

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/14-01/21
Date: 10 December 2021

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Single Judge

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public

**Public Redacted Version of
“Registrar’s Observations on the “Prosecution’s Submission on the Appointment
of Defence Counsel” (ICC-01/14-01/21-7-Conf-Red)”, 12 February 2021,
ICC-01/14-01/21-18-Conf**

Source: The Registry

Document 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 QC

Mr James Stewart

Mr Eric MacDonald

Counsel for the Defence

Ms Jennifer Naouri

Mr Dov Jacobs

Legal Representatives of Victims

**Unrepresented Applicants
(Participation/Reparation)**

Unrepresented victims

**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

Mr Esteban Peralta Losilla

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. Introduction

1. Following the Pre-Trial Chamber II (“Chamber”) email instruction on 3 February 2021,¹ the Registry hereby submits its observations on the “Prosecution’s Submission on the Appointment of Defence Counsel” (“Request”).²

II. Procedural history

2. On 20 January 2021, the Registrar appointed Mr Jean Pierre Madoukou (“Defence”) as duty counsel on standby pursuant to regulation 73 of the Regulations of the Court (“RoC”), to assist during the proceedings that would take place under article 59 of the Rome Statute (“Statute”) in relation with the arrest and transfer of Mr Mahamat Said Abdel Kani (“Mr Said”) to the Court.³

3. On 26 January 2021, Mr Said retained Mr Madoukou as counsel to represent him during his initial appearance before the Court.⁴

4. On 1 February 2021, the Office of the Prosecutor (“Prosecution”) objected to the appointment of Mr Madoukou as “permanent counsel”⁵ and requested the Single Judge “to appoint another Counsel to represent [Mr Said]”.⁶

5. On 10 February 2021, Mr Madoukou filed his response to the Request.⁷

¹ Email from Pre-Trial Chamber II to Registry on 3 February 2021 at 16.02.

² Office of the Prosecutor, “Confidential Redacted Version of “Prosecution’s Submission on the Appointment of Defence Counsel”, dated 21 February 2021”, dated 1 February 2021 and registered on 2 February 2021, ICC-01/14-01/21-7-Conf-Red (“Request”).

³ Registry, “Notification of the Appointment of Mr Jean Pierre Madoukou as Counsel for Mr Mahamat Said Abdel Kani”, dated 26 January and registered on 27 January 2021, ICC-01/14-01/21-5-Conf-AnxI (“Appointment Letter of the Duty Counsel”).

⁴ Registry, “Notification of the Appointment of Mr Jean Pierre Madoukou as Counsel for Mr Mahamat Said Abdel Kani”, dated 26 January and registered on 27 January 2021, ICC-01/14-01/21-5.

⁵ Request, para. 27.

⁶ Request, para. 28.

⁷ Defence, “Réponse de la Défense à la ‘Version confidentielle expurgée des observations de l’Accusation sur la nomination de l’Avocat de la Défense’ datée du 21 Février 2021”, 10 February 2021, ICC-01/14-01/21-17-Conf (“Response”).

III. Classification

6. In accordance with regulation 23 *bis*(2) of the RoC, the present observations are classified as confidential because they refer to the Request with the same level of classification.

IV. Applicable Law

7. The following provisions are of particular relevance to the present submissions: articles 55, 59 and 67(1)(b) of the Statute, rule 21 and 22 of the Rules of Procedure and Evidence (“Rules”), regulations 23 *bis* and 73 of the RoC, regulation 123 of the Regulations of the Registry (“RoR”) and articles 5, 12, 13, 16 and 22(3) of the Code of Professional Conduct for counsel (“Code”).

V. Observations

8. As a preliminary remark, the Registry notes that Mr Madoukou may be best placed to inform the Chamber on a potential conflict of interest and impediments to representation of Mr Said, if any.⁸ The Registry limits the present observations to: (i) the aspects pertaining to Mr Madoukou’s appointment as duty counsel; and (ii) the obligations of duty counsel under the Code.

i. Appointment of duty counsel

9. The Registry appoints duty counsel in accordance with regulation 73 of the RoC for the purposes of articles 55 and 59 of the Statute, as the case may be, to assist the persons who require legal assistance and have not yet secured that assistance. It is the established practice of the Registry, in the case of the latter, once the Prosecution has informed it of any such proceedings, to so appoint counsel when a person is going to be surrendered to the Court, to be on standby during those proceedings in order to help ensure the respect of the procedure and the rights of the person. Duty counsel

⁸ See generally, Response, paras. 9-19.

appointments are made on the basis of the information available to the Registry at the relevant time; namely, the dates and the approximate location of the Prosecution activities taking place for which duty counsel is required. It is only thereafter, via the Prosecution, that the newly appointed duty counsel is informed of the identity of the person who requires legal representation and the reason(s) for which the relevant appointment has been made.⁹

10. It may be that in specific geographical areas only a limited number of counsel on the roster of duty counsel¹⁰ is available for timely legal representation; [REDACTED], including for the purposes of the matter to hand. Whether a counsel is chosen by the person entitled to legal representation, or whether the Prosecution has identified the latter as having been interviewed before and assisted by a particular counsel and has communicated this to the Registry, there is a risk of conflict of interest or impediment to representation if one counsel is continuously intervening in such occasions.

11. As above, the Registry, pursuant to its established practice regarding the appointment of duty counsel for the purpose of proceedings in the custodial State¹¹ requested the availability of two lawyers [REDACTED] ("Lawyer X and Lawyer Y, respectively). On 18 January 2021, having received no response from these lawyers, the Registry extended the request to Mr Madoukou. On 20 January 2021, Mr Madoukou and Lawyer Y confirmed their availability. On that same day, the Registry requested Lawyer Y to provide the necessary documentation to prepare for a possible appointment.¹² Lawyer Y did not provide the requested documentation during the requested timeline (i.e. on the same day). Given that the aforementioned proceedings were expected to take place the next morning, the Registry proceeded with the

⁹ Appointment Letter of the Duty Counsel.

¹⁰ Regulation 73(2) of the RoC.

¹¹ See para. 9 above.

¹² Undertakings pursuant to article 5 and 22(3) of the Code.

appointment of Mr Madoukou who was available, and for which all the necessary documentation was ready. Lawyer Y's documents reached the Court in the morning on 21 January 2021, after the said proceedings had started. Lawyer X responded to the Registry on 26 January 2021.

12. Mr Madoukou was appointed by the Registry as duty counsel in the context of article 59 of the Statute [REDACTED].

13. Upon Mr Said's arrival to the Detention Centre of the International Criminal Court ("Court"), he informed the Registry of his decision to retain Mr Madoukou as his counsel for the purpose of his initial appearance before the Court. The Registry, with full respect to the free choice of counsel, acknowledged this appointment in accordance with regulation 123 of the RoR. The current appointment is, at this time, limited to the said initial appearance and any actions necessary at this stage pending Mr Said's further decision to appoint counsel for the rest of the proceedings.

ii. Obligations of duty counsel under the Code

14. Throughout the application process and following every person's admission to the List of counsel,¹³ the Registry brings to their attention the legal texts that are relevant to the performance their duties before the Court, including the Code.

15. In addition, the letter acknowledging the appointment of a duty counsel, and regardless of the context in which legal assistance is required (i.e. article 55(2) interview, article 59 proceedings, first appearance, etc.), reminds counsel of their obligations under the pertinent legal texts of the Court, including the Code. It is therefore expected that any appointed counsel consider the relevant provisions of the Code and alert, as the case may be, all persons concerned as to any impediment to

¹³ Rules 21(2) and 22 of the Rules and regulation 67 of the RoC.

representation, as required under article 12 of the Code, or potential conflict of interest, as required under article 16 of same.



_____.p.p.
Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Peter Lewis, Registrar

Dated this 10 December 2021

At The Hague, The Netherlands