



Original: **English**

Date: **14/4/2023**

THE OFFICE OF THE PROSECUTION

Information on the Situation in Kenya

**Communication to the Office of the Prosecution on the Situation in Kenya in
the period 20th March 2023 to date 2nd April 2023**

**Document submitted in accordance to
Regulation 25 of the Regulations of the**

Office of the Prosecutor to:

International Criminal Court

Office of the Prosecutor

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INTRODUCTION

Kenya held a General Election on 9th August 2022. Though the Presidential Elections was a contest with four candidates on the ballot, the election was largely a two-horse race between Raila Odinga and his running mate Martha Karua from the Azimio La Umoja One Kenya Coalition Party against William Ruto and his running mate Rigathi Gachagua from the Kenya Kwanza Coalition. The election witnessed slightly over 14 million Kenyans go to the polls to exercise their democratic right.

President William Ruto was controversially announced as the winner of the Presidential Election. Throughout the election period, the issue of technology was at the centre of concerns regarding the integrity of the elections. Smartmatics International Limited Holdings B.V, a controversial international company that is a voting technology supplier, had been contracted by the Independent Electoral and Boundaries Commission (IEBC) to manage the 2022 elections. Media reports showed that the company had been involved in manipulation of elections in other countries.

From the very start, Smartmatics was accused of subterfuge and intention to manipulate the elections. The height of the controversy was when three Venezuelan nationals were arrested at the Jomo Kenyatta International Airport in Nairobi with IEBC election materials that they were said to possess illegally. It was established they worked for Smartmatics.

At the Supreme Court, the issue of technology centered on Smartmatics and in particular the activities of its agents who were said to have illegally accessed the IEBC servers during the electoral period.

Evidence was presented to court in the form of a report from the Directorate of Criminal Investigation regarding the activities of the three agents of Smartmatics arrested at the airport: Jose Camargo, Joel Gustavo and Salvador Javier. The report showed that Jose Camargo was a systems administrator in the entire IEBC ICT System and could remotely access any database and add, delete, edit or manipulate data.

The report showed that a total of twenty-one (21) people had similar administrative rights; Nineteen (19) of these were foreigners and two (2) were locals.

Other evidence presented to court by the petitioners was their report on the court mandated scrutiny held from 31st August to 1st September. The report gave evidence of computer log-ins given by IEBC itself that showed that at least four (4) foreigners were online the IEBC System where they were deleting and uploading documents.

An order was issued by the Supreme Court directing IEBC to grant access to the servers for the parties to scrutinize its contents. Smartmatics refused to grant access to the said servers and said that such access would be an infringement to its property rights. The Supreme Court refused to order them to grant the access.

On the 5th of September 2022, the Supreme Court ruled to uphold the election of William Ruto as the 5th President of the Republic of Kenya.

On or about January 18th 2023, a whistleblower working at the IEBC, came forward with evidence of fraud and manipulation in the 2022 elections. The whistleblower's report indicated that fabricated results were released to the public to the effect that President William Ruto's garnered 50.49% of the votes and Raila Odinga garnered 48.5% of the votes. However, according to the whistleblower's release, 59% of the results of the constituencies could not be verified. The documents provided by the whistleblower indicate that Raila Odinga garnered 8,170,353 votes which presents 57.3% while president William Ruto garnered 5,915,973 votes which represents 41.66% of the votes.

The whistleblower's release further stipulates that the illegal entities were set up at the IEBC data transmission center's back office to convert the original form 34B from its original JPEG format to PDF. Furthermore, the whistleblower states that forms 34A of Books 2 were primarily used whenever forms 34A of Book 1 were exhausted at the polls and that the original forms were converted to PNG in order to change the background watermarks. This is in blatant disregard of the rights of Kenyans to a free and fair elections and it is violation of the electoral procedures since the tampering gave President William Ruto an advantage over Raila Odinga. This illegality was done in the full knowledge of the leadership of the IEBC. As a result of the whistleblower's release, Raila Odinga's party Azimio La Umoja Coalition, demanded for opening of the servers to ascertain the declared presidential results. The IEBC have neglected/refused and or failed to

open the servers, therefore the Azimio la Umoja Coalition undertook to exercise its right to demonstrate.

THE POLITICAL SITUATION IN KENYA

Ever since William Ruto was sworn in as President of Kenya on 13th September 2022, his Kenya Kwanza regime has exhibited disdain for the Constitution and laws of Kenya and contempt for democracy and its institutions. The state has moved quickly to capture the Independent Electoral and Boundaries Commission, the Director of Public Prosecutions and the Judiciary. Everyday critical decisions have been made in flagrant violation of Chapter Six of the Constitution on Leadership and Integrity which has seen the withdrawal of all criminal charges from members of the ruling coalition and their appointment to the Cabinet and other senior government positions.

To prevent any criticism, the regime has destroyed the political opposition by bribing its members and recruiting them to take positions against their party leadership, and targeted the free press by pressuring management of media institutions to sack journalists critical of the regime and also physically assaulting cameramen while on duty covering opposition activities.

To protest against the deteriorating political and economic situation in Kenya, the Azimio La Umoja One Kenya Coalition Party called for nationwide demonstrations through the exercise of the fundamental rights enshrined under Article 1(1) and (2) and in Article 37 of the Constitution of the Constitution of Kenya.

Article 1(1) and (2) states as follows:

- (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.
- (2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

Article 37 of the Constitution states as follows:

Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to—present petitions to public authorities.