

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/14-01/21

Date: 25 October 2022

TRIAL CHAMBER VI

Before: Judge Miatta Maria Samba, Presiding Judge
Judge María del Socorro Flores Liera
Judge Sergio Gerardo Ugalde Godínez

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

IN THE CASE OF

THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI

Public Redacted Version of

Decision on the Composition of the Prosecution's Team

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

The Office of the Prosecutor

Mr Karim A. A. Khan

Ms Holo Makwaia

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

Ms Sarah Pellet

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants
for Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to article 64(2) of the Rome Statute (the ‘Statute’), issues this ‘Decision on the Composition of the Prosecution’s Team’.

I. PROCEDURAL HISTORY & SUBMISSIONS

1. On 23 September 2022, the Chamber notified the parties and participants that it had been made aware that a former staff member of the Registry, [REDACTED] (the ‘Staff Member’), is now a member of the Office of the Prosecutor’s (the ‘Prosecution’) team in the present case.¹ In particular, the Chamber noted that whilst employed by the Registry she had previously had a role in the current case and that the Defence had not been made aware of her appointment to the Prosecution’s team.²

2. As a result, the Chamber ordered the Prosecution to disclose all relevant details regarding the Staff Member’s employment to the Defence by 27 September 2022 and ordered the Defence to file any objections regarding her employment no later than 30 September 2022.³ In the interim, the Chamber ordered the Prosecution to ensure that the Staff Member abstains from any involvement in the case pending a final determination by the Chamber.⁴

3. On 27 September 2022, the Prosecution wrote to the Defence via email.⁵ The Prosecution notes that the Staff Member was appointed as a Trial Support Assistant in the Prosecution’s team. In addition, the Prosecution notes, *inter alia*, that the Staff Member previously acted as a Court Clerk in the Registry. In this role she was tasked with keeping ‘audio-visual and written records of proceedings in both working languages of the Court, as well as receiving, registering and distributing decisions, orders and documents from Chambers, parties and participants in (all) Situations and

¹ Email from the Chamber to the Parties, dated 23 September 2022 at 17:21.

² Email from the Chamber to the Parties, dated 23 September 2022 at 17:21.

³ Email from the Chamber to the Parties, dated 23 September 2022 at 17:21.

⁴ Email from the Chamber to the Parties, dated 23 September 2022 at 17:21.

⁵ Emails from the Prosecution to the Defence, dated 27 September 2022 at 08:57, 17:59 and 19:22. This email correspondence was shared with the Chamber on 7 October 2022, at 08:58.

Cases; she assisted with scheduling and organisation of hearings and processes of the Registry as well as a range of administrative duties.’⁶

4. In addition, the Prosecution notes that the Staff Member previously acted as a Court Clerk during the confirmation proceedings in the present case.⁷ Furthermore, it submits that she was ‘privy only to filings which were Under-Seal and Confidential for the Registry; she has never been privy to other filings which are not in the Public domain.’⁸

5. On 30 September 2022, the Defence wrote to the Chamber via email.⁹ Therein the Defence notes that, during her employment in the Registry, the Staff Member had access to a number of *ex parte* filings by the Defence.¹⁰ In this regard, the knowledge acquired in the context of her functions in the Registry creates a perception of bias and it is impossible to know what she may have seen and what she may remember in her new role in the Prosecution.¹¹ As a result, the Defence notes that there is a risk that the fairness and integrity of the entire proceedings will be tainted.¹²

6. On 10 October 2022, the Chamber enquired with the Registry, via email, as to whether the Staff Member actually accessed any of the *ex parte* filings referred to by the Defence, and to confirm her exact involvement in, *inter alia*, the present proceedings during her employment in the Registry.¹³

7. On 19 October 2022, the Registry responded to the Chamber’s enquiry.¹⁴ Therein the Registry indicated, *inter alia*, that: (i) in addition to acting as a Court Clerk in the confirmation proceedings in the present case, the Staff Member also acted as a Court Officer for the rendering of the Appeals Chamber judgment on the accused’s detention on 23 August 2022; and (ii) audit logs carried out by the Registry indicated that the

⁶ Email from the Prosecution to the Defence, dated 27 September 2022 at 08:57.

⁷ Emails from the Prosecution to the Defence, dated 27 September 2022 at 17:59 and 19:22.

⁸ Email from the Prosecution to the Defence, dated 27 September 2022 at 08:57.

⁹ Email from the Defence to the Chamber, dated 30 September 2022, at 15:48.

¹⁰ Email from the Defence to the Chamber, dated 30 September 2022, at 15:48.

¹¹ Email from the Defence to the Chamber, dated 30 September 2022, at 15:48.

¹² Email from the Defence to the Chamber, dated 30 September 2022, at 15:48.

¹³ Email from the Chamber to the Registry, dated 10 October 2022, at 18:01.

¹⁴ Email from the Registry to the Chamber, dated 19 October 2022, at 14:18.

Staff Member never accessed any confidential or *ex parte* Defence filings in the present case or in the Central African Republic II situation.¹⁵

II. ANALYSIS

8. Article 64(2) of the Statute provides that the Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses. In this regard, the Chamber notes that it has an inherent power over any matter which may affect the integrity or fairness of the proceedings,¹⁶ which in the Chamber's view, includes ensuring that the proceedings are not prejudiced by conflicts of interests arising from the composition of any of the parties' or participants' teams.

9. In relation to the matter at hand, the Chamber notes that the Defence does not explicitly request that the Chamber order the removal of the Staff Member from the Prosecution's team. That notwithstanding, the Chamber finds that it has the obligation to ensure that the trial is conducted fairly, with full respect for the rights of the accused. Accordingly, the Chamber must determine for itself whether the Staff Member's involvement in the Prosecution's team undermines the integrity or fairness of the proceedings.

10. At the outset, the Chamber is of the view that, in the interests of transparency of the proceedings, the Prosecution should have, of its own initiative, disclosed the Staff Member's employment to the Defence. Whilst it is the Chamber's obligation to ensure that the trial is conducted fairly and expeditiously, this can largely only be realised when the parties and participants conduct themselves in a manner which facilitates this. It is therefore incumbent on the parties and participants to act diligently in this regard and to properly analyse where potential conflicts of interest may arise, particularly when employing staff who have worked in other areas of the Court.

¹⁵ Email from the Registry to the Chamber, dated 19 October 2022, at 14:18.

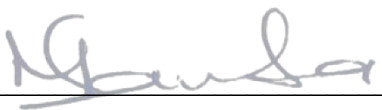
¹⁶ The Chamber notes that the Appeals Chamber has considered this provision in a similar context, albeit at the pre-trial stage in respect of a challenge to counsel - Appeals Chamber, *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber II dated 20 July 2011 entitled "Decision with Respect to the Question of Invalidating the Appointment of Counsel to the Defence", 10 November 2011, [ICC-01/09-02/11-365 OA 3](#), (the 'Muthaura OA3 Judgment') para. 46.

11. Following a review of the parties' submissions and the information received from the Registry, the Chamber finds that the Staff Member's employment in the Prosecution's team does not give rise to a conflict of interest or otherwise prejudice the accused, nor does it undermine the integrity or fairness of the proceedings. The Chamber makes this finding on the basis that: (i) the Staff Member never accessed *ex parte* filings from the Defence in the present case; and (ii) her role in the Registry meant that any involvement in the present case was confined to administrative matters.¹⁷

12. Accordingly, the Chamber does not consider there to be any impediment to the Staff Member continuing to act as a Trial Support Assistant for the Prosecution in the present case.

FOR THESE REASONS, THE CHAMBER HEREBY

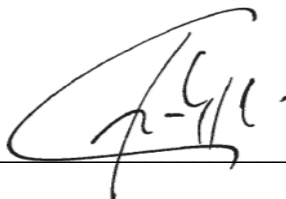
FINDS that there is no impediment to the Staff Member working for the Prosecution in the present case.



Judge Miatta Maria Samba
Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

Done in both English and French, the English version being authoritative.

Dated 25 October 2022

At The Hague, The Netherlands

¹⁷ See further, [Muthaura OA3 Judgment](#), paras 52-70.