

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **12 April 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 *PROSECUTOR v. ALFRED YEKATOM AND PATRICE-  
EDOUARD NGAÏSSONA***

**Public**

**Public Redacted Version of “Request for leave to add 103 Items to the List of  
Evidence (ICC-01/14-01/18-1330-Conf)”, ICC-01/14-01/18-1330-Conf, 24 March 2022**

**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**

Mr Karim A. A. Khan QC  
Mr Mame Mandiaye Niang  
Mr Kweku Vanderpuye

**Counsel for Alfred Yekatom**

Ms Mylène Dimitri  
Mr Thomas Hannis  
Ms Anta Guissé

**Counsel for Patrice-Edouard Ngaïssona**

Mr Geert-Jan Alexander Knoops  
Mr Richard Landry Omissé-Namkeamaï  
Ms Marie-Hélène Proulx

**Legal Representatives of Victims**

Mr Dmytro Suprun  
Mr Abdou Dangabo Moussa  
Ms Elisabeth Rabesandratana  
Mr Yaré Fall  
Ms Marie-Edith Douzima-Lawson  
Ms Paolina Massidda

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. SUBMISSIONS

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber V (“Chamber”) to authorise the addition of 103 Facebook records (“Items”)<sup>1</sup> to its Updated List of Evidence (“LoE”)<sup>2</sup> in accordance with the Decision Setting the Commencement Date of the Trial<sup>3</sup> and subsequent decisions.<sup>4</sup>

2. The Items comprise five Facebook Placeholder reports and 98 Facebook conversations between [REDACTED] and several individuals during the Relevant Period.<sup>5</sup> The Items are relevant to material issues at trial, mutually corroborative, and bear sufficient indicia of reliability on which the Chamber may properly base its article 74 decision.

3. The addition of the Items to the LoE is warranted and appropriate in the circumstances. Despite the Prosecution requesting the Facebook accounts of these individuals on 25 June 2020, the materials were only received on 5 March 2021, well after the 9 November 2020 deadline to file its LoE.<sup>6</sup> They were disclosed to the Defence in June 2021.<sup>7</sup> The identification of the Items was furthermore dependent on a careful and holistic analysis of all the materials in conjunction with other evidence in the case.

4. The addition of the Items to the LoE causes no prejudice to a fair trial. To the contrary, it would assist in the Chamber’s determination of the truth, and would contribute to an expeditious trial.

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<sup>1</sup> See Annex A. .

<sup>2</sup> ICC-01/14-01/18-1211-Conf-AnxA (“LoE”).

<sup>3</sup> ICC-01/14-01/18-589, para. 10, 14 and 16 (“Decision”).

<sup>4</sup> ICC-01/14-01/18-989-Conf, para. 5-6; ICC-01/14-01/18-1080-Conf, para. 7; ICC-01/14-01/18-T-073-ENG ET (“T-073”), p. 3, l. 16-17; ICC-01/14-01/18-1206, para. 5; ICC-01/14-01/18-1301-Conf, para. 10 . Note that the English edited case transcripts will be referred to hereinafter as “T-”.

<sup>5</sup> As defined in the Prosecution’s Trial Brief, from September 2013 through December 2014: ICC-01/14-01/18-723-Red para. 5.

<sup>6</sup> ICC-01/14-01/18-589, para. 14.

<sup>7</sup> The specific dates of disclosure are set out in the Annex A.

## II. CONFIDENTIALITY

5. Pursuant to regulation 23bis(1) of the Regulations of the Court (“RoC”), the Prosecution files this request and its Annexes as “*Confidential*” because they contain confidential information regarding Prosecution evidence. A public redacted version will be filed as soon as practicable.

## III. SUBMISSIONS

### A. Background

6. The Prosecution obtained the Facebook accounts of [REDACTED] from Facebook [REDACTED] (Meta INC [REDACTED]) under the same circumstances that it obtained records which it sought to add to its list of evidence in its previous application.<sup>8</sup> Accordingly, the Chamber has previously considered the *circumstances* as set out below.

7. Specifically, the items were obtained pursuant to a Request for Assistance (“RFA”) made [REDACTED] on 25 June 2020 ([REDACTED]).<sup>9</sup>

8. Despite numerous attempts to secure the expedited treatment of this RFA, the [REDACTED] authorities only transmitted the Items on 5 March 2021, pursuant to the relevant domestic legal procedures. The authorities informed the Prosecution that, although marked as urgent, the disposition of the RFA was delayed primarily because of the partial closure of the national courts due to Covid-19. The fact that Items were obtained after the 9 November 2020 deadline to file the LoE is thus due to circumstances outside the Prosecution’s control.

9. The material responsive to this particular RFA consisted of 19 Facebook accounts comprising around 3000 conversations (containing over more than 25,000 pages), 1213

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<sup>8</sup> See ICC-01/14-01/18-1285-Conf, paras. 7-9.

<sup>9</sup> CAR-OTP-2127-9187.

photographs, and 31 videos. Upon receiving this material [REDACTED] in March 2021, the Prosecution [REDACTED], investigators and/or analysts ran a series of key-words on the collection and filtered out irrelevant items. The pool of documents which were key-word responsive were subsequently registered in Ringtail and manually reviewed to classify them legally, prepare them for disclosure, and to assess and implement redactions where necessary. After being processed by the Information and Evidence Unit, the Items were formally disclosed to the Defence in June 2021.<sup>10</sup>

10. Subsequently, investigators and/or analysts read and analysed the conversations and identified those of importance to the Prosecution case. This analysis involved [REDACTED].

11. The delay between the disclosure of the items and the identification of these most relevant items is justified and reasonable. This case is complex. The messages contained in these Facebook accounts are voluminous (more than 25,000 pages) and the [REDACTED] resources available to the Prosecution to analyse this material are limited. The messages are difficult to decipher. The interlocutors use French shorthand and/or slang (for example ‘*hoes*’ to mean ‘*hommes*’),<sup>11</sup> making the collection difficult to search electronically. In addition, they use code-names and/or nick-names, and the relevance of the various interlocutors depends sometimes on piecing multiple items together.<sup>12</sup> In short, given the vast amount of information contained in the Facebook records, the *significance* of the messages is therefore not always clear instantaneously.<sup>13</sup> This is to be expected in complex cases and neither undermines or detracts from the reasonable diligence exercised to discover or determine such information.

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<sup>10</sup> The specific dates of disclosure are set out in the Annex A.

<sup>11</sup> See e.g. CAR-OTP-2131-4976, at 4995.

<sup>12</sup> For example upon further analysis, the Prosecution has concluded that the user of the account [REDACTED], given that his Facebook ID number matches the one of [REDACTED] in other conversations.

<sup>13</sup> The Prosecution will submit a Glossary of terms with its next request for the admission of evidence from the bar table.

## B. The documents are relevant and have significant probative value

12. The Items are extracted from five Facebook accounts. Upon a careful and holistic analysis of the materials, including by comparing them to other evidence in the case, their relevance and significance has become apparent.

13. The Facebook account ([REDACTED]) is associated with the names [REDACTED]<sup>14</sup> and “[REDACTED]”.<sup>15</sup> The analysis of the account has revealed that its user is [REDACTED].<sup>16</sup> [REDACTED] is one of [REDACTED] who [REDACTED] of CAR after the 24 March 2013 *Coup*,<sup>17</sup> and [REDACTED] with BOZIZE [REDACTED] in CAMEROON.<sup>18</sup> In the messages, [REDACTED] confirms [REDACTED] during the events at BOZIZE’s *Cité du Golf* residence,<sup>19</sup> where NGAISSONA and Bernard MOKOM also resided.<sup>20</sup> At the Golf residence, NGAISSONA held strategic meetings with members of BOZIZE’s inner circle,<sup>21</sup> and handed out money to FACA members loyal to BOZIZE.<sup>22</sup> Individuals, like Eugene NGAIKOSSET, received instructions from NGAISSONA at the Golf residence.<sup>23</sup> The analysis of the messages confirms not only that [REDACTED] was privy to key-insider information,<sup>24</sup> but also that [REDACTED] himself was directly involved in the provision of materials (for example, [REDACTED]) to the Anti-Balaka on NGAISSONA’s behalf.<sup>25</sup>

<sup>14</sup> See for example CAR-OTP-2100-2994, at 2994.

<sup>15</sup> CAR-OTP-2131-1003, at 1003.

<sup>16</sup> The fact that it is his account is corroborated by the content of the messages. For example, the telephone number provided by him ([REDACTED]), to different interlocutors such as [REDACTED] (CAR-OTP-2131-3310, at 3349), [REDACTED] (CAR-OTP-2099-7606, at 7652), and [REDACTED] (CAR-OTP-2100-2994, at 3026), is attributed to [REDACTED] by [REDACTED] (CAR-OTP-2117-0389, Sheet named [REDACTED] at rows 12, 16, 18, 20, 21, 27, 30 and 32).

<sup>17</sup> See CAR-OTP-2099-7606, at 7607.

<sup>18</sup> [REDACTED].

<sup>19</sup> As he confirms himself in the messages: see CAR-OTP-2131-2865, at 2866; CAR-OTP-2133-0458, at 0462.

<sup>20</sup> See for example [REDACTED]; T-41-CONF-ENG ET, p. 20, l. 13-19.

<sup>21</sup> See for example T-041-CONF-ENG ET, p. 11, l. 7-13; T-042-CONF-ENG ET, p. 11, l. 19 – p. 12, l. 12 ; CAR-OTP-2127-6435, at 6449, para. 86; CAR-OTP-2055-2511, at 2524-2526, para. 81-90.

<sup>22</sup> CAR-OTP-2127-6435, at 6443, para. 53; T-041-CONF-ENG ET, p. 18, l. 20 – p. 20, l. 19.

<sup>23</sup> See for example T-023-CONF-ENG CT, p. 87, l. 15-p. 88, l. 21.

<sup>24</sup> See Annex B for a detailed overview of messages concerned.

<sup>25</sup> See for example CAR-OTP-2102-2520, at 2643-2644; CAR-OTP-2101-8599, at 8691-8693.

14. The Facebook account ([REDACTED]) is associated with the name [REDACTED].<sup>26</sup> The analysis of the account has revealed that the user of this account is [REDACTED],<sup>27</sup> who participated in meetings with NGAISSONA in CAMEROON,<sup>28</sup> and who allegedly handed over money to NGAISSONA there.<sup>29</sup> The analysis of the messages shows that [REDACTED] was privy to key-insider information on the organisation of the Anti-Balaka,<sup>30</sup> and the messages confirm: (i) NGAISSONA's role in the Anti-Balaka before 5 December 2013;<sup>31</sup>(ii) NGAISSONA's participation in discussions with other members of BOZIZE's inner circle upon 'VIP's instruction;<sup>32</sup> and (iii) the purpose of NGAISSONA's return to BANGUI on 14 January 2014, namely to coordinate and organise things.<sup>33</sup>

15. The Facebook account ([REDACTED]) is associated with the name "[REDACTED]",<sup>34</sup> and used by [REDACTED], a former FACA, involved in COCORA,<sup>35</sup> for whom [REDACTED].<sup>36</sup> [REDACTED] was in contact with NGAISSONA, Bernard MOKOM and Maxime MOKOM before the 5 December 2013 attacks,<sup>37</sup> *inter alia* for the provision of arm supplies<sup>38</sup> and money.<sup>39</sup> The analysis of the messages confirm [REDACTED] involvement in the Anti-Balaka.<sup>40</sup>

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<sup>26</sup> CAR-OTP-2131-1021, at 1021.

<sup>27</sup> This is corroborated by the placeholder record which refers to his e-mail addresses [REDACTED] (CAR-OTP-2131-1021, at 1022), but also corroborated by the content of the messages. For example, the user presents himself as [REDACTED] at CAR-OTP-2131-2629, at 2690; *see also* CAR-OTP-2133-6061, at 6096-6097; he confirms his identity in a conversation with [REDACTED]; CAR-OTP-2099-9596, at 9596-9598; and he sent a picture of himself in a conversation with [REDACTED] CAR-OTP-2102-8899, at 8942-8943.

<sup>28</sup> CAR-OTP-2079-0574, at 0574-0575.

<sup>29</sup> CAR-OTP-2045-1300, at 1307-1308.

<sup>30</sup> *See* Annex B for a detailed overview of messages concerned.

<sup>31</sup> *See* for example CAR-OTP-2131-5707, at 5838-5839.

<sup>32</sup> CAR-OTP-2133-2227, at 2255-2256.

<sup>33</sup> CAR-OTP-2131-2344, at 2475-2476; CAR-OTP-2133-3757, at 3810-3811.

<sup>34</sup> CAR-OTP-2131-1038, at 1038.

<sup>35</sup> CAR-OTP-2127-4238, , at 4271, para. 181.

<sup>36</sup> *See* e-mails at CAR-OTP-2124-0890; CAR-OTP-2124-0891; CAR-OTP-2124-0892; CAR-OTP-2124-0895; CAR-OTP-2124-0896; CAR-OTP-2124-0899.

<sup>37</sup> [REDACTED]; T-030-CONF-ENG ET, p. 16, l. 3-6 ; [REDACTED].

<sup>38</sup> [REDACTED].

<sup>39</sup> CAR-OTP-2127-4238 , at 4259, 4272, paras. 119-120, 183. *See also* [REDACTED].

<sup>40</sup> CAR-OTP-2131-1303, at 1304-1305.

16. The Facebook account ([REDACTED]) is associated with the name “[REDACTED]”<sup>41</sup> and was used by [REDACTED], one of BOZIZE’s [REDACTED] who fled to CAMEROON and participated in meetings with NGAISSONA there in view of organising a response to the Seleka.<sup>42</sup> [REDACTED] was part of a coordination office in CAMEROON<sup>43</sup> and later stationed [REDACTED] where the Anti-Balaka planned military operations.<sup>44</sup> While in YAOUNDE, [REDACTED] at NGAISSONA’s residence with [REDACTED] and [REDACTED] FACA officers.<sup>45</sup> In the messages, [REDACTED] confirms his presence in DOUALA and YAOUNDE, and confirms that NGAISSONA is part of the Anti-Balaka Coordination in CAMEROON.<sup>46</sup> The analysis of the messages confirms [REDACTED] proximity to NGAISSONA at the time the Anti-Balaka were organising themselves from CAMEROON, and his access to key-information.

17. The Facebook account ([REDACTED]) is associated with the name “[REDACTED]”<sup>47</sup> and was used by P-2843. P-2843 testified that [REDACTED].<sup>48</sup> In the messages, P-2843 discussed the Anti-Balaka’s strategy, including their [REDACTED],<sup>49</sup> and Anti-Balaka attacks on Muslims.<sup>50</sup> The analysis of the messages corroborates P-2843’s inside knowledge about the Anti-Balaka.

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<sup>41</sup> CAR-OTP-2131-1032, at 1032.

<sup>42</sup> CAR-OTP-2079-0574, at 0574-0575; [REDACTED]; [REDACTED]; [REDACTED], T-076-CONF-ENG ET, p. 42, l. 17-23; [REDACTED]; CAR-OTP-2046-0603, at 0607, para. 26; T-092-CONF-ENG ET, p. 20, l. 9-16, p. 21, l. 3-p. 22, l. 9.

<sup>43</sup> [REDACTED].

<sup>44</sup> CAR-OTP-2062-0039, at 0043-0045, paras. 25, 34-36; CAR-OTP-2127-6435, at 6455, paras.127-128; T-093-CONF-ENG ET, p. 42, l. 24-p. 43, l. 18; CAR-OTP-2102-4062, at 4065; *see also* CAR-OTP-2101-8599, at 8720-8721.

<sup>45</sup> [REDACTED],

<sup>46</sup> *See* Annex B for a detailed overview of messages concerned.

<sup>47</sup> CAR-OTP-2131-0993, at 0993.

<sup>48</sup> [REDACTED].

<sup>49</sup> CAR-OTP-2131-6546, at 6556-6558.

<sup>50</sup> CAR-OTP-2131-4793, at 4824; CAR-OTP-2131-1420, at 1436.



### C. Organisation and content of the Items

18. The Items (*i.e.*, five placeholders, 98 conversations) are listed in Annex A, detailing per document: the ERN, the title, the interlocutors, and the date the item was disclosed.

19. Annex B provides a detailed overview, in chronological order, of the relevant messages within these conversations, indicating: the ERN, the date of the message concerned, the interlocutors, and a summary of the message.

20. The Items are sufficiently relevant and probative to be added to the LoE. As further detailed in Annex B, the Items reflect the organisation of the Anti-Balaka from April 2013 onwards; the communication, association, and coordination amongst different individuals close to the Accused in view of organising a military response against the Seleka; and the awareness of these individuals of NGAISSONA's role within the group.

21. More specifically, they show, amongst others : (i) BOZIZE's and his inner circle's involvement with the Anti-Balaka; (ii) the failed political/military negotiations which led to the organisation of the Anti-Balaka; (iii) the (military) organisation of the Anti-Balaka from April 2013 onwards in different areas in the CENTRAL AFRICAN REPUBLIC ("CAR"), in the DEMOCRATIC REPUBLIC of the CONGO ("DRC"), in CAMEROON, and in FRANCE, as well as the communication/coordination of Anti-Balaka members across these areas; (iv) the structure, identity, and composition of the group as well as the identity and location/whereabouts of particular Anti-Balaka members; (v) Anti-Balaka attacks between September and December 2013; (vi) the link between the Anti-Balaka and FROCCA ("*Front pour le retour à l'ordre constitutionnel en Centrafrique*"); (vii) the Anti-Balaka's provision of weapons, ammunition and other means prior to/after the 5 December 2013 attacks on BANGUI and BOSSANGO; (viii) the planning and preparation of the 5 December 2013 attack on BANGUI and other locations in CAR, including the descent of men to BANGUI in view of the attack;

(ix) the Anti-Balaka's adoption of a generalised anti-Muslim rhetoric, disseminated earlier by BOZIZE and those within his circle, conflating the Seleka and Muslims; and  
 (x) the planning of Anti-Balaka attacks in January 2014.

22. In addition, the Items show NGAISSONA's whereabouts and his role before and after the 5 December 2013 attacks. Amongst others, the Items show that prior to the 5 December 2013 attacks, NGAISSONA was meeting and coordinating with other key-Anti-Balaka figures, such as Bernard MOKOM, KOKATE, YAKETE, Eugène NGAIKOSSET, and several of BOZIZE's sons; that he was involved in the decision-making process regarding the attack on BANGUI; that he and Bernard MOKOM liaised with BOZIZE; that they received money from BOZIZE; and that NGAISSONA visited troops in the field and provided them with supplies. The Items also show that *before* his 14 January 2014 arrival in BANGUI, it was decided that NGAISSONA should return to BANGUI *in view of* organising and coordinating the Anti-Balaka. His role as the Anti-Balaka National Coordinator was thus not unplanned or accidental.

#### **D. Adding the Items to the LoE causes no unfair prejudice to the Defence**

23. The addition of 103 Items to the LoE well-within the presentation of the Prosecution's case, does not cause unfair prejudice to the Accused. The fact that several months passed since the disclosure of the evidence is not unreasonable in the circumstances. The Prosecution exercised reasonable diligence in reviewing and analysing the received material, which comprised around 3000 conversations (containing over more than 25,000 pages), 1213 photographs, and 31 videos.

24. *First*, instead of entertaining piecemeal motions or motions seeking addition to the LoE on a rolling basis, the Prosecution considered that grouping the relevant Items into the present motion<sup>51</sup> would be the more efficient manner in which to proceed. A

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<sup>51</sup> With the exception of the request to add items to the LoE and submission regarding P-0889, which was filed separately to provide sufficient time before the P-0889's appearance in Court.

selective approach rather than a broad-based dump of *possibly* incriminating material would rather undermine the expedition of the proceedings.

25. *Second*, as mentioned above, the analysis of the messages takes time. In contrast with the *Popovic* decision,<sup>52</sup> where the ICTY Chamber concluded that the Prosecution had exercised reasonable diligence in identifying indirect evidence which was already partly in its possession, even after the Prosecution's presentation of evidence had finished - and which Prosecution incorporates by reference its submissions on the standard of reasonable diligence set out in its previous request<sup>53</sup> - this case is not yet in an advanced stage.<sup>54</sup> Moreover, the Items provide *direct* evidence that is consistent with the theory of the case and the basis of the confirmed charges.

26. *Third*, all Facebook conversations were timely disclosed in May and June 2021, and the Defence was aware of the subject matter of the Items. Annex B provides a detailed overview of the relevant messages within the conversations to help the Chamber and the Defence identify the parts of the conversations on which it aims to focus.

27. *Finally*, given the Defence's relationship to the persons and subject matters in the conversations, the Defence has always been in a better position than the Prosecution to recognise the materiality of the information.

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<sup>52</sup> *Prosecutor v. Popovic et al*, Case No. IT-05-88-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 8 May 2008, available at: [Decision on motion to reopen the prosecution case \(icty.org\)](#) [accessed 24 March 2022], in particular paras.23-39.

<sup>53</sup> See "Request for leave to add 21 Items to the List of Evidence and their Submission from the Bar Table, and to extend the estimated examination time for P-0889", ICC-01/14-01/18-1285-Conf + Conf-Anx, paras. 18-20.

<sup>54</sup> To date, the Prosecution has called only 30 of its 96 anticipated live witnesses.

#### IV. CONCLUSION

28. The fair and expeditious conduct of the proceedings is not infringed by permitting the Prosecution to add the Items to the LoE at this stage. The Items are of significant probative value, their addition causes no unfair prejudice, and their introduction will advance the Chamber's mandate to search for the truth.

29. For the above reasons, the Prosecution requests the Chamber's leave to add the Items to its LoE.

A handwritten signature in blue ink, consisting of a stylized 'K' followed by a horizontal line and a period.

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**Karim A. A. Khan QC, Prosecutor**

Dated this 12<sup>th</sup> day of April 2022  
At The Hague, The Netherlands