



Original: English

No.: ICC-01/09-02/11

Date: 7 March 2013

**TRIAL CHAMBER V**

**Before:** Judge Kuniko Ozaki, Presiding Judge  
Judge Christine Van den Wyngaert  
Judge Chile Eboe-Osuji

**SITUATION IN THE REPUBLIC OF KENYA  
IN THE CASE OF  
THE PROSECUTOR V. FRANCIS KIRIMI MUTHAURA AND UHURU MUIGAI  
KENYATTA**

**Public Document**

**With confidential, *Ex Parte* Annex only available to the OPCV  
and the Common Legal Representative**

**Information on the Agreement  
between the OPCV and the Common Legal Representative of victims  
for the purpose of the trial**

**Source:** Common Legal Representative  
Office of Public Counsel for Victims

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

**The Office of the Prosecutor**

Ms. Fatou Bensouda  
Ms. Adesola Adeboyejo

**Counsel for Francis Kirimi Muthaura:**

Mr. Karim Khan  
Mr. Essa Faal

**Counsel for Uhuru Muigai Kenyatta:**

Mr. Steven Kay  
Ms. Gillian Higgins

**Legal Representatives of Victims**

Mr. Fergal Gaynor

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

Ms. Paolina Massidda  
Ms. Caroline Walter

**The Office of Public Counsel for the  
Defence**

**States Representative**

**Amicus Curiae**

**REGISTRY**

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**Registrar & Deputy Registrar**

Ms. Silvana Arbia & Mr. Didier Preira

**Counsel Support Section**

Mr. Esteban Peralta Losilla

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

Ms. Fiona McKay

**Other**

## I. PROCEDURAL HISTORY

1. On 3 October 2012, Trial Chamber V issued a “*Decision on victims’ representation and participation*”<sup>1</sup> (the “Decision of 3 October 2012”) and directed, *inter alia*, that:

- “40. The procedure for victim participation will be based on common legal representation, which will include both an appointed common legal representative of victims (“Common Legal Representative”) and the Office of Public Counsel for victims (“OPCV”) acting on the Common Legal Representative’s behalf.
41. The Common Legal Representative will have primary responsibility for being the point of contact for the victims whom he/she represents, to formulate their views and concerns and to appear on their behalf at critical junctures of the trial.
42. The OPCV’s primary responsibility will be to act as the interface between the Common Legal Representative and the Chamber in day-to-day proceedings. To that end, the OPCV will be allowed to attend hearings on behalf of the Common Legal Representative, during which it may be permitted to intervene and question witnesses. The OPCV shall also assist the Common Legal Representative in preparing relevant written submissions. The representation in the courtroom through the OPCV will allow the victims to benefit from the experience and expertise of the OPCV and thereby maximise the efficiency of their legal assistance. Involvement of the OPCV will also ensure that confidential information is handled safely and securely.”

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<sup>1</sup> See the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012.

2. Moreover, Trial Chamber V directed the Registry to submit a recommendation for the position of the Common Legal Representative of Victims according to a number of pre-determined criteria.<sup>2</sup>

3. On 17 October 2012, the Office of Public Counsel for Victims (the “OPCV” or “Office”) filed a submission on the division of responsibilities and effective functioning of the common legal representation system.<sup>3</sup>

4. On 5 November 2012, the Registry filed its recommendation for the position of the Common Legal Representative of Victims.<sup>4</sup>

5. On 20 November 2012, the Trial Chamber rendered a “*Decision appointing a common legal representative of victims*” (the “Decision of 20 November 2012”) and appointed Mr. Fergal Gaynor as the Common Legal Representative of Victims (“the Common Legal Representative”) in the current case.<sup>5</sup>

6. In the Decision of 20 November 2012, Trial Chamber V also instructed the OPCV and the Common Legal Representative to undertake discussions regarding their cooperation in order to ensure the effective functioning of the common legal representation system.<sup>6</sup>

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<sup>2</sup> *Idem*, paras. 58-60 and p. 33.

<sup>3</sup> See the “OPCV’s Proposal on the Division of Responsibilities and Effective Functioning of the Common Legal Representation System”, No. ICC-01/09-02/11-507, 17 October 2012; See also the “Registry’s Proposal on the Division of Responsibilities and Effective Functioning of the Common Legal Representation System”, No. ICC-01/09-02/11-508, 17 October 2012.

<sup>4</sup> See the “Recommendation for the position of Common Legal Representative of victims”, No. ICC-01/09-02/11-517, 5 November 2012.

<sup>5</sup> See the “Decision appointing a common legal representative of victims” (Trial Chamber V), No. ICC-01/09-02/11-537, 20 November 2012.

<sup>6</sup> *Idem*, p. 7.

## II. INFORMATION TO THE CHAMBER

7. The Principal Counsel and the Common Legal Representative inform the Chamber that, in accordance with the Decisions of 3 October 2012 and of 20 November 2012, they have conducted extensive discussions regarding the effective functioning of the common legal representation system and have reached an Agreement on their cooperation. Said Agreement was signed by both Parties on 6 March 2013 and it has entered into force immediately upon signature.

8. The Agreement is attached to the present submission for the information of the Chamber as a confidential, *ex parte* annex – available to the OPCV and the Common Legal Representative only – given that it is an internal working document of the Office.

Respectfully submitted.



**Paolina Massidda**  
**Principal Counsel**



**Fergal Gaynor**  
**Common Legal Representative of victims**

Dated this 7<sup>th</sup> day of March 2013

At The Hague (The Netherlands) and Killaloe (Ireland)