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January 3, 2017
The Clerk of the Senate
Main Parliament Buildings
Parliament Road NAIROBI

Via email: cSenate@parliament.go.ke

Dear Sir,

Memorandum on Election law (Amendment) Bill 2016, from the Kenya ICT Action Network (KICTANet)

The Kenya ICT Action Network (KICTANet) is a multi-stakeholder platform for people and institutions interested and involved in ICT policy and regulation. The network aims to act as a catalyst for reform in the ICT sector in support of the national aim of ICT enabled growth and development.

Pursuant to the gazette notice requesting for public input into the Elections Law (Amendment) Bill 2016, and after intense consultation with our stakeholders, we propose the following:

As an ICT community, we acknowledge that there are many amendments necessary but our interest is in **the amendment to sections 39 and 44.**

This is the amendment in question:

14B.(1) Notwithstanding the provisions of sections 39 and 44, the Commission shall put in place a complementary mechanism for identification and transmission of election results that is simple, accurate, verifiable, secure, accountable and transparent to ensure that the Commission complies with Article 38 (2) and (3) of the Constitution. (2)The Commission shall use the complementary mechanism referred to in sub-section (1) for identification and transmission of election results only where the technology initially deployed fails. (3)Before using the complementary mechanism referred to in subsection (1)for identification and transmission of election results, the Commission shall notify the public and all candidates and shall immediately cause the notification to be published in the electronic media and in at least

two daily newspapers of nationwide circulation detailing the reasons necessitating the use of the alternative mechanism.

We suggest that the amendment be revised to provide further clarity along the following lines:

a) The employment of technology in elections management is meant to address questions of integrity of the election and efficiency in transmission of the results. It is our submission that once the IEBC system has been procured, it is possible for the technical committee to come to a consensus on how to mitigate potential vulnerabilities of the system.

Good systems are built with inherent redundancy and it is possible to develop a system that safeguards the integrity of the vote as well as efficiency of transmission. It is possible to have the primary and redundant systems being electronic.

b) We acknowledge that for purposes of RTS, there are areas that do not have network coverage. However, these are few areas which can be covered by alternative technologies such as Wimax, VSAT, or satellite phones. It is our view that the costs associated with these technologies could comfortably be covered by the Universal Service Fund.

c) We further acknowledge that there is need to think of possible cases of failure. It is our view that the threshold of acceptable failure should be agreed beforehand. We therefore propose that the amendment be further amended to include:

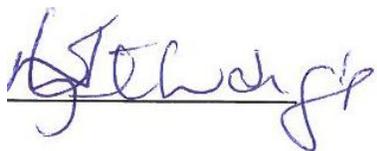
- i) Mitigation instances of failure of EVID equipment through proper training, pre-charging devices and having a backup of devices. This should be captured in the Regulations on ICT.
- ii) EVID devices should be local databases that do not require real time network connection. The databases should be audited post voter identification and results transmission.
- iii) Results transmission should also have redundancy. The centers transmitting results should have at least three different means of transmitting results so as to improve the efficiency of the system.

d) In line with Article 35, election information should be proactively disclosed to the public. With technology, information such as statistics of EVID and manual ID where it has occurred, results transmission as well as logs about the transmission should be proactively disclosed to enhance integrity and transparency of the vote.

For further reference, I also attached a detailed document which contains a verbatim collation of questions, issues and suggestions raised by our members during our consultations on the Bill.

Representatives of KICTANet would be available to further discuss this memorandum with your office. Grace Githaiga, the Co-convenor can be reached on phone number 0722701495 or on email ggithaiga@kictanet.or.ke, or ggithaiga@hotmail.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Githaiga', written over a horizontal line.

Grace Githaiga,
Co-convenor, KICTANet

Annex: Detailed Memorandum.