

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **21 September 2021**

TRIAL CHAMBER V

Before:

**Judge Bertrand 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 ROMBHOT YEKATOM AND PATRICE-EDOUARD
NGAISSONA***

Public

**Defence response to the “Notification of the appointment of Mr Jean Pierre Madoukou
as Legal Adviser to Witness P-0458”, ICC-01/14-01/18-1109, 10 September 2021**

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**

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I. Introduction

1. The Defence for Mr Ngaïssona (“Defence”) respectfully opposes the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0458, noting that Mr Jean Pierre Madoukou is also the Legal Adviser of Witness P-0306. Mr Jean Pierre Madoukou, by virtue of this dual mandate, is in a position of conflict of interest which bars him from exercising his mandate as Legal Adviser for Witness P-0458.

II. Procedural History

2. On 13 July 2015, Witness P-0458 signed a waiver of right to be assisted by a Counsel during an interview under article 55(2) of the Rome Statute.¹ During his further interviews with the Prosecution, from 7 to 9 May 2019 and again later from 27 June to 1 July 2019, Witness P-0458 was represented by Mr Jean Pierre Madoukou.
3. Witness P-0306 was also represented by Mr Jean Pierre Madoukou during his interviews with the Prosecution, from 10 to 12 April 2018 and later from 5 to 8 November 2019. Mr Jean Pierre Madoukou was P-0306’s Counsel already on 16 March 2018² and during national proceedings.³
4. On 30 August 2021, the Registry filed its “Notification of the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0306”, the letter informing Mr Madoukou of his designation⁴ and the solemn undertakings

¹ CAR-OTP-2011-0118.

² CAR-OTP-2127-3893.

³ <https://www.radiondekeluka.org/actualites/justice/30657-bangui-ouverture-de-la-session-criminelle,-g%C3%A9n%C3%A9ral-andjilo-%C3%A0-la-barre.html>.

⁴ ICC-01/14-01/18-1101-Conf-AnxI.

required by articles 5 and 22(3) of the Code of Professional Conduct for Counsel (the “Code”) signed by Mr Madoukou on 11 April 2018.⁵

5. On 10 September 2021, the Registry filed its “Notification of the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0458”, the letter informing Mr Madoukou of his designation (“Appointment Letter”)⁶ and the solemn undertakings required by articles 5 and 22(3) of the Code signed by Mr Madoukou on 11 April 2018.⁷

III. Applicable Law

6. Pursuant to article 12(1)(a) of the Code, Counsel shall not represent a client “[i]f 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”.

IV. Submissions

7. Mr Madoukou was appointed Legal Adviser for Witness P-0306 as well as for Witness P-0458 in order to represent them under Rule 74 in the case at hand. Mr Madoukou’s mandate consists of providing the Witnesses with independent and qualified legal assistance under Rule 74 to avoid any risk of self-incrimination.
8. Pursuant to article 12(1)(a) of the Code, the representation of two clients in the same case and for the virtually same facts places their Legal Advisor in a situation of conflict of interest when the client’s interests are diverging. In the

⁵ ICC-01/14-01/18-1101-Conf-AnxII.

⁶ ICC-01/14-01/18-1109-Conf-AnxI.

⁷ ICC-01/14-01/18-1109-Conf-AnxII.

case at hand, the Witnesses' alleged involvement in the Anti-Balaka movement as high ranked leaders, their alleged participation in the 5 December attack, their alleged involvement in the same Anti-Balaka group among other allegations and the associated risk of self-incrimination places Mr Madoukou in a conflicting position where his two clients might have adverse interests. The Defence believes that such position will not allow Mr Madoukou to provide Witness P-0306 and Witness P-0458 with an independent and qualified legal advice.

9. This consideration is reinforced by the fact that Witness P-0458's oral testimony will take place directly or shortly after that of Witness P-0306.⁸ This lack of time in between the two testimonies would render virtually impossible for Mr Madoukou to ignore the testimony and position of Witness P-0306 whilst providing Witness P-0458 with legal advice on the same potentially incriminating facts.
10. Mr Madoukou will also be exposed to confidential information during the examination and cross-examinations of Witness P-0306 that could be of relevance to the representation of Witness P-0458. Mr Madoukou would in this case be in a conflicting position between his duty to respect the confidentiality of the information related to the examination of Witness P-0306 and the duty to provide proper, independent and qualified legal advice to Witness P-0458. This form of conflict of interest might impact the integrity of the proceedings and affect the two expected testimonies of P-0306 and P-0458.

⁸ Email of 27 August 2021, at 15:36. The Prosecution informed the parties and participants that Witness P-0306 will testify from 27 September 2021 to 1 October 2021 and that Witness P-0458 will testify directly after, on 1 October and from 4 to 7 October 2021.

V. Relief sought

11. In light of the above, the Defence respectfully requests that Mr Madoukou be barred from representing Witness P-0458 in this trial.

Respectfully submitted,



Mr Geert-Jan Alexander Knoops
Lead Counsel for Mr. Patrice-Edouard Ngaïssona

The Hague, 21 September 2021