

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No: *ICC-01/14-01/18*

Date: **21 December 2020**

TRIAL CHAMBER V

Before: Judge Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Chang-ho Chung

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

With Confidential Annex A

**Public Redacted Version of Defence Response to the “Prosecution’s Submission
on the Appointment of Defence Counsel”**

Source: Defence of Patrice-Edouard Ngaïssona

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

The Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Mr Kweku Vanderpuye

Counsel for the Defence of Mr Ngaïssona

Mr Geert-Jan Alexander Knoops

Mr Richard Omissé-Namkeamaï

Ms Sara Pedroso

Counsel for the Defence of Mr Yekatom

Ms Mylène Dimitri

Mr Thomas Hannis

Legal Representatives of the Victims

Mr Abdou Dangabo Moussa

Ms Elisabeth Rabesandratana

Mr Yaré Fall

Ms Marie-Edith Douzima-Lawson

Ms Paolina Massidda

Mr Dmytro Suprun

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented

(Participation/Reparation)

Applicants

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 Other
Section**

I. Introduction

1. After having been vetted, Mr Richard Landry Omissé-Namkeamaï's designation as associate counsel on the Defence team of Mr Ngaïssona was confirmed on 2 December 2020.¹ Mr Omissé-Namkeamaï's designation was formalised by way of a filing by the Registry on 8 December 2020 titled "Registration of the appointment of Mr Richard Omissé-Namkeamaï as Associate Counsel for Mr Patrice-Edouard Ngaïssona",² to which Mr Omissé-Namkeamaï's solemn undertaking was annexed.³
2. On 10 December 2020, the Prosecution filed the "Prosecution's Submission on the Appointment of Defence Counsel" ("Submission") challenging Mr Omissé-Namkeamaï's appointment as Associate Counsel on the Defence team of Mr Ngaïssona.⁴ The Prosecution claims that Mr Omissé-Namkeamaï formerly represented [REDACTED] and that a conflict of interest arises pursuant to article 12(1)(a) of the Code of Professional Conduct for Counsel ("Code of Conduct").⁵ More specifically, the Prosecution avers that Mr Ngaïssona's "interests appear incompatible with those of Counsel's former clients"⁶ and that the Chamber's review of Mr Omissé-Namkeamaï's appointment is necessary to ensure the absence of conflicts of interest.⁷
3. However, the facts do not support the Prosecution's claims: given Mr Namkeamaï's extremely limited involvement in [REDACTED], there is clearly no impediment to Mr Omissé-Namkeamaï's representation of Mr Ngaïssona in the present case and no conflict of interest arises.

¹ Letter from CSS/2020/628 dated 2 December 2020, ICC-01/14-01/18-758-Conf-AnxI.

² ICC-01/14-01/18-758.

³ ICC-01/14-01/18-758-AnxII.

⁴ ICC-01/14-01/18-764-Conf ("Prosecution's Submission"). A public redacted version was filed contemporaneously, ICC-01/14-01/18-764-Red.

⁵ Prosecution's Submission, para. 2.

⁶ Prosecution's Submission, para. 2.

⁷ Prosecution's Submission, para. 3.

II. Confidentiality

4. In accordance with regulation 23*bis*(1) of the Regulations of the Court ("Regulations"), the response is filed confidentially as it responds to a document of the same classification. A public redacted version of the response will be filed contemporaneously.

III. Applicable Law

5. Article 12(1) of the Code of Conduct provides that "Counsel shall not represent a client in a case: (a) If the case is the same as or substantially related to another case in which counsel or his or her associates 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.
6. Article 16(1) of the Code of Conduct provides that "Counsel shall exercise all care to ensure that no conflict of interest arises" and "shall put the client's interests before counsel's own interests or those of any other person, organization or State" (....). Article 16(3) provides that where "a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either: (a) withdraw from the representation of one or more clients with the prior consent of the Chamber; or (b) seek the full and informed consent in writing of all potentially affected clients to continue representation".

IV. Submissions

7. The Defence has conducted its due diligence in identifying any conflict of interest prior to Mr Omissé-Namkeamai's designation. The Defence confirms that no conflict of interest arises in the present case and wishes to address concerns raised by the Prosecution in its Submissions. To assist the Chamber,

the Defence also presents in Confidential Annex A, an affidavit signed by Mr Omissé-Namkeamaï detailing the facts related to the issue at hand.

8. [REDACTED].⁸ As noted by the Prosecution, [REDACTED].⁹
9. However, Mr Omissé-Namkeamaï did not go on to represent [REDACTED]. [REDACTED]. [REDACTED],¹⁰ [REDACTED]. [REDACTED].¹¹
10. [REDACTED];¹² (2) [REDACTED].¹³ Mr Omissé-Namkeamaï was thus never apprised of any privileged information [REDACTED].¹⁴
11. In the case file cited by the Prosecution bearing the reference number CAR-OTP-2003-1010, it is apparent that [REDACTED].¹⁵
12. Given Mr Omissé-Namkeamaï never received any privileged information from [REDACTED], there is no risk that Mr Omissé-Namkeamaï could use “information obtained from his former clients when acting as Counsel to [Mr] NGAISSONA, whether to his former clients’ detriment or to NGAISSONA’s advantage”.¹⁶
13. The criteria constituting an impediment to representation within the meaning of article 12(1)(a) of the Code of Conduct are cumulative. In addition to the fact that there was no effective “representation” within the meaning of article 12(1)(a) of the Code of Conduct, as demonstrated above, the facts of the case involving [REDACTED] and the facts in the instant case are not “substantially

⁸ Annex A, para. 1.

⁹ CAR-OTP-2003-1010, at 1070-1071.

¹⁰ [REDACTED], *see* Annex A, paras 8-9.

¹¹ Annex A, paras 5-10.

¹² Annex A, paras 3-4 and 7.

¹³ CAR-OTP-2003-1010, at 1070-1071.

¹⁴ *See* Annex A, paras 5, 8.

¹⁵ CAR-OTP-2003-1010, at 1074.

¹⁶ Submissions, para. 10.

related”.¹⁷ [REDACTED] which are clearly distinguishable from the charges of war crimes and crimes against humanity, as confirmed by the Pre-Trial Chamber in the present case.¹⁸ Moreover, the criterion that the interests of the former clients must not be incompatible with those of the client in these proceedings is not met. Several observations made by the Prosecution – for instance that [REDACTED] – amount to an attempt by the Prosecution to create a link between [REDACTED] and the present case, which is tenuous at best.¹⁹

14. In conclusion, there is no indicia of the existence of a conflict of interest or any impediment to representation concerning Mr Omissé-Namkeamaï pursuant to articles 12 and 16 of the Code of Conduct. Securing the consent of Mr Omissé-Namkeamaï’s current of former clients was – and remains – therefore unnecessary. There is, therefore no “risk to [Mr] Ngaïssona’s right to adequate representation”, contrary to the Prosecution’s contention.²⁰

15. The Defence remains at the Chamber’s disposal should it require any additional information or clarification.

Respectfully submitted,



Mr Knoop, Lead Counsel for Patrice-Edouard Ngaïssona

Dated this 21 December 2020,

At The Hague, the Netherlands.

¹⁷ Article 12(1)(a), Code of Conduct.

¹⁸ ICC-01/14-01/18-403-Conf-Corr.

¹⁹ Submissions, Para. 9.

²⁰ Submissions, para. 8-11.