



REPUBLIC OF KENYA

**MAXIMIZING THE POTENTIAL
AND INPUT OF THE KENYAN
DIASPORA IN THE POLITICAL
PROCESS, WEALTH CREATION,
EMPLOYMENT GENERATION
AND POVERTY REDUCTION**

Draft Session Paper

**PREPARED BY THE DIASPORA TECHNICAL TEAM
(Government of Kenya, KEPSA, Diaspora representatives)**

FOREWORD

Worldwide the role of the Diasporas in the development of their countries of origin is increasingly being recognized and given strong support by the UN, World Bank, African Union, NEPAD, and individual governments. In the second half of the 20th century several world economies have benefited considerably by capitalizing on their links with national Diasporas. More and more the international migration and development debate has been emphasizing the important contributions that migrant communities and their associations make in the development strategies of their countries of origin. Their human, material, and financial contributions have proved to be critical in the development process.

Several countries in the world have taken measures to design policies and pass legislations that create conducive environments for the Diasporas to participate effectively in economic, political and social affairs. China, India, and Israel seem to be the best-known examples of countries that received a major developmental push from their nationals located throughout the world. While in most countries the main Diaspora-related benefit for the domestic economy was and still is associated with private transfers (including remittances), sent by members of Diasporas to their relatives and friends at home, China, India, and Israel managed to complement this traditional financial

support by much more active involvement of the Diaspora in their economic development.

In these countries, Diaspora investors and entrepreneurs have played a critical role in attracting Foreign Direct Investment (FDI), setting up joint ventures, promoting export of domestic companies, etc. In short, these examples confirm that traditional ethnical and cultural links could be instrumental in facilitating integration into the international economy as well as transferring of new professional and managerial skills.

The Kenyan Diaspora has been playing an important role in the development of the country through remittances and promotion of Kenya's economic development abroad. However, until recently the role of the Kenyan Diaspora in the development of the country was not very much acknowledged. It is evident that more is needed to facilitate the participation of the Kenyan Diaspora in the social, economic and political arena.

In order to facilitate the participation of the Kenyan Diasporas in the social, economic and political arena it is imperative that a Bill should be passed by the Government. The passing of this Bill will increase and diversify the participation of the Kenyan Diaspora in the economic development of the country.

The rationale for passing such a Bill is underlined by the fact that the Kenyan Diaspora has tremendous potential especially in critical areas that are important for the Kenyan economy to grow much faster. The participation of the Kenyan Diaspora in the economy will spur the Government's current economic reforms to modernize the economy and augment growth as per the **VISION 2030** Development Process.

Thus, it is in view of this situation that it is imperative for the Government of Kenya to design and implement a Diaspora-focused policy that would address the needs of the Kenyan Diaspora in both countries of residence and here in Kenya as well as effectively facilitate their involvement in the social, political, and economic affairs of the country.

This Draft Session Paper is intended to present the case for passing a Bill that would create conducive environment for the Kenyan Diaspora. The paper highlights the need for such a Bill and anchors the rationale and significance therein.

- CHAPTER ONE -

Introduction

Giving back to Kenya is done by the Kenyan Diaspora out of solidarity and obligation. These particular thoughts imbue unselfishness among the Diaspora; in most cases, you will find individuals and groups, acting on their own initiative, with their own resources to support development in the country. Informal and formal structures have been erected in the form of associations, charitable organizations, investment groups, NGO's, political parties, health centres, education, cultural clubs, virtual networks, etc. *The Diaspora renders concrete developmental changes but these remain unheralded, unappreciated and without structural support.*

Although the exact numbers of Kenyans in the Diaspora is not known, is estimated that there are approximately two million Kenyans working abroad, available data from the Internet shows that there were as at 2002:

- 47,000 Kenyans in the USA
- 5,200 in Germany
- 1,300 in Sweden,
- 1,500 in Netherlands,
- 7,500 in Australia
- 21,000 in Canada and 15,000 in the UK.

The Kenyan Diaspora Abroad

The number of Kenyans living abroad has been growing steadily over the years. A survey by the London-based Institute for Public Policy Research (IPPR) issued September 2006 showed that Kenyans made up the eighth-largest group of immigrants in Britain by 2001. After South Africa, Kenya sent more nationals to Britain than any other African country. Not much is known about Kenyans living in the East and the Orient. The dearth of such data points at an urgent need for a baseline survey to establish the exact number of Kenyans living abroad.

In general, the Diaspora seems not to be aware of its unique strengths and added value in the area of development. However, it is disappointing to see that the unique strengths and added value of the Kenyan Diaspora has until to date has not been realized and effectively used. As one member of the Diaspora responded as follows:

“Pardon me but I do not consider what I do to be development – I simply contribute money and skills because I am inspired by my sense of responsibility and compassion for my loved ones back at home.”

There is also a general lack of awareness, acknowledgement and recognition from the Kenyan Government and the public in general of on the role the Kenyan Diaspora has been playing in the development of their homeland at different levels namely nationally, community and even personal levels. The Kenyan government should start to acquaint

itself and the Kenyan public with the depth, variety and achievements of the Kenyan Diaspora, as well as sensitizing them of their problems and their expectations from their homeland.

The Kenyan Diaspora contributes to development in various ways including:

- Building business networks and creating social capital
- Through Foreign Direct Investment (FDI)
- Sending money to friends and relatives in their countries of origin – commonly known as Remittances
- Getting involved in political processes
- Market development for products from Kenya
- Promoting tourism and Kenyan culture
- Science and Technology transfer
- Positive influence and intangible knowledge transfer and
- Philanthropy among others

This Session Paper addresses the various ways and areas in which the Kenyan government could address the above disparities by, first of all, adjusting its own structural policy area that will allow a symbiotic relationship between Kenya and its Diaspora to flourish. After such a step, the various other stakeholders can be approached to follow suit in both Kenya and countries where Kenyans are residing. Such stakeholders include:

- Representatives of Ministry of Foreign Affairs and Development Cooperation from countries of settlement
- World bank and IMF
- Non-governmental organizations
- Kenyan missions abroad
- Investment promotion agencies

- Corporations and other Private and Public companies with an interest in Kenya
- Donors and Foundations
- Kenyan Diaspora - individuals, organizations and professionals
- Kenyan public

From the above facts, it is clear that the contribution by the Kenyan Diaspora to development has been fraught with a host of obstacles which in many ways have adversely affected the volume and quality of contribution to Kenya. Such obstacles range from lack of awareness, lack of clear and supportive policies on both Kenya and countries of settlement; lack of a conducive environment to motivate more tangible contributions by the Diaspora; high money transfer costs; a chronic lack of information; lack of formal structures; lack of concrete networks with regular institutions, etc.

This Session Paper is divided into the following chapters that address some of the major areas that need tackling one by one.

CHAPTER ONE focuses on the issue of **Dual Citizenship**, the **Right to Vote** and the **Right to Representation** by the Kenyan Diaspora.

CHAPTER TWO deals with **Consular affairs** and provides an argument for the need for Diaspora to be included in appointments and employment in embassies and the improvement of public service to the Diaspora.

CHAPTER THREE covers the widely spoken issues of **Remittances** (money sent by the Diaspora to their country of origin) which has actually played a big role in directing attention to the plight of immigrants and acknowledgement of their role world wide.

CHAPTER FOUR focuses on **Trade and Investment** providing best practices and examples of incentives that have succeeded in countries that have attempted to develop a relationship with their Diaspora such as India, Israel and China.

CHAPTER FIVE deals way in which knowledge previously thought to have been drained out of Kenya can be tapped back hence reversing brain drain to **Brain Gain**.

CHAPTER SIX with a its wide spectrum of influence, looks into the other areas in which the Kenyan Diaspora contributes to, and can be facilitate in, such as **Tourism, Culture and Philanthropy**, etc.

CHAPTER SEVEN underscores the need to sensitize and put in place mechanisms and qualified personnel to deal with issues of **Gender Equity** in addressing all the areas of dealing with the Diaspora.

CHAPTER EIGHT underscores the need to undertake a mapping exercise which will allow all concerned parties to attain baseline information on the Kenyan Diaspora. This will result to the creation of a **Diaspora Data Bank**.

CHAPTER NINE deals with the development of policies to address the Diaspora issues in form of **Legislation**.

CHAPTER TEN underscores the need for the Bill to be passed in order to provide an effective monitoring mechanism. It is calls mechanism to be put into place so as to operationalize a working infrastructure in form of a **Diaspora Council and Secretariat**

Chapter 1

Dual Citizenship

Dual citizenship is becoming more common in our increasingly interconnected, global economy. Many countries are now seeing the advantages of dual citizenship and are liberalizing their citizenship laws (Ghana, Nigeria, South Africa, Israel, India, the Philippines, and Mexico are recent examples). Many other African countries are going through the process of legislating Dual Citizenship. Dual citizenship has the advantages of broadening Kenya's economic base by promoting trade and investment between the dual citizen's two respective countries.

The principal rationale of allowing Dual Citizenship in today's globalized world is obvious. Dual citizens can hold two passports or citizenship and essentially live, work, and travel freely within their native and naturalized countries.

Acquiring the citizenship of the host country for the Kenyan Diaspora goes along way in increasing their opportunities to resource abroad by enjoying the same rights accorded to the citizens of such countries. That means that they can then access better paid jobs reserved exclusively for citizens, access to, say, government supported programmes and

opportunities, loans, property ownership, etc. By increasing their earnings and potential, then Kenyan Diaspora will have more money to send back home for poverty reduction and investments.

Dual citizenship is extremely advantageous for Kenyans living abroad since not every Kenyan abroad has a success story. Indeed, the issue of dual citizenship has been a long-standing wish of the Kenyan Diaspora. Dual citizenship can benefit Kenyans who face abuse and exploitation. Thus, by allowing dual citizenship, Kenyans under difficult situations will attain the right to forward their grievances to the government representatives abroad.

Right to vote

Dual citizenship, goes hand in hand with the right to vote. Kenyans abroad should be accorded their constitutional right to vote in parliamentary and presidential elections. The current voting eligibility criteria does not consider the Kenyan living abroad and therefore renders them ineligible.

With today's technology, which is tested and applied in other countries, residents abroad have been enabled to vote in the elections of their home countries. In fact, Kenya's living abroad were able to vote in Kenya elections in the 70's.

Right to Representation

The right to vote goes with the right to representation. Kenyans in the Diaspora have debated widely on the subject of which constituency to vote in for in the Parliamentary elections. There is no doubt the legislative issues of concern to the Kenyans in the Diaspora are unique and distinct relative to those at home in quite a number of areas.

Secondly the foreign offices, embassies and missions are arms of the executive. Embassies are service offices for executive interests and cannot be assumed to play legislature's representative role. They are answerable to the minister, and not to the mwananchi, hence the Diasporans have no choice or recourse to their representative. The legislative representation will give the Diaspora an opportunity to influence and participate in the national policy making process.

Recommendations:

1. To amend the constitution to allow for Dual Citizenship
2. To amend the constitution to allow for the representation of Kenyans abroad in Parliament either by creating a Diaspora constituency(ies) or special interest nomination opportunity.
3. Amend the law to qualify Kenyans abroad to be eligible to vote in elections here at home

4. To put the enabling infrastructure in place immediately to facilitate the Kenyan Diaspora to vote in the 2007 elections and in the New Constitution Referendum
5. To facilitate financially and otherwise the Electoral Commission of Kenya to start the registration of voters among Kenyans abroad.
6. To facilitate the issuance of National Identity Cards for the Kenyans abroad
7. To facilitate the re-issue of Kenyan Passports to Kenyan citizens who may have lost their Kenyan passports on reason of acquiring citizenships of their host countries abroad

Chapter 2

Consular Affairs

Appointments and Employment

Being part of the Kenyan community, the Kenya Diaspora must play an important role in policy making. With extensive experience and learning opportunities on policy making processes in the host countries, the input of the Kenya Diasporas will be fundamentally worthwhile. Thus, in order to maximize their contribution there is need to contact and consult with the Diaspora on potential resource persons for the Kenyan government, and even in the private sector, living abroad.

There are very many qualified Kenyans with a great sense of understanding of Kenya and the country in which they reside. Other than being represented in the parliament, the Kenyan Diaspora should be aggressively sourced for appointment in key positions in government offices abroad..

In Staffing at the Kenyan Embassies, apart from key posts such as The High Commissioner, The Counselor, Military Attaché or other very key posts, commercial, development, economic, related posts could be occupied by the Diaspora and hence, significantly reduce expenses currently incurred in transfers, maintenance and settlement of embassy staff.

Public service

The Government of Kenya accords consular work a high priority and are committed to providing comprehensive and good consular services to Kenyans living abroad. In recent years the number of Kenyans traveling and residing overseas has increased substantially. Although traveling overseas and residing abroad has never been a problem to many Kenyans, many Kenyans are reportedly encountering problems during their stay in overseas countries.

Notwithstanding the improvements that have been made, there remains some weaknesses in the management processes and administrative systems supporting the provision of consular services. In particular, the following areas where the management of consular services would benefit from improvement:

1. The arrangements for the provision of travel advice and information should be strengthened to ensure that all travel information is underpinned by an effective communication strategy; warnings are highlighted and clearly explained; and the processes that lead to the issuance of travel advisories are systematically applied and the assessment appropriately documented;

2. There is a need for an effective case management system to support the monitoring and review of case progress and the collection of consular performance information;
3. Strengthening of performance management arrangements would help ensure that management, staff and clients are focused on the requirement to deliver prompt and responsive services. The establishment of appropriate service performance targets, the systematic measurement and/or assessment of client satisfaction and structured complaint handling are key areas to address; and
4. Contingency planning should be based on a systematic risk assessment, updated regularly, and more focused on the protection of Kenyan travelers and residents overseas.

Recommendations:

1. Solicit and gather data on potential value adding Kenyan Diaspora to be consider for appointments in positions in the countries of foreign residence
2. Holding briefs with Diasporas in embassies and missions on Kenyan foreign policy and interests in specific countries to inform them of Kenyans objectives in the respective countries.

3. Improve services in the foreign offices to serve the Diaspora in a more effective and friendly way to promote patriotism and government good will among the Diaspora
4. To improve reception of the Diaspora at the port of entry when returning home to make them feel more welcome and belonging, thus promoting ownership of the mother country.
5. Appointing special representatives in every embassy who will specifically mediate between the embassy employees and the Kenyan Diaspora resident in the host countries. Such persons would also act as links between the Diaspora and the Member(s) of Parliament for the Diaspora

Chapter 3

Remittances

To translate these needs into an effective monitoring mechanism, it is necessary to put into place / operationalise a working infrastructure.

*“Officially recorded remittances worldwide exceeded \$232 billion in 2005. Of this, developing countries received \$167 billion, more than twice the level of development aid from all sources. The world bank has suggested that remittances sent through informal channels could add at least 50 percent to the official estimate, **making remittances the largest source of external capital in many developing countries.**”*

“With the number of migrants worldwide now reaching almost 200 million, their productivity and earnings are a powerful force for poverty reduction,”
“Remittances, in particular, are an important way out of extreme poverty for a large number of people. The challenge facing policymakers is to fully achieve the potential economic benefits of migration, while managing the associated social and political implications.” said **François Bourguignon, World Bank Chief Economist and Senior Vice President for Development Economics.**

“Remittances are hard-earned income that, in most cases, has already been taxed,” said World Bank chief economist Francois Bourguignon. *“They should not be taxed again, and governments should not try to count them as development aid.”*

“The global development lender called for policies to improve the access of poor people to financial services to send and receive remittances - including expanding banking networks and credit unions and allowing developing country banks to open branches in rich countries.”

Kenyan's abroad remit a huge amount of money through both formal and informal channels. According to the survey conducted by the London-based Kenya Club Kenyan's in the UK alone send Ksh 50 billion annually whilst those in Germany remit Ksh 30 million a month. Equity Building Society, which recently entered into a sub-agency contract with Western Union, is said to now command 12% of the officially reported market with remittance transaction values of Ksh 3 million per day.

However, due to lack of clearly-defined policies and legislation most Kenyan's still face a number of barriers that impact on the flow of remittances. Due to this situation the majority of the Kenyan's abroad utilise informal money transfer systems, including personal couriers, that go unrecorded.

The London-based Kenya Club estimate that Kenyan's abroad remit not less than \$1 billion annually to Kenya of which \$ 500 is transferred through unreported informal transfer systems. The UK's Department for International Development (DFID) equally acknowledges that informal remittance mechanisms when taken into account more than doubles official flows.

Therefore this situation needs to be dealt with by passing a Bill that would remove such constraints and enable the Kenyan Diasporas to send the money home through formal channels which are beneficial to the nation. This is extremely important since Kenya is losing foreign

exchange earnings, as informal channels carry out money transfer without actual money movement. The Bill would lead to efficient and focussed channelling of remittances which will increase the level of savings domestically and thus create additional investment resources that avail cheaper capital to local investors. This would lead to an increase in foreign exchange earnings should be a further incentive for government's involvement in facilitating these services.

Recommendation

1. Setting up of structure in form of a financial institute or Diaspora Bank. Interest from the Development community (World Bank, IMF and Bilateral donors) is raising and suggestions to use such an institute to undertake parallel development have been aired. The Diaspora Bank will combine aspects of corporate finance, trade finance, investment fund management and poverty reduction to create a new product for the Kenyan Diaspora, their families and communities. In implementing this instrument, efficient transfers, attractive return on investment and enhanced national development are the main objectives. The Diaspora Bank would:
 - Provide key instruments to mobilise the financial resources of the Kenyan Diaspora including hard currency;
 - Increase the range of financial products to include investments, savings, pension, insurance, etc;

- Liaise with key stakeholders who have a mandate to streamline remittances into the general development policy framework;
- Streamline the smooth flow of remittances and other financial products in both Countries of Origin and Countries of Settlement by use of regular and formal channels;
- Create a liaison point for, among other stakeholders, the senders – who are the Kenyan Diaspora and financial institutions/ development community in the Country of residence;
- Benchmark and document best practices that allow smoother flow of remittances from countries such as India, Philippines, and Mexico and Countries of residence such as US, UK, etc.
- Eliminate exorbitant and prohibitive money transfer charges

Helped by the rapid and massive leaps forward in communication technologies, through the Diaspora Bank, the Kenyan Diaspora would have the capacity to exert far greater influence on their homeland than ever before.

2. Creating structured and credible investment vehicles to attract remittances.
3. Design remittance mobilization incentives to attract even higher volumes of transfers.
4. Enact enabling policies to support the creation of the desired environment

Chapter 4

Trade and Investment

Perhaps the single largest influence the Diaspora could have in the Kenyan economy is in the area of trade and investment. The large amounts of remittance should find way into well structured investment vehicles. These includes the capital markets (stock Exchange), engagement in all industries in form of shareholding through venture capital, or partnerships, Bonds, Treasury Bills, etc

Of high priority, a close working relationship should be established between the Diaspora and the Small and Medium Enterprises which employ well over 75% of the working population. This relationship would facilitate marketing of Kenyan products abroad and availing alternative source of financing of the SMEs businesses.

Diaspora professionals are working in senior positions in various industries abroad and their skills and expertise can be sourced to help build the industries here at home. The Diaspora's interaction with the global market especially in the developed world will help familiarize the local industries to international standards and expectations

Recommendations:

1. The Government should consider setting up Special Economic Zones, exclusively for projects to be set up by Non-Resident Kenyans (NRKs) and People of Kenyan Origin (PKOs). They should Involve Non-Resident Kenyans (NRKs) and People of Kenyan Origin (PKOs) in the development of Special Economic Zones such zones.
2. The Government could also consider issuing special infrastructure bonds for attracting investments from the Diaspora
3. The government could also consider extending fiscal incentives, such as reducing corporate tax rates to levels at or below competitive international levels
4. Removing restrictions on repatriation of profits (if need be especially to allow Diasporas to invest in host countries)
5. Eliminating needless licensing requirements
6. Sending trade and investment delegations to meet the Diasporas to inform them of the opportunities available.
7. Inviting the Diaspora home to have first hand opportunity to engage with local businesses especially to benefit the Small and Medium Enterprises who may not have the finances to travel abroad to take their opportunities to the Diaspora. This can be done through multi-sectoral exhibitions and conferences in Kenya with a focus on bringing the two parties together.
8. Celebrating and honouring successful Diaspora investments at home and abroad

Chapter 5

Brain Gain

There are a large number of internationally renowned experts, of Kenyan origin who are well positioned, in for instance, management and academic institutions. They are more than willing to provide assistance in upgrading skills in management and in the skills development, training and the general area of education.

In order to ensure systematic flow of brain gain form the Kenyan Diaspora it is imperative that policies that attract Kenyan Diaspora professionals should be designed to enable them return to Kenya or come periodically to work in critical areas of the economy which need foreign expertise. This can be done in many areas including but not limited to education, health, media, science and technology

Recommendations:

1. Facilitate interaction between professional associations and Kenyan Diaspora professional to help inform the professions in cutting edge research and technology and transfer of the same
2. Establish avenues of collaboration between institutions of higher learning and the Diaspora for mutual benefit

3. Facilitate the opportunity for the Diaspora to own or sponsor the creation of institutions of skills training in areas of short supply.
4. Online interaction opportunities can be established to engage with valuable Diasporas who may not be physically able to be present here at home.
5. Source and facilitate exchange programs, scholarships and internships both abroad and locally to maximize on the Diaspora potential

Chapter 6

Tourism and Culture and Philanthropy

The Diaspora can make a significant contribution to the growth of tourism in Kenya. There should be greater focus on promoting tourism among second generation Kenyan Diaspora by designing special tour packages and other packages tailor-made for this section of the Diaspora. In the same light the Diaspora is available to work in promoting Kenya as the best tourist destination on earth. Huge travel costs currently being incurred through tourism promotion initiatives could be greatly reduced by engaging and employing the skills of Diaspora based in target markets abroad. This is especially so because Kenyans living in different countries understand better the cultures and language of the host countries than officials from the tourism promotion board based in Kenya. It is easier for a Kenyan abroad to learn of tourism opportunities in Kenya than for a tourist board official to learn within the short period of stay the sales pitch to a new market especially non-English speaking clientele.

Philanthropy

Most Kenyans already contribute a lot to community development projects in their areas of origin. The government could facilitate the establishment of NGO's in Kenya that will link up with those of the Diaspora in their countries of residence to contribute to charity work at home. .

Chapter 7

Gender Equality

All the policy areas that will be affected in the implementation of this bill will have to be cautious of the gender perspective. The policy should be able to address both the needs of women and men in the Kenyan Diaspora. Most Kenyans who live abroad are married to Kenyans working abroad, Non-Resident Kenyans (NRKs), and People of Kenyan Origin (PKOs). Experience with Kenyan Diaspora shows that most Kenyan women have been victims of arbitrary marriage breakages with disadvantageous consequences. Many of these women have had to resort to Kenyan Embassies for help. Unfortunately, the type of assistance rendered to these women has been either too little or completely ineffective.

The main reason for this situation has been inadequate and unqualified staff at the Embassies. Most staff of the Embassies lack qualifications in marital affairs, knowledge of international law, and the appropriate advice. This problem needs to be addressed.

Chapter Eight

Diaspora Data Bank:

There is a need to undertake a comprehensive survey of the Kenyan Diaspora. This data will be focused in all areas of concern to planning and implementation of all recommendations.

Involving the Diaspora in the exercise and the endorsement of key government and credible institutions is very important to gain trust in the Diaspora to give as much information as possible. This will enable the government and the private sector to allocate resources wisely in the process of planning to engage the Diaspora. Networking with as many organizations and individuals in the Diaspora will be key to the success of this baseline survey. The Embassies may also be involved in providing logistics and any other assistance to access the Diaspora in the countries represented.

Recommendation:

1. A broad based survey questionnaire should be developed and tested among a pilot group in the Diaspora
2. A website should be developed and hosted by an online media outlet that has good reach of the Kenyans in the Diaspora, for example, The Nation newspaper online was used successful to reach over 12 ,000 Kenyans abroad on a petition on Dual citizenship

Chapter 9

LEGISLATION FOR THE KENYAN DIASPORA

Legislation could take any of the following forms-

1. Proposals for amendment to the Constitution of Kenya along the lines of the “Bomas Draft” or the “Wako Draft” especially on issues to do with citizenship.
2. Proposals for a principal legislation (Act of Parliament) being either-
 - (a) a separate and distinct Act of Parliament with a framework to cater for the specific needs of the Kenyan Diaspora; or
 - (b) an amendment to an existing Act of Parliament so as incorporate a framework for the realization of the needs of Kenyan Diaspora. An example of an Act which can be considered for amendment along these lines is the Investment Promotion Act, 2004. (*No 6 of 2004*)
3. Subsidiary legislation which could be either-
 - (a) a Legal Notice under an existing Act of Parliament to establish a framework to address the needs of the Kenyan Diaspora. This could be modeled along the lines of the current Public Procurement Regulations which are multisectoral and were promulgated under the Exchequer and Audit Act (*Cap. 412*). Examples of legislations under which the Kenyan Diaspora framework can be considered for

establishment is the State Corporations Act. (*Cap. 446*).

- (b) A Gazette Notice setting up a multisectoral agency for the Kenyan Diaspora along the lines of the National Economic Council (the one associated with Baroness Chalker) or the National Anti Corruption Steering Committee (the one associated with Rev Mutava Musyimi's). This approach however more administrative than legal and is best when it is used as a temporary measure.

The approach specified in paragraph 2 (a) would be a better approach for the reasons that the provisions of such Act of Parliament could be–

- (a) tailored in order to ensure harmony with the other existing Acts;
- (b) of a coordinating or advisory nature or, where the case allows, confer substantive rights and duties;
- (c) used to amend the various other Acts of Parliament so as to make them friendly to the needs of the Kenyan Diaspora.

In a nutshell, such legislation could be tailored along the lines of the Environmental Management and Coordination Act, 1999.

THE KENYAN DIASPORAS BILL, 2007

A Bill for

An Act of Parliament to promote and facilitate effective participation of the Kenyan Diasporas in the economic, political and social development of the nation; to provide for the establishment and functions of the Council of the Kenyan Diaspora and for connected purposes

ENACTED by the Parliament of Kenya, as follows-

PART I – PRELIMINARY

Short title and commencement. 1. This Act may be cited as the Kenyan Diasporas Act, 2007 and shall come into operation not later than ninety days from the date of its enactment.

Interpretation. 2. In this Act, unless the context otherwise requires, -

“Chairperson” means the Chairperson of the Council appointed under section 7;

“Chief Executive Officer” means the Chief Executive Officer of the Council appointed under section 10;

“Council” means the Council of the Kenyan Diaspora established by section 3;

“diasporas” means any and all person(s) living outside Kenya who holds or has held Kenyan citizenship;

“Minister” means the Minister for the time

being responsible for matters relating to foreign affairs.

PART II-ESTABLISHMENT OF THE COUNCIL OF THE KENYAN DIASPORAS

Establishment of the Council.

3. (1) There is established a council to be known of the Council of the Kenyan Diasporas.

(2) The Council shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of-

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) charging fees for services rendered by it and requesting for securities for such fees; and
- (e) doing or performing all other acts or things for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

Headquarters.

4. The headquarters of the Council shall be in Nairobi or at such other place the Council may decide.

Functions of the Council.

5. The functions of the Council shall be to-

- (a) coordinate the development and implementation of diasporas focused policies;
- (b) advise the Government on and support such measures as may be necessary for the creation of a conducive environment for the diasporas to effectively participate in the economic, political and social affairs of the nation;
- (c) promote cooperation and interaction between the diasporas, public bodies and departments, local authorities, Non Governmental Organizations and other private sector bodies with activities relating to the diasporas;
- (d) monitor independently or in co-operation with any person, such surveys, investigations and services as may be necessary for the promotion of the welfare of the diasporas;
- (e) address complaints on illegal overseas recruitment agencies, non receipt of salary , accommodation or other distress suffered by diasporas;
- (f) address problems faced by diasporas in interacting with

Government Departments;

- (g) process, in collaboration with the relevant agencies, enquires by diasporas for investment opportunities in Kenya.
- (h) recommend for honours those diasporas who have excelled in their professions abroad;
- (i) maintain cultural bonds with the diasporas;
- (j) consider any matter relating to diasporas specifically referred to it by the Government and recommend such action as may be deemed necessary.

Powers of the Council.

6. The Council shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Council shall have power to –

- (a) control, supervise and administer the assets of the Council in such manner as best promotes the purpose for which the Council is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Council;
- (c) receive any grants, gifts, donations

or endowments and make legitimate disbursements there from;

- (d) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (e) open such banking accounts for its funds as may be necessary;
- (f) invest any funds of the Council not immediately required for its purposes in the manner provided in section 19;
- (g) undertake any activity necessary for the fulfillment of any of its functions.

Composition of the Council.

7. (1)The Council shall consist of -

- (a) a Chairperson appointed by the President;
- (b) the Permanent Secretary in the Ministry for the time being responsible for matters relating to foreign affairs or his designated alternate not being below the level of Deputy Secretary;
- (c) the Permanent Secretary to the Treasury or his designated alternate not being below the level of Deputy Secretary;

- (d) the Permanent Secretary in the Ministry for the time being responsible for matters relating to economic planning or his designated alternate not being below the level of Deputy Secretary;
- (e) the Permanent Secretary in the Ministry for the time being responsible for matters relating to trade and industry or his designated alternate not being below the level of Deputy Secretary;
- (f) the Permanent Secretary in the Ministry for the time being responsible for matters relating to immigration or his designated alternate not being below the level of Deputy Secretary;
- (g) eight persons appointed by the Minister in accordance with subsection (2);
- (h) the Managing Director of the Kenya Investment Authority; and
- (i) the Chief Executive Officer who shall be an ex-officio member and Secretary to the Council.

(2) The organizations listed in the First Schedule shall each submit a list of two nominees, one of whom must be a woman and out of the sixteen names submitted the Minister shall appoint eight persons one from each of the eight organizations and at least a third of the eight appointees shall be from either gender.

Conduct of business and affairs of the Council.

8. (1) The conduct and regulation of the business and affairs of the Council shall be as provided in the Second Schedule.

(2) Except as provided in the First Schedule, the Council may regulate its own procedure.

Remuneration of Council members.

9. The Council shall pay its members such remuneration, fees or allowances for expenses as it may determine in consultation with the Minister for the time being responsible for matters relating to finance.

Chief Executive Officer

10. (1) There shall be Chief Executive Officer who shall be appointed by the Council and whose terms and conditions of service shall be determined by the Council in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless such person-

(a) has a higher university degree in finance, law or diplomacy from a recognized university;

(b) has at least ten years' working experience in the diasporas .

(3) The Chief Executive Officer shall-

(a) be the secretary to the Council;
and

(b) subject to the directions of the Council, be responsible for the day to day management of the affairs and staff of the Council

Staff of the Council.

11 The Council may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine.

Delegation by the Council.

12. The Council may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Council, the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act or under any other written law.

Protection from personal liability.

13. (1) No act or omission by any member of the Council or by any officer, employee, agent or servant of the Council shall, if the act or omission was done bona-fide for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any, action, claim or demand whatsoever.

(2)The provisions of subsection (1) shall not relieve the Council of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.

Common seal.

14. (1) The common seal of the Council shall be kept in such custody as the Council may direct and

shall not be used except on the order of the Council.

(2) The affixing of the common seal of the Council shall be authenticated by the signature of the Chairperson and the Chief Executive Officer and any document not required by law to be made under seal and all decisions of the Council may be authenticated by the signatures of the Chairperson and the Chief Executive Officer.

(3) Notwithstanding the provisions of subparagraph (2) the Council shall, in the absence of either the Chairperson or the Chief Executive Officer in a particular matter, nominate one member to authenticate the seal on behalf of either the Chairperson or the Chief Executive Officer.

(4) The common seal of the Council when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Council under this section shall be presumed to have been duly given.

PART III-FINANCIAL PROVISIONS

Funds of the Council.

15. (1) The funds of the Council shall comprise of -

- (a) such sums as may be granted to the Council by the Minister pursuant to subsection (2);
- (b) such fees, monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions under this Act or under

any written law; and

- (c) all monies from any other source provided for or donated or lent to the Council.

(2) There shall be made to the Council, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Council in the exercise of its powers or the performance of its functions under this Act.

Financial year.

16. The financial year of the Council shall be the period of twelve months ending on the thirtieth June in each year.

Annual estimates.

17. (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of the revenue and expenditure of the Council for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Council for the financial year and in particular, the estimates shall provide for –

- (a) the payment of the salaries, allowances and other charges in respect of members and staff of the Council;
- (b) the payment of pensions, gratuities and other charges in respect of members and staff of the Council;
- (c) the proper maintenance of the buildings and grounds of the Council;
- (d) the maintenance, repair and

replacement of the equipment and other property of the Council; and

- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.

(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Council shall not increase the annual estimates without the consent of the Minister.

Accounts and
audit.

18. (1) The Council shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Council.

(2) Within a period of four months from the end of each financial year, the Council shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Council together with-

- (a) a statement of the income and expenditure of the Council during that year; and
- (b) a balance sheet of the Council on the last day of that year.

(3) The accounts of the Council shall be audited and reported upon in accordance with the Public Audit Act, 2003.

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Investment of funds.

19. The Council may invest any of its funds in securities, in which for the time being trustees may by law invest trust funds, or in any other securities or banks which the Treasury may, from time to time, approve for that purpose.

PART IV-GENERAL PROVISIONS

Fiscal incentives.

20.(1) The Minister for the time being responsible for matters relating to finance shall propose to Government tax and other fiscal incentives to induce or promote a conducive environment for the investment in the country by the diasporas.

(2) Without prejudice to the generality of subsection (1), the tax and fiscal incentives may include-

(a) customs and excise waiver in respect of capital goods imported by diasporas;

(b) tax rebates to industries and other enterprises established by diasporas;

(3) The Minister for the time being responsible for matters relating to finance shall, in the formulation of economic and budgetary policies and programmes, take into consideration and as far as practicable incorporate the recommendations of the Council submitted pursuant to its functions under this Act.

Database

21. (1) The Council shall maintain an up to date database consisting of information necessary for the furtherance of its functions under this Act.

(2) Without prejudice to the generality of

subsection (1) the database shall contain detailed information relating to-

- (a) the investment incentives, business related legislation, local businesses seeking foreign joint venture partners and targeted investment opportunities;
- (b) the diasporas, their actual location and expertise in various areas which are of shortage in the country;
- (c) travel advice and consular services.

(3) The Council shall have a website and run such publications as may be necessary to effectively communicate to the diasporas the information stored in the databank referred to in this section

Regulations

22. The Council, with the approval of the Minister, may make rules generally for the better carrying out of its functions under this Act.

FIRST SCHEDULE

(s.7)

ORGANIZATIONS WHICH SHALL NOMINATE MEMBERS FOR APPOINTMENT TO THE COUNCIL

1.The KCFA *(to be stated name in full)*

2.KCA*(to be stated name in full)*

3. Kenya Private Sector Alliance

4. Kenya Association of Manufacturers

(Names the eight organizations to be agreed)

SECOND SCHEDULE (s.8)

**PROVISIONS AS TO THE CONDUCT OF
BUSINESS
AND AFFAIRS OF THE COUNCIL**

Tenure of office.

1. The Chairperson or a member of the Council other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment.

Vacation of office.

2. (1) The Chairperson may resign from office by notice in writing to the President.

(2) A member other than an ex-officio member may-

(a) at any time resign from office by notice in writing to the Minister;

(b) be removed from office by the Minister on recommendation of the Council if the member -

(i) has been absent from

three consecutive meetings of the Council without its permission;

(ii) is convicted of a criminal offence that amounts to a felony under the Laws of Kenya;

(iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(iv) is otherwise unable or unfit to discharge his functions.

Meetings.

3. (1) The Council shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members shall, convene a special meeting of the Council at any time for the transaction of the business of the Council.

(3) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' written notice of every meeting of the Council shall be given to every member of the Council.

(4) The quorum for the conduct of the business of the Council shall be ten members including the Chairperson or the person presiding.

(5) The Chairperson shall when present, preside at every meeting of the Council but the members present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Council shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Council may determine its own procedure and the procedure for any committee of the Council and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of
the Council.

4. (1) The Council may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Council shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Council may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Council.

Disclosure of interest.

5. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Council who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding one hundred thousand shillings.

Contracts and instruments.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.