



Ref:

Date: 9<sup>th</sup> August, 2017

Hon. James Orengo, SEN.  
Chief Agent,  
NASA Campaign Secretariat  
Capital Hill Square, 4<sup>th</sup> Floor  
Upperhill  
NAIROBI

**RE: PRESIDENTIAL ELECTION RESULT**

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We acknowledge receipt of your letter dated 10<sup>TH</sup> August, 2107 on the above subject.

The Commission understands your letter as making the following allegations:

1. NASA has in its possession the actual Presidential Election results contained in the Commission's data base.
2. The authentic and legitimate results of the Presidential Election is the transmission received in the IEBC servers.
3. NASA has in its possession data from the IEBC servers and screen shots showing the results as displayed on the Commission's website and its displays at Bomas.
4. According to NASA, at the time of writing the said letter, H.E. Uhuru Kenyatta and Hon Raila Odinga had garnered 7,755,428 and 8,041,726 votes respectively in the General Election held on 8<sup>th</sup> of August, 2017. In support of this you have annexed to your said letter a document titled `dbo.PRESIDENTIAL_REAL_TIME` which you allege is the "actual &

complete data contained in the IEBC servers”. Based on the above allegations you have requested the Commission to do the following:

- i. The IEBC stop forthwith the display of unverified and unauthenticated results.
- ii. The Commission allows political parties to download all the Forms 34A and Forms 34B to enable them verify the information expeditiously. It is practically impossible for political parties to verify all the 41,000 documents with only two terminals that the IEBC is providing.
- iii. The Rt Hon Raila Amolo Odinga and Hon Stephen Kalonzo Musyoka be declared as the President and the Deputy President of the Republic of Kenya.

The Commission responds to your allegations and demands in the Order that they appear as follows:

#### **1. ACTUAL PRESIDENTIAL RESULTS**

- The Court of Appeal in **Civil Appeal No 105 of 2017 IEBC Vs Maina Kiai & Others** held that the results of the Presidential Election would be electronically transmitted from the polling stations to the constituency returning officers, who would tally and verify the said results and in compliance with **Section 39(1)(c)(a), Elections Act**, electronically transmit the results to the Commission at the National Tallying Centre.
- The Commission would then collate the results from the 290 constituency returning officers and the Chairperson of the Commission would thereafter, in accordance with **Articles 138(3)(c) and 138(10) of the Constitution**, declare the result of the Presidential Election.
- The lawful results in the Presidential Election are those announced by the Constituency Returning Officers and contained in Form 34B completed by the Constituency Returning Officers. The final results of the presidential Election is that declared by the Chairperson of the Commission being the aggregate of the results announced by the 290 Constituency Returning Officers.

- At the time your said letter was received, the Commission had received only 131 Form 34Bs meaning that the transmission of the results of the Presidential Election have still not been completed. The accurate and lawful result will thus only be ascertained once all the Form 34Bs are received by the Commission and the results therein collated. Your assertion that the accurate and lawful results are contained in the IEBC servers is grossly incorrect and premature.
2. Without prejudice to the legal position set-out above, the Commission has reviewed the document entitled `dbo.PRESIDENTIAL_REAL_TIME` and we make the following comments:
- Although you refer to data that supposedly supports the number of votes referred to in your letter, you have not attached copies of Form 34As or 34Bs or the raw data allegedly contained in the IEBC servers for purpose of authentication of your tabulation and comparison with the actual data received by the Commission. We are therefore unable to comment on the character of the alleged raw data since we have not seen it. We request that if indeed you have such data, you forward it to us for our review and verification.
  - The document entitled `dbo.PRESIDENTIAL_REAL_TIME` is in any case obviously and plainly falsified and contains elementary errors. We have set-out below a sample of the glaring errors in your said document:
    - (i) The total number of registered voters currently stands at 19,611,423 and not 19,601,502 as indicated in your document. Further your data fails to detail or include the diaspora and prison voters.
    - (ii) The total number of votes cast in Siaya County which is given in the last Column as 482,772 exceeds the total number of registered voters in the first Column which is indicated as 457,953.
    - (iii) The total number of registered voters in Nyamira County is indicated as 278,853 yet the total number of votes cast

is 2,411,731. This erroneous number is included in the total voter turnout, which according to NASA IS 18,362,556 and is indicated as representing a turnout of 73.82%. Basic arithmetic will show that a total turnout of 18,362,556 against a total sum of registered voters of 19,601,502 registered voters represents a turnout of 93.68% and not 73.82% as indicated in your document.

- (iv) The total number of votes cast in Nyamira County which is shown as 2,411,731 in the last column, is the exact number as the total number of votes cast in Nairobi County. In addition a basic reading of the column representing the total number of votes cast in Nairobi county in Column 3 is shown as 2,411,731 while the last Column indicates 16,936,696.
- (v) The running totals are also obviously wrong. The figure in Column 3 of the total votes cast should be the same as the aggregate for the votes cast for the eight [8] presidential candidates which is set-out in the last Column. In your document, the figure in Column 3 which is given as 16,993,696 is different from the aggregate of the individual votes cast, which is indicated as 18,362,556.
- (vi) The annotation dbo shows that the information in your document shows that it is a print out from Microsoft SQL database. The Commission is on record that its results management platform runs on an oracle database which is intact and secure.

3. The Commission reiterates that its commitment to strictly comply with the provisions of the Constitution and the law. In that regard the Commission will only declare the results of the Presidential Election as directed by Article 138(3)(c) & 138(10) of the Constitution. The Constitution and the law do not envisage a situation where a candidate in an election demands that he be declared the winner of an election based on results that he has provided to the Commission.

4. Finally Article 249 of the Constitution stipulates that the Commission is independent and not subject to the control of any person or authority. In the circumstances the demands in paragraphs 1 & 3 of your letter constitute a direct violation and breach of the independence of the Commission and are therefore unconstitutional.
5. The Commission has noted the demand number 2 in your letter. As you are aware Presidential Candidates agreed on a framework whereby one [1] account was to be provided by the Commission to each Presidential Candidate to facilitate ease of access to Forms 34As and 34Bs. The Commission has in compliance with that negotiated agreement provided the said account to each Presidential Candidate and thereby provided reasonable access to the Forms 34A and 34B.
6. NASA has, through its chief agents, continued to participate in confirmation of results of Form 34B at Bomas. Form 34As have been available for some time now on the Commission's public portal, the Commission is aware that a large number of members of the public have accessed the said information. From the time the information was uploaded there have been no claims from members of the public regarding any inconsistencies or deficiencies with the information.

W.W. CHEBUKATI  
CHAIRMAN