

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: **25 January 2022**

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

**Public Redacted Version of “Defence Response to the ‘Notification of the appointment
of Mr Jean Pierre Madoukou
as Legal Adviser to Witness P-0446’, ICC-01/14-01/18-1235, 7 January 2022”, 11
January 2022**

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-0446, noting that Mr Jean Pierre Madoukou is also the Legal Adviser of witnesses P-0306 and P-0458.
2. The witnesses’ alleged involvement in the Anti-Balaka movement as prominent leaders, their alleged participation in the 5 December attack, their alleged closeness to the Anti-Balaka coordination among other allegations and the associated risk of self-incrimination places Mr Madoukou in a conflicting position where his three clients might have adverse interests. Such position will not allow Mr Madoukou to provide witnesses P-0306, P-0458 and P-0446 with independent and qualified legal advice. Therefore, by virtue of his mandates, Mr Jean Pierre Madoukou is in a position of conflict of interests which bars him from exercising his mandate as Legal Adviser for witness P-0446.

II. Procedural History

3. On 15 June 2015, witness P-0446 met with the investigators and gave a declaration without being assisted by a Counsel. When witness P-0446 met again with the investigators from 12 to 16 May 2016, he was assisted by Ms - now ICC Judge - Alapini-Gansou. Moreover, witness P-0446 was represented by Mr Madoukou during his last interview conducted from 1 to 3 August 2018.
4. 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

¹ CAR-OTP-2011-0118.

later from 27 June to 1 July 2019, witness P-0458 was represented by Mr Jean Pierre Madoukou.

5. 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 criminal proceedings.³
6. On 30 August 2021, the Registry filed its "Notification of the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0306",⁴ the letter informing Mr Madoukou of his designation⁵ and the solemn undertakings required by articles 5 and 22(3) of the Code of Professional Conduct for Counsel (the "Code") signed by Mr Madoukou on 11 April 2018.⁶
7. On 10 September 2021, the Registry filed its "Notification of the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0458",⁷ the letter informing Mr Madoukou of his designation⁸ and the solemn undertakings required by articles 5 and 22(3) of the Code signed by Mr Madoukou on 11 April 2018.⁹ On 21 September 2021, the Defence responded to this notification raising its concerns with regards to a conflict of interest and requesting that Mr Madoukou be barred from representing witness P-0458 in this trial.¹⁰
8. From 27 September 2021 until 1 October 2021, witness P-0306 testified orally and was represented in the courtroom by Mr Madoukou. On 22 September 2021, the Prosecution informed the parties and participants that witness P-0458

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-01/14-04/18-1101.

⁵ ICC-01/14-01/18-1101-Conf-AnxI.

⁶ ICC-01/14-01/18-1101-Conf-AnxII.

⁷ ICC-01/14-01/18-1109.

⁸ ICC-01/14-01/18-1109-Conf-AnxI.

⁹ ICC-01/14-01/18-1109-Conf-AnxII.

¹⁰ ICC-01/14-01/18-1115.

who was initially scheduled to testify directly after witness P-0306, on 1 October and from 4 to 7 October 2021, was not available to testify as intended.¹¹ To this date, witness P-0458 has not testified before Trial Chamber V.

9. On 7 January 2022, the Registry filed its “Notification of the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0446”, the letter informing Mr Madoukou of his designation¹² and the solemn undertakings required by articles 5 and 22(3) of the Code signed by Mr Madoukou on 11 April 2018.¹³

III. Applicable Law

10. Pursuant to article 12(1)(a) of the Code of Professional Conduct for counsel (“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. Confidentiality

11. In accordance with regulation 23*bis*(1) of the Regulations of the Court (“Regulations”), these submissions are filed confidentially as they contain potentially identifying information. A public redacted version will follow shortly.

¹¹ Email of 22 September 2021, at 18:15.

¹² ICC-01/14-01/18-1235-Conf-AnxI.

¹³ ICC-01/14-01/18-1235-Conf-AnxII.

V. Submissions

12. Mr Madoukou was appointed Legal Adviser for witnesses P-0306, P-0458 and P-0446 in order to represent them under rule 74 of the Rules of Procedure and Evidence in the case at hand. Accordingly, Mr Madoukou's mandate consists of providing the witnesses with independent and qualified legal assistance under rule 74 to avoid the risk of self-incrimination.
13. Pursuant to article 12(1)(a) of the Code, the representation of different clients in the same case and for the virtually same facts places their Legal Adviser in a situation of conflict of interest where the client's interests are diverging.
14. The witnesses' alleged involvement in the Anti-Balaka movement as prominent leaders and the associated risk of self-incrimination justified the nomination of a Counsel in order to represent them during their in-court testimony to guarantee their right against self-incrimination. However, the three witnesses' statements overlap in time and space. [REDACTED], places Mr Madoukou in a conflicting position where his three clients might have adverse interests. Such position will not allow Mr Madoukou to provide witnesses P-0306, P-0458 and P-0446 with independent and qualified legal advice.
15. The oral testimony of witness P-0306 took place from 27 September 2021 to 1 October 2021, four months before the oral testimony of witness P-0446 scheduled to testify from 26 to 31 January 2022.¹⁴ This short time in between the two testimonies will prevent Mr Madoukou from ignoring the testimony and position of witness P-0306 whilst providing witness P-0446 with legal advice on the same potentially incriminating facts.

¹⁴ Email of 16 December 2021, at 08:52.

16. During the oral testimony of witness P-0306, Mr Madoukou was exposed to confidential information related to the involvement of witness P-0306 in the Anti-Balaka movement and in the conflict throughout 2013 and 2014. Such information could be of relevance to the representation of witness P-0446. Mr Madoukou would be, in this case, 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-0446. This form of conflict of interests might impact the integrity of the proceedings and affect the testimony of P-0446.

17. Relief sought

18. In light of the above, the Defence respectfully requests that Mr Madoukou be barred from representing witness P-0446 in this trial.

Respectfully submitted,



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

The Hague, 25 January 2022