



## CALL FOR EXPRESSION OF INTEREST

### COMMON LEGAL REPRESENTATIVES FOR VICTIMS IN THE KENYA CASES

#### Background

On 3 October 2012, Trial Chamber V (“the Chamber”) issued decisions on victims’ representation and participation at trial (“the Decisions”) in the cases of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang* (“*Ruto et. al.*”) and *The Prosecutor v Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (“*Muthaura et. al.*”).<sup>1</sup> In the Decisions, the Chamber ordered the Registry to submit recommendations for the position of Common Legal Representative of victims (“CLR”) in each case by 1 November 2012.<sup>2</sup>

Under Article 68(3) of the Rome Statute victims linked to a case (persons who suffered harm as a result of the crimes alleged in a case before the ICC) may participate in ICC proceedings relating to that case.

The Registry therefore seeks expressions of interest from counsel interested in seeking appointment as common legal representative in one of the two cases in the Kenya situation. The Registry will not recommend that the same counsel be appointed to represent victims in both cases.

#### Role of common legal representatives of victims

As occurred at the Pre-Trial stage of the proceedings, the Chamber has decided to appoint a common legal representative to present the views and concerns of the victims, in accordance with the Decisions.<sup>3</sup> Under the model envisaged by the Chamber, the common legal representation scheme will include “both an appointed common legal representative of victims and the Office of Public Counsel for victims (“OPCV”) acting on the Common Legal Representative’s behalf”<sup>4</sup> under a form of cooperation that will be defined.

A lawyer appointed as common legal representative during trial is expected to undertake all work required to represent participating victims, in accordance with the ICC’s legal texts, most relevantly article 68 of the Rome Statute and rules 91 to 93 of the Rules of Procedure and Evidence (“RPE”), and the Decisions. This work includes leading a legal team which makes appearances, files written submissions, and maintains communication with the victims represented. According to the Chamber the primary responsibilities of the CLR include *inter alia*:

- Acting as the point of contact for victims whom he/she represents and to formulate their views and concerns;

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<sup>1</sup> Decision on victims’ representation and participation, issued in each of *The Prosecutor v William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-460) and *The Prosecutor v Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (ICC-01/09-02/11-498),

<sup>2</sup> *Id* at Section VI.

<sup>3</sup> Under Rule 90(2) of the Rules of Procedure and Evidence, where there are a number of victims, the Chamber may for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. Rule 90(3) provides that if the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives.

<sup>4</sup> *Id.* at para 40.

- Submitting filings on behalf of victims wishing to appear directly, in person or via video-link, before the Court;
- Appearing on the victims' behalf at critical junctures of trial that involve victims interests;
- Appearing at other times during the trial upon specific request filed with the Chamber;
- Drafting and submitting filings in response to documents presented at trial that impact the interests of victims;
- Giving instruction to OPCV on the submissions to be made on his/her behalf;
- Giving Opening and Closing Statements;
- Presenting Evidence;
- Ensuring that the views and concerns he or she represents are those of only individuals qualifying as victims in the present case;
- Making sure (in conjunction with VPRS) that the victims of the case assigned to the CLR are informed of the new procedure.

### **Duration of appointment**

The appointment of a common legal representative resulting from the present process would be expected to last for the duration of trial. Trial proceedings may potentially continue for several years (including preparation for trial, trial hearings, appeals, reparations). The Registry therefore requests the applicants to consider their long-term availability. The trials in both cases are currently scheduled to begin on 10 April 2013 (*The Prosecutor v Ruto et. al.*) and 11 April 2013 (*The Prosecutor v Muthaura et. al.*).

### **Remuneration**

Legal aid is available for victims who lack the necessary means to pay for a common legal representative according to the conditions established under Rule 90 (5) of the RPE. Where victim clients are indigent, a common legal representative and members of his/her team may be remunerated for certain work undertaken according to fixed rates through the ICC Registry. More information on the ICC legal aid scheme can be obtained on the web site of the Court and from the Counsel Support Section ([css@icc-cpi.int](mailto:css@icc-cpi.int)).

### **Minimum requirements**

In order to practice before the Court, including as a common legal representative of victims, a lawyer must first be admitted to the List of Counsel maintained by the Registrar under rule 21(2) of the Rules of Procedure and Evidence. For the purposes of the present Call, the Registry will therefore only consider applications from persons who are either already admitted to the List of Counsel, or who appear to meet the minimum requirements for admission to this List. The latter requirements include:

- Fluency in at least one of the working languages of the Court (English and French);
- Established competence in international or criminal law and procedure and at least 10 years of relevant experience in criminal proceedings.<sup>5</sup>

Counsel must be free of serious criminal or disciplinary convictions and be prepared to comply fully with the ICC's Code of Professional Conduct for counsel.<sup>6</sup> More information on admission to the List of Counsel is available on the ICC website at <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Defence/Counsel/>

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<sup>5</sup> Rule 22, Rules of Procedure and Evidence; regulation 67, Regulations of the Court.

Counsel expressing interest in this role are expected to have familiarized themselves with the work involved, including by reference to the ICC's legal texts and jurisprudence, the Code of Professional Conduct for counsel, and other available documents such as the Manual for legal representatives produced by the Office of Public Counsel for Victims (<http://www.icc-cpi.int/iccdocs/PIDS/publications/OPCVManualEng.pdf>).

### **Selection criteria**

The Registry will assess candidates expressing interest in appointment as common legal representative of victims by reference to established criteria. In addition to the requirements set out in rule 22 of the RPE, regulation 67 of the Regulations of the Court ("ROC") and the ability to maintain an ongoing presence in Kenya throughout the course of proceedings, these criteria include:

- (1) An established relationship of trust with the victims or ability to establish such a relationship;
- (2) Demonstration of an ability and willingness to take a victim-centred approach to their work;
- (3) Familiarity with the country where the crimes in connection to which the victims are admitted to participate in the proceedings have been allegedly committed;
- (4) Possession of relevant expertise and experience, demonstrated by previous experience in criminal trials, experience representing large groups of victims and specialized study in relevant academic fields;
- (5) Readiness to commit a significant amount of time to maintain contact with a large number of clients, to follow developments in the Court's proceedings, to take any appropriate steps in the proceedings, and to maintain adequate contact with the Court;
- (6) A minimum level of knowledge in information technology.<sup>7</sup>

As the victims to be represented are likely to speak English, Swahili and/or local Kenyan languages, the Registry will prefer candidates able to work in English. Knowledge of other languages spoken in Kenya would be an asset.

### **Procedure for application and selection**

Lawyers interested in being appointed as common legal representative for victims in one of the Kenya cases should submit an expression of interest which includes the following:

- An up to date *curriculum vitae*;
- A statement against the selection criteria demonstrating how the candidate meets the identified criteria;
- An indication of which of the two cases the candidate would wish to act in;
- Any other relevant information which the candidate believes should be made known to the Registry, for example regarding potential conflicts of interest.

Expressions of interest should be submitted to the Victims Participation and Reparations Section in the ICC Registry by **17.30 Central European Time, on 17 October 2012**, using the following email address: [vprs@icc-cpi.int](mailto:vprs@icc-cpi.int)

Questions on this process can likewise be sent to [vprs@icc-cpi.int](mailto:vprs@icc-cpi.int)

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<sup>6</sup> Resolution ICC-ASP/4/Res.1

<sup>7</sup> Paragraph 60 in the Decision in the *Muthaura et al* case and paragraph 61 in the Decision in the *Ruto et al* case