



21st September, 2017

The Chairman,

Independent Electoral & Boundaries Commission,

Anniversary Towers, 6TH Floor,

University Way,

NAIROBI

Att: Mr Wafula Chebukati

Dear Sir,



RE: MANAGEMENT OF INFORMATION AND THREATS TO JUBILEE CHIEF AGENT

Our attention has been drawn to news reports which have been recently published on a regular basis setting out details of Memorandums issued by your office to the Commission's members and staff.

As you will recall, on 10th August 2017, NASA Chief Agent Hon Musalia Mudavadi and alternate Chief Agent Hon. James Orengo held a press conference. At the said press conference, NASA alleged that it was in possession of information it had obtained from confidential IEBC sources.

We could cite several other instances where NASA has claimed to be in possession of internal IEBC information or where, internal IEBC Memos and documents have been leaked to the media only for the Commissioners to refute such information or issue statements indicating that such information was released without authorisation and/ or prematurely released even as the Commission was reviewing the said material.

Section 27 of the IEBC Act provides a framework for the management of information by the IEBC and in particular obliges every employee and member of the Commission to sign a confidentiality agreement.

The objective of the said provision is to provide a mechanism for the orderly dissemination of information in a manner that:

- a. Secures the rights of privacy for the Commission, its members and employees;
- b. Ensures that unauthorised individuals and/ or parties do not access information that is either at a deliberative stage by the Commission; or
- c. Ensures that unauthorised individuals and/ or parties do not access information that is restricted for purposes of the efficient management of elections.

The consequences of failure to adhere to the responsible handling of information are now becoming clear. For example, in the period immediately following the access to IEBC servers by NASA, NASA called for a press conference at which they released the information they had gathered including the email addresses of numerous IEBC members, staff and other stakeholders, including NASA's technology representative at the National Tallying Centre and that of our chief agent.

Consequently, many of the said individuals have now become the target of cyber-attacks and bullying. In addition thereto, NASA leaders have used the Memos allegedly leaked from IEBC offices to make all manner of false and baseless accusations with the stated intention of ensuring an election is not held as directed by the Supreme Court of Kenya in its judgement and as required by the provisions of Article 140 (3) of the Constitution of Kenya.

In addition, NASA leaders have deliberately distorted the information they gleaned from the read- only access granted by the Supreme Court Order and turned such information into a tool for peddling falsehoods and attacking individuals either employed by the Commission or appointed as Agents of political parties including Jubilee's Chief Agent Mr. Davis Chirchir who has now become the subject of daily attacks and harassment at all NASA press events.

The facts are well known to NASA and the Commission but we nevertheless set them out again to make them abundantly clear:

- i) On the evening of 8th August 2017 at 7.30 pm or thereabouts, at the request of NASA, all the 8 Presidential Candidates Chief Agents were given read only access to IEBC server in Bomas to enable them read only access and verify the transmitted text results against the scanned form results.

To facilitate establishment of the access, all the chief agents were requested to provide email addresses. The activity audit log-ins trail time stamps of the Agents obtained following the read only access granted by the Supreme Court to Jubilee and NASA are attached. You will note that NASA's representative, Mr John Walubengo accessed the IEBC servers the most times during that period. The statistics regarding access by the majority of agents are as follows:

<u>NAME</u>	<u>CANDIDATE</u>	<u>NUMBER OF TIMES IEBC SERVER ACCESSED</u>
a) John Walubengo	Raila Odinga	54
b) Collins Dindi	Prof Wainaina	41
c) Davis Chirchir	Uhuru Kenyatta	24
d) Bern Wafukho	Cyrus Jirongo	8
e) Bill Kagai	Ekuru Aukot	5

- ii) The aforesaid access was granted following a meeting, which is a matter of public record, convened by the Chairman IEBC together with all IEBC commissioners and all the presidential chief agents in attendance.
- iii) From NASA, Musalia Mudavadi, James Orengo, Olga Karani and John Walubengo were in attendance, while from Jubilee Party, Winnie Guchu, Fred Ngatia and Davis Chirchir were in attendance. The specific concern from NASA was that the display of results only involved the text results without the scanned image and a party could not verify the text against the scanned image even when the two had been transmitted and received.

The purpose of this letter, therefore, is to request the Commission to take urgent measures:

- a. To ensure the provisions of section 27 of the IEBC Act are complied with;
- b. To correct the untrue and misleading information being peddled by NASA regarding our party Agents;
- c. To share with the Jubilee Party, Stakeholders and the Public what protocols the Commission has put in place to secure the orderly dissemination of information in a manner that promotes confidence in the electoral process;
- d. To liaise with the Registrar of Political Parties and take appropriate action in view of the provisions of Article 91(2)(b) of the Constitution of Kenya and the Code of Conduct for political parties established under the provisions of Section 6 (2) (e) of the Political Parties Act, Act No 11 of 2011 which prohibits political parties from engaging in or encouraging violence by, or intimidation of, its members, supporters, opponents or any other person.
- e. To take appropriate action pursuant to the provisions of Section 13 (k) of the Election Offences Act which states as follows:

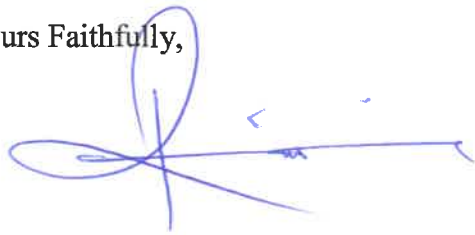
A person who

(k) publishes, repeats or disseminates in any manner whatsoever, information with the intention of—

- (i) disrupting or preventing the election;
- (ii) creating hostility or fear in order to influence the process or outcome of the election; or
- (iii) otherwise unlawfully influencing the process or outcome of the election, or aids, abets counsels or procures the commission of or attempts to commit any such offence;

commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

Yours Faithfully,



Raphael Tuju
Secretary General
Jubilee Party Kenya

CC: The Director of Public Prosecutions
Department of Public Prosecution
NSSF Building, Block 'A'
19th Floor
P.O. Box 30701-00100
NAIROBI

Registrar of Political Parties
Lion Place, Waiyaki way
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