

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No.: ICC-01/14-01/21  
Date: 3 September 2024**

**TRIAL CHAMBER VI**

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

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF  
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public**

**Decision on the Appointment of Fabián Raimondo as Legal Adviser of  
Witness P-2161 and Dignité Bwiza as Legal Adviser of Witness P-2563**

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**

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**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

Mr Juan Escudero  
Mr Pieter Vanaverbeke

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

Mr Fabián Raimondo  
Ms Dignité Bwiza

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**TRIAL CHAMBER VI** of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 93(2), of the Rome Statute (the ‘Statute’), rules 74, 190 and 191 of the Rules of Procedure and Evidence (the ‘Rules’) and article 12 of the Code of Professional Conduct for counsel (the ‘Code of Conduct’), issues this ‘Decision on the Appointment of Fabián Raimondo as Legal Adviser of Witness P-2161 and Dignité Bwiza as Legal Adviser of Witness P-2563’.

## **I. PROCEDURAL HISTORY**

1. On 14 August 2024, the Registry informed the Chamber that Mr Fabián Raimondo had been appointed as Legal Adviser to Witness P-2161<sup>1</sup> and that Ms Dignité Bwiza had been appointed as Legal Adviser to Witness P-2563.<sup>2</sup>
2. On 28 August 2024, the Defence submitted observations in relation to the appointments of Mr Raimondo and Ms Dignité Bwiza (the ‘Defence Observations’).<sup>3</sup>
3. On 2 September 2024, Mr Raimondo,<sup>4</sup> Ms Bwiza<sup>5</sup> and the Office of the Prosecutor (the ‘Prosecution’)<sup>6</sup> responded to the Defence Observations.

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<sup>1</sup> Notification of Appointment of Mr Fabián Raimondo as Legal Adviser to Witness P-2161, 14 August 2024, ICC-01/04-01/21-837 (with two confidential annexes).

<sup>2</sup> Notification of Appointment of Ms Dignité Bwiza as Legal Adviser to Witness P-2563, 14 August 2024, ICC-01/14-01/21-836 (with two confidential annexes).

<sup>3</sup> Observations de la Défense sur la « Notification of Appointment of Ms Dignité Bwiza as Legal Adviser to Witness P-2563 » (ICC-01/14-01/21-836) et la « Notification of Appointment of Mr Fabián Raimondo as Legal Adviser to Witness P-2161 » (ICC-01/14-01/21-837) et demande de tirer les conséquences procédurales de ces observations, 28 August 2024, ICC-01/14-01/21-840-Conf.

<sup>4</sup> Response to Observations Made by Counsel for the Defence, 2 September 2024, ICC-01/14-01/21-844-Conf (the ‘Mr Raimondo’s Response’).

<sup>5</sup> Réponse de Dignité BWIZA - Conseil du témoin P-2563 aux " Observations de la Défense sur la "Notification of Appointment of Ms Dignite bwiza as Legal Adviser of Witness P-2563" et la "Notification of Appointment of Mr Fabian Raimondo as Legal Adviser to Witness P-2161" et demande den tirer les conséquences procédurales de ces observations - (ICC-01/14-01/21-840-Conf), 2 September 2024, ICC-01/14-01/21-846-Conf (the ‘Ms Bwiza’s Response’).

<sup>6</sup> Prosecution’s Response to Defence “Observations de la Défense sur la « Notification of Appointment of Ms Dignité Bwiza as Legal Adviser to Witness P-2563 » (ICC-01/14-01/21-836) et la « Notification of Appointment of Mr Fabián Raimondo as Legal Adviser to Witness P-2161 » (ICC-01/14-01/21-837) et demande de tirer les conséquences procédurales de ces observations”, 2 September 2024, ICC-01/14-01/21-845-Conf (the ‘Prosecution Response’).

## II. SUBMISSIONS

### A. Defence Observations

4. In the Defence Observations, the Defence avers that Mr Raimondo has previously represented P-2105, another Prosecution witness in this case, and Ms Bwiza has represented P-0487, a Prosecution witness in the case of the *Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the ‘Yekatom and Ngaïssona Case’).

5. According to the Defence, Mr Raimondo’s two clients are considered as ‘insiders’, who contradict each other in relation to significant points and mutually incriminate each other.<sup>7</sup> The Defence claims that this may raise issues in terms of the theory of appearance (*la théorie des apparences*).<sup>8</sup> Moreover, the Defence alleges that Mr Raimondo would be in an impossible position because the advice he would give to one client would be influenced by his knowledge about the evidence given by the other, and may even be counter-productive for that client.<sup>9</sup>

6. In relation to Ms Bwiza’s clients, the Defence claims that one is a Seleka *insider*, whereas the other is an Anti-Balaka *insider*.<sup>10</sup> According to the Defence, Ms Bwiza’s knowledge of information about P-0487’s evidence may impact her advice to P-2563 or even influence his testimony.<sup>11</sup> The Defence further claims that Ms Bwiza may be subject to an unconscious bias, but does not specify against whom or in relation to what.<sup>12</sup>

7. Despite alleging a conflict of interest for both Mr Raimondo and Ms Bwiza, the Defence does not formulate a specific request for relief, beyond asking the Chamber to ‘draw the procedural consequences’ on the existence of a conflict of interest.<sup>13</sup>

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<sup>7</sup> Defence Observations, ICC-01/14-01/21-840-Conf, paras 31-35.

<sup>8</sup> Defence Observations, ICC-01/14-01/21-840-Conf, para. 36.

<sup>9</sup> Defence Observations, ICC-01/14-01/21-840-Conf, paras 36-37.

<sup>10</sup> Defence Observations, ICC-01/14-01/21-840-Conf, para. 9.

<sup>11</sup> Defence Observations, ICC-01/14-01/21-840-Conf, paras 9-17.

<sup>12</sup> Defence Observations, ICC-01/14-01/21-840-Conf, para. 14.

<sup>13</sup> Defence Observations, ICC-01/14-01/21-840-Conf, prayer.

## **B. Submissions concerning Mr Raimondo's mandate**

8. In Mr Raimondo's Response, Mr Raimondo denies that there is any contradiction between P-2105's testimony and P-2161's prior recorded testimony.<sup>14</sup> Mr Raimondo further asserts that the Defence's claim that P-2161 might try to minimise his role and exaggerate that of P-2105 during testimony is mere speculation.<sup>15</sup>

## **C. Submissions concerning Ms Bwiza's mandate**

9. Ms Bwiza rejects that there exists a real or perceived conflict of interest on the ground that she represented P-0487 in the *Yekatom and Ngaïssona* Case. Ms Bwiza points out that her mandate is limited to issues of self-incrimination and that her letter of appointment indicates that she is not allowed to discuss any other aspect of P-2563's testimony with him.<sup>16</sup> Ms Bwiza also argues that her role is fundamentally different from that of counsel for the parties or the victims, in that she only analyses the testimony of her client with an eye on self-incrimination and does not concern herself with the guilt or innocence of the accused.<sup>17</sup>

## **D. Prosecution Response**

10. The Prosecution submits that the Defence Observations should be dismissed and the appointments of Mr Raimondo and Ms Bwiza should be upheld.<sup>18</sup>

In relation to Mr Raimondo, the Prosecution acknowledges that there may be some overlap between the topics generally discussed by P-2105 and P-2161, but argues that this does not create an impediment for Mr Raimondo to represent both witnesses.<sup>19</sup>

11. In relation to Ms Bwiza, the Prosecution argues that no conflict of interest has been shown, as P-0487 and P-2563 are two different individuals with different interests in different cases.<sup>20</sup> The Prosecution argues that counsel is only disqualified if it is probable that there will be a substantial conflict of interest.<sup>21</sup> The Prosecution further avers that there is no similarity between the *Yekatom and Ngaïssona* Case and the case

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<sup>14</sup> Mr Raimondo's Response, ICC-01/14-01/21-844-Conf, paras 14-18.

<sup>15</sup> Mr Raimondo's Response, ICC-01/14-01/21-844-Conf, para. 19.

<sup>16</sup> Ms Bwiza's Response, ICC-01/14-01/21-846-Conf, paras 7-9.

<sup>17</sup> Ms Bwiza's Response, ICC-01/14-01/21-846-Conf, paras 12-14.

<sup>18</sup> Prosecution Response, ICC-01/14-01/21-845-Conf, para. 19.

<sup>19</sup> Prosecution Response, ICC-01/14-01/21-845-Conf, para. 18.

<sup>20</sup> Prosecution Response, ICC-01/14-01/21-845-Conf, para. 7.

<sup>21</sup> Prosecution Response, ICC-01/14-01/21-845-Conf, paras 9-11.

against Mr Said and that the testimonies of P-0487 and P-2563 are not expected to be similar either.<sup>22</sup>

### III. ANALYSIS

12. The Defence articulates its observation in light of article 12 of the Code of Conduct, which prohibits counsel from representing more than one client in the same or substantially related cases if the interests of these clients are incompatible with each other.

13. At the outset, the Chamber notes that the Defence does not ask the Chamber for any particular relief, but merely asks the Chamber to draw the procedural consequences of the alleged conflict of interest. In this regard, it is unclear what relief the Defence specifically requests.

14. That notwithstanding, the Chamber finds that the Defence has not established the existence of a genuine risk of incompatibility that would justify relieving either counsel from representing their respective clients.

15. The Chamber observes, in this regard, that the role of the rule 74 counsel is limited to advising witnesses on their right against self-incrimination and to representing them in case they wish to ask for guarantees pursuant to rule 74 of the Rules. Counsel are expressly not allowed to discuss the entire content of their clients' testimony<sup>23</sup> and are strictly forbidden from influencing the content of their testimony beyond the possible exercise of the right to remain silent.

16. The Chamber further observes that rule 74 counsel is expected to have some understanding about the case in order to be able to carry out their mandate. In some instances, they may need to have fairly detailed information in order to understand their client's potential involvement in criminal activity. The fact that a counsel may have represented another witness in the same or a related case therefore does not pose any

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<sup>22</sup> Prosecution Response, ICC-01/14-01/21-845-Conf, paras 13-16.

<sup>23</sup> See, for example, Annex I to the Notification of Appointment of Ms Dignité Bwiza as Legal Adviser to Witness P-2563, 14 August 2024, ICC-01/14-01/21-836-Conf-AnxI.

problem *per se*, as long as he or she respects confidentiality. The Chamber has no reason to doubt the professionalism of Mr Raimondo and Ms Bwiza in this regard.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**DISMISSES** the Defence Observations.

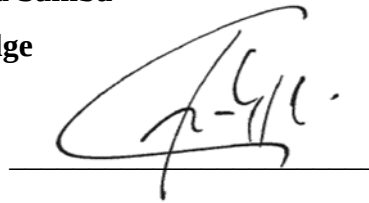


**Judge Miatta Maria Samba**

**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 3 September 2024

At The Hague, The Netherlands