

# **Annex**

**Cour  
Pénale  
Internationale**



Bureau du Conseil public pour les victimes

**International  
Criminal  
Court**

Office of Public Counsel for Victims

**Internal memorandum  
Mémoire interne**

To   À	Silvana Arbia, Registrar	From   De	Paolina Massidda, Principal Counsel – OPCV
Date	10 October 2012	Copies	Didier Preira, Deputy Registrar Marc Dubuisson, Director - DCS Esteban Peralta-Losilla, Head – CSS Fiona McKay, Head – VPRS
Ref.	OPCV/2012/29/PM	Pages	3 (Including this page   y compris cette page)
Subject   Objet	Common legal representation in the cases <i>The Prosecutor v. Ruto et al.</i> and <i>The Prosecutor v. Muthaura et al.</i>		

Madame Registrar,

Following the notification of Trial Chamber V's decisions on victims' representation and participation in both Kenyan cases,<sup>1</sup> and in light of the Chamber's instruction according to which "*the Registry and the OPCV [are directed] to consult and to submit a joint proposal on the division of responsibilities and effective functioning of the common legal representation system within 14 days of notification of this Decision*"<sup>2</sup>, I wish to convey the preliminary position of the Office in relation to the implementation of said decisions<sup>3</sup>.

The Office wishes to underline that the option of appointing an external counsel who will not be present in The Hague and who will be supported by the OPCV members acting on his or her behalf in courtroom gives rise to both legal and practical impediments.

The Office's position has constantly been that its staff cannot form part of, or be otherwise assimilated to, external legal representatives' teams. Indeed, such a scenario would jeopardize the core principle of the independence of the Office as enshrined in the Regulations of the Court as well as its ability to work on multiple cases simultaneously. In this respect, it is important to note that the seven staff of the Office with legal expertise currently provide support and assistance to 42 legal representatives in the different situations and cases before the Court and that the Office has been appointed as legal

<sup>1</sup> See the "Decision on victims' representation and participation", No. ICC-01/09-01/11-460, 3 October 2012 and the "Decision on victims' representation and participation", No. ICC-01/09-02/11-498, 3 October 2012.

<sup>2</sup> *Idem.*, p. 33.

<sup>3</sup> *Ibid.*, in particular paras. 40-44.

representative of numerous victims in different situations and cases. Moreover, placing members of the Office in an external legal representative's team could create conflicting standards and mechanisms of accountability that would not be easily resolved. Staff members would have to be bound by the external legal representatives' instructions, but would still be accountable to the Principal Counsel of the Office who is responsible for their performance appraisal. Moreover, it has to be noted that the staff of the Office are also bound by the Staff Rules and Regulations. Last but not least, the Office has insufficient resources to dedicate to "secondments" of this nature.

The Office is of the view that said difficulties should be brought to the attention of the Chamber.

Nonetheless, the Office has reflected upon possible ways to implement said decisions. In this regard, the Office suggests to allocate to each case one P-3 (Legal Officer) who might be able to jointly work with a P-2 (Associate Legal Officer), if need be. The allocation of a P-3 per case will allow for certain flexibility in so far said person will be able to both provide legal research and advice, as well as, being relatively senior and able to work with minimal supervision, to appear in courtroom. This solution will also allow for a reasonable redistribution of tasks within the Office taking into consideration its current and foreseen workload for 2013. Considering the allocation of staff within the Office to situations and cases, the current stage of different proceedings which said staff is already allocated to and its workload, the Office will need – in order to comply with the decisions – additional resources which can be, at this point in time, quantified as an additional P-3.

This need can be easily accommodated, in the Office's view, by funding the said position for an initial one year period (1 January - 31 December 2013)<sup>4</sup> from the legal aid budget. In this regard, the Office notes that a legal officer P-3 GTA is currently working for the OPCV and his contract – which is due to expire on 31 December 2012 – could be extended. This seems indeed the most effective course of action in the circumstances.

Upon appointment of the Common Legal Representatives, discussions will need to be undertaken between the appointed counsel and the Principal Counsel of the OPCV in

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<sup>4</sup> Subsequently, this position could be requested in the 2014 OPCV budget, if still needed.

order to find an agreement on the most efficient way of cooperating without jeopardizing the independence of the Office and in order to preserve members of the Office who might encounter difficulties in complying with their obligations under different legal provisions. The result of said discussions will be then communicated to the Trial Chamber and to the Registry.

Following said appointment and agreement, need might arise for additional resources. Such need cannot be foreseen at this point in time. Should such need arise, the Office intends to request said additional resources from the legal aid budget.

Please be ensured of the full support of the Office in this important matter and I remain at your disposal to confer further on the best ways to implement the decisions.

Kind regards,

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda  
Principal Counsel