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**International
Criminal
Court**



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No.: ICC-01/14-01/18
Date: 17 February 2026

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II
IN THE CASE OF *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-
EDOUARD NGAÏSSONA***

Public

**Public redacted version of “Prosecution’s Submission on the Appointment
of Defence Counsel’,
ICC-01/14-01/18-14-US-Exp, 20 November 2018”**

Source: Office of the Prosecutor

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

The Office of the Prosecutor

[REDACTED]

[REDACTED]

[REDACTED]

Counsel for Alfred Yekatom

[REDACTED]

[REDACTED]

Counsel for Patrice-Edouard

Ngaïssona

[REDACTED]

**Legal Representatives of the
Victims**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Legal Representatives of the
Applicants**

**The Office of Public Counsel for
Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar

[REDACTED]

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Pre-Trial Chamber II to review Mathias Barthelemy MOROUBA’s appointment as Counsel for **Alfred YEKATOM** (“YEKATOM”).¹ Mr MOROUBA currently represents, and has represented, Suspect **Patrice Edouard NGAISSONA** (“NGAISSONA”) in the context of the Prosecution’s ongoing investigation in this case. Articles 12 and 16 of the Code of Professional Conduct for counsel (“Code”)² thus preclude Mr MOROUBA’s prospective representation, absent the full and informed consent of both Suspects.³

2. Mr MOROUBA’s appointment is also precluded because of his representation of five other individuals pursuant to article 55(2) of the Rome Statute (“Statute”) in the course of the investigation. Their interests, like **NGAISSONA**’s, are incompatible with **YEKATOM**’s. To the same effect, Mr MOROUBA’s representation of an [REDACTED] under rule 111(1) of the Rules of Procedure and Evidence (“Rules”) who provides evidence regarding **YEKATOM**’s demobilisation of child soldiers presents a clear conflict of interest.

3. There is no indication that Mr MOROUBA has obtained **YEKATOM**’s or **NGAISSONA**’s full and informed consent or that of the other individuals he

¹ ICC-01/14-01/18-13, para. 1.

² The Code is part of the Court’s applicable law under rules 8 and 20(3), and article 21(1)(a) of the Statute: *see* ICC-01/09-02/11-365 OA3, paras. 48 and 54. Prosecutor v. Muthaura, Kenyatta and Ali, Judgment on the Appointment of Defence Counsel, 10 November 2011: “The Code is a part of the Court’s applicable law under article 21(1)(a) of the Statute, which requires the Court to apply, in the first place, its Statute, Elements of Crimes and Rules of Procedure and Evidence. Rule 8 of the Rules of Procedure and Evidence mandates the drawing up of a Code of Professional Conduct for counsel.”

³ Article 12(1)(a) of the Code (precluding representation where “the case is the same or substantially related to another case in which counsel ... represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation”); *see* article 16(1) and (3) of the Code (requiring counsel to ensure that no conflict of interest arises; inform all potentially affected clients of the existence of the conflict, and to either withdraw from representation or seek the full and informed consent in writing of all potentially affected clients).

represents or has represented.⁴ Nor has the Chamber been notified of the state of Mr MOROUBA's existing and prior representation.⁵

4. Even if, *arguendo*, obtaining the informed consent of former and current clients could extinguish the existing impediments to Mr MOROUBA's representation of **YEKATOM**, doing so would require his disclosure of highly confidential and sensitive information in the unredacted Arrest Warrant. This is the only way to ensure **NGAISSONA**'s full awareness of the extent of his Counsel's proposed representation of **YEKATOM**, and that his own interests are not thereby prejudiced. Similar disclosure would be required regarding the other six individuals Mr MOROUBA has represented in the course of the investigation.

5. Permitting the resolution of these conflicts through the informed consent of Counsel's clients, which would necessarily entail divulging the parameters of his proposed representation of **YEKATOM**, would completely defeat the compelling concerns set out in the Prosecution's Request for Redactions⁶ and recognised by the Chamber,⁷ particularly in respect of **NGAISSONA**.

6. The Chamber's review of Mr MOROUBA's appointment is therefore necessary: (a) to ensure that present or latent conflicts of interest are resolved *prior* to the proposed representation;⁸ (b) to preserve the integrity and fairness of the proceedings; and (c) to protect the compelling interests identified in the Prosecution's Redactions Request.

⁴ Article 12(1)(a) of the Code.

⁵ Article 12(2) of the Code.

⁶ ICC-01/14-01/18-7-US-Exp and Annex A ("Redactions Request").

⁷ ICC-01/14-01/18-1-Red.

⁸ Article 16(1) and (3) of the Code.

II. CONFIDENTIALITY

7. The Submission is filed under seal and *ex parte*, pursuant to regulation 23bis(1) of the Regulations of the Court as it relates to the Warrant of Arrest Application filed with the same status. The Prosecution requests that the Chamber issue its decision with the same classification. Public disclosure at this time may jeopardise the Prosecution's ongoing investigation, [REDACTED]. The Prosecution will seek to unseal both this Request and any related decisions as soon as practicable.

III. SUBMISSIONS

8. On 19 November 2018, **YEKATOM** appointed Mr MOROUBA as his Defence Counsel.⁹ However, [REDACTED], **NGAISSONA** informed the Prosecution that he was represented by Mr MOROUBA. Mr MOROUBA confirmed this on several subsequent occasions. Further, Mr MOROUBA's representation of **NGAISSONA** appears to be longstanding. Central African Republic ("CAR") court records reflect his involvement in **NGAISSONA**'s representation in 2014 on charges related to his responsibility as the Anti-Balaka Coordinator.¹⁰

9. As noted, Mr MOROUBA represents/represented five [REDACTED] ("Insiders"): four who were questioned by the Prosecution under article 55(2), [REDACTED]. These individuals played important roles in the current case, [REDACTED],¹¹ namely:

⁹ ICC-01/14-01/18-13, para. 1.

¹⁰ CAR-OTP-2003-1076 at 1076. Mr MOROUBA's name is indicated on the cover-page of the legal file. However, from the file, it seems that other lawyers have also been involved in his representation. It is unclear to what extent the respective lawyers were involved.

¹¹ [REDACTED].

- a. [REDACTED];¹²
- b. [REDACTED];¹³
- c. [REDACTED], a senior Anti-Balaka commander who was involved in the creation of the group;
- d. [REDACTED]; and
- e. [REDACTED] [REDACTED].¹⁴

10. Mr MOROUBA also represented and/or advised [REDACTED] whose rule 111(1) statement confirms YEKATOM's demobilisation (and therefore control of) child soldiers within his group of Anti-Balaka elements.

YEKATOM and NGAISSONA have incompatible interests

11. The plain reading of article 12(1)(a) of the Code¹⁵ precludes Mr MOROUBA's prospective representation. The rule prohibits counsel from appearing in a case which, "... is the same as or substantially related to another case in which counsel ... formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation."

12. **YEKATOM** and **NGAISSONA** are co-Suspects in this case and/or investigation. As the Chamber is aware, their interests are plainly incompatible. Both Suspects are alleged participants in a criminal scheme which entailed the

¹² For his role in the case *see* ICC-01/14-18-US-Exp ("Application"), pages 12, 22, 53-54, 58, 62, 68, 75-76, 82, 86-87.

¹³ [REDACTED].

¹⁴ For his role in the case *see* Application, pages 101-109, 111-112.

¹⁵ On the applicability of the Code *see above*, footnote 2.

targeting of the Muslim population in western CAR who, based on their religious, national or ethnic affiliation, was perceived as collectively responsible for, complicit with, and/or supportive of, the Seleka.¹⁶ **NGAISSONA**'s arrest is sought for crimes which include those committed by **YEKATOM** and his Anti-Balaka elements under, *inter alia*, article 25(3)(a).¹⁷ This creates an obvious and serious tension among the two Suspects' potential defences, rising to the level of a direct conflict of interest.

13. Given his representation, Mr MOROUBA cannot use information obtained from **NGAISSONA** when acting as **YEKATOM**'s Counsel either to **NGAISSONA**'s detriment or to **YEKATOM**'s advantage. If, for example, **NGAISSONA** provides or has provided Mr MOROUBA with information exonerating **YEKATOM**, Mr MOROUBA would be precluded from using this information either directly or derivatively in **YEKATOM**'s interests. Similarly, should **NGAISSONA** testify, Mr MOROUBA could not cross-examine him on information that he might have acquired as **NGAISSONA**'s Counsel, to **YEKATOM**'s detriment.

14. Mr MOROUBA's responsibilities to **NGAISSONA** materially limit his prospective duty to **YEKATOM**. His appointment is *per se* inconsistent with his clients' potentially incompatible, if not adversarial, positions in these proceedings. It risks **YEKATOM**'s right to adequate representation pursuant to article 67¹⁸ and conversely, **NGAISSONA**'s right to maintain the confidentiality of his communications with his counsel. Should the Chamber issue a warrant of arrest against **NGAISSONA**, this would necessarily further implicate *his* article 67 rights.

¹⁶ See Application, paras. 11, 110, 116, 279, 339, 345.

¹⁷ See Application, paras. 111, 115, 203.

¹⁸ See *also*, article 15(3) of the Code.

15. Given their respective posture in the case/investigation, **YEKATOM** or **NGAISSONA** could potentially blame the other for the crimes alleged. Such directly adverse positions are hardly uncommon. Although **YEKATOM** and **NGAISSONA** are not yet co-accused, [REDACTED],¹⁹ the critical issue is that there is a substantial likelihood that their incompatible interests will materialise, jeopardising either of their respective positions before the Court. Should this occur at a later stage of the proceedings or mid-trial, it may be too late to cure any latent conflict. [REDACTED].

YEKATOM and the Insiders as well as [REDACTED] have incompatible interests

16. The same applies in respect of the Insiders and [REDACTED]. Despite the fact that the Insiders represented by Mr MOROUBA are not co-suspects, they (especially ([REDACTED] [REDACTED])) had important roles in the Anti-Balaka, and are alleged to have participated in the same criminal scheme.²⁰ They were questioned on core issues in the case, and [REDACTED] evidence on **YEKATOM**'s role in the demobilisation of child soldiers [REDACTED]. Like the case with **NGAISSONA**, Mr MOROUBA cannot use any of their confidences when acting as **YEKATOM**'s Counsel. Similarly, should they testify, Mr MOROUBA could not cross-examine them on information he might have acquired as their Counsel.

17. Mr MOROUBA's responsibilities to these individuals materially limit his prospective duty to **YEKATOM**. His appointment is *per se* inconsistent with his clients' potentially adversarial or incompatible positions in these proceedings. Mr MOROUBA's appointment significantly compromises **YEKATOM**'s right to adequate representation pursuant to article 67²¹ and conversely, undermines these individuals' right to maintain the confidentiality of their communications with

¹⁹ [REDACTED]..

²⁰ See above, para. 9 for their roles in the case.

²¹ See also, article 15(3) of the Code.

their Counsel, as a matter of public policy.

Mr MOROUBA cannot obtain the necessary informed consent of NGAISSONA without revealing confidential and sensitive information in the Arrest Warrant

18. As noted, articles 12(1)(a) and 16(3)(b) of the Code preclude Mr MOROUBA's representation of **YEKATOM**. At a minimum, **NGAISSONA** and **YEKATOM** must be fully informed of the nature and extent of any possible conflicts of interest, and consent to the representation. Importantly, article 12(2) of the Code requires Counsel to inform the Chamber of the conflict and of the clients' consent in writing. However, as noted, obtaining the requisite consents could not be achieved without undermining the compelling interests recognised by the Chamber.²²

19. To ensure **NGAISSONA**'s full awareness of the nature and extent of his Counsel's proposed representation of **YEKATOM**, Mr MOROUBA would have to disclose to **NGAISSONA** highly confidential and sensitive information in the unredacted Arrest Warrant, including information substantiating **NGAISSONA**'s alleged criminal responsibility based on: (i) his leadership role in the common plan; and on (ii) **YEKATOM**'s reporting to, and coordinating with, **NGAISSONA** regarding its implementation and/or the resultant crimes.²³ As the Redactions Request asserts, **NGAISSONA**'s mere awareness of being named as a member of the Common Plan or as **YEKATOM**'s superior, may cause him reasonable apprehension of arrest, encourage him to initiate attempts to interfere with or threaten witnesses, and/or tamper with evidence or evade arrest.²⁴

20. Given that these critical concerns were at the heart of the Chamber's decision

²² See generally, ICC-01/14-01/18-1-Red.

²³ ICC-01/14-01/18-1-US-Exp, paras. 7, 9, 13, 18, 19.

²⁴ See ICC-01/14-01/18-5-US-Exp, in particular para. 15.

to redact the Arrest Warrant in the first place, the provision of this sensitive information to **NGAISSONA** or Counsel's clients (current or former) would be the most direct route to undermining these measures. Moreover, were the Chamber to prohibit Mr MOROUBA from sharing the sensitive information in the Arrest Warrant with **NGAISSONA**, this would render Counsel unable to obtain the latter's full and informed consent, precisely because he would not know how he fits into the case on which Mr MOROUBA proposes to represent **YEKATOM**.

21. Even if sufficient, the informed consent of Mr MOROUBA's present clients may not be sufficient to discharge the Chamber's overarching duty to protect the rights and interests of the Parties and persons appearing before it.²⁵

22. The rights of suspects are necessarily components of a fair trial and, as such, failing to secure them will adversely affect a trial's fairness.²⁶ A conflict of interest does not necessarily entail the withdrawal or removal of counsel where the consent of all potentially affected clients is obtained.²⁷ However, where the representation involves, or could involve, the assertion of a claim by one client against another, a waiver may nevertheless be unavailing.

23. It is first and foremost "counsel's responsibility to ensure that an impediment to representation and/or a conflict of interest does not arise, in accordance with his or her professional obligations under the Code."²⁸ However, where, as here, the interests of Counsel's clients may be so directly aligned against one another, the Chamber's intervention is necessary to avert the potential adverse impact on the fairness of this case, as well as the safety of an eventual trial.

²⁵ Article 67 of the Statute.

²⁶ ICC-01/09-02/11-365 OA3, Muthaura Appeal, para. 51. *See also* ICC-02/11-01/15-T-129-Red-Eng Ins. 2-10, noting that conflict rules apply on the mere appearance of a conflict.

²⁷ Article 16(3) of the Code.

²⁸ ICC-01/09-02/11-365 OA3, Muthaura Appeal, paras. 54 and 69.

24. Thus, even where written consent *has* been obtained, it remains incumbent on the Chamber to assess the sufficiency of the information on which it is based. In this regard, it is significant whether the clients were informed of the actual and reasonably foreseeable adverse consequences of representation. Further, directly adverse positions between clients may require independent legal advice concerning their consent to the conflicted representation.

25. To date, the Prosecution is unaware that Counsel has filed the required notification with the Chamber,²⁹ or any determination has been considered or made regarding the clear impediments to representation or conflicts of interest.

Mr MOROUBA cannot obtain the necessary informed consent of the Insiders and [REDACTED] without revealing confidential and sensitive information

26. In respect of the Insiders and [REDACTED], so far, neither their cooperation with the ICC nor the content of their accounts is known to **YEKATOM**. [REDACTED].

27. However, as mentioned above, to comply with his obligations, Mr MOROUBA would have to fully inform the Insiders, [REDACTED], and **YEKATOM** of the nature and extent of any possible conflicts of interest, which in turn would require him to breach his confidentiality obligations. Further, they would all have to consent to the representation and the Chamber informed accordingly, *prior* to the contemplated representation.

IV. CONCLUSION

28. For the reasons set out above, the Prosecution objects to the appointment of

²⁹ Articles 12(2) and (4), and 16(3)(b) of the Code (requiring that full and informed consent of all potentially affected clients be sought in writing).

Mr MOROUBA as Counsel for **YEKATOM**, and requests that the Chamber determine the propriety of his continued representation.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 17th day of February 2026
At The Hague, The Netherlands.