

Annex  
*Public*

Second Periodic Report on the general situation of victims in the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang and the activities of the VPRS and the Common Legal Representative in the field

## **Introduction**

1. This Second Periodic Report on the general situation of victims in the Republic of Kenya and the activities of the Victims Participation and Reparations Section (the “VPRS”) and the Common Legal Representative (the “CLR”) in the field is presented in accordance with paragraph 55 and Part VI of the 3 October 2012 Decision on victims’ representation and participation (the “3 October Decision”) issued by Trial Chamber V (the “Chamber”).<sup>1</sup>
2. During the reporting period the VPRS and the CLR carried out a joint mission to Kenya in the course of which they met with 96 out of the 120 victims who were authorised to participate at the confirmation stage of proceedings and who the VPRS considers remain within the scope of the case in accordance with paragraphs 61 and 54 of the 3 October Decision.<sup>2</sup> The purpose of the meetings was to facilitate the transition of legal representation from Ms. Chana to Mr. Nderitu as well as to explain the framework for victim participation established by the Chamber. Conducting the mission in the pre-election environment presented a series of challenges, most stemming from the last minute postponement of activities in the Nyanza region due to the violence associated with the Orange Democratic Movement’s (the “ODM”) political nomination process. The VPRS also met with large numbers of victims who it had assessed as having fallen outside the scope of the case due to the narrowing of the geographical and temporal parameters by the Pre-Trial Chamber II in its 23 January 2012 Decision to confirm the charges (the “Confirmation Decision”), in order to explain that Decision and its implications for them.<sup>3</sup>
3. The present report will address the following topics:

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<sup>1</sup> ICC-01/09-01/11-460.

<sup>2</sup> ICC-01/09-01/11-460; The VPRS conducted an analysis of the applications in accordance with the 3 October Decision, as explained in part C below, and communicated the results of its analysis to the CLR.

<sup>3</sup> ICC-01/09-01/11-373.

- A. Information concerning the activities of the CLR in the field (including details and statistics about the victims' population and information on the general situation of registered and non-registered victims);
- B. Information pertaining to the security situation of victims
- C. VPRS assessments on the victims who were authorised to participate at the confirmation hearing but now fall outside the scope of the present case; and
- D. Information concerning the activities of the VPRS in the field.

#### **A. Information concerning the activities of the CLR in the field**

4. In accordance with the 3 October Decision, the CLR has provided the VPRS with detailed information relating to his activities. During the reporting period the CLR reported that he and his team met a total of 96 victims in five groups of victims in various locations throughout the country.<sup>4</sup> The purpose of the meetings was for the CLR to introduce himself to the victims authorised to participate at the confirmation hearing and to collect their views and concerns on various topics. The details and statistics of the victim populations met, as well as a summary of information on their general situation, is presented by group below.

<b>Meeting 1</b>	
<b>Location:</b> Nakuru County, Rift Valley Province	<b>Category:</b> Authorised to participate at confirmation stage; first meeting with CLR
<b>Detailed Statistics</b>	
The CLR met with 21 victims from the Kikuyu and Luhya communities. The group was composed of 9 adult men and 12 adult women. All of the victims in this group were victims of forced displacement and one of the men in the group was nearly killed in the Post-election violence (the "PEV") of 2007-2008.	
<b>General Situation</b>	
The members of the group came to Nakuru County from the greater Eldoret area, Kapsabet and Nandi Hills towns, where they suffered harm during the PEV. The victims in Nakuru County cited a number of issues relating to their current situation including: ongoing security concerns due to the fact that many of the victims continue to live amongst the same communities that perpetrated the	

<sup>4</sup> All data in relation to the activities of the CLR in the field are derived from the meeting forms submitted to the VPRS for the purposes of this report.

violence against them; the lack of support from the Government of Kenya to reintegrate victims of displacement back into society; and a general lack of trust in the legal and electoral systems due to the fact that many of the victims in the group also suffered harm in election-related violence of 1992 and 1997.

<b>Meeting 2</b>	
<b>Location:</b> Uasin Gishu County, Rift Valley Province	<b>Category:</b> Authorised to participate at confirmation stage; first meeting with CLR
<b>Detailed Statistics</b>	
The CLR met with 16 victims from the Kikuyu community. The group was composed of 5 adult men and 11 adult women. All of the victims in this group were forcibly displaced in Uasin Gishu County and each lost property during the PEV. Included in this group is one victim whose family member was murdered.	
<b>General Situation</b>	
The members of the Uasin Gishu County group indicated that they continue to suffer as a result of being forced to flee from their homes and the loss of property associated with their displacement. They asserted that the Government of Kenya had done little to restore their livelihood and that the local judicial mechanisms have failed them. Many reported living in fear due to the fact that they continue to reside among the same tribal community that perpetrated the violence against them in 2007-2008. They fear reprisals if their cooperation with the International Criminal Court (the "Court") becomes known and politicised.	

<b>Meeting 3</b>	
<b>Location:</b> Uasin Gishu County, Rift Valley Province	<b>Category:</b> Authorised to participate at confirmation stage; first meeting with CLR
<b>Detailed Statistics</b>	
The CLR met with 39 victims from the Luhya, Kikuyu and Kamba communities in Uasin Gishu County. The group was composed of 24 adult men and 15 adult women, including an elderly woman. All of the members of the group were forcibly displaced in Uasin Gishu County and reported having their property destroyed during the PEV in 2007.	
<b>General Situation</b>	
The victims in the group mentioned facing continuing hardships after having lost most of their possessions and property when they were forcibly displaced during the PEV. Many were worried about the prospect of violence during the March 2013 election, especially because many members of the group also suffered as a result of the election-related violence in both 1992 and 1997.	

<b>Meeting 4</b>	
<b>Location:</b> Vihiga County, Western Province	<b>Category:</b> Authorised to participate at confirmation stage; first meeting with CLR
<b>Detailed Statistics</b>	
<p>The CLR met with eight victims from the Luhya community in Vihiga County. The group was composed of seven adult men, including one elderly man and one adult woman. Each member of the group had been forcibly displaced in the Rift Valley during the PEV and each reported having their properties destroyed or looted. Within the group, one victim reported that her children died as a result of the PEV.</p>	
<b>General Situation</b>	
<p>The victims in the group said that they continue to suffer as a result of the loss of life and property due to the PEV. The members of the group described how they had been reduced to poverty with little or no support from the Government of Kenya. Some mentioned that their children were dying because they were no longer able to provide for them.</p>	

<b>Meeting 5</b>	
<b>Location:</b> Kisumu County, Nyanza Province	<b>Category:</b> Authorised to participate at confirmation stage, first meeting with CLR
<b>Detailed Statistics</b>	
<p>The CLR met with 12 victims from the Kikuyu and Maasai communities in Kisumu County. The group was composed of seven adult men and five adult women. All of the group members were forcibly displaced from Nandi County during the PEV and all reported having their properties destroyed.</p>	
<b>General Situation</b>	
<p>The victims in the group all managed businesses before the PEV. They have all had to struggle considerably in order to maintain their livelihood while relocating and rebuilding. They remain concerned about being targeted again for cooperating with the Court, but consider that they deserve justice through reparations for the harm that they suffered.</p>	

## **B. Information pertaining to the security situation of victims**

5. In addition to commenting on their general state of insecurity (physical, psychological, economic, etc.) as a result of what they had suffered during the PEV, many of the victims expressed concern about their own personal security during the period of the forthcoming elections. Victims were worried

about a recurrence of violence, especially considering that many of them continue to reside in the same areas as members of the same tribal communities that perpetrated the violence against them during the PEV. Victims in several groups expressed fear of being mistaken for witnesses and targeted for cooperating with the Court.

**C. VPRS assessments regarding the victims who were authorised to participate at the confirmation hearing but now fall outside the scope of the present case**

6. Before carrying out the mission, the VPRS had taken initial steps to implement the Chamber's Order to the Registry to "review and assess the applications of victims authorised to participate at the confirmation of charges hearing to determine whether those persons still fall within the definition as outlined in this Decision" and to submit a report to the Chamber "in the event it identifies any individuals who no longer fall within the definition of a victim as set out in this Decision".<sup>5</sup>
7. In accordance with this Order, the VPRS reviewed the applications of the 327 victims accepted to participate in the Pre-Trial Chamber II's Decision of 5 August 2011.<sup>6</sup> Since a number of victims provided date ranges instead of precise dates and broad territorial areas instead of precise locations in relation to the alleged crimes, supplementary information needed to be requested in order to determine whether or not the victims remained within the scope of the case. To date, the VPRS has received supplementary information from the current CLR in relation to 25 victims. 58 victims' applications remain uncertain<sup>7</sup> and two victims have died.<sup>8</sup>
8. In reviewing the applications and supplementary information received, the VPRS has identified 149 victims, including the two deceased applicants, who

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<sup>5</sup> 3 October Decision, see *supra* footnote 1, paragraph 62 and Part VI.

<sup>6</sup> ICC-01/09-01/11-249.

<sup>7</sup> a/0237/10; a/8054/11; a/8067/11; a/8078/11; a/8088/11; a/8091/11; a/8331/11; a/8333/11; a/8334/11; a/8339/11; a/8343/11; a/8347/11; a/8351/11; a/8352/11; a/8358/11; a/8360/11; a/8365/11; a/8368/11; a/8370/11; a/8379/11; a/8382/11; a/8388/11; a/8392/11; a/8393/11; a/8398/11; a/8399/11; a/8403/11; a/8408/11; a/8420/11; a/8422/11; a/8424/11; a/8425/11; a/8428/11; a/8715/11; a/8720/11; a/8721/11; a/8758/11; a/8777/11; a/8779/11; a/8835/11; a/8842/11; a/8903/11; a/8904/11; a/8921/11; a/8922/11; a/8940/11; a/8945/11; a/8947/11; a/8966/11; a/8994/11; a/8999/11; a/9017/11; a/9020/11; a/9021/11; a/9025/11; a/9026/11; a/9029/11; and a/9032/11; The VPRS in conjunction with the CLR is working to locate the victims whose status remains uncertain in order to request supplementary information.

<sup>8</sup> a/8036/11 and a/8666/11.

now fall outside the scope of the case.<sup>9</sup> All of these 149 victims reported having suffered harm outside either the significantly reduced geographical boundaries of the present case<sup>10</sup> or the significantly reduced temporal limits<sup>11</sup> set by Pre-Trial Chamber II in the Confirmation Decision. The total number of victims remaining within the scope of the case from those authorised to participate at the confirmation hearing is therefore provisionally set at 120.

#### **D. Information concerning the activities of the VPRS in the field**

9. During the reporting period, two staff members of the VPRS travelled with the CLR and his team to meet with the victims authorised to participate in the Confirmation Hearing and to explain to the victims the system for participation during the trial established by the Chamber as well as the transition of legal representation from Ms. Chana to Mr. Nderitu. During the course of the introductory sessions the VPRS heard questions and concerns, including the following:

- a. Several groups wanted more information about the handover from Ms. Chana to Mr. Nderitu and sought assurances that during the transition

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<sup>9</sup> a/0056/10; a/0143/10; a/0153/10; a/0266/10; a/0275/10; a/0356/10; a/0379/10; a/0574/10; a/0590/10; a/2078/10; a/8020/11; a/8025/11; a/8026/11; a/8028/11; a/8032/11; a/8034/11; a/8036/11; a/8037/11; a/8038/11; a/8042/11; a/8045/11; a/8047/11; a/8051/11; a/8056/11; a/8059/11; a/8094/11; a/8096/11; a/8246/11; a/8327/11; a/8332/11; a/8335/11; a/8336/11; a/8342/11; a/8346/11; a/8349/11; a/8355/11; a/8356/11; a/8359/11; a/8361/11; a/8369/11; a/8374/11; a/8376/11; a/8380/11; a/8381/11; a/8384/11; a/8391/11; a/8394/11; a/8396/11; a/8397/11; a/8400/11; a/8401/11; a/8402/11; a/8405/11; a/8407/11; a/8409/11; a/8417/11; a/8418/11; a/8419/11; a/8423/11; a/8426/11; a/8429/11; a/8431/11; a/8433/11; a/8435/11; a/8436/11; a/8437/11; a/8438/11; a/8440/11; a/8442/11; a/8647/11; a/8648/11; a/8649/11; a/8650/11; a/8655/11; a/8659/11; a/8663/11; a/8664/11; a/8666/11; a/8709/11; a/8710/11; a/8712/11; a/8713/11; a/8719/11; a/8722/11; a/8723/11; a/8725/11; a/8731/11; a/8738/11; a/8745/11; a/8767/11; a/8770/11; a/8771/11; a/8773/11; a/8774/11; a/8775/11; a/8776/11; a/8778/11; a/8780/11; a/8781/11; a/8782/11; a/8783/11; a/8784/11; a/8785/11; a/8872/11; a/8874/11; a/8895/11; a/8906/11; a/8908/11; a/8910/11; a/8911/11; a/8912/11; a/8914/11; a/8916/11; a/8918/11; a/8920/11; a/8923/11; a/8924/11; a/8936/11; a/8946/11; a/8951/11; a/8952/11; a/8955/11; a/8957/11; a/8959/11; a/8962/11; a/8967/11; a/8980/11; a/8983/11; a/8988/11; a/8990/11; a/8997/11; a/8998/11; a/9001/11; a/9004/11; a/9005/11; a/9006/11; a/9010/11; a/9012/11; a/9013/11; a/9015/11; a/9018/11; a/9019/11; a/9023/11; a/9028/11; a/9039/11; a/9041/11; a/9053/11; a/9054/11; and a/9055/11.

<sup>10</sup> For example, several victims are now outside the geographical scope of the present case because the scope before the confirmation decision was “Uasin Gishu District” and after the decision was limited to the “Greater Eldoret Area” and “Turbo town” which excludes Kipkaren, Burnt Forest and other locations..

<sup>11</sup> For example, several victims are now outside the temporal scope of the present case because the scope before the confirmation decision was from “30 December 2007 to the end of January 2008” and after the decision was limited to 31 December 2007 in Turbo town and 1-4 January in Eldoret town.

their confidential information would be treated with the necessary care.

- b. Would those that chose not to participate, or those that received a stipend from the Government of Kenya, would be eligible for a potential collective reparation award in the event of a conviction?
- c. Why was the charge of rape not included in the case considering that, in the view of the victims, many women had been raped in the relevant locations? They asked whether there was a possibility of adding this crime at this stage.
- d. Some victims were concerned about the limited scope of the case and asked why the former Court Prosecutor had not gone to Kericho or Kisumu Counties.
- e. Several groups reflected on the possibility of collective reparations in the event of a conviction, and asked how victims who have moved locations due to forced displacement could benefit from collective awards.
- f. On the subject of reparations, what could be done for those victims who lost loved ones?

10. In Uasin Gishu County, the VPRS met with roughly 90 victims, who were authorised to participate during the confirmation stage of proceedings, but no longer fall within the scope of the case for the purposes of trial. The procedural reasons for their removal from the case were explained, and the victims were given time to ask questions.

11. The VPRS held a meeting in Nairobi with a number of key intermediaries to discuss issues pertaining to the security of victims and intermediaries; the registration/verification process to be put in place to enable victims who wish to do so register with the Registry; logistical issues relating to the conducting of activities after the election period; and issues pertaining to victims not linked to the case. The discussions were productive though a number of intermediaries reported having received threats that they perceived as being linked to their cooperation with the Court.