

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 5 September 2013

TRIAL CHAMBER V(A)

Before:

**Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccion
Judge Robert Fremr**

SITUATION IN THE REPUBLIC OF KENYA

***IN THE CASE OF
THE PROSECUTOR***

v.

WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG

Public Redacted Version

**Common Legal Representative for Victims' Comprehensive Report on the Withdrawal
of Victims from the Turbo area by Letter dated 5 June 2013**

Source: Wilfred Nderitu, Common Legal Representative for Victims

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. On 11 June 2013, the CLR notified the Chamber of an incident involving the Amani Peace Building and Welfare Association (hereinafter referred to as the “Amani Organization”), a community based civil society organization in Turbo, which had initiated and facilitated the application and registration of at least two thousand post-election violence victims in the Kenyan situation. As a result of the limited temporal and geographical scope of the case not all victims assisted by the Amani Organization enjoy the status of a case victim in *The Prosecutor –versus- William Samoei Ruto and Joshua arap Sang*, and such victims are outside the scope of representation by the Common Legal Representative.
2. The Amani Organization sent to “the Victims and Witness Office” of the Court a letter dated 5 June 2013 titled “Withdrawal from the International Criminal Court Proceedings at The Hague” which stated that 93 victims who had been assisted by the Amani Group in submitting their applications for participation at the Pre-Trial stage wished to withdraw from their participation in the case.
3. On 23 July 2013, the Registry filed its Fourth Periodic Report on victims participation (filing 825 with Public Annex A and Conf-Exp Annex B), in which the Common Legal Representative had indicated that he and his team had been on a field mission between 16 and 19 July 2013 and that the Common Legal Representative would prepare a comprehensive report including information on the security situation encountered.¹

¹Fourth Periodic Report on the General Situation of Victims in Kenya, 23 July 2013 AnxB-Conf-Exp, paragraph 9

4. The Chamber instructed the Common Legal Representative to file the said comprehensive report on the withdrawal of victims by 30 August 2013 and the Common Legal Representative now submits the below report.

II. Statistics of the Victims in the Letter of Withdrawal

5. There were 93 victims who had signed the letter dated 5 June 2013 from victims living in Turbo. Of the 93 victims, forty-seven (47) victims are within the scope of case as delineated by the Document Containing Charges, whilst the status for participation of another thirteen (13) victims is uncertain. The Common Legal Representative attempted to consult with the 47 victims within the geographical and temporal scope of the case and the 13 victims whose status to participate in the case was unclear, in order to confirm if they had signed the subject letter and, if so, to identify their reasons from withdrawing from the case. Thus, out of the 93 persons who signed the letter in question, a total of 60 persons were found to be either clearly within the scope of the case or of uncertain status (and therefore of concern to the work of the Common Legal Representative until their status has been conclusively determined). The VPRS have the mandate to inform the Trial Chamber about the remaining 33 situation victims.
6. The individual responses and subsequent classification/reclassification of the 47 victims who fall within the scope of the case and the 13 victims whose status is uncertain is summarized in the Confidential Annex (Trial Chamber only). As a result of the individual responses received from these victims and as noted in paragraph 5 of this Report, the Common Legal Representative concludes that in the absence of further information or evidence, seven (7) victims of a total of 47 victims within the scope and 13 victims whose status to participate in the case is unclear, are regarded as continuing to participate in the case.

III. Events Surrounding the Withdrawal of Victims

7. The Common Legal Representative was informed by one of the withdrawing victims that the decision to withdraw from participating as victims in the case was made at a meeting [REDACTED]. The exact date of the meeting is not known to the Common Legal Representative, but is approximated to have been around [REDACTED], based on enquiries with the withdrawing victim. The meeting was organized by [REDACTED].
8. Several victims stated that it was [REDACTED] who had personally taken the letter to them to append their signatures signifying withdrawal.
9. Members of the Common Legal Representative team were on a field assessment mission (not related to the withdrawal) round about the time that the letter of 5 June 2013 was sent to the Court. The team members therefore took the opportunity to also meet with the Chairman of the Amani Organization to discuss the letter of withdrawal. This meeting was held on 11 June 2013 when the Chairman told the Common Legal Representative's team that the withdrawal of victims was an initiative of the victims themselves and the Chairman had been instructed by them to forward the letter on their behalf and that he had even been threatened that if he did not do so, he would suffer the consequences². The Chairman was adamant that the Turbo area was hostile to any ICC related meetings and the Common Legal Representative and his team should avoid the area "until the situation settles down". In a [REDACTED].

² [REDACTED]

10. The Common Legal Representative is cognizant of the fact that the Chairman of the Amani Organization fell out of scope of the case following the delimitations on temporal and geographical scope in Pre-Trial Chambers Decision on the confirmation of charges. This brings to question whether an intermediary should continue to carry the interests of participating victims in such circumstances. [REDACTED].

11. The Common Legal Representative received further disconcerting information from two victims: one who wished to continue to participate in the case; and the other who said that he was no longer interested in participation. They told the Common Legal Representative team that [REDACTED]. The victims were allegedly informed that if they stopped participating in the case, the case could be moved to Arusha or Kenya. One of the two victims informed the Common Legal Representative's team that in consideration of withdrawing from the case, the victims [REDACTED]. To this victim's knowledge, [REDACTED].

IV. Key Reasons Provided by Victims on the Reason(s) for Withdrawal of Participation

12. A prominent issue raised by these victims as well as by other participating victims was that victims are extremely opposed to reparations and/or compensation being given on a community basis. This appeared to result from explanations given by the Common Legal Representative, the VPRS and intermediaries to the effect that the mandate of the Trust Fund for Victims as well as the reparation regime of the Court ordinarily require the conviction of an accused and that the Court has not yet outlined its reparation policy as its first case enters into the reparations stage only now. In this context it was clarified that individual compensation is only one option among others and that the issuance of individual payments to each and every victim, while theoretically possible, remained an

unlikely option compared to collective reparations. The victims argue that most of them continue to live among perpetrator communities and therefore if reparations are made collectively, e.g., in the form of construction of a school or a hospital, it would mean that perpetrators of the violence would also benefit directly from the harm suffered by the victims. Many victims expressed the fact that in such event they would even prefer that they were compensated in the form of very little money rather than having perpetrators of the violence benefit from the victims' suffering. Due to this reality about the reparations regime, many victims feel disillusioned and consider that justice cannot be done in this way and that there is therefore no need to continue to participate in the case.

13. Some victims explained that they wanted to be involved in the peace processes that are taking place in the country and that they therefore needed to stop participating in the case, in order to effectively engage in these processes. It was expressed that the previous government lacked the will to cooperate with the ICC, and now that the government in power is led by persons indicted before the Court, the victims needed to prioritize their own security first, in relation to participation in the proceedings.
14. Some victims expressed the fact that they were unhappy that some of the people that they considered responsible for the post-election violence were never charged with these offences. They stated that even after highlighting this issue to the former Common Legal Representative, the Office of the Prosecutor failed to take this concern into consideration before the confirmation of charges decision.
15. A number of victims indicated that they were relying on- and placed their hopes in- the court case filed at the High Court of Kenya to secure compensation from the Government of Kenya for harm suffered by them, following the failure of security forces

to secure their safety during the post-election violence. They said that the ICC case was taking too long and had been subject to several adjournments, and doubted that they would in any way benefit from the ICC case.

V. Security Incidents in the Turbo area and General Security Situation in the area

16. During the Common Legal Representative's mission to Turbo in February, 2013 the Common Legal Representative notified the Chamber of a security incident that occurred during the Common Legal Representative meeting with victims.³ *Prima facie*, this security incident could have been disregarded as an isolated incident. However, the subsequent withdrawal of participation of victims from this area, coupled with the security incident that occurred during the Common Legal Representative's mission in July 2013 [REDACTED], causes the Common Legal Representative to consider that personnel in the local administration and national government are intent on intimidating him, his team and victims in order to dissuade or impede from continued participation in the proceedings before the Court. It is noteworthy that the caseload met by the Common Legal Representative [REDACTED]. The detailed circumstances of [REDACTED] incident are set out below.

17. As part of the Common Legal Representative activities, he organized a meeting [REDACTED] to meet with victim participants [REDACTED] whose applications had recently been transmitted to the Common Legal Representative by VPRS, and had not previously met with the Common Legal Representative. He was in the company of three Field Officers and a Field Security Officer. On arrival at the meeting venue, the Common Legal Representative found three men waiting at the gate to the venue. These men were later identified to be part of the local administration. Before the meeting

³ Observations of the Common Legal Representative for Victims on Issues Related to the Commencement of Trial, 6 February 2013, ICC-01/09-01/11, para 3

begun, the Common Legal Representative team [REDACTED] who had already arrived at the meeting venue, [REDACTED] four (4) men (including the three men who had been at the gate earlier) who wanted to sit in the meeting but were not victims. The Common Legal Representative refused the men entry into the meeting room, whereupon the men were joined by five (5) others who identified themselves as officials of the District Peace Committees (hereinafter referred to as DPC)⁴ and one man identified himself as the Assistant Chief of that area. The officials insisted that they should sit in the meeting because they should know what victims were being told in order to ensure that the Common Legal Representative did not “interfere with peace processes in the area”. They also insisted on having the names of the victims who had been invited to the meeting. According to them, rumours in the locality were that there was a team that was coming from the Court to meet with people interested in giving incriminating evidence against the President Uhuru Kenyatta and his Deputy William Ruto. The Common Legal Representative informed them that that was not the purpose of his meeting with the victims, and reminded them of the fact that his work was supposed to be facilitated, rather than hindered, by Government.

18. After protracted dialogue, the officials withdrew their insistence on attending the meeting itself, but indicated that they would remain around the venue and that they would want the Common Legal Representative to share the issues discussed at the meeting with them once the meeting with victims was concluded. Whilst this discussion was on-going, [REDACTED]. In the course of the meeting with victims, a vehicle belonging to the Kenya Power & Lighting Company Limited (the national electric power distribution company) entered the compound, and shortly after, there was a power blackout for the duration of the meeting.

⁴ District Peace Committees were established under the mandate of the immediate former President in order to respond to the December, 2007 post-election violence. These committees consist of members of the local administration from the various areas in which they were established.

19. Once the meeting with victims was concluded, the DPC officials subjected the Common Legal Representative to a lengthy inquisition as to his intentions in the area and his mandate as the victims' representative before the Court. The Common Legal Representative engaged the officials in an explanation of his mandate and gave them publicly available information in this connection. The officials once again asked for names of victims who had attended the meeting and their specific concerns, but the Common Legal Representative diplomatically (using the analogy of doctor-patient confidentiality) informed them that he was unable to do so, and they appeared to be satisfied with this explanation.

20. After the discussion with the DPC officials, the Common Legal Representative went back to the meeting room for one-on-one meetings with the victims, [REDACTED]. At this point, [REDACTED] informed the Common Legal Representative that there was a person who wanted to have a word with him. The Common Legal Representative was then taken [REDACTED] towards a police Toyota Land Cruiser vehicle which was parked a distance away from the meeting room. This vehicle had not been there during the earlier parts of the meeting. From a distance, the Common Legal Representative noticed a uniformed police officer as well as another person in civilian clothes alight from the vehicle and informed [REDACTED] that he (the Common Legal Representative) needed to finalize with the victims and he would then meet the person who had requested for him. The Common Legal representative avoided meeting this person, and there was apparently no insistence for a meeting despite this avoidance. The police vehicle left only after the one-on-one meetings had ended.

21. Although not directly related to [REDACTED] incident, the Common Legal Representative wishes to bring to the Court's attention that during the subsequent two days on mission in

Eldoret, a man claiming to be the Manager of the meeting venue (a different venue, in the outskirts of Eldoret Town) insisted that the Common Legal Representative provide him with the names and signatures of meeting participants in order to verify numbers for catering purposes. The Common Legal Representative was able to confirm that this condition was not imposed on other organizations that were holding meetings at the same venue. In order not to aggravate any potential security risks, [REDACTED].

22. Lastly, the Common Legal Representative has information from one victim that [REDACTED] was concluded. This victim informed the Common Legal Representative's Field Officers that he and several other victims are willing to participate [REDACTED]. The victim stated that he and the others had taken the position they would rather remain cautious about their interaction with the Common Legal Representative's team [REDACTED].

VI. Conclusion

23. The Common Legal Representative concludes that despite the general statements from the leadership of the Amani Organization that "all victims" that they represent have withdrawn from the case, the Common Legal Representative considers that victims should still be presumed to be participating victims until they have communicated their individual withdrawal to the Common Legal Representative and/or the Court.

24. In light of the information given to the Common Legal Representative by the victims contacted, the Common Legal Representative makes this filing to be notified only to VPRS, OPCV, and VWU, and a Confidential Annex (Trial Chamber only) in order to mitigate security risks associated with disclosure of victims' names and application

numbers. The Common Legal Representative also makes the filings confidentially as a preemptive measure to protect himself and his team against possible security risks.

25. The Common Legal Representative states that he lacks adequate resources to carry out a full investigation to establish the root cause for the withdrawal by victims from participation in the proceedings, their claims as to dissuasion from participation by the Amani Organization leadership, and his intimidation by the local administration in the carrying out of his work, and [REDACTED], as claimed by some of the victims who provided information. Accordingly, he requests the Trial Chamber to take appropriate measures for further investigations in this regard.

26. The Common Legal Representative takes this opportunity to bring to the attention of the Trial Chamber the fact that [REDACTED]⁵. The Common Legal Representative has been informed that he cannot [REDACTED]. This is notwithstanding the fact that the [REDACTED]. The Common Legal Representative states that [REDACTED].

27. Accordingly, the Common Legal Representative requests the Trial Chamber to look into ways and means of [REDACTED].

28. Finally, the Common Legal Representative requests the Trial Chamber to direct the Court's Security and Safety Section (SSS) to undertake regular reporting procedures on security incidents in the field and to provide security briefs to the Trial Chamber and to the Common Legal Representative after the occurrence of security incidents.

Respectfully submitted,

⁵ [REDACTED]



WILFRED NDERITU

Common Legal Representative for Victims

Dated this 5th day of September 2013

At Nairobi, Kenya