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**No. ICC-01/14-01/18
Date: 2 February 2022**

TRIAL CHAMBER V

**Before: 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***

Public redacted version of

**Decision on the Ngaïssona Defence Submissions regarding the Appointment of a
Legal Adviser to P-0458 and P-0446**

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

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Jean Pierre Madoukou

TRIAL CHAMBER V of the International Criminal Court, in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, having regard to Article 64(2) the Rome Statute (the ‘Statute’), Rule 74(10) of the Rules of Procedure and Evidence (the ‘Rules’), and Articles 12, 13 and 16 of the Code of Professional Conduct for counsel (the ‘Code’), issues this ‘Decision on the Ngaïssona Defence Submissions regarding the Appointment of a Legal Adviser to P-0458 and P-0446’.

I. Procedural history

1. From at least 16 March 2018 to 1 October 2021, Mr Jean Pierre Madoukou served as counsel for witness P-0306 in proceedings before the Court, including during his interviews with the Office of the Prosecutor (the ‘Prosecution’),¹ as well as during the witness’s testimony before the Court, which took place from 27 September to 1 October 2021.²
2. On 13 September 2021 and 7 January 2022, respectively, the Chamber was notified of the appointment of Mr Madoukou as legal adviser to witnesses P-0458 and P-0446 (the ‘P-0458 Appointment’ and the ‘P-0446 Appointment’, respectively), pursuant to Rule 74(10) of the Rules.³
3. On 21 September 2021 and 11 January 2022,⁴ respectively, the Ngaïssona Defence (the ‘Defence’) filed submissions to the P-0458 Appointment and the P-

¹ See CAR-OTP-2127-3893 (Prosecution investigation report, indicating that on 16 March 2018, a meeting was held with P-0306 and Mr Madoukou); CAR-OTP-2118-0491 (transcript of interview held on 10 April 2018); and CAR-OTP-2118-4784 (transcript of interview held on 5 November 2019), where Mr Madoukou provided legal assistance pursuant to Article 55(2) of the Statute.

² See Notification to the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0306, 30 August 2021, ICC-01/14-01/18-1101 (with confidential Annexes I and II); transcript of hearing, 27 September 2021, ICC-01/14-01/18-T-064-CONF-ENG (public redacted version notified 5 October 2021, ICC-01/14-01/18-T-064-Red-ENG) (the ‘T-064 Hearing’); transcript of hearing, 28 September 2021, ICC-01/14-01/18-T-065-CONF-ENG (public redacted version notified 1 November 2021, ICC-01/14-01/18-T-065-Red-ENG) (the ‘T-065 Hearing’); transcript of hearing, 29 September 2021, ICC-01/14-01/18-T-066-CONF-ENG (public redacted version notified 7 October 2021, ICC-01/14-01/18-T-066-Red-ENG); transcript of hearing, 30 September 2021, ICC-01/14-01/18-T-067-CONF-ENG; transcript of hearing, 1 October 2021, ICC-01/14-01/18-T-068-CONF-ENG (the ‘T-068 Hearing’).

³ See Notification of the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0458, ICC-01/14-01/18-1109 (with confidential Annexes I and II); Notification of the appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0446, ICC-01/14-01/18-1235 (with confidential Annexes I and II).

⁴ Noting that P-0446’s testimony was, at that time, scheduled to start on 26 January 2022, the Single Judge shortened the deadline for submissions, if any, to the P-0446 Appointment. See email from the Chamber, 7 January 2022, at 16:41.

0446 Appointment, requesting that Mr Madoukou be barred from representing P-0458 and P-0446 (the ‘P-0458 Request’ and the ‘P-0446 Request’, respectively).⁵

4. On 24 September 2021, the Prosecution opposed the P-0458 Request.⁶
5. On 10 January 2022, the Common Legal Representatives of the Victims of the Other Crimes informed the Chamber that they do not intend to file submissions to the P-0446 Appointment.⁷
6. On 14 January 2022, the Prosecution informed the Chamber that, considering its previous submissions on the appointment of Mr Madoukou to P-0458, it does not intend to respond to the P-0446 Request and defers to the Chamber’s discretion.⁸
7. On that same day, the Common Legal Representative of the Victims of the Other Crimes, the Common Legal Representative of the Former Child Soldiers, and the Yekatom Defence informed that they do not intend to respond to the P-0446 Request.⁹

II. Analysis

8. The Chamber recalls the applicable law set out in its previous decisions.¹⁰

⁵ Defence response to the “Notification of appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0458”, ICC-01/14-01/18-1109, 10 September 2021, ICC-01/14-01/18-1115, paras 1, 7-11; Defence response to the “Notification of appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0446”, ICC-01/14-01/18-1235, 11 January 2022, ICC-01/14-01/18-1242-Conf (public redacted version notified 25 January 2022, ICC-01/14-01/18-1242-Red), paras 1-2, 12-18.

⁶ Prosecution’s Response to ‘Defence response to the Notification of appointment of Mr Jean Pierre Madoukou as Legal Adviser to Witness P-0458’ (ICC-01/14-01/18-1115), ICC-01/14-01/18-1117 (the ‘Response to the P-0458 Request’), paras 1, 11, 12.

⁷ See email from the CLRV of the Other Crimes, 10 January 2022, at 16:47.

⁸ See email from the Prosecution, 14 January 2022, at 13:24.

⁹ See email from the CLRV of the Other Crimes, 14 January 2022, at 13:21; email from the Common Legal Representative of the Former Child Soldiers, 14 January 2022, at 13:35; email from the Yekatom Defence, 14 January 2022, at 13:43.

¹⁰ See, *in particular*, Decision on the Prosecution Submission on the Appointment of Defence Counsel, 19 January 2021, ICC-01/14-01/18-837-Conf (public redacted version notified the same day, ICC-01/14-01/18-837-Red), paras 6-9. See also Decision on the Second Prosecution Submission on the Appointment of Defence Counsel, 17 March 2021, ICC-01/14-01/18-916-Conf, paras 9-10.

9. The Chamber will first assess whether there is an impediment to representation within the meaning of Article 12(1) of the Code and then determine whether a conflict of interest exists, pursuant to Article 16 of the Code.
10. The Chamber observes that Mr Madoukou served as counsel for P-0306 from at least 16 March 2018 in proceedings before the Court and represented him during his interviews with the Prosecution, which were carried out from 10 to 12 April 2018 and from 5 to 8 November 2019. The Chamber notes that, in addition, counsel also represented P-0458 during his interviews with the Prosecution, which took place from 7 to 9 May 2019 and from 27 June to 1 July 2019,¹¹ as well as P-0446 during his last interview with the Prosecution from 1 to 3 August 2018.¹² In the course of these interviews, Mr Madoukou provided legal assistance to the three witnesses under Article 55(2) of the Statute. Furthermore, the Chamber observes that Mr Madoukou represented P-0306 during his testimony before the Court, following his appointment as duty counsel under Rule 74(10) of the Rules.
11. The Chamber notes that the Defence essentially challenges whether Mr Madoukou should be allowed to assist P-0458 and P-0446 in their upcoming testimonies before the Court, after having already represented P-0306 in such capacity.
12. In this regard, the Chamber notes the Defence's submissions that the representation of P-0306, P-0458, and P-0446 concerns 'the same case and [...] virtually the same facts', which places Mr Madoukou in a situation of conflict of interest when the client's interests are diverging.¹³ In particular, the Defence argues that the three witnesses might have adverse interests, given that their statements 'overlap in time and space', [REDACTED], which 'will not allow Mr Madoukou to provide witnesses P-0306, P-0458 and P-0446 with independent

¹¹ See [REDACTED].

¹² See [REDACTED].

¹³ P-0458 Request, ICC-01/14-01/18-1115, para. 8; P-0446 Request, ICC-01/14-01/18-1242-Red, para. 13.

and qualified legal advice'.¹⁴ In addition, the Chamber notes the Defence's submissions that P-0306 was exposed to confidential information which 'could be of relevance' to the representation of P-0446, and similarly P-0458.¹⁵

13. Having reviewed the statements of the witnesses, the Chamber observes that P-0306 mentioned P-0458 and P-0446 during his testimony¹⁶ in the context of issues that have also been addressed by these witnesses in their prior recorded testimonies,¹⁷ which also contain references with regard to one another on certain events.¹⁸ However, the Chamber finds that, despite the fact that there might be some overlap in the topics discussed by the witnesses during their testimonies, the Defence's submissions on the alleged existence of adverse interests among these witnesses are speculative and unsubstantiated.¹⁹ Consequently, the Chamber considers that there is no indication that the testimonies of these witnesses might give rise to a situation in which their interests would be incompatible under Article 12(1) of the Code.
14. Additionally, the Chamber recalls that the mandate of a legal adviser under Rule 74 of the Rules is very limited in scope, as it is restricted to issues relating to self-incrimination, and that no other aspects of the testimony must be discussed.²⁰ Moreover, Mr Madoukou has executed the solemn undertakings required by the Code and, to date, the Chamber notes that neither counsel himself, nor the Registry have raised any impediment or conflict.²¹ Therefore, it concludes that there is no impediment to representation under Article 12(1)(a) of the Code.

¹⁴ P-0446 Request, ICC-01/14-01/18-1242-Conf, para. 14; P-0458 Request, ICC-01/14-01/18-1115, para. 8.

¹⁵ P-0446 Request, ICC-01/14-01/18-1242-Red, para. 16; P-0458 Request, ICC-01/14-01/18-1115, para. 10.

¹⁶ With respect to P-0458, [REDACTED]. With respect to P-0446, [REDACTED].

¹⁷ See e.g. [REDACTED].

¹⁸ See e.g. [REDACTED].

¹⁹ See e.g. P-0458 Request, ICC-01/14-01/18-1115, paras 8 ('where his two clients might have adverse interests'), 10 ('information [...] that could be of relevance [...]. Mr Madoukou would in this case be in a conflicting position'). See also P-0446 Request, ICC-01/14-01/18-1242-Red, paras 2, 14 ('places Mr Madoukou in a conflicting position where his three clients might have adverse interests'), 16 ('[s]uch information could be of relevance [...]. Mr Madoukou would be, in this case, in a conflicting position').

²⁰ See Annex 1 to the Decision on Protocols at Trial, 8 October 2020, ICC-01/14-01/18-677-Anx1, para. 60.

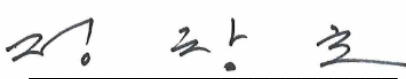
²¹ See also Response to the P-0458 Request, ICC-01/14-01/18-1117, paras 6-7.

15. Similarly, the Chamber considers that, on the basis of the available information at this stage, there is also no indication that a conflict of interest exists. Nonetheless, the Chamber reminds counsel of his ongoing obligations under Article 16(3) of the Code.
16. In light of the above, the Chamber considers that the P-0458 Appointment and the P-0446 Appointment are appropriate. The Defence's requests that Mr Madoukou be barred from representing P-0458 and P-0446 in this trial are thus rejected.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the P-0458 Request and the P-0446 Request.

Done in both English and French, the English version being authoritative.

 Judge Péter Kovács	 Judge Bertram Schmitt Presiding Judge	 Judge Chang-ho Chung
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Dated 2 February 2022

At The Hague, The Netherlands