

ANNEX 14

PUBLIC REDACTED

From: Trial Chamber VI Communications <[REDACTED]>
Sent: 25 October 2022 16:23
To: Associate Legal Officer-Court Officer <[REDACTED]>; [REDACTED]
[REDACTED]; Chamber Decisions Communication
<[REDACTED]>
Cc: Trial Chamber VI Communications <[REDACTED]>; OTP CAR IIA
Prosecution Team <[REDACTED]>; D33 Said Defence Team
[REDACTED]; Said LRV Team OPCV <[REDACTED]>
Subject: RE: Defence objection in relation to the composition of the Prosecution team

Dear Registry,

In light of the Chamber's Decision entitled 'Decision on the Composition of the Prosecution's Team' (ICC-01/14-01/21-513), the Chamber hereby orders the Registry to file the parties' submissions (along with the relevant attachment from the Prosecution), included in the email chain below, on the record as part of the relevant quarterly report.

Furthermore, in line with the process on the preparation of the quarterly reports, the Registry is ordered to liaise with the parties regarding any necessary redactions.

Kind regards,

Trial Chamber VI

From: Makwaia, Holo <[REDACTED]>
Sent: 07 October 2022 08:58
To: Trial Chamber VI Communications <[REDACTED]>
Cc: D33 Said Defence Team [REDACTED]; OTP CAR IIA Prosecution Team
<[REDACTED]>; Said LRV Team OPCV <[REDACTED]>
Subject: Defence objection in relation to the composition of the Prosecution team

Dear Trial Chamber VI,

Please find attached three email correspondence sent to the SAID Defence Team on the above subject matter.

Kind regards,

Holo.

From: Trial Chamber VI Communications >
Sent: 03 October 2022 11:15
To: Jacobs, Dov >; Trial Chamber VI Communications
 [REDACTED]; OTP CAR IIA Communications
 [REDACTED] >
Cc: D33 Said Defence Team [REDACTED] >; Said LRV Team OPCV < [REDACTED]
 [REDACTED] >; Associate Legal Officer-Court Officer < [REDACTED]
 [REDACTED] >; Chamber Decisions Communication [REDACTED] >
Subject: HPRM: Deadline for response to Defence objection in relation to the composition of the Prosecution team

Dear Prosecution,

In light of the Defence's position below and considering the fact that the Chamber was not copied on the information provided by the Prosecution to the Defence on this matter, the Chamber instructs the Prosecution to submit its response no later than Friday 7 October 2022.

Kind regards,
 Trial Chamber VI

From: Jacobs, Dov [REDACTED] >
Sent: 30 September 2022 15:48
To: Trial Chamber VI Communications < [REDACTED] >; OTP CAR IIA Communications [REDACTED] >
Cc: D33 Said Defence Team [REDACTED] >; Said LRV Team OPCV [REDACTED]
 [REDACTED] >; Associate Legal Officer-Court Officer [REDACTED]
 [REDACTED] >
Subject: RE: Composition of the Prosecution team

Chère Chambre de première instance VI,

Conformément aux instructions communiquées par la Chambre par email le 23 septembre 2022, la Défense formule les observations suivantes concernant ce qu'elle a pu établir quand à l'implication de [REDACTED] [REDACTED], anciennement employée au Greffe, dans l'affaire *Said*.

Pour la Défense, il est crucial de pointer le fait que, après vérification des emails de notifications des écritures, [REDACTED] a reçu, et a donc pu consulter, les versions *ex parte* d'un certain nombre d'écritures déposées par la Défense dans le présent dossier. Ces écritures contiennent des informations sensibles, par exemple relatives aux enquêtes de la Défense (notamment sur le terrain), aux conditions de détention ou à la vie privée de Monsieur Said qui, par nature, ne doivent pas être communiquées à l'Accusation.

Il apparaît que [REDACTED] a été notifiée des écritures suivantes : ICC-01/14-01/21-175-Conf-Exp, ICC-01/14-01/21-231-Conf-Exp, ICC-01/14-01/21-237-Conf-Exp, ICC-01/14-01/21-239-Conf-Exp, ICC-01/14-01/21-257-Conf-Exp-AnxA, ICC-01/14-01/21-272-Conf-Exp, ICC-01/14-01/21-300-Conf-Exp, ICC-01/14-01/21-303-Conf-Exp, ICC-01/14-01/21-313-Conf-Exp, ICC-01/14-01/21-350-Conf-Exp, ICC-01/14-01/21-350-Conf-Exp-Anx, ICC-01/14-01/21-353-Conf-Exp.

Le principe du dépôt d'une écriture *ex parte* est de pouvoir traiter, dans des cas exceptionnels, de certaines questions avec la Chambre sans communiquer certaines informations à l'autre Partie. Aujourd'hui, ce principe serait battu en brèche si un membre de l'équipe du Bureau du Procureur travaillant sur le présent dossier avait eu accès à ces informations.

Nous sommes donc ici confrontés à un cas de figure particulier: une personne qui a déjà travaillé pour un des services de la Cour dans la situation CARII et qui était dans une position de pouvoir prendre connaissance du fait de sa fonction d'informations confidentielles et ex parte parce que justement elle arborait la neutralité, qui va se trouver dans une position où elle pourrait travailler pour l'une des Parties. Les connaissances acquises dans le cadre de sa fonction au Greffe ne disparaîtront et l'implication dans ce service crée une perception de biais auquel il ne pourra plus être remédié a posteriori parce que qu'à partir du moment où elle a eu accès de manière systématique à des informations ex parte, il est impossible de savoir ce qu'elle a vu ou non et ce dont elle pourrait se rappeler dans le cadre de ses nouvelles fonctions au sein du Bureau du Procureur.

Il s'agit ici, selon la Défense, d'un cas classique où il convient de préserver la théorie des apparences sous peine d'entacher l'équité et l'intégrité de la totalité de la procédure.

Bien à vous,

Dov Jacobs

From: [REDACTED]

Sent: 27 September 2022 19:22

To: [REDACTED]

Cc: [REDACTED]; OTP CAR IIA Communications

Subject: HPRM: RE: HPRM: RE: HPRM: Trial Chamber instruction of 23.9.2022.

Record Number: OTP2022/021207

Dear Ms Naouri,

[REDACTED] has confirmed that she worked in the SAID confirmation hearing; she is the Court Clerk that is [REDACTED] provided to you.

Best regards,

[REDACTED]

From: [REDACTED]

Sent: 27 September 2022 17:59

To: [REDACTED]

Cc: [REDACTED]; OTP CAR IIA Communications <[REDACTED]>

Subject: HPRM: RE: HPRM: Trial Chamber instruction of 23.9.2022.

Dear Ms Naouri,

Further to the below communication from Ms Makwaia, it has come to our attention that [REDACTED] may have worked in the SAID confirmation hearing; please see attached [REDACTED]. We will revert once we confirm with Ms Campos.

[REDACTED]

Best regards,

[REDACTED]

From: Makwaia, Holo <[REDACTED]>

Sent: 27 September 2022 08:57

To: [REDACTED]

Cc: [REDACTED]; OTP CAR IIA Communications [REDACTED]

[REDACTED]

Subject: HPRM: Trial Chamber instruction of 23.9.2022.

Dear Ms. Naouri,

Pursuant to the Chamber's instruction of 23 September 2022 below is information concerning the staff member in question

In May 2022, ██████████ applied for the position of Trial Support Assistant (TSA) with the Office of the

Prosecutor and was successful in this recruitment.

Her position at the time of applying was that of a Court Clerk in the Court Management Services (CMS) of the Registry. Prior to this, she was a Visiting Professional in Chambers (between November 2020 and March 2021) working on the Case Law Database project. She also worked as a Data Processing Assistant for almost 3 months in what is now IKEMS and was a legal intern for 6 months in 2019 in the VPRS of the Registry.

Her duties as a Court Clerk in CMS were to keep 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 Cases; she assisted with scheduling and organisation of hearings and processes of the Registry as well as a range of administrative duties. Her background in this respect was very relevant to similar duties which are performed by a TSA in the OTP.

There has not been any conflict of interest identified for the OTP in relation to her (former) tasks as a Court Clerk.

██████████ has confirmed that she has never held the position of Court Officer (P2 level). She was however learning some of the tasks of a Court Officer in order to be able to cover in case of an emergency.

██████████ has confirmed that she has never been a Court Clerk or a Court Officer for the Saïd case, since it only commenced on 26 September. ██████████ commenced her position at the OTP on 12 September.

As per her assigned duties with CMS, she could be assigned to a range of cases and during her recent term at CMS, was principally involved with the Darfur/Abd-Al-Rahman case.

As a Court Clerk, ██████████ 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.

Upon acceptance of her position at the OTP, ██████████ requested her immediate removal from all email circulation lists at the Registry side.

The move of a staff member from the Registry to the OTP is normally handled by HRS once the staff member has accepted the offer. HRS would have been able to alert the OTP or others to any potential conflict before the recruitment had been finalised. This was not the case.

██████████ adheres to the highest levels of integrity, professionalism and confidentiality. This was also confirmed during her recruitment and selection.

From the above, the Prosecution does not consider there to be any impediment to the continuous employment of

██████████ as a Trial Support Assistant on the Said case.

Kind regards,

Holo Makwaia

From: Trial Chamber VI Communications <██████████>
Sent: 23 September 2022 17:21
To: OTP CAR IIA Communications ██████████>
Cc: D33 Said Defence Team <██████████>; Said LRV Team OPCV <██████████>; Trial Chamber VI Communications <██████████>; Associate Legal Officer-Court Officer <██████████>
Subject: Composition of the Prosecution team

Dear Prosecution,

It has come to the Chamber's attention that a former staff member of the Registry, who previously acted as a court officer in the present case, is now a member of the Prosecution's team for this case. The Chamber also understands that the Defence has not been informed of this.

The Chamber orders the Prosecution to inform the Defence of any relevant details regarding this staff member's employment by no later than 4pm on Tuesday 27th September. If the Defence has any objections regarding the involvement of this staff member in the Prosecution team, it is ordered to file them no later than 4pm on Friday 30th September.

In the interim, the Chamber orders the Prosecution to ensure that the staff member in question abstains from any involvement in the case pending a final determination by the Chamber.

Kind regards,
 Trial Chamber VI

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