

Inclusion of Kenya's Diaspora Representatives in the new Judicial Service Commission (JSC), other constitution implementation committees, and generally in Kenya's socio-economic and cultural development

PETITIONERS REQUIREMENT: *Inclusion of Kenyan Diaspora Representatives in strategic committees, commissions and other national duties of paramount importance.*

To:

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8. THE HON. CHIEF JUSTICE
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PETITION BACKGROUND

Importance of the Judiciary, the Legal Sector and the Place of the Diaspora: The passage and promulgation of the New Constitution lends Kenya a unique and rare opportunity to correct the wrongs of the past, including inequality and injustice, to become once again a leading light among nations of the world. As is widely acknowledged, whereas a nation can thrive with an under-performing executive or legislature, it can hardly survive with a below-expectation judiciary. It is with this importance that we view the ongoing legal and constitutional reforms with great keenness. With over 3 million Kenyans believed to be in foreign lands, remitting on average over US\$ 1 billion (KShs 80 billion) a year, their importance to our present and future needs no gainsaying. Hitherto, the Government of Kenya has largely turned a blind eye on them. Yet this is in spite of being a signatory to the African Charter on Human and People's Rights, the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights (among others), whose Article 25 holds that:-

Every citizen shall have the right and opportunity ... without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; etc.

Article 2(1) of the International Covenant on Economic, Social and Cultural Rights avers that:-

Each State Party undertakes to take steps, individually and through international assistance and cooperation, and especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means....

We are deeply perturbed not only at the apparent throwing merit out of the window in the ongoing appointments of Committees and Commissions, instead replacing it with deal-making between the two major partners in the Coalition, patronage, dynasty and other known ills that have over the years denied Kenya the opportunity to excel, but also the total exclusion of Diaspora representation in all this.

JSC role and importance of Diaspora inclusion in the decision making process: In the recently promulgated constitution of Kenya Articles 171 to 172, the Establishment of the Judicial Service Commission (JSC), its functions and the mechanisms of appointments of the commissioners are well explained. Briefly, the Commission should consist of the Chief Justice, who shall be the chairperson, one Supreme Court judge elected by the judges of the Supreme Court; one Court of Appeal judge elected by the judges of the Court of Appeal, one High Court judge and one magistrate, one a woman and one a man, elected by the members of the association of judges and magistrates, the Attorney-General, two advocates, one a woman and one a man, each of whom has at least fifteen years' experience, elected by the members of the statutory body responsible for the professional regulation of advocates; one person nominated by the Public Service Commission; and one woman and one man to represent the public, not being lawyers, appointed by the President with the approval of the National Assembly. The duties of Commission includes:- promotion and facilitation of the independence and accountability of the judiciary, promotion of transparent administration of justice, recommending persons for appointment as judges, receiving complaints, investigating and removing judicial officers, preparing and implementation of programmes for the continuing education of judges and judicial officers, advising the national government on improving the efficiency of the administration of justice among others. These duties are primary to **all** Kenyans hence the appointments should net a wide range of talents including the already known reservoir of the highly trained/qualified Kenyans currently fitting the description of a Kenyan Diaspora – or at a minimum, seek their views on the same.

The justification of the Kenyan Diaspora consideration is based on the current statistics on the Diaspora constituency and their contribution to running of the economy of our country. With remittances ranking the second highest source of foreign exchange and contributor to growth of our national economy only after tourism we cannot continue to treat them with disdain. Among the Kenyan Diasporas are highly qualified Lawyers, Engineers, Scientists, Medical Doctors and others currently constituting the well documented brain drain phenomenon observed in many African countries. While this constituency has worked very hard in development of the country and has publicly indicated their interest in being contracted/included in the processes that are of high value to Kenya such as JSC committee constitution, it appears the government has some level

of lethargy when it comes to their inclusion in the Kenya decision making process. Indeed it saddens many that expatriates who absolutely lack the passion and patriotism for Kenya have been preferred over them. Kenya is losing a battle that every country would love to win if it continues to exclude some of her brightest brains. Many cases abound to learn from in terms of maximizing Diaspora input: India, Malaysia, Ethiopia, Rwanda, China, UK, just to mention a few.

The purpose of this petition therefore is to ask His Excellency the President, the Rt. Hon. Prime Minister, the entire Executive Branch of Government, and the Legislature to ensure inclusion of Diaspora Representatives in strategic committees and commissions including JSC for the purposes of (1) Recognizing the Kenyan Diaspora Constituency (2) Utilizing patriotic highly qualified human resources. In so doing, merit and diversity should never be compromised under any circumstance, and replaced instead with mediocrity, political expediency and ethnic bigotry. We seem to forget that we can have no better or worse 'Ambassadors' in foreign lands than these Diaspora.

PETITION

We the undersigned call upon the President of Kenya, Prime Minister of Kenya and the Kenya Legislature to ensure inclusion of Kenyan Diaspora Representatives into the JSC and all other future and existing strategic committees and commissions. We believe this is in the spirit of recognizing the Kenyan Diaspora constituency contributions to Kenya's development and working towards attracting highly trained patriotic services and investment.

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3. KENYANS FOR CHANGE (K4C)
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OR CORNER HOUSE, NAIROBI, KENYA

4. DIASPORA MOVEMENT OF KENYA (DMK)

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5. KENYAN COMMUNITY ABROAD (KCA)

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SIGNATURES

	ORGANIZATION	AUTHORIZED OFFICER	POSITION	SIGNATURES
1.	Kenya Global Union	Mr. Alex P. Momanyi	President	Attached
2.	New Vision Kenya - Mageuzi	Dr Shem Ochuodho	Co-Convenor	
3.	New Vision Kenya - Mageuzi	Mr. Robert Kimathi	Co-Convenor	E-Signature
4.	Kenyans for Change	Mr. Hebron Mosomi	Chairperson	Attached
5.	Diaspora Movement of Kenya	Mr. Robinson Gichuhi	Global Chair	E-Signature
6.	Kenya Community Abroad	Mr. David Otwoma	Member Rep	
7.	Kenya Community Abroad	Ms Margaret Wamuhu	Member Rep	
8.	Kenya Community Abroad	Mr. Gichane Muraguri	Member Rep	

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Dated: 15th December, 2010