya

**NAIROBI**

Dear Sir/Madam,

**REF: PUBLIC/DIASPORA COMMENTS ON THE ELECTIONS (AMENDMENT) (NO 3) BILL 2015 (NATIONAL ASSEMBLY BILL NO 63 OF 2015)**

Kindly assist transmit this communication to the Hon Chairpersons of the Concerned Standing Committees, including but not limited to Legal Affairs & Human Rights, and ICT.

Of the 3 Major Issues of Public Concern addressed by the Amendments in the Bill, the KDA views are as follows:

**I. VOTER IDENTIFICATION & RESULTS TRANSMISSION AND TECHNOLOGIES THEREOF**

* All Electoral Technologies and Systems for National Elections should be declared “Critical National Infrastructure”, meriting the level of protection befitting military installations, airport control and surveillance systems, etc;
* Perhaps such detailed, technical information is best handled in “Electoral Technology Regulations” produced by IEBC, but approved by Parliament, not in an Act of Parliament;
* It is not clear to us why the Biometric Voter Registration (BVR) and Electronic Voter Identification (EVID) systems cannot be one and the same device. Such 2-in-1 systems already exist in the market and widely used even in Kenya;
* We fault the submission of Ministry of ICT to the Committee to a large extent; we do not see why 3G is a major issue in the 2 segments (of voter identification and results transmission). If it is Internet/data transmission that is needed, even 2.5G (GPRS) is good enough; if it is SMS, then even 1G is adequate;
* However, we have concerns about the security and integrity of GSM systems, regardless of whether 2G, 3G or 4G, etc! What security measures are being put in place?
* No truly critical electronic system operates without redundancy, i.e. a back-up. In fact, there can be more than one layer of back-up – the more they are, the greater the reliability. However, no single system (even with a cascade of back-ups) is 100% reliable;
* Contrary to the public perception and misleading media reports, no single country that we are aware of (whether Ghana, The Gambia, USA, UK, etc) doesn’t have a manual back-up, should the electronic version/s fail;
* However, there must be clearly defined, credible, transparent and documented processes to convert from an electronic system to a manual back-up, in the unlikely case it is necessary;
* KDA fully subscribes to the digital revolution (despite its inherent limitations, far exceeded by the pluses). Instead of stopping just at electronic voter registration, identification, tallying and results transmission, we strongly encourage the Senate and IEBC to chaperon Kenya to lead the world into this digital voyage, like it did with mobile money (aka MPesa);
* We recommend that we pilot mobile voting (m-voting) for which beta products already exist with a limited number of Diaspora voters, say a maximum of 10,000 voting for presidential elections. A provision could be made such that if the margin is too close to make the Diaspora vote overly contentious (e.g. sizeable enough to determine a run-off), the Diaspora vote could be excluded (in law) in the final tally;
* The electoral technologies used are only as good as: i) the environment and context in which they are applied, ii) the people who manage them, especially the Project Manager and ICT Director, iii) enabling Electoral Technologies Regulations (already developed by IEBC), and iv) goodwill, professional independence and adequate resourcing of the concerned entities;
* The ‘Technical Committee’ is crucial in proper application of electoral technologies. However, as currently constituted and from a professional standpoint, we have serious reservations on its ability to execute the set mandate; and
* Successful deployment of electoral systems will be contingent on fulfilling the conditions we specified for the “IEBC ICT Regulations”, attached hereto in the Annex.

**II. DEGREE & DIPLOMA REQUIREMENTS FOR PARLIAMENTARY & MCA CANDIDATES**

KDA believes the degree and diploma requirements for MPs and MCAs respectively are reasonable and justifiable requirements that should not be deleted from the Bill. They should be retained even if to be implemented only after the 2017 elections. We don’t believe non-degree holders can effectively perform the function of a legislator. For Kenya to make the next big leap, we must be prepared to make or allow our very best to steer the ship.

We, however, acknowledge that there are a few exceptions to the general rule: there are a few credible, naturally intelligent and/or talented people who may not conform to the norms. For such, a special aptitude test could be administered to allow for exceptions.

**III. CAPPING OF CAMPAIGN FINANCE**

KDA believes a major thing that robs Kenya of good/better leaders it deserves is over-glorification of money, often ill-gotten, in the electoral process. We therefore support, in principal, capping of campaign finance even for the 2017 elections, and ensuring full compliance and enforcement. We therefore do not support the amendment that seeks to delay effective date of this law to after the elections.

Besides, we think the thresholds currently in the Bill are artificially too high for the ordinary Kenyan who may want to run for office. We support much lower limits, informed and backed by scientific, empirical evidence – not arbitrary.

We go even a step further to recommend that candidates be financed from the exchequer to ensure accountability and equity in financial spending.

**IV. OTHER URGENT NECESSARY ELECTORAL AND ADMINISTRATIVE REFORMS**

Whereas the following do not appear *per se* in the said Amendment Bill, KDA feels they are important and require inclusion in a revised, negotiated statute:-

* Because one of the reasons given by those opposed to Diaspora Voting is the possibility of “non-Kenyans” who in the past acquired Kenyan passports to gain refugee status in the West wrongly influencing election outcomes, a new clause can be introduced to the “Citizenship and Nationality Act (2011)” that clearly defines who among such are eligible to register and vote;
* There are also 3rd generation Kenyans, especially from among minority communities whose attainment of citizenship and nationality status require streamlining in legislation;
* Generally, all key aspects of Diaspora Voting (including registration, identification of polling centres, voting methods, appointment of election officers, voter/civic education, transmission of results, management of election offenses and disputes, etc) require its own statute;
* While there appears presently to be inordinate focus on voter identification and results transmission, we believe there are other stages of the electoral cycle that would even more significantly contribute towards enhancing credibility of the electoral processes. These include but are not limited to: i) credibility of party primaries, especially for the ‘major’ political parties/coalitions, ii) role of money in elections, iii) enhanced credibility of election monitoring, possibly with a ‘watchdog’ to watch the observers, and, iv) full compliance and enforcement of laws and regulations. More effort should be invested to strengthen the statutes that support these elements.

We remain available for any further necessary consultations.

Yours Sincerely,

Dr Shem J. Ochuodho

**KDA’s Global Chairperson**

**CC:** Hon Speaker of the National Assembly

Chief Executive Officer/CEO, IEBC

Press (Open Letter)

**Encls.**

**ABOUT KDA & IT’S TECHNICAL TEAM**

KDA is a Federation of 41 registered Diaspora organizations, with a combined nominal membership of about 250,000 Kenyans across the world. Over the past nearly 3 decades, KDA has been advocating for Diaspora rights, including the historic victory in the Supreme Court in May 2015 for Diaspora to vote.

KDA's Global Chairman introduced Internet in Kenya/Eastern Africa in 1995, is a Former Elected MP and has current research interests in "Cyber-security and Electoral Technologies", and is therefore well versed to offer competent technical information to the Committee, especially on the first item above. In 2000, he represented the ICT Sector in the Government-appointed National Y2K Committee that ensured Kenya smoothly managed transition of the "2000 Millennium Bug", and the same year was named by the Computer Society of Kenya (CSK) "Father of Internet in Kenya". He also served as Temporary Chair of the "Energy, Public Works & Communications Committee" of the 8th Parliament, through which he was instrumental in the passage of the National Communications Act (1998) and the Regulations on Live Broadcasting of Parliamentary Proceedings, among others.

As Global Chair of KDA, and having served several African governments in diverse, senior ICT Policy & Management positions, he is fairly conversant with not only electoral systems regionally, but globally. We are available to share these experiences with the Esteemed Committee where needed.