

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/09
Date: 29 March 2010

PRE-TRIAL CHAMBER II

Before: Judge Ekaterina Trendafilova, Presiding Judge
Judge Hans-Peter Kaul
Judge Cuno Tarfusser

SITUATION IN THE REPUBLIC OF KENYA

Public Redacted Version

**Of Corrigendum to the Report on Victims' Representations (ICC-01/09-17-Conf-
Exp-Corr) and annexes 1 and 5**

Source: Victims Participation and Reparations Section

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

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**Victims Participation and Reparations
Section**

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1 Introduction

1.1 Overview

1. In this report the VPRS provides and summarizes representations received from Kenyan victims in accordance with article 15(3) of the Statute and rule 50(3) of the Rules of Procedure and Evidence.
2. In total 396 victims' representations were received. Of these, 76 were made by representatives of victim communities and 320 were made by individual victims.
3. A significant majority of the victims' representations (383) expressed the view that an ICC investigation should be authorised by Pre-Trial Chamber II. Nine victims' representations expressed the view that an ICC investigation should not take place. Four did not express a view on this question.
4. Victims who requested the authorisation of an investigation expressed a range of reasons for this. The most frequently cited reasons were: in order to deter future violence, particularly around the electoral cycle; a lack of faith in the Kenyan justice system; and a general desire for justice to be done.
5. Many victims who want the Pre-Trial Chamber to authorise an investigation also gave their views regarding the scope of a potential investigation.
6. A very large number of victims' representations called for ICC proceedings to move quickly so that results can be seen before the elections planned for 2012.
7. A detailed compilation of the views of Kenyan victims submitted to the ICC is contained in Section 3 of this report.

1.2 Procedural history and legal basis

8. This report is submitted to Pre-Trial Chamber II in compliance with the Chamber's "Order to the Victims Participation and Reparations Section

Concerning Victims' Representations Pursuant to Article 15(3) of the Statute" of 10 December 2009,¹ and its "Decision on Extension of Time Limit" of 23 December 2009.²

9. On 5 November 2009 the Prosecutor informed the President of his intention to submit a request in respect of the Republic of Kenya under article 15(3) of the Rome Statute.³
10. On 6 November 2009 the Presidency assigned the situation in the Republic of Kenya to Pre-Trial Chamber II.⁴
11. On 23 November 2009 the Prosecutor published a notice on the ICC website stating his intention to make a request under article 15(3) in respect of "alleged crimes committed in Kenya during the post-election violence of 2007-2008" and informing victims of those crimes that they had thirty days in which to make representations to the ICC.⁵
12. On 26 November 2009 the Prosecutor filed a request pursuant to article 15 of the Rome Statute, seeking authorisation for "the commencement of an investigation into the situation in the Republic of Kenya in relation to the post-election violence of 2007-2008".⁶
13. On 10 December 2009 Pre-Trial Chamber II issued its "Order to the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute",⁷ which included orders that:

¹ ICC-01/09-4.

² ICC-01/09-7-Conf-Exp.

³ ICC-01/09-1-Anx.

⁴ ICC-01/09-1.

⁵ ICC-01/09-3-Anx 1F.

⁶ ICC-01/09-3.

⁷ ICC-01/09-4.

- (a) all victims' communications received by the Court in relation to the Prosecutor's request be submitted directly to the VPRS; and that
 - (b) the VPRS implement procedures for receiving, assessing and presenting victims' representations and report to the Chamber on the steps taken in this regard by 21 December 2009.
14. On 21 December 2009 the VPRS filed an *ex parte* "Report Concerning Victims' Representations"⁸ to the Chamber requesting an extension of time for the filing of victims' representations until 15 March 2010.
 15. On 23 December 2009 the Chamber issued its "Decision on Extension of Time Limit",⁹ which granted the VPRS an extension of time until 15 March 2010 at 16h00 to implement its Order of 10 December 2009.

1.3 Preliminary matters

16. The VPRS notes that the present report exceeds the page limit set out in Regulation 37(1) of the Regulations of the Court. This reflects the large volume of information received by the VPRS from victims, as well as the short period of time available for rendering it into a more concise form. Given these factors and the importance of the material contained in this report to the question before the Chamber, the VPRS requests an extension of the page limit, pursuant to Regulation 37(2).
17. The VPRS also wishes to indicate that this report is filed as Confidential *ex parte* since it implements and includes details of a decision of the Chamber which also bears that status, and because it contains some details which, if made public or provided to the Prosecutor, might put at risk persons who have been in contact with the VPRS. However the VPRS is ready to prepare a public

⁸ ICC-01/09-6.

⁹ ICC-01/09-7-Conf-Exp.

redacted version of the report should the Chamber so order. A detailed explanation of these issues is set out in Section 4 of this report.

1.4 Purpose and contents of this report

18. The contents and objectives of this report are as follows.

19. The main body of this report:

- sets out information about the victims who presented representations to the Chamber;
- summarizes, and provides extracts from, the views of those victims who made representations
- makes recommendations to the Chamber regarding confidentiality and protection.

Annexes 2 to 4 provide information regarding the methods used by the VPRS to identify the community leaders of the affected groups to act on behalf of those victims who may wish to make representations (collective representations) and to receive victims' representations (collective and/or individual).

Annex 5 explains the methods and principles used by the VPRS to conduct assessments, in accordance with the Chamber's Order of 10 December, whether the conditions set out in rule 85 have been met in respect of each representation received.

A complete list of annexes is contained in Annex 1.

1.5 Information management

20. A total of 406 representations were received by the VPRS.¹⁰ Each representation was provided with a reference number: from r/0001/10 to r/0406/10. These reference numbers will be used to refer to the representations in this report.
21. The VPRS wishes to draw to the Chamber's attention the fact that some of the representations contain information submitted by a victim or community representative on separate occasions. These have been grouped together into one representation so that each numbered representation contains all views provided by a particular victim or community.¹¹ Likewise, where forms were completed partially or not at all, but additional views were presented by video, a transcript of the video representation has been provided as part of the annexed representation.¹²
22. Information contained in the representations was entered into a database and extracted in the summary of victims' views provided in Section 3 of this report.
23. As required by the Chamber in its Order of 10 December 2009, the VPRS has conducted assessments of whether the requirements of rule 85 are met by those persons, groups and organizations who have submitted representations. Annex 5 to this report contains an explanation of the approach taken in making such assessments, in accordance with the Chamber's request in its Decision on Extension of Time Limit.¹³ Having undertaken such assessments, the VPRS

¹⁰ This is the complete number of representations received, without taking into account the conclusions reached in respect of rule 85.

¹¹ This was done for r/0031/10 (which includes both a form submitted by the individual victim, and a letter sent by him to the VPRS) and r/0017/10 (which includes two forms submitted by the same individual apparently on behalf of the same group of victims).

¹² This was done for r/0032/10, r/0035/10, r/0061/10, r/0062/10 and r/0161/10. Representation r/0406/10 includes only the video transcript, since no form was provided by the community leader in this instance.

¹³ ICC-01/09-7-Conf-Exp, paragraph 9.

concludes that of the 406 representations received, 396 meet the requirements of rule 85 and 10 do not.¹⁴ The figures provided in the rest of this report refer to the 396 representations considered to meet the requirements of rule 85.

24. The VPRS also wishes to bring to the attention of the Chamber that in addition to the representations submitted with this report, the VPRS has received a number of applications for reparations or participation in proceedings. The great majority of these are applications for reparations made by victims who are represented by the counsel who has submitted representation r/0392/10 on their behalf. A list of the individual victims represented by this counsel is included in representation r/0392/10 itself. The applications for reparations are not filed with the Chamber at this point.
25. Nine other applications for reparations or participation in proceedings were received. One of these¹⁵ was a duplicate of an application in the group mentioned above and covered by representation r/0392/10. A second¹⁶ has been given a representation number (r/0208/10) and is included among the 396 representations annexed to this report, since it contained views on the involvement of the ICC in Kenya. The other seven applications did not explicitly present views on a possible ICC investigation or its potential scope, and so have not been annexed to this report. The Chamber may wish to infer from the fact that these individuals provided application forms for participation or reparations that they wish the ICC Prosecutor to commence an investigation in Kenya. The VPRS therefore attaches, in Annex 10, a list of the identifying details of the individuals who have submitted forms for reparations or participation and who are not covered by representation r/0392/10.

¹⁴ See further in Annex 5.

¹⁵ a/0669/09

¹⁶ a/0642/10

26. Finally, the VPRS has compiled a list of questions asked and comments made by victims and community representatives during the targeted meetings organised with them. This list of questions is attached as Annex 6. It may serve to further elaborate for the Chamber the perspectives of victims as they were expressed in person to the VPRS.

1.6 Victims' communications sent to the Prosecution

27. Finally, before turning to the representations themselves, the VPRS considers it important to draw to the Chamber's attention that none of the representations covered by this report was forwarded to the VPRS by the Office of the Prosecutor. Despite a request by the VPRS to the Office of the Prosecutor on 14 December 2009, no response has been received and no representations from victims have been forwarded to the VPRS.

2 Overview of victims and victim groups

28. Before summarizing the victims' views received by the VPRS, an overview of the persons who provided representations is provided. This is done in order to assist the Chamber in understanding which sections of the victim population have made representations, as well as in interpreting the quantitative information provided below which summarizes the views expressed in the representations.
29. Of those 396 representations received by the VPRS which were considered to meet the requirements of rule 85:
- 76 were provided by groups of victims
 - 320 were provided by individual victims

It is important to note the significant overlap between these categories: many of the individual victims who made representations are themselves members, or indeed representatives, of groups of victims. For this reason, in the analysis

which follows, information relating to the views of individuals and groups has often been provided separately so as to avoid twice reporting the views of those victims who made both individual and collective representations.

2.1 Collective representations

30. From the Chamber's Order of 10 December 2009, the VPRS understood that the primary focus of its work in this process, particularly given time constraints, should be to seek collective representations from community leaders and other persons who could be considered representatives of victim communities. Ultimately 76 collective representations were received which were considered to meet the requirements of rule 85.
31. Representations were provided from a variety of groups. Many were groupings of internally displaced persons, others came from particular communities. Some were family groups. Collective representations were received from various ethnic groups and from different parts of the affected areas.
32. Some impression of the geographic spread of the collective representations can be gained from the information given about the place where crimes were suffered by the victims. Among collective representations that provide this information, the locations by province are as follows:¹⁷
 - Central: 3
 - Coast: 4
 - Nairobi: 19 (many being small, family groups)
 - Nyanza: 3
 - Rift Valley: 37

¹⁷ The VPRS notes that some collective representations mention multiple crimes which are said to have taken place in more than one province.

- Western: 2

The location of the alleged crime is not known in respect of 11 collective representations.

33. However the VPRS notes that only limited conclusions can be drawn from this information. Given that many victims were displaced during the violence, and that many remain displaced until today, it is difficult, for example, to deduce from these figures any impression regarding the current residence of these groups of victims.
34. It is difficult to provide precise information about the victim population whose views are covered by the 76 collective representations. Community leaders and others who made collective representations were asked to estimate the size of the victim populations they represented, and to list the ethnic groups represented in them. However detailed information, such as the proportional ethnic composition of a group, was not requested and it is doubtful that many representatives would have been able to provide it.
35. The size of victim groups covered by collective representations varies enormously, with the smallest being two¹⁸ and the largest [REDACTED].¹⁹ However both of these examples are exceptional. The majority of collective representations are made on behalf of groups numbering between one 100 and 10,000 victims.
36. It is certain that the victim groups covered by collective representations must overlap. For example, [REDACTED].²⁰ [REDACTED] However it is not possible to know for sure the extent of overlap between the various groups represented.

¹⁸ r/0403/10.

¹⁹ r/0354/10. [REDACTED].

²⁰ r/03544/10

Because of this, it is not possible to give a precise figure for the total number of victims covered by collective representations.

37. The VPRS notes that most of the collective representations received cannot be understood as indicating agreement from each and every member of the group in question. This is particularly so in respect of very large groups and those cases in which community leaders did not have an opportunity to consult group members before making a representation. However, it is hoped that the representation is an indicator of the general or majority sentiment in the group.

2.2 Individual representations

38. In addition to the collective representations received, many individual representations were also submitted. In many cases the individuals were members of groups who also made collective representations, but wanted to have their own voice heard in addition to that of their community. In total 320 individual victims' representations were received which were considered to meet the requirements of rule 85.
39. It seems relevant to consider the features of those persons who submitted individual representations, since it might provide some insight into the demographic characteristics of the victims reached by the VPRS during this process.

(a) Age

40. The age of victims who made individual representations, and who provided their age or date of birth,²¹ varies from 19²² (the youngest) to 76²³ (the oldest). The average age of victims who made individual representations is 44 years.

²¹ The ages of 29 of the individual victims who made representations are unknown.

²² r/0129/10

(b) Sex

41. Of the victims who made individual representations, 192 are men (60%) and 128 are women (40%).

(c) Ethnicity

42. Those victims who made *individual* representations came from the following ethnic groups:²⁴

- Embu: 3
- Kalenjin: 16
- Kamba: 34
- Kikuyu: 112
- Kisii: 10
- Luhya: 93
- Luo: 18
- Meru: 9
- Mijikenda: 2
- Teso: 3
- Turkana: 2
- Mixed or unknown: 18

²³ r/0103/10 and r/0286/10

²⁴ Victims who identified themselves by a sub-tribe category have been categorized by VPRS into larger ethnic groupings to ensure consistency.

(d) Location

43. Useful information about the geographical origins of victims proved difficult to collect. This is because many victims have been displaced for a long period of time. A simple question about place of residence may therefore produce an answer relating either to the original or current place of residence. For this reason the VPRS did not seek to collect information of this type. Rather, it considers more useful the information collected about the location in which the victims experienced a crime. It is true that this place will not necessarily be the home area, or area of origin, for all victims (especially since violence occurred during a holiday period when many people may have been visiting family), but it can provide some indication.

44. For individual victims who provided information about the place of the crime they described,²⁵ those places are as follows (by province):

- Central : 1
- Coast: 113
- Nairobi: 21
- Nyanza: 5
- Rift Valley: 148
- Western: 7

45. The VPRS notes that these figures reflect a disproportionate rate of participation in this process by individual victims from Coast Province, which occurred inadvertently during the process of collecting representations.²⁶ The VPRS notes

²⁵ This information is not known in respect of 27 of the individual representations.

²⁶ [REDACTED]

however that geographical spread was more even in respect of collective representations.²⁷

46. The VPRS observes that the victims who were reached in this process include representatives from the major ethnic groups victimized and from all areas of the country which experienced violence.²⁸ However there is noticeable variation between the levels at which different victims from different groups engaged in the process, and this variation does not necessarily reflect the differing extent to which groups were affected by the violence. A number of factors influenced the numbers of victims from various communities who participated. One was the means VPRS used to implement the Chamber's Order, and the people it was thereby able to reach, information regarding which is provided in Annex 2. However in addition the VPRS found that the numbers of individual victims were also influenced by the willingness of different victim communities to participate in this process, and the decisions which they made about whether to speak through a representative or individually. This was in turn also influenced by varying levels of security concern in different parts of the country, and different dynamics within various communities.
47. As a result, VPRS emphasizes that it is not possible to draw conclusions, based on the information contained in this report, regarding the relative levels of violence suffered by different ethnic groups, the prevalence of particular types of crime, or other similar conclusions. Rather, this information is provided to the Chamber in order to assist it in understanding the nature of the particular victims and communities who actually participated in this process.

²⁷ See above, paragraph 32 of this report.

²⁸ One notable exception is the Asian community which, though not thought to have been targeted for significant violent crime, might have suffered disproportionately from property crimes (particularly looting). Unfortunately, appropriate community leaders of this community were not identified during victim mapping. It remains an area where further efforts will be required if an investigation is authorised.

48. Despite conscious efforts by the VPRS to include as many women as possible in the meetings organised with community representatives, this was not always easy to achieve, and in any event women were always free to decide not to submit a representation. Ultimately, 40% of the victims who presented individual representations were women.²⁹
49. VPRS regrets that it was not ultimately able to identify appropriate representatives to speak specifically on behalf of victims who are children or young people. Of course, many if not all of the victim communities represented include children and youths, but in so far as the views of younger victims might vary from those of their older community leaders, these were not made visible in this process. This was due in large part to the short time period available which constrained efforts by the VPRS to identify appropriate representatives.
50. The VPRS notes that this process cannot be compared to a general survey of victim attitudes. Attempts were made by the VPRS to ensure that all major victim populations had an opportunity to participate in the process. However participation was entirely voluntary. Moreover the VPRS's objective was to identify and engage with individuals who could be viewed as representatives of victim communities, rather than to target a particular number of individuals from each victim group. For these reasons this report, which summarises representations received, cannot be viewed as a population survey demonstrating the views of the victim population as a whole.
51. Throughout this process VPRS has been impressed by the overwhelmingly positive response of victims. Almost without exception victims were enthusiastic and grateful for the opportunity to give their views to the Chamber. Had there been more time in which to reach a larger number of

²⁹ This percentage represents the proportion of those representations considered as meeting the requirements of rule 85 which were presented by women.

Kenyan victims, the VPRS has no doubt that many more victims would have been pleased to have the opportunity to participate in this process.

2.3 Representations from organizations

52. Only one representation was received on behalf of an organisation,³⁰ however it was considered not to meet the conditions of rule 85(b), for reasons which are set out in Annex 5.

3 Summary and examples of victims' views

53. Having reviewed and catalogued the representations received from Kenyan victims, the VPRS provides below a summary and some key examples of the views expressed. This section is not intended to replace the original representations, which are annexed for individual consideration by the Chamber. Rather, the objective of this section is to provide an overview which draws out the major themes, in the interests of assisting the Chamber to identify patterns in the views presented by the victims.
54. In addition to providing quantitative information about the numbers of representations provided which present a certain view, or touch on a particular issue, VPRS considered it important to extract some of the comments from victims which best exemplify the themes identified. This is intended to assist the Chamber by conveying victims' views in their own words. The VPRS has extracted these comments from the representations which came directly from victims.³¹

³⁰ The VPRS notes that one other victim used the form for organizations (r/0161/10), but that it is clear from his representation, made by video, that he speaks on behalf of himself as an individual victim.

³¹ This has not been done for the two longer and more analytical representations which were received through legal representatives (r/0034/10 and r/0392/10). This is in part because these representations tend to touch on issues of a more technical legal nature. It is also because, being typewritten, they are already quite accessible to the Chamber in their original format.

55. The VPRS considers it appropriate to explain briefly the process and criteria which were used to select these extracts. Initially, an assessment was made of the comments made in all representations, in order to identify common themes. Comments were then grouped into these themes. Comments were then selected for inclusion in the text of this report based on:

- their comprehensibility;
- the extent to which they provide further insight into the rationale for, background to, or specifics of the common view in question; and
- attempts to avoid the undue repetition of very similar comments.

The VPRS wishes to emphasize that it has sought to present the various viewpoints commonly expressed, and that in selecting comments to include no attempt was made to favour or disfavour any particular view.

3.1 Victims who want an ICC investigation to be authorised

56. The overwhelming opinion of those victims who made representations, whether collectively or individually, is that an ICC investigation in Kenya should be authorised.
57. Among the 392 victim representations which expressed an opinion on this question, 74 (97%) of the groups and 309 (98%) of the individuals gave this response. Four individual representations did not provide a view on this subject.
58. Those who want the ICC to investigate cover members of all groups who provided representations: men and women; older and younger victims; victims from various parts of Kenya; victims who suffered various types of crimes over

various periods; and perhaps most significantly, victims from all the major ethnic groups which suffered from the violence.³²

59. A number of reasons were commonly given for why an ICC investigation is favoured. These include:

(a) So that this sort of violence does not happen again

60. One hundred and fifty-three representations requested the ICC to investigate because they are fearful that the violence will be repeated:

- *Because actually I don't want what happened to repeat itself again. Some people are used to getting away with every crime they commit. (r/0171/10)*
- *Is because if there will be no step taken, then this conflict will not come to an end. (r/0196/10)*
- *To make sure it does not happen again. To stop impunity. (r/0113/10)*
- *We all want the perpetrators to face ICC so that those who will be found guilty will serve as a deterred measure to those criminals who would want to do the same in the future. Other war lords will be aware of the law and fear doing the same in the future. (r/0023/10)*
- *So that those who perpetrated the violence and incited them into that harm not to think of doing it again and to be a reason for generations to come. (r/0153/10)*
- *They want this to happen, so that it will not be done again, and then let not this be a habit of our people. Let them be punished and not to repeat it again, but according to the law. (r/0359/10)*
- *For the sake of justice especially to avoid any such incidents in future. Innocent children, women, the aged, suffered unnecessarily. (r/0360/10)*
- *So that those who perpetrated the violence not to repeat that again and also to be the reason for those who think to do it to see the sufferers. (r/0131/10)*
- *To handle over the perpetrators of violence to justice. To prevent Kenyans from being used by politicians as objects during elections. So politicians will not incite Kenyans against each other tribes. (r/0321/10)*
- *We pray the relevant authorities take over this case and try the perpetrators at the Hague ICC to serve as a warning to those warlords who might plan to do it in future indeed some are planning to do the same. (r/0013/10)*

³² Representations supporting the authorising of an ICC investigation were received from members of all the ethnic groups which participated in this process.

- 1. So as to stop whatever happened. 2 So that there can be peace whenever there are elections. 3. So that women should never be used again as battlefields. (r/0348/10)

61. In giving this reason some victims referred to a history of recurrent violence around the election cycle:

- We want the ICC to investigate [these] matters because this is not [the] first time for them to attack us. In 1992, 1997, 2007 the same kind of people attacked during election time thinking that they may remove us from our farm or land. (r/0244/10)
- I wanted ICC to investigate these because it's now several times since 1992 up to 2007 during post election. (r/0247/10)
- So that such violence stops in Kenya and shows [the] young generation the side effects of post election. This tribe [clashes] have been repeated four times in Kenya in 1992, 1994, 1997, 2007 ... (r/0111/10)
- To end the culture of impunity as have been displaced and affected about 3 times (1992, 1997 and 2007) hence perpetrators must be arrested and justice be done (r/0018/10)
- We may see some changes in the country, because the [Kenyans] have been used for violence in every general election. (r/0044/10)
- To make sure that there will be no repeat of the event in Kenya. It has come to be a custom after every election. This should be stopped... (r/0207/10)
- My reason is because this thing has become common, as from 1992 so prevention is better than cure. (r/0330/10)
- This crimes have been committed for a long time in this party of Kenya and and nobody has taken the initiative to prosecute the perpetrators. They are the same people doing this since 1992, 1994, 1997, 2002 and then 2007. (r/0319/10)
- I would wish ICC to assist Kenyans to stop these killings during elections which has taken place since 1992, 1997 and 2007. (r/0322/10)

62. Many also referred to their expectation that violence will reoccur around the 2012 general election:

- If you don't come in to our assistance, Kenya will end up into worst part coming 2012 election. (r/0328/10)
- If The ICC takes over this case, it will have done Kenyans a favour because whoever did it will be an example to those who are boasting and planning to do it during the next General Elections (August 2012). (r/0001/10)
- Kenyan People are experienced of repeating similar offences if proved guilty and without punishment. If the Court will forgive them, I am very sure in 2012 will be worse than 2007, but if they will face the judgment people will fear to repeat violence again in our lovely country. (r/0009/10)

- *Unless this is done and the people who were responsible for the chaos brought to books we may continue to have similar incidences each time we hold an election. We had chaos in 1992 and in 1997 just before elections and nobody was punished even after an elaborate investigation by a commission led by Judge Akiumi. Unless the investigation and prosecution is done next time Kenya will have a full fledged civic war. Kenyans are bitter. (r/0051/10)*
- *This is because the perpetrators are left free they will do the same in the coming elections and thus our country will be curbed by civil wars. (r/0068/10)*
- *My reason is that I wanted ICC to carry out investigation, the election coming 2012 might have to come the same. At the same time from these things are going to come again. (r/0243/10)*
- *Justice to be done and also not be repeated the coming year for elections 2012 years. (r/0110/10)*
- *Because there have been many cases like this have taken place since 1992 and the Kenyan government has not taken any step. (r/0328/10)*
- *So as to be lesson to others who wish to do bad things in 2012 elections. (r/0132/10)*
- *I want the ICC to investigate violence because that same people are ... waiting 2012 to bring violence again. (r/0314/10)*
- *A failure to investigate and potentially prosecute, would foster ever increasing growth of the culture of impunity in Kenya and is likely to lead to a repeat of post-election violence with tragic consequences on a grander scale in the 2012 elections. (r/0033/10)*

63. Many victims expressed optimism that the ICC's involvement could break the cycle of violence:

- *Victims say ICC's intervention will help restore accountability and will set an example for those who may be preparing to repeat the same. Victims also view that the coming general elections to be held in the year 2012 may be free from the atrocities witnessed in the past years - if the perpetrators of the post election violence are held accountable. ... It is my prayer the Court intervenes to end the impunity witnessed here for many years. (r/0214/10)*
- *That they have suffered fo[r] so long. So that those who did that to stop the law should take its part. So as then to know that there is law and will never try again violence. (r/0213/10)*
- *It is my wish to have a safe country with law and order during the elections. I hope ICC will discourage the same kind of events. (r/0362/10)*
- *I want the ICC to investigate so that they should not repeat such behaviour anymore (next election to be free and fair). (r/0073/10)*
- *To be a lesson to others not to be mastermind violence ever again. To prevent violence and bring peace to Kenya. (r/0124/10)*

- *Because it will make those who have bad motive[s] like this (violence) in future not to do it, they will learn that all the world are concerned with every country in the world. (r/0327/10)*
- *I would wish the ICC to take step to the perpetrators of violence to justice so that the derogative statements during campaigns can stop and hold peaceful rallies and elections without harming each other or other communities. (r/0321/10)*
- *I am very sure that if the court will take the step of facing who caused violence, Kenya will be a good and blameless country. (r/0008/10)*

(b) Because the Kenyan authorities and/or justice system cannot be trusted

64. A very large number of victims explained that they do not trust the Kenyan justice system or other Kenyan authorities to bring about justice for crimes related to the 2007 election. Ninety-nine representations gave this as a reason for requesting the ICC's involvement.

- *[The victims] do not trust the Kenyan judicial system. They also believe that the perpetrator have a higher chance of evading justice through our Kenyan judicial system (r/0050/10)*
- *I have no faith in the Kenyan Judicial System. (r/0053/10)*
- *I do not trust Kenyan Courts. (r/0041/10)*
- *Only the ICC can help us, because the way that things are here, mean that the local court does nothing because the politicians here are very powerful. We will continue to live in fear and with no peace. (r/0367/10)*
- *I have no faith in the Kenyan judicial system. My son's murderers and those who were part of the post election violence will evade justice if we use the Kenyan National system: (r/0055/10)*
- *Plus I have no trust in our judicial systems to carry out proper investigations. There is no political will in Kenya. (r/0340/10)*
- *Because here in Kenya, people have little confidence in our judicial system. The present Kenyan government is also reluctant in ensuring the rights of those affected are guaranteed. (r/0190/10)*

65. For some victims this is because they believe that the Kenyan justice system is weak or corrupt:

- *Because Kenya's judicial system is poor bad policies and corruption. (r/0101/10)*
- *Local investigation may not yield any result due to incompetence and biasness. If any, the result will be a distorted one due to the present political temperature. Furthermore the country does not have resources to carry out the exercise. (r/0384/10)*

- *[The victims] feel that the Kenyan government is not responsible. It doesn't take any action because of the corruption that is within the Kenyan's court. Also the Big people behind all this the Kenya government will not judge them, the government is afraid of them. They can't do anything to them. (r/0326/10)*
- *The Kenyan population has lost confidence in the Kenyan Judicial System as the Judiciary is prone to judgment in favor of who pays more bribe, Kenyan Victims of Past election Violence are looking forward to ICC investigations and nothing short of it. Our Confidence in ICC investigations is our only hope. (r/0192/10)*

66. Others observed that prosecutions have not occurred in Kenya, and say that they believe the authorities are not willing to investigate:

- *The Kenyan government up to now have not started to prosecute or investigate anything about the violence 2 years now. (r/0126/10)*
- *I want the ICC because the Kenyan government has not done anything since 2007 to punish the perpetrators that means they have failed and [are] unwilling. (r/0180/10)*
- *Our government is not willing to investigate or prosecute the perpetrators. (r/0128/10)*
- *Because the current government is not willing to investigate. (r/0149/10)*
- *Because I know the people who planned and destroyed my property, but to date nobody has been charged for the offences committed to me. (r/0319/10)*
- *In Kenya our leaders live in heavens they are untouchables, unprosecutable, do not care for citizens and will do anything to acquire leadership. If you do not act there will be no Kenya in future. (r/0077/10)*
- *[The victims] feel that the Kenyan government is not responsible. It doesn't take any action because of the corruption that is within the Kenyan's court. Also the Big people behind all this the Kenya government will not judge them, the government is afraid of them. They can't do anything to them. (r/0326/10)*
- *The government is not concerned about us. They are busy fighting for power. I wish we could remain as one party state so that we do not have such problems when we vote. Our leaders are so corrupt and that is why they become harsh when they hear about such investigations such as the ICC. (r/0370/10)*

67. Some victims specifically pointed to the failure of talks around the establishment of a special tribunal in Kenya for the prosecution of crimes relating to the 2007 election:

- *The perpetrators of the violence have to date not [been] prosecuted despite being known with overwhelming evidence. The government of Kenya has failed to form a local tribunal to try the suspects. (r/0324/10)*
- *Our Government has failed to establish a local tribunal to handle the crime cases during 2007 post election violence. (r/0060/10)*

- *The Kenyan state has failed to set up a local tribunal to put an end to impunity (r/0323/10)*
- *Until now our government has failed to put in place a local tribunal to try [the perpetrators] (r/0188/10)*

68. Some victims believe that justice has not been, or will not be, achieved in Kenya because the persons responsible for the violence are in a position to prevent efforts toward accountability:

- *Because the Kenya police were involved in the killing and they can not investigate themselves. With ICC involved I think will have justice done. (r/0381/10)*
- *The perpetrators of the violence and the brains behind all those chaos are still in the government a hunter will never hunt himself. (r/0096/10)*
- *We do not trust our local courts, especially the High Court due to manipulation and interference from the politician who are likely to be involved in what happened to most and majority of Kenya. Justice carried would be favourable, this will touch the key perpetrators of the violence. (r/0165/10)*
- *Because the people who facilitated the violence are the people in power and [we] do not have faith and trust in them. There is a lot of corruption in Kenya and no justice can be done here. (r/0178/10)*
- *Because the Kenya Government is not ready to bring the [culprits] to the book. The leaders are the ones who caused it happen (the violence 2007 election). (r/0341/10)*
- *The Kenyan government is corrupt. They can use BIG FISH to intervene: (r/0015/10)*
- *Those people who sponsored and supported the violence are holding big offices in the government and because of corruption and injustice in Kenya, the perpetrators cannot be tried in Kenya. Such violence has happened many times and other criminal cases and the perpetrators have not been brought to book up to date, eg. tribal classes in 1992, Goldenberg Scandal, etc. (r/0019/10)*

69. Other victims stop short of alleging that the leaders themselves were involved in violence and are preventing prosecutions for that reason, but believe that the politics of tribalism will prevent the leadership from taking action:

- *The Government of Kenya can not make a good investigation because either the person given will lie on ethnic side, because the other investigations which have passed were not good. (r/0063/10)*

(c) So that justice will be done

70. A large number of representations (85) indicated that they want the ICC to be involved so that justice will be done. Some victims explained their personal reasons for wanting justice:

- *[The victim] wants justice. She says that her husband was killed for nothing. He was the only companion she had. (r/0120/10)*
- *I want justice, because it is unfair to leave the person next to you who committed crime knowing he was doing it to harm you and he is left free, waiting to do the same thing when he gets a chance. Police knew the victims very well and could not help. (r/0179/10)*
- *I really want the judges to help us, there is nowhere I can live safely with my children. I really need safe in my own country. I have no idea how to support my children and want justice for what happened to me. (r/0372/10)*
- *Because I still suffer psychological trauma. I lost all my property. I would like justice to be done. (r/0351/10)*

(d) To know the truth about what happened and who the perpetrators are

71. A number of representations (47) support an ICC investigation for the reason that it may reveal the truth about what happened during the violence.

- *We want Justice to stand, truth to be told about crimes against humanity in Kenya. ... Deep in our hearts and minds we feel convinced that we will never forget or forgive those who did all these evil things to us unless otherwise. (r/0182/10)*
- *The ICC should go on with investigation so as to find the truth. (r/0268/10)*
- *I, as a Kenyan, want to know the real truth concerning the events, which came during elections. (r/0362/10)*

72. In some cases victims specifically indicate that they want to know the identities of perpetrators, especially those who organized violence. For some this is important so that they can know who to forgive:

- *The investigation is allowed so that we can know who is the planner of violence. (r/0218/10)*
- *I support the ICC to investigate so that the planners to be singled and known to the public. (r/0232/10)*
- *Want to see the organisers/planners and envelope names made public. (r/0027/10)*
- *Investigation brings up clear picture then gives back forgiveness. The investigation should be done so that we can get who is the person. (r/0248/10)*

- *ICC Investigation violence of 2007 will assist the innocent victims to know these criminal fellows so as to know whom to forgive why and how. (r/0260/10)*
- *I am a Christian. The Bible says forgive you'll also forgiven. But I do not know them I do not forgive. (r/0264/10)*

73. Other victims believe that an ICC investigation will help to uncover the root causes of the violence:

- *Action taken by ICC will help to unearth the truth behind the violence. (r/0363/10)*
- *All the aspects of the total Post-Election violence should be investigated to unearth the whole truth and to facilitate remedy for the future. (r/0027/10)*
- *I want the judges to make sure that there are investigations carried out so that we can know exactly what happened in our country. (r/0382/10)*
- *I want the ICC to come and investigate so that we can know exactly why the violence happened and so that it is not repeated ever again. (r/0374/10)*

74. Some believe that an ICC investigation can also help them to understand the role of institutions in the violence.

- *For justice to be done, for me to have peace of mind. I wanted to know who did this to us and why police took part of the same. (r/0181/10)*

(e) To end the culture of impunity in Kenya

75. Some representations (37) spoke not only about the history of violence and the need to repeat its reoccurrence, but also about a culture of impunity in Kenya which they believe an ICC investigation can address.

- *I think for people to know that the law of the land is the way and anything like impunity should be out of the society. (r/0150/10)*
- *Because we're tired of impunity in this country of ours. (r/0166/10)*
- *It's high time for Kenya politicians to obey rule of law and stop impunity because in every event the small common citizen are the ones who suffer most due to loss of life and property. (r/0168/10)*
- *Since 1992, the routine of pre and post election violence has persisted. Failure by the ICC judges to prosecute the masterminds and financiers of the 2007/2008 Post-Election violence may translate to impunity by both the political class and individuals. (r/0275/10)*
- *The worst thing we have in Kenya is impunity which seems to be worse than AIDS epidemic. If there can be a cure of this disease in Kenya from the ICC it can be very welcome. (r/0167/10)*

- *In Kenya victims are not cared for and its good that this violence will never happen to me again or my neighbours and even our children. - - I wish to support the judges and ask them to help Kenya because our country Kenya is a blessed country which wants to be destroyed by impunity. We need help. (r/0349/10)*

(f) To punish the perpetrators

76. Some representations (34) express the hope that the ICC will investigate in order that perpetrators are punished:

- *I want the ICC to investigate the violence because I want people responsible to punished so that such crimes are never repeated because I lost my house, my husband was killed, all the livestock we had was stolen. I now have no way to access help from anywhere, not even the government (r/0002/10)*
- *So that the arson not repeated again in the country and to make those who financed the clashes be punished by the law. (r/0010)*
- *After a thorough investigation by the ICC, and perpetrators brought to book, the rest will see the example. (r/0058/10)*
- *We want good justice and service, we want the involved punished, we want every citizen to get his/her right. (r/0169/10)*
- *Let them be punished an not to repeat it again, but according to the law. (r/0359/10)*

(g) Because the ICC is trustworthy

77. Some victims explained that they view the ICC as a trustworthy institution. Twenty-one representations included a comment of this nature.

- *Because I believe ICC more [than] judges in Kenya. (r/0177/10)*
- *Its is independent, I have strong confidence in handling the case, I have strong believe in judges (r/0335/10)*
- *A lot of commissions have been formed in Kenya such as Kiliku, Akwumi and others have not been implemented to date. So I need an outsider such as ICC to come in and investigate the perpetrators as a lesson to the others. (r/0057/10)*

78. Some explained that they trust the ICC because it is external to the politics and tribalism which they see as afflicting the Kenyan justice system and its handling of election-related violence in particular.

- *I have high hopes in the ICC because my government protects those who caused me a lot of harm and because there in the ICC they won't rule in favour of those who protect the big fish. (r/0170/10)*

- *I want the ICC because the Kenyan Judicial system and government cannot deliver genuine justice to us victims because they were involved. I believe the ICC is independent and the Kenyan judicial system can be compromised by the leaders. (r/0059/10)*
- *Am pessimistic with Kenyan judicial system thus would like people from outside Kenya who may not be politically influenced to investigate and prosecute both organizers and perpetrators. (r/0122/10)*

79. Others simply state their belief that the ICC system is more impartial than the Kenyan justice system:

- *I think the ICC has the capacity and good intentions to freely investigate the violence of 2007 without any bias unlike our local Courts which are full of bias. (r/0193/10)*
- *This is because there will be no favouritism on victimization during the time when the ICC is. (r/0202/10)*

80. Some also indicated that they trust the ICC because it is professional or has the relevant expertise:

- *For the ICC are trusted that they could deal with the matter without being interfered by corruption. It is also an international body able to scrutinize that matter seriously. (r/0334/10)*
- *I believe that the ICC mode of investigation is better than that of Kenya. ICC is also an international body which may be accurate and deal with investigations thoroughly: (r/0064/10)*
- *The ICC should handle the cases due to its competency, fairness and independence. (r/0385/10)*

81. For some victims a favourable feature of the ICC is that it listens to the victims' views:

- *Because it is an independent organization which preserves my security and ready to listen to my views without forcing me on it. (r/0164/10)*

(h) To help victims recover property or compensation

82. Some representations (20) expressed the hope that the ICC's involvement would bring compensation, the return of property or other forms of reparations. In some cases it seems that victims hope that an ICC investigation would raise the profile of their suffering or otherwise increase pressure on the government to provide assistance to victims. In other cases victims hope that the ICC itself will

provide reparations. In some cases the anticipated source of the reparations is not clear.

- *To have justice in Kenya and to press the Government to compensate: (r/0084/10)*
- *Compensation, The Kenyan Government to be pressed by the ICC to compensate the victims of 2007/2008 in [REDACTED] and Kenya. (r/0066/10)*
- *We need investigations to happen so that the victims' needs can be addressed (r/0373/10)*

(i) To address inter-ethnic conflict

83. Some victims believe that the ICC's involvement could have wider impacts, such as addressing the politics of tribalism and the problem of inter-ethnic conflict. This was expressed in five representations.

- *To [have] being targeted as a community be killed and destroyed our property to come to the end, to end impunity in Kenya, to stop Tribalism in Kenya. (r/0320/10)*
- *... investigations will minimize the current fear and polarization among the Kenyan tribes. (r/0357/10)*

3.2 Victims who do not want an ICC investigation to be authorised

84. Only a very small number of those victims who made representations stated that they do *not* want an ICC investigation to be authorised. There were seven representations which clearly fell in this group:

- Five individual representations from [REDACTED] victims from [REDACTED];³³
- Two collective representations, made on behalf of [REDACTED] victims from the same region.³⁴

85. In addition, two individual [REDACTED] victims made representations apparently indicating that they do not want the ICC to investigate.³⁵

³³ r/0037/10, r/0038/10 r/0039/10, r/0040/10 and r/0042/10.

³⁴ r/0035/10 (on behalf of approximately [REDACTED] victims) and r/0036/10 (on behalf of approximately [REDACTED] victims).

86. However in the latter case (of the two individual [REDACTED] victims) further comments in their representations seem to indicate that they *do* want an investigation to be authorised. This appears to follow from the reason given for their answer, as well as from the fact that they provided information about what they want the scope and timing of an investigation to be.³⁶ VPRS therefore regards these representations as ambiguous and invites the Chamber to refer to the original representations.³⁷
87. Focusing on the seven representations which definitively rejected a role for the ICC in the Kenya, the VPRS draws the Chamber's attention to the reasons given for this position in the representations.
88. While the group is a relatively small one, it is possible to notice some common reasons among representations. Firstly, in common with those victims who want the ICC to investigate in Kenya, some of these victims explain that they want steps to be taken so that the violence does not occur again.³⁸ One of them also refers to the need for justice to be done and for the truth to be revealed.³⁹
89. However in contrast to many of the other victims who provided representations, these victims do not trust the ICC more than the local justice system. Some refer to local approaches as being the best solution.
- *Justice to be done to have the perpetrators be tried here. (r/0037/10)*
 - *If there is any assistance for the IDPs, it is good to consider local community for any assistance and this will create healing amongst the clash communities. (r/0038/10)*
 - *They prefer home or local forgiveness. (r/0036/10)*

³⁵ r/00264/10 and r/00278/10

³⁶ r/00264/10 and r/00278/10

³⁷ r/00264/10 and r/00278/10

³⁸ r/0040/10, r/0042/10.

³⁹ r/0037/10

90. As indicated in the above extracts, most of these victims place a high importance on healing, reconciliation and peace, which they see as tied to forgiveness. For some, prosecutions at the ICC are not compatible with these important goals:

- *1) Put God first in order to assist you with wisdom like King Solomon. Amen.*
- *2) Justice, truth and reconciliation. (r/0038/10)*
- *[The victims] prefer home or local forgiveness. They believe Hague might not be a solution because it will increase pain in the upcoming peace which is now 70% gain through a hard struggle. (r/0036/10)*
- *In Kenya, so far, the peace has prevailed. So for my own opinion, I would like the warring communities to forge peace and reconcile. So that it would not open the heal[ed] wounds. (r/0040/10)*
- *Brotherly forgiveness will be of high help to our people. (r/0039/10)*
- *As far as I am concerned I would like to forget. My way ahead and build my country. I am not ready to see what happened to me happen again. (r/0042/10)*

91. Additional insights into the views and concerns of this group of victims are provided by the video representation r/0035/10. In this representation, on behalf of a community of around [REDACTED] victims, the community leader explains that the victims prefer to seek justice through a local tribunal. They are concerned that although the [REDACTED] are law abiding citizens, they are not as vocal or as often heard as some other communities and that because of this the ICC may receive false information about them. They therefore fear that because of this their rights might not be looked after in a process at the ICC. They consider that their rights and interests would be better protected in a local process.⁴⁰

92. This video representation accords with the views expressed during the meeting [REDACTED] with [REDACTED] victims and community leaders from [REDACTED], some of whom submitted these representations. At that meeting

⁴⁰ r/0035/10

some participants expressed their fears that the ICC might be influenced by the Kenyan Government or politicians and that if an investigation is authorised the Prosecutor may focus unduly on crimes committed in [REDACTED], targeting [REDACTED] as suspects, while failing to investigate crimes committed by [REDACTED]. Participants expressed concerns that this may have a negative impact on the processes of reconciliation and peacebuilding which have begun. Some stated that if an ICC investigation is authorised but does not result in the identification of perpetrators from all groups this might result in further violence.

93. The VPRS notes that representations both for and against the authorisation of an investigation were received from [REDACTED] victims. The VPRS received 11 other individual representations from [REDACTED] victims who support the opening of an ICC investigation,⁴¹ as well as two other collective representations from [REDACTED] victim groups,⁴² and five from multi-ethnic groups including [REDACTED] victims,⁴³ all of which favoured an ICC investigation.

3.3 Views on the scope of an investigation if authorised

94. Among those representations which supported the authorisation of an ICC prosecution, many also gave their views regarding the temporal, geographic and subject-matter scope of such an investigation.

⁴¹ r/0041/10, r/0064/10, r/0192/10, r/0193/10, r/0194/10, r/0217/10, r/0223/10, r/0332/10, r/0334/10, r/0335/10, r/0338/10.

⁴² r/0189/10 (on behalf of around [REDACTED] victims) and r/0355/10 (on behalf of around [REDACTED] victims). VPRS draws to the Chamber's attention that collective representation r/0355/10 is made by the same person who made individual representation r/0037. VPRS also notes that r/0037, which was considered not to meet the requirements of rule 85, was purportedly made on behalf of a group of [REDACTED] victims.

⁴³ r/0047/10 (on behalf of [REDACTED] victims), r/0048/10 (on behalf of [REDACTED] victims), r/0050/10 (on behalf of around [REDACTED] victims), r/0213/10 (on behalf of around [REDACTED] victims), and r/0318/10 (on behalf of around [REDACTED] victims).

(a) Views on the temporal scope of a possible ICC investigation

95. Some victims provided views on the temporal scope of a potential investigation by the ICC Prosecutor. Many victims referred to the period of intense violence which occurred between 30 December 2007 and 28 February 2008.
96. However many victims requested a broader temporal scope for investigations.

Crimes committed before the 2007 election

97. Fifty-one representations expressly⁴⁴ referred to the need to investigate crimes committed before the 2007 election.
98. In some cases such victims referred to the campaign period before the 2007 election or earlier parts of 2007. Twenty-nine representations fall into this category.
- *This exercise should cover six months before election to six months after election. (r/0384/10)*
 - *The investigation should cover the time of campaign, during election and after election. (r/0195/10)*
 - *Period: From 1st Dec. 2007 (period of campaign) to 28 Feb. 2008 (r/0318/10)*
 - *To cover the period leading to the General Election of 2007 ie Jan 2007 to February 2007. (r/0363/10).*
99. Some referred to statements made, plans laid, or activities undertaken during the lead-up to the election which subsequently resulted in violence.
- *Months before the violence broke out, many of our [REDACTED] friends in [REDACTED] used to warn us that we the [REDACTED] will be driven out of [REDACTED]. We never took it seriously. They had even started allocating themselves of our houses and businesses, by way of pinpointing. It was well known because they used to tell us that war was imminent. How I wish I had taken it seriously. It was well organised way before the election. (r/0340/10)*
 - *[Investigation should cover] from the 2nd month (Feb) of 2007 during the establishment and training of militia groups. (r/0212/10)*

⁴⁴ This figure does not include those who mention "2007" without specifying more.

- *[The investigation should cover] from the election period and after the election due to the clashes was well planned whether they win or they lose the election. (r/0010/10)*
- *Investigate issues way back from 2006 to 2008 as violence was pre-planned. (r/0354/10)*

100. Some victims, who had experience violence during earlier periods, requested that an investigation also take in those periods of violence. For example, this was the case in respect of victims of the violence which occurred in [REDACTED] in 2006 and 2007.⁴⁵

101. Other victims referred to violence which occurred around earlier electoral processes, for example around the 2005 referendum.

- *Investigation should go back to 2005 when incitement started... (r/0030/10)*
- *The investigations should cover the time period from the year 2005's constitutional referendum until now. (r/0049/10)*
- *Investigations should cover from 2005 when we had a referendum to date. (r/0180/10)*

102. The argument for extending the scope of the investigation in order to cover crimes committed during this period is made most clearly in representation r/0392, where examples are given of crimes committed between September and November 2005:

- *The 2007/2008 PEV [Post-Election Violence] cannot be separated from this post-September 2005 violence. In fact, the PEV was a culmination of pre-planned, systematic, coordinated and organized actions that can be traced from 1963. Like during the 2007/2008 PEV, in 2005 political leaders incited the public to engage in crimes by promoting ethnic hatred with impunity. ..."(r/0392/10)⁴⁶*

103. The Chamber may also consider it relevant that a number of the victims dated the crimes from which they suffered as having occurred before the 2007 election.⁴⁷

⁴⁵ r/0021/10, r/0022/10, r/0063/10. In relation to this violence see also Annex 3, pages 9 to10.

⁴⁶ Paragraphs 47 to 57.

⁴⁷ For example r/0020/10, r/0021/10, r/0022/10, r/0063/10, r/0064/10, r/0164/10, r/0196/10, r/0351/10.

Crimes committed after 28 February 2008

104. Twenty-seven representations explicitly⁴⁸ refer to the need for investigations to include crimes committed or continuing after 28 February 2008. Some of these victims mentioned that violence targeting their communities has continued after February 2008 and even up to the present.

- *Investigations should spread to after Feb 2008 because some crimes continue to be perpetrated up to date. (r/0002/10)*
- *Violence has been happening since 1992, so that time 'till now should be covered. (r/0347/10)*
- *I think that the judges should look at crimes that were committed not only during the post-election violence but also the crimes in 2008. (r/0372/10)*

105. A number of victims dated the crimes from which they suffered as having occurred or continued after 28 February 2008. Most of the dates given are in March or April 2008.⁴⁹

[REDACTED]

106. [REDACTED]⁵⁰ [REDACTED]⁵¹

107. [REDACTED]

(b) Views on the geographical scope of a possible ICC investigation

108. Victim views on the geographic scope of a possible ICC investigation closely reflect the well-known information about the location of crimes committed

⁴⁸ This figure does not include those who mention "2008" without specifying more.

⁴⁹ For example: r/0191/10, r/0194/10, r/0198/10, r/0200/10, r/0201/10, r/0202/10, r/0203/10, r/0204/10, r/0207/10, r/0228/10, r/0239/10, r/0240/10, r/0241/10, r/0258/10, r/0260/10, r/0318/10, r/0355/10.

⁵⁰ [REDACTED]

⁵¹ [REDACTED]

during the peak period of violence. Victims requested that investigations take in the following Provinces:

- Nairobi: 49 representations
- Rift Valley: 184 representations
- Nyanza: 78 representations
- Western: 81 representations
- Central: 19 representations
- Coast: 63 representations
- 138 representations requested that investigations cover the whole of Kenya.

(c) Views on the subject-matter scope of a possible ICC investigation

109. Many victims mentioned in their representations the types of criminal acts which they want to be investigated by the Prosecutor.

110. In a large number of cases, these included those types of conduct identified by the Prosecutor in his Request for authorisation of an investigation pursuant to article 15. For example, 191 representations requested that investigations include killings, 179 requested that investigations include sexual violence, 111 requested that investigations include forced displacement, 114 requested that investigations include acts of ill-treatment such as might fall within the scope of article 7(1)(f) "torture" or article 7(1)(k) "other inhumane acts".

111. However other types of conduct not explicitly mentioned in the Prosecutor's Request were also mentioned by victims. For example, 205 representations requested that the destruction or theft of property be encompassed within the scope of the investigation authorised.

112. In addition to presenting views on the potential scope of a possible ICC investigation, victims also described the events that happened to them and the

harm they suffered as a result of these events. In many cases this information correlates closely to the types of conduct mentioned above. However, since it is possible that some victims did not understand the question about the scope of a requested investigation, and because it might be assumed victims would like to have an investigation cover the crimes which they themselves experienced, the main types of conduct mentioned are also summarised here.

- 176 of the individual representations and 61 of the collective representations mention an act of sexual violence
- 180 of the individual representations and 64 of the collective representations mention killing
- 190 of the individual representations and 58 of the collective representations mention torture, another form of ill-treatment, or an assault
- 210 of the individual representations and 69 of the collective representations mention (forced) displacement
- 307 of the individual representations and 70 of the collective representations mention the destruction or theft of property

113. It may be questioned whether the latter acts encompassing the destruction or theft of property properly fall within the jurisdiction of the Court in this instance. In this regard, for the purpose of determining what information might be relevant to bring to the Chamber's attention in this report, as well as for the purpose of undertaking rule 85 assessments, the VPRS considered the possibility that a Chamber might categorize such acts as falling within the crime against humanity of persecution. Considering that they might well do so, VPRS considered it relevant to note that:

- A number of victims explicitly mentioned in their representations that they were targeted for violence or theft because of their membership in a particular ethnic group or their real or perceived political affiliation.
- Information provided to the VPRS during meetings with victims and community leaders, as well as in the report on victim mapping (Annex 3) also indicates possible persecutory targeting and in this respect supports claims made by the Prosecutor in his Request for authorisation of an investigation pursuant to article 15.

114. [REDACTED]⁵² [REDACTED]⁵³ [REDACTED]⁵⁴ [REDACTED]⁵⁵ [REDACTED]⁵⁶
[REDACTED]

3.4 Other issues raised by victims in their representations

115. In providing their representations, some victims have also touched on other issues. VPRS notes that many of the topics addressed by victims are not within the Chamber's power to resolve or respond to, either at all or at this stage. It is the VPRS's understanding that these issues have not always been raised in the expectation that they will be resolved by the Chamber. Rather in many cases they are raised because this process has provided a rare opportunity for victims to speak frankly about their needs and wishes.

116. The VPRS has included these views because it was clearly the wish of victims to have these messages conveyed to the Chamber through the present procedure, and because the views may be of assistance to the Chamber in understanding the circumstances and perspectives of Kenyan victims.

⁵² [REDACTED]

⁵³ [REDACTED]

⁵⁴ [REDACTED]

⁵⁵ [REDACTED]

⁵⁶ [REDACTED]

117. In the sections below some examples of the most common views in this category are presented.

(a) The ICC process must move quickly

118. The most commonly given additional comment among the representations was that the proceedings before the ICC must move quickly. A comment of this substance was made in 252 of the 396 victims' representations.⁵⁷

119. For most victims who gave a reason for this sense of urgency, it was because of a fear that violence will reoccur around the 2012 general election unless the ICC has done its work before then. For this reason many representations mention the need for investigations or prosecutions to occur before 2012:

- *The ICC should take charge immediately--justice delayed is justice denied. (r/0122/10)*
- *I fear living in my own home because of what happened in 2007, and do not live there anymore. That is why I want the judges to commence investigation as soon as possible. (r/0366/10)*
- *Period of investigation should [be] as quick as possible, before another Government sworn in. It should take 2 – 4 months from now. Because coalition government is about to break, and many of them could go missing exile.(r/0358/10)*
- *The ICC should try to take the least time possible to prosecute the suspects to avoid such occurrences during the coming general elections in 2012. (r/0012/10)*
- *I want the investigations to be done quickly, and especially before the 2012 elections as there will be more violence. (r/0176/10)*
- *This should happen before 2012 to avoid the same fate. (r/0019/10)*
- *The suspects should be tried before the next general election (2012) to avoid the same occurrence. (r/0020/10)*
- *The victims would prefer the cases are dispensed with as soon as possible. They should be before 2012 when Kenyans might go to General Election. (r/0046/10)*

⁵⁷ The Chamber may notice in reviewing the representations themselves, that many victims misunderstood the VPRS's question asking victims what they wanted the temporal scope of the investigation to be. In response many indicated how long they wanted the investigation to take, for example "no more than six months", or "two months". In such cases VPRS has understood this as an indication that the investigation must proceed quickly, except where a longer period (for example expressed in years) was given.

- *ICC to press the government to give result / judgment before the next elections in the year 2012 so that we can have peace in Kenya. (r/0072/10)*
- *I would like to propose that the investigation and trial take place before the 2012 General Elections. (r/0068/10)*
- *The time of period of investigation should be as soon as possible, before the forthcoming election of 2012. We as women we suffered a lot and we are afraid the something will happen on the forthcoming election 2012. We are worried to be the victims once again when the election occurs. (r/0375/10)*
- *Investigations should not take less than one year and should not last until one year before the 2012 general election so that investigations and general elections don't coincide. (r/0192/10)*
- *The investigation should not take long time because if the action is not taken before we reach the next election 2012 still the clashes will occur. (r/0306/10)*

(b) Victims should have reparations

120. In many representations, the needs of victims and their wish to receive reparations or some form of assistance is mentioned not as a reason for requesting the Court's involvement, but rather as an additional request either to the Court or to the national authorities. In some cases this is linked to the possible involvement of the ICC, but in many cases it is mentioned as a more general request or comment. One hundred and four of the victims' representations mentioned a desire for reparations of some kind.

- *Many people were affected, just for voting and many families left without breadwinners and are suffering today. Victims have lost their lives. Personally, I see no future for myself and Children. I hope our Kenyan government would help us and compensate and we are tired and suffering because of this government. Many women raped were infected with HIV aids virus. (r/0370/10)*
- *They get a lot of problems, they suffer a lot so the government needs to do something about it. (r/0004/10)*
- *I would add to say I request the government of Kenya and the International to do anything possible to compensate and resettle all the victims from 1992, 1997 and 2007 and 2008. (r/0169/10)*
- *To pressure the Government to [complete] compensation IDPs so us to [settle] back. (r/0216/10)*
- *ICC to press the Government of Kenya to compensate IDPs. (r/0072/10)*

- *I could request the ICC to push our government to pay us because it did not give me security and also to pay those who were killed. (r/0197/10)*
- *People want the Government at least to help them recover their usual life. Eg.: give the IDPS a piece of shamba. (r/0022/10)*
- *I would like the ICC to press the Kenyan Government to compensate those who lost their property and justice to be done to everybody. (r/0081/10)*
- *The Government should compensate for all our property which were lost during post-election violence. At the same time, build for us the houses which were burnt to ashes. Because by this time we are still living in tents which are now worn out. The ten thousand promised by the Government to start the life has not been given nor the twenty five thousand to rebuild the houses has not been issued. (r/0306/10)*
- *We request the ICC to try and assist us as much as possible financially or materially to enable us go back to our normal lives. May we also be assisted socially as most of us are still traumatized (r/0364/10)*
- *This violence case associated has made poor. Even we can't manage to pay school fees for our children, progress poor, caused hunger in village. We therefore request the ICC to [compensate the losses] since 1992-2007. (r/250/10)*
- *I would request if the offenders are found guilty that victims should be compensated. (r/0162/10)*

(c) Security/protection for victims/witnesses

121. The need for measures to protect victims and/or witnesses was raised in 25 representations.

- *I want the victims and witnesses protected. I fear that influential people may feel threatened and harm or kill them. (r/0383/10)*
- *We are still not safe because the dispute about land in this area has remained a big concern to both perpetrators and the people evicted. We pray that a proper policy be formulated for our [safety] in the future. (r/0013/10)*
- *Ensure the safety of victim's family in the event they are called to testify (r/0350/10)*

122. Some victims believe that this protection should be provided by the Kenyan authorities:

- *Victims' protection to be provided by the Kenyan Government. (r/0047/10)*

123. Others asked that the ICC take responsibility for protecting victims and witnesses:

- *We are concerned about the security and safety conditions of the victims. We urge the ICC to help us in this matter. The proceedings should take place as soon as possible. (r/0050/10)*
- *There should be security for those who will give evidence to the investigators. The ICC should make sure that such acts are not repeated. (r/0174/10)*

124. Some victims specifically raised the need for their identity and other information to remain confidential as a means of ensuring their protection:

- *We need the court to be able to protect us and not expose us to the Kenyan government because we are very worried about our security if they know that we are community. We are worried that many victims may not talk or give information for fear of security operatives and other tribes (r/0003/10)*
- *I need protection that my name does not get to the Kenyan government. (r/0178/10)*
- *To ensure confidentiality of victims and witnesses. (r/0350/10)*
- *Those people who will give evidence should not be known by the government. (r/0175/10)*
- *I would like this information to kept private and confidential for [...] my security and that of my people and community. (r/0342/10)*

(d) Institutional reform and the removal of perpetrators from public office

125. Some victims expressed the hope that an ICC prosecution would be accompanied by measures directed at achieving key institutional reforms. Some victims mentioned the need to reform the police force, others to reform the constitution or electoral processes. Some mentioned the need to address corruption:

- *To find better way of voting. (r/0108/10)*
- *Reforms in Police should be done immediately. (r/0065/10)*
- *In Kenya we don't have enough security, and police have enemies of common awareness...., so they should look a way of bringing common citizens closer to the Kenya police, police harassment should not be there. Our rights as common citizen, police to obey and follow the right of a common mwaranchi, so they should look away of bringing common citizen closer to the Kenya police, police harassment should not be there. Our rights as common citizen, police to obey and follow the right of a common mwaranchi. ...About police harassment, even if you [are] suspect police should [have] a way he must follow to arrest you not harass as if you have been found guilty. (r/0358/10)*
- *ICC to press corruption in Kenya (r/0084/10)*

- *As a human right activist on the ground, I would like people to have good constitution rather than the one we have now. (r/0206/10)*

126. In addition, a number of representations contain comments indicating that those persons responsible for the violence should be removed from public office, or prevented from running for election in the future:

- *The planners should be barred from any office. (r/0344/10)*
- *The political parties which started the violence should be [banned] from future elections. (r/0389/10)*
- *For my suggestion I don't want those people to stand for election at 2012 at all... My suggestion is I ask kindly to get enough security in the next election. (r/0391/10)*
- *I would like king pins should be pinned down and should not be allowed to hold public office like our current MP. (r/0150/10)*
- *The Kenyan Government to be pressed to lead with justice and all those who were involved directly or indirectly in political violence to be brought to justice and resign from their ministerial posts. (r/0083/10)*
- *All suspects should not run for any seat in 2012 General Elections. (r/0101/10)*
- *Well needed those concerned to be stopped from representing as leaders anymore to be investigated first. (r/0073/10)*

(e) Focus of investigations

127. Some victims made comments in their representations regarding those who they see as the appropriate targets for an ICC investigation. Among these reference to the police was particularly common. A number simply refer to "police brutality" or "shootings by the police"⁵⁸ as a type of crime needing to be investigated.

- *To investigate the police activities during the period in question. Particularly the Administration Police's conducts. (r/0385/10)*
- *Police of Kenya should be investigated because during they violence, they also looted and were not [sic] partisan (r/0180/10)*
- *The Police force should be investigated. (r/0056/10)*
- *The role of the police should be investigated (r/0356/10)*

⁵⁸ r/0055/10, r/0058/10, r/0371/10, r/0378/10, r/0379/10.

128. Other victims mention the need for investigations to focus on the persons responsible for planning, organizing and financing violence, especially senior political leaders.

- *Those who funded perpetrators. Those big people like commanders. (r/0017/10)*
- *I wish to request that those who are adversely mentioned as having been the masterminds of financing and organizing all these things are put to trial. (r/0188/10)*
- *The ICC should take this matter seriously in order to protect Kenyans from those greedy politicians who incited, planned, funded those violence, The ICC should make sure that those participated big and small should be brought to Court of Law. (r/0209/10)*
- *[The investigation] should include the two leaders of the big parties i.e. Mwai Kibaki & Raila Odinga. It should cover all the political leaders and prosperous businessmen. (r/0175/10)*
- *Top official in Kenya government who planned and supported the violence should be investigated and judged. Also those who participated in the violence should be judged. (r/0328/10)*
- *Crimes to be investigated, the Kenyan government leaders who give out money for the youth to beat and commit crimes to other people. (r/0164/10)*
- *I urge the ICC to try the best of their level and bring to book all the perpetration mostly those who supported and funded the violence. (r/0019/10)*
- *[Investigate] earlier political activities by top politicians before election, during election and post election or after election. This should be done in connection with violence planning which included a neighbouring country. (r/0384/10)*
- *[Investigations should cover] the planners of the violence, the financiers of the violence, the trainers of the perpetrators, the creation and maintenance of the local militia, the role of the police in the violence. (r/0026/10)*
- *I request the ICC to deal with those who were planning and financing violence.*

129. One victim identified the [REDACTED], and those financing and supporting it, as responsible for some of the violence and needing to be investigated.⁵⁹

130. Some victims specifically focused on persons involved in inciting violence or spreading hate speech.⁶⁰ One particularly detailed representation was received

⁵⁹ r/0059/10.

⁶⁰ r/0030/10, r/0033/10, r/00152/10, r/0365/10

on this subject, which calls *“for the opening of an investigation by the ICC into the circumstances surrounding crimes of violence and incitement to violence that took place in Kenya and which were perpetrated by elements residing within and outside the geographic borders of Kenya during the post-election violence between 2007-2008.”*⁶¹

The victim argues that the use of electronic media to encourage violence was a significant catalyst for crimes, and that it has not been and might never be properly investigated by national authorities in Kenya and elsewhere.⁶²

(f) Need for reconciliation, peacebuilding and/or civic education

131. A number of victims indicated that they would like to see programs implemented in their communities with the goals of reconciliation and peacebuilding. These comments come from those victims favouring the involvement of the ICC and demonstrate that these victims see the ICC as complementary, not antithetical, to reconciliation efforts.

- *Try to educate the communities how to maintain peace among the communities living in Rift Valley provinces. (r/0307/10)*
- *Reconciliation should be encouraged. (r/0125/10)*
- *Support peace building initiatives among different communities. (r/0352/10)*
- *The affected people should be given civic education (r/0021/10)*

132. Some victims also called for programs for civic education in their communities:

- *There should be enough civil education to let the people know their rights. (r/0390/10)*
- *We want civic education to be done and peace building initiatives be started in the most affected areas. (r/0363/10)*

(g) Root causes of violence to be addressed (eg land reform, electoral reform)

133. For many victims it is important that some steps are taken, whether by the Kenyan Government or others, to resolve the underlying causes of conflict.

⁶¹ r/0033/10.

⁶² r/0033/10.

These causes are perceived as including, for example, land disputes, corruption and problems in the electoral processes.

- *The ICC should advise the Kenyan Government on the land issues. (r/0012/10)*
- *We are still not safe because the dispute about land in this area has remained a big concern to both perpetrators and the people evicted. We pray that a proper policy be formulated for our [safety] in the future. (r/0013/10)*
- *The real cause of the post election violence should be established. For example if indeed there was vote rigging. (r/0189/10)*
- *The real cause of the post election violence should be established if impunity is to be replaced totally with accountability. In particular the question of land and free and fair elections are paramount issues requiring proper analysis and appropriate solutions. (r/0190/10)*
- *Solve issue of land in Kenya. Find the genesis of this matter. (r/0198/10)*
- *The government must find another way of settling people, not letting them lose their original land. (r/0205/10)*
- *Kenya should stop tribalism and corruption and selfishness. (r/0163/10)*

(h) To be kept educated about the ICC and informed of developments

134. A small number of victims specifically requested that they be kept informed about developments at the ICC, or that be further educated about the way the Court works. It was pointed out that many Kenyans don't have a good level of understanding about the Court.

- *The sensitisation on the role of the ICC should be enhanced to reach and be understood by the poor victim in the village. It is understood to be a monster. (r/0194/10)*
- *ICC to do capacity building to all victims to know what is ICC. (r/0203/10)*
- *We need to be informed on development on ICC. (r/0181)*

(i) Victims are continuing to suffer as a result of the violence suffered

135. It is apparent from many of the representations that victims continue to suffer greatly, even as the result of violence which occurred more than two years ago. Moreover many victims emphasize this fact in a way that makes clear that they want it to be known and recognized by the authorities and the Court. There are many examples of this in the representations, and each tells its own story.

Therefore on this point the VPRS only wishes to draw the Chamber's attention to the apparent wish of victims for this to be made known, and refers the Chamber to the representations annexed to this report.

4 Confidentiality and protection

136. The VPRS continues to be concerned by the significant security risks faced by victim communities in Kenya and those assisting them. During its missions in Kenya, the VPRS met many victims who expressed strong grounds to fear for themselves or their families, simply because they were victims of, or witnesses to, violence. Most of these victims placed themselves at further risk by meeting with the VPRS and/or by submitting a representation to the Court.
137. In the course of meetings with victim representatives the VPRS undertook frank discussions on the subject of security. This included providing information about the limits of what might be expected from the ICC if an investigation is authorised, and advising on what steps victims and those assisting them can take to address existing risks and avoid creating new ones. In the context of these discussions, VPRS has assured victim communities that the ICC takes seriously the need to maintain the confidentiality of their engagement with the Court.
138. The VPRS notes that many of the victims it met had already given statements to one of various official commissions of inquiry. Many reported that official bodies had let them down by taking insufficient precautions with sensitive information, and that this had been the source of serious security risks to the victims concerned. Despite, or perhaps because of, these past experiences, victims responded positively to the discussions led by the VPRS on security and protection. They were particularly receptive to the seriousness with which the Court takes the confidentiality of information provided by victims. The VPRS

draws this to the attention of the Chamber in order to highlight the trust which the victims have invested in the Court by taking part in this process.

139. For these reasons the VPRS recommends that the Chamber maintains the confidentiality of all information which might, if released, expose persons to any risk. This would include at a minimum the representations themselves, but also any information which might put at risk any persons (victims, community leaders, intermediaries, lawyers and others) who have been in contact with the VPRS or other parts of the Court.

140. The VPRS notes that the Prosecutor has requested access to reports and documents filed by the VPRS.⁶³ The VPRS is aware that many victims would be prepared to provide information to the Prosecutor. Indeed the VPRS representatives were impressed by the courage of many victims who declared their readiness to give evidence as Prosecution witnesses despite being aware of the potential risks of such an action. Despite this, the VPRS does not recommend providing access to the representations to the Prosecutor, for the following reasons:

- 1) Victims have not given permission for their representations to be seen by the Prosecutor. Many victims did not express an opinion on this subject. Indeed many spoke of the risks they are facing and threats they have already received. Victims were informed that their views were being sought specifically for the purposes of the Article 15 procedure and not for any other purpose (such as the collection of evidence).
- 2) Given the early stage of proceedings, and indeed the possibility that the Chamber may reject the Prosecutor's request to authorise an investigation,

⁶³ Prosecutor's Application for Access to Any VPRS Filing and any Decision by this Chamber, ICC-01/09-10-Conf-Exp.

limited measures of protection are available to these victims should they be put in danger as a result of their engagement with the ICC.

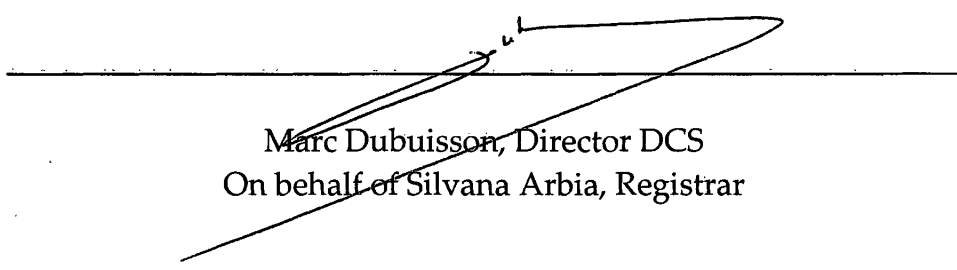
- 3) An approach by the Prosecutor, or even the possibility of it, might put victims at risk. The VPRS does not doubt the Prosecutor's commitment to ensuring the safety of victims and witnesses. Nor does it question the security of information provided to the Prosecution in confidence. However it believes that in the process of approaching victims, it is unavoidable that some level of risk will be created.

141. The VPRS also notes that, in contrast to the circumstances in which applications for victim participation are provided to the parties for observations, there is no provision in the legal texts of the Court for victim representations to be transmitted to the Prosecutor for observations or for another purpose. The substance of the victim representations can be substantially communicated to the Prosecutor in an appropriate manner through the provision of a public redacted version of this report.
142. The VPRS therefore recommends that the Chamber takes such measures as might be required to maintain the confidential and *ex parte* classification of all information contained in this report and its annexes which might, if released, have the result of putting at risk victims, community leaders, intermediaries, legal representatives, or any other person. This could include, for example, ordering that this report, and the VPRS's Report of 23 December 2009, only be made public after the application of appropriate redactions. VPRS will be able to provide an appropriately redacted version of this report and the Report of 23 December 2009 should the Chamber so order.

5 Conclusions and recommendations

143. The VPRS refers the Chamber to Annexes 6 to 407, which contain not only the victims' representations themselves but also other materials providing victims' views.
144. The VPRS also refers the Chamber to Annex 2, which explains the methods used for the receipt and collection of representations; and Annex 5, which explains the principles applied and procedures followed in undertaking assessments regarding rule 85.
145. The VPRS reflects that the process leading to this report has been a success in that it has allowed Kenyan victims to present their views to the Chamber in a limited but, at least until now, secure way. The VPRS has welcomed the approach of the Chamber which enabled this.
146. Despite this, the VPRS considers that, regardless of the outcome of the Chamber's decision, further work will be necessary. The VPRS recommends that following the Chamber's decision, and regardless of whether or not an investigation is authorised, it will be necessary to immediately undertake a further mission to Kenya. The objectives of this mission would be to meet with victim communities who have already engaged with the Court and explain the content and consequences of the decision to them.
147. If the Chamber decides to authorise an investigation in Kenya, the VPRS will immediately begin its work of identifying and training intermediaries and legal representatives and conducting outreach activities targeting victim communities. In the light of the security concerns already noted, the VPRS also believes that should an investigation be authorised, it will become necessary for the Registry to undertake an assessment concerning the implications for the security of victims, witnesses, intermediaries, lawyers and other persons engaging with the Court.

148. The VPRS submits that the number, complexity and novelty of issues addressed in the present Report constitute exceptional circumstances justifying an extension of page limit pursuant to Regulation 37(2)⁶⁴ and, therefore, respectfully requests the Chamber to grant such extension and admit the present report.



Marc Dubuisson, Director DCS
On behalf of Silvana Arbia, Registrar

Dated this 29 March 2010

At The Hague, The Netherlands

⁶⁴ ICC-01/04-01/06-124.