

The Chairperson  
Independent Electoral and  
Boundaries Commission (IEBC)  
Anniversary Towers  
**Nairobi**

**Attention: Mr. Wafula Chebukati**

Dear Sir,

**RE: ACCESS TO INFORMATION**

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I refer to the above captioned matter and wish to address you as below;

I am a citizen of the Democratic Republic of Kenya and a registered voter duly registered and eligible to vote in the forthcoming presidential election.

**Article 35 of the Constitution** provides that every citizen has the right of access to information held by the State and information held by any other person and required for the exercise or protection of any right or fundamental freedom.

Pursuant to this provision of our Constitution Parliament enacted **the Access to Information Act** which is an Act to give effect to Article 35 of the Constitution; to confer on the Commission on Administrative Justice (CAJ) the oversight and enforcement functions and powers and for connected purposes.

The forthcoming presidential election is an opportunity that I have to exercise my constitutional right as enshrined under **Article 38** of the Constitution.

On the other hand you are obligated by the Constitution to ensure that my exercise of the right under Article 38 is protected by carrying out elections that are free and fair and which are by secret ballot; free from violence, intimidation, improper influence or corruption; conducted by an independent body (yourselves); transparent and administered in an impartial, neutral, efficient, accurate and accountable manner as required by **Article 81** of the Constitution.

In carrying out the above, you are to ensure that whatever voting method is used, the system is simple, accurate, verifiable, secure, accountable and transparent; the votes cast are counted, tabulated and the results announced promptly by the presiding officer at each polling station; the results from the polling stations are openly and accurately collated and promptly announced by the returning officer at the constituency level; and appropriate structures and mechanisms to eliminate electoral malpractice are put in place, including the safekeeping of election materials.

The elections conducted on the 8<sup>th</sup> August 2017, particularly the presidential elections, was indicted by the **Supreme Court in Petition No 1 of 2017**. The Supreme Court established that

you failed to ensure that my right under Article 38 was protected by failing to conform to the provisions of Articles 81 and 86 of the Constitution to wit, the system you employed was not *inter alia* accurate, verifiable, secure, accountable and transparent and that the votes were not counted and tabulated in the proper manner.

Further, you willfully failed and/or neglected to provide certain crucial information that the Supreme Court directed you to provide to wit, further reinforcing the belief that the whole electoral process was a sham from the outset.

Further still, the method of transmission of the results was indicted to the extent that it was not verifiable and accountable.

As a consequence of the foregoing therefore, and to ensure the protection not only of my rights but the rights of other citizens in the forthcoming elections, I am now making an application to access information held by yourselves.

**Section 4 (2)** of the Act provides that every citizen's right to access information is not affected by any reason the person gives for seeking access or the public entity's belief as to what are the person's reasons for seeking access. You are obligated to provide the information I seek unless it can be shown that the pursuant to Article 24 of the Constitution, the right of access to information under Article 35 of the Constitution is limited in respect of information whose disclosure is likely to:

- a) undermine the national security of Kenya;
- b) impede the due process of law;
- c) endanger the safety, health or life of any person;
- d) involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;
- e) substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;
- f) cause substantial harm to the ability of the Government to manage the economy of Kenya;
- g) significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;
- h) damage a public entity's position in any actual or contemplated legal proceedings; or
- i) infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.

The Act further provides that for purposes of and in relation to national security, information relating to national security includes:

- a) military strategy, covert operations, doctrine, capability, capacity or deployment;

- b) foreign government information with implications on national security;
- c) intelligence activities, sources, capabilities, methods or cryptology;
- d) foreign relations;
- e) scientific, technology or economic matters relating to national security;
- f) vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security;
- g) information obtained or prepared by any government institution that is an investigative body in the course of lawful investigations relating to the detection, prevention or suppression of crime, enforcement of any law and activities suspected of constituting threats to national security;
- h) information between the national and county governments deemed to be injurious to the conduct of affairs of the two levels of government;
- i) cabinet deliberations and records;
- j) information that should be provided to a State organ, independent office or a constitutional commission when conducting investigations, examinations, audits or reviews in the performance of its functions;
- k) information that is referred to as classified information in the Kenya Defence Forces Act; and any other information whose unauthorized disclosure would prejudice national security.

With regard to the manner of making an application to be supplied with the information sought, the Act provides at **Section 8** that an application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.

In my capacity stated and to ensure that my rights as under **Articles 38, 81 and 86** are protected and pursuant to Article 35 of the Constitution and the relevant provisions of the Access to Information Act I now make an application to be provided with certain information as enumerated below which information is held by yourselves:

1. Access to the Physical Servers hosting IEBC applications;
2. Access to the information stored in these Servers more specifically:
  - a. Biometric Voters Register;
  - b. KIEMS Kits allocations as per usage on the 8th August Elections;
  - c. GPRS Details of the Kits used on the above date;
  - d. Administrative Logs of the Servers used for the Elections Applications and Databases;
  - e. Statutory Elections Forms Repository Logs and Archive;
  - f. Application Programming Interface Access List;
  - g. User Access Logs for the RTS;
  - h. Access to the Cloud Servers Contract and Contact Details of the Relevant Organizations e.g. Amazon; and

- i. User Access logs for the Public Portal and the Backend of the Portal used to generate reports.

It is my belief that the information I seek is well within your possession and you are obligated by the Constitution and the Act referred to herein to provide me with the information sought.

Further, it is my belief that the information sought does not fall within the ambit of the exceptions provided under the Act.

I request that the information be provided to me within the next seven (7) days hereof failing which I shall enforce my legal rights in having the information in your possession availed to me.

It is of utmost urgency that the information requested for be provided to me within the timeline above as you have slated the forthcoming elections for the 26<sup>th</sup> October 2017 which is about one month away.

I am looking forward to your prompt response.

Yours faithfully,

**KOITAMET OLE KINA**  
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Cc: Commission on Administrative Justice  
**Nairobi**