

INTERNAL MEMO

FROM: CHAIRPERSON

TO: CEO/CS

REF: IEBC/CP/CON/A/2/VOL.1(52)

DATE: SEPTEMBER, 18<sup>TH</sup> 2017

RE: SC PET NO 1 OF 2017

RAILA ODINGA & ANOTHER VS IEBC & 2 OTHERS

I refer to the above subject. Issues emerging therefrom particularly on the Court sanctioned reports as well as your Memo my office dated 5<sup>TH</sup> September, 2017, the contents of which are well noted.

I write to state the following for purposes of unequivocating the record, as well as providing guidance and direction on the better management of the Commission's electoral ICT related processes.

#### 1.0 GENERAL

The issues raised as regards the electoral technology are informed by the logs provided by Messer Safran Identity and Security aka Oberthur Technologies [OT] Morpho, which information I believe is well within your possession and knowledge.

I must –at the outset- appreciate that most of the IEBC staff involved in the 8<sup>TH</sup> August General elections discharged their duties diligently and professionally. However from the said information, and the determination from the Supreme Court [detailed reasons for which we await] there are some members of staff from the ICT Directorate who were/are either incompetent and/or deliberately and grossly misconducted themselves by carrying out acts of malpractices.

As the Commission's Chairperson and as the National Returning Officer for the country's Presidential Election: I reiterate that we need not await the reasoned Supreme Court judgment to enable the Commission commence rectification of any shortcomings that may be evident from the 8<sup>TH</sup> August Election: if we are to timeously prepare for the fresh presidential elections.

## 2.0 ISSUES EMERGING FROM YOUR MEMO OF RESPONSE

I further note that your Memo in response to the issues posed in my earlier Memo, raises more questions than answers, to wit:

### (i) Statutory Forms

I am not privy to any plenary Minutes that confirm only Form 34As were to be pre-printed with candidates' names and security features:

- I require the supporting documentation, including packing lists of the Forms printed and supplied by M/S Al Ghurair LLC;
- Avail copies of the training manuals as to usage of the Forms 34B and 34C; and,
- Prepare a Paper on how to ensure that the discrepancies about the Forms lacking security features are rectified.

### (ii) MFI Support

In your subject Memo you state that were, "no notable failures that significantly impaired the required processes". These required processes being, printing and scanning. Whereas I am advised, that in a TV interview on the 13<sup>th</sup> of September, 2017 with NTV's Larry Madowo, you stated that there were "printing failures" in some constituencies that supposedly ended up "destroying the forms".

Indeed with the said satisfactory level of support that provided by M/S MFI, how and why did the printing failure and consequent destruction of Forms happen? Further in the Memo dated 31<sup>st</sup> August, 2017 [at the 3<sup>rd</sup> page thereof] from the Commission's Director, ICT James Muhati, he blames the image quality as one of the reasons for reported numerous transmissions of Forms 34B. According to him this greatly impacted the close to 10,000 logs created viz the Chairperson's credentials and ultimately the integrity of the data in the servers.

In view of the positions adopted by yourself and Mr Muhati, it can therefore be observed that poor printing and/or scanning is one of the reasons for the ultimately many logs that are recorded on the FTP system. These are certainly notable failures, that admittedly significantly impacted, the required processes, necessitating the concern posed in my subject Memo but remains unanswered.



(iii) ICT Memo on Chairperson's/NROs Account

First the Chairperson never attended any briefing by the ICT/IEBC Team at Bomai on the 7<sup>th</sup> of August, 2017 or at all, on the Chairperson/NROs account.

I have reviewed the workflow provided [at annex 7, as an attachment to the Memo dated 31<sup>st</sup> of August, 2017] as well as the Minutes of the Meeting on Presidential Election Results Transmission [Held on 21<sup>st</sup> July, 2017 at the Director, ICT Office; similarly attached to the Memo dated 31<sup>st</sup> August, 2017]; and it was never anticipated that the functionalities of the Chairperson/NRO would include DELETION of Forms with "poor image quality" or "corrupted forms".

Infact: as confirmed at page 1 of the Workflow attached to the Memo dated 31<sup>st</sup> August, 2017: DELETION [by the Chairperson/NRO] is completely "PROHIBITED" under the security checks which state clearly and in no uncertain terms that, "Deletion and Overwriting not permitted" and that, "Only the National Returning Officer shall have read only access of the designated shared folder on the FTP server".

Given the aforesaid, how then did the two [2] ICT officers, acquire additional rights to delete and other escalated privileges to the FTP server, under the Chairperson/NROs account? Why would this super account, be conveniently and exclusively managed by them with no oversight? Consequently;

- o Under whose authority did they accrue these super user rights, in respect of the Presidential election?
- o What was the scope of the user rights/privileges exercised in the name of the Chairperson, and where these rights delegated or otherwise assigned to any other person? If so, whom?
- o Why and under whose authority did these officers insist on deleting the unclear or corrupt Forms instead of archiving the same? Are there any such unclear and corrupt Forms available?
- o The Commission's Plenary approved two options on transmission of Form 34B; [refer to the 4<sup>th</sup> page of the attachments to annex 7 of your response] and not one option as alluded to in your response?
- o Who had access over the Chairperson's email address, and who gave authority for commencement of its use?

- Why didn't the ICT team follow the naming convention and precedent set by the FTP set-up account instead of using the Chairperson's account?
- If indeed the Forms were being re-sent from Constituencies as a result of unclear or corrupted images, why are there recorded instances of Forms 34B uploads from the Chair's account? Shouldn't these logs, actually show up in the respective Constituency R.Os names?
- Reference to "lack of concentration" from your supposed follow up with the ICT team, makes no sense and trivialises obviously grave and legitimate concerns. The ICT team would; if indeed they set-out to conduct any briefing to the Chairperson and Commissioners as alleged; not have finalised their 'brief' until they had communicated the salient matters and secured an understanding of the Chairperson and Commissioners.
- I am advised that deletions of Forms, under a read only user account, cannot be 'proper' and certainly does not constitute 'normal access and retrieval functions'; and is actually reasonable cause for worry *viz* did the other 'read only' users, also have such enhanced rights?

(iv) **KIEMS – RESULTS TRANSMISSION**

The Plenary resolution adopting the work flow for the delivery of Forms [refer to the 1<sup>st</sup> page of attachments to annex 7 of your response]; Was that Forms be transmitted together with the text; with the RTS actualising this Plenary resolution. Your Memo fails to avail a response, as to why a significant number of polling stations, would nonetheless send text results without image of result forms.

In your subject Memo, you seem to be alluding to the fact that network challenges led to text transmission without the image. This action was in direct contradiction to the Plenary resolution that, if there was no network connectivity to contemporaneously send both text and image results, the KIEMS devise would securely store the image and automatically transmit the same when the sufficient network was realised particularly through the Satellite phone devices.

(v) **Use of SFTP for Forms 34B Transmission**

I note that all security measures including 'hash' functionality were put in place in the SFTP system. I have however been advised that cryptographic hash functions are indeed used to protect data integrity; and that in the case of sending files, there



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the 8<sup>th</sup> August, 2017. Why was the process of retrieving these coordinates not initiated a few days later and forwarded to the MNOs for review and realignment?

Your response alludes to logistical challenges as impairing the process; were the said logistical challenges in getting those polling station coordinates communicated to the Commission?

(vii) GPS and Geo-fencing

The concern posed in my subject Memo under this header regards the KIEMS Kits GPS feature, properly referred to as Global Position System. If this feature existed/exists in the Kits, why was it switched off from the 5<sup>th</sup> of August, 2017? How then could one tell if the Kits were in the right location/station?

Consequently, without this feature and for purposes of an audit, how would one evaluate and verify the MNOs who claimed coverage in the various areas?

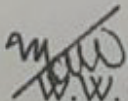
### 3.0 CONCLUSION

The Chairperson and the Commissioners took oath of office to serve the Kenyan people. Our joint Constitutional mandate and indeed the Chair's goal remains to deliver free, fair and credible elections.

Quite patently, the ICT Director and the two members of staff involved in managing the SFTP platform, appear to have fallen short of assisting the Commission successfully discharge this collegial and constitutionally enshrined mandate: the Chairperson as the NRO therefore demands that the following officers in the ICT Directorate be immediately suspended in accordance with the enabling laws and the Commission's HR and Administration Manual to facilitate full and proper investigations:

- (i) James Muhati – Director;
- (ii) Paul Mugo – ICT Coordinator; and,
- (iii) Boniface Wamae – ICT Officer.

This is especially necessary to not just restore waning public confidence in the Commission's ability to prepare and deliver credible polls but also assert the integrity and fidelity of the Commission to the rule of law.

  
W.W. CHEBUKATI  
CHAIRPERSON

CC: COMMISSIONERS