

**Cour
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**International
Criminal
Court**

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Date: **8 March 2024**

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
NGAISSONA***

Public

**Public redacted version of “Prosecution’s Tenth Application for Submission of Facebook
Evidence from the Bar Table”, 3 July 2023, (ICC-01/14-01/18-1956-Conf)**

Source: Office of the Prosecutor

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

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I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) requests Trial Chamber V (“Chamber”) to recognise as formally submitted [REDACTED] items of evidence obtained from, or related to [REDACTED] Facebook [REDACTED] (“Facebook Evidence”).¹ The Request is made pursuant to the Chamber’s invitation to submit evidence in writing through a ‘bar table’ application,² and in accordance with articles 64(9)(a), 69(3), and 69(2), (3), and (4).

2. The Facebook Evidence is relevant to material issues at trial, is mutually corroborative, and bears sufficient indicia of reliability. As demonstrated in this application and its Annex, each item of evidence satisfies *prima facie* the criteria for submission.

3. Recognising the formal submission of the Facebook Evidence at this stage of the trial causes no undue prejudice. It will enable the Chamber to understand other evidence in the case, and ultimately assist in determining the truth. Recognising the formal submission of the Facebook Evidence will also contribute to an expeditious trial.

4. As requested by the Chamber, the Annex to this filing details for each of the [REDACTED] items of evidence: (i) the evidence registration number (“ERN”); (ii) the type; (iii) the title; (iv) the main date of the document; (v) a short description of the item; (vi) its relevance and probative value; and (vii) the date of disclosure. All of these items were included on the Prosecution’s 9 November 2020 List of Evidence, as indicated below.

II. CONFIDENTIALITY

5. Pursuant to regulation 23*bis*(1) of the Regulations of the Court (“RoC”), the Prosecution files this Request as ‘*Confidential*’ because it contains confidential information. A public redacted version will be filed as soon as practicable.

¹ Hereinafter, “Request”.

² ICC-01/14-01/18-631, paras. 61-62.

III. SUBMISSIONS

6. The Facebook Evidence meets the criteria for the recognition of its formal submission, in accordance with the Chamber’s “Decision on the First Prosecution Submission Request from the Bar Table (Sexual and Gender Based Violence)”.³

7. The Facebook Evidence is relevant to the issues at trial, has significant probative value, and does not unfairly prejudice the Accused. The relevance and probative value of the [REDACTED] Facebook [REDACTED] is discussed in turn below.

8. Per the Initial Directions,⁴ the Prosecution inquired with the Defence whether they consent or object to the [REDACTED] Facebook [REDACTED] listed in the Annex. Neither Defence team objected to the submission of these [REDACTED] items.

A. Background

9. The Facebook Evidence comprises [REDACTED] Facebook [REDACTED], containing multiple conversations and related meta-data, as well as the response [REDACTED].

10. The conversations and related meta-data were obtained [REDACTED], pursuant to a Request for Assistance (“RFA”)⁵ [REDACTED], and transmitted them to the Prosecution in December 2017.⁶

B. The Facebook Evidence is relevant to the case

11. The Facebook Evidence is relevant to the case and would assist the Chamber to determine the truth.⁷ It is particularly relevant to NGAISSONA’s individual criminal responsibility, as its content bears on NGAISSONA’s *mens rea* and his role as a National General Coordinator of the Anti-Balaka.

³ ICC-01/14-01/18-1359, paras. 10-12 referring to Initial Directions on the Conduct of the Proceedings, 26 August 2020, ICC-01/14-01/18-631 (the ‘Initial Directions’), paras. 53-54, 62.

⁴ ICC-01/14-01/18-631, para. 62.

⁵ See CAR-OTP-2130-0259.

⁶ CAR-OTP-2130-0409.

⁷ See ICC-01/04-01/06-1398-Conf, para. 20.

12. The Facebook Evidence comprises [REDACTED].

1. [REDACTED]

13. [REDACTED],⁸ [REDACTED]⁹ [REDACTED].¹⁰ [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³

14. These Facebook conversations are relevant to the Anti-Balaka activities on the ground and NGAISSONA's intent and knowledge regarding their crimes. Specifically, they show: a) NGAISSONA's role as the National General Coordinator of the Anti-Balaka in BANGUI and the provinces, including BERBERATI;¹⁴ b) NGAISSONA's knowledge of the crimes committed by the Anti-Balaka after DJOTODIA's resignation;¹⁵ and c) the attribution of the phone numbers [REDACTED], and email addresses [REDACTED] to NGAISSONA.¹⁶

2. [REDACTED]

15. [REDACTED].¹⁷

16. [REDACTED].¹⁸ [REDACTED].¹⁹ [REDACTED].²⁰

17. These Facebook conversations are relevant, in particular with respect to MOKOM's key functions in the Anti-Balaka, as well as the Anti-Balaka's activities on the ground. Specifically, they show that: a) in October 2013, MOKOM is together with other militaries,²¹ and he is the Anti-Balaka Coordinator based in ZONGO;²² b) in November 2013, MOKOM's elements need

⁸ CAR-OTP-2066-2466, at 2466

⁹ [REDACTED], *see* CAR-OTP-2066-2466, at 2570.

¹⁰ [REDACTED] CAR-OTP-2017-0198.

¹¹ CAR-OTP-2066-2466, at 2512-2514.

¹² CAR-OTP-2066-2466, at 2689-2659.

¹³ CAR-OTP-2066-2466. [REDACTED].

¹⁴ CAR-OTP-2066-2466, at 2695, 2659-2641.

¹⁵ CAR-OTP-2066-2466, at 2694.

¹⁶ CAR-OTP-2066-2466, at 2567-2570.

¹⁷ CAR-OTP-2066-2142, at 2142.

¹⁸ CAR-OTP-2066-3003, at 3003.

¹⁹ [REDACTED] CAR-OTP-2066-1601, at 1778, [REDACTED] CAR-OTP-2066-2142, at 2154, at 2171; CAR-OTP-2066-3003, at 3031.

²⁰ CAR-OTP-2066-3003. [REDACTED].

²¹ CAR-OTP-2066-3003, at 3064.

²² CAR-OTP-2066-3003, at 3071.

ammunition,²³ MOKOM is in command of the operations in BOSSEMBELE,²⁴ and he is coordinating with the team from CAMEROON;²⁵ c) in early December 2013, MOKOM's elements as well as the Youth in BANGUI are ready for the upcoming attack,²⁶ and MOKOM and his elements cross from ZONGO to BANGUI in view of the 5 December 2013 attack on BANGUI;²⁷ d) at end of December 2013, MOKOM is in BANGUI,²⁸ and he considers that the fight continues²⁹ to get rid of the 'Devil' by all means;³⁰ and e) in early 2014, MOKOM is in contact with the 'seniors' in CAMEROON.³¹

3. [REDACTED]

18. [REDACTED].³² [REDACTED],³³ [REDACTED],³⁴ [REDACTED].³⁵

19. [REDACTED],³⁶ [REDACTED].³⁷

20. These Facebook messages are relevant. In particular, the messages indicate that: a) in January 2014, the National Coordination was unhappy about the division of government positions between the Seleka and the Anti-Balaka and was going to take actions in consequence,³⁸ and the '[REDACTED]' supported BOZIZE's return to power;³⁹ b) in February 2014, NGAISSONA had knowledge about his elements committing crimes against Muslims and did nothing to remedy the situation;⁴⁰ Maxime MOKOM was amongst the founders of the Anti-Balaka movement and NGAISSONA was the political coordinator,⁴¹ the '[REDACTED]' indicated that NGAISSONA should be allowed to buy weapons,⁴² the Anti-Balaka are ready

²³ CAR-OTP-2066-3003, at 3083-3082.

²⁴ CAR-OTP-2066-3003, at 3018-3017.

²⁵ CAR-OTP-2066-3003, at 3083-3082, 3056, 3052, 3016.

²⁶ CAR-OTP-2066-3003, at 3072.

²⁷ CAR-OTP-2066-3003, at 3078.

²⁸ CAR-OTP-2066-2142, at 2166, 2156; CAR-OTP-2066-3003, at 3031-3030.

²⁹ CAR-OTP-2066-2142, at 2161-2160.

³⁰ CAR-OTP-2066-2142, at 2155.

³¹ CAR-OTP-2066-2142, at 2159-2158.

³² CAR-OTP-2066-1601, at 1601.

³³ [REDACTED] CAR-OTP-2027-2290, at 2302, as well as [REDACTED] CAR-OTP-2066-1601, at 1680, 1731, 1771, 1775.

³⁴ CAR-OTP-2066-1601, at 1675, 1734, 1775.

³⁵ CAR-OTP-2066-1601, at 1675, 1684, 1688, 1707.

³⁶ CAR-OTP-2066-1601, at 1790.

³⁷ CAR-OTP-2066-1601, at 1673, 1778.

³⁸ CAR-OTP-2066-1601, at 1630.

³⁹ CAR-OTP-2066-1601, at 1635.

⁴⁰ CAR-OTP-2066-1601, at 1758-1754.

⁴¹ CAR-OTP-2066-1601, at 1778, 1776.

⁴² CAR-OTP-2066-1601, at 1629-1630.

to fight back Catherine SAMBA-PANZA, who was allegedly after them,⁴³ the National Coordination is unable to control the situation following the arrest of their elements,⁴⁴ and the anti-Muslims animus of the Anti-Balaka;⁴⁵ and c) in April 2014, NGAISSONA took a solemn undertaking to cease the hostilities in the country.⁴⁶

4. [REDACTED]

21. [REDACTED].⁴⁷ [REDACTED],⁴⁸ [REDACTED].⁴⁹

22. These Facebook messages are relevant. In particular, the messages indicate that: a) in February 2014, the Anti-Balaka were still pursuing the complete liberation of CAR from oppression,⁵⁰ NGAISSONA signed the CLPC/Anti-Balaka 14 February 2014 declaration, which *inter alia* deplored the arrest of 10 Anti-Balaka members and Catherine SAMBA-PANZA's transition,⁵¹ the National Coordination was already distributing badges to the real Anti-Balaka,⁵² and the National Coordination was aware of the Anti-Balaka misconducts and their need to define actions for these to be contained;⁵³ and b) in May 2014, NGAISSONA continued to motivate his group by choosing wording such as 'enemies of CAR' when reporting on crimes committed in the country.⁵⁴

C. The Facebook Evidence is reliable and authentic

23. The Facebook Evidence is reliable and authentic. To assess *prima facie* reliability of evidentiary material, the Chamber may evaluate the factors affecting its authenticity, such as:

⁴³ CAR-OTP-2066-1601, at 1628, 1633.

⁴⁴ CAR-OTP-2066-1601, at 1633.

⁴⁵ CAR-OTP-2066-1601, at 1642.

⁴⁶ CAR-OTP-2066-1601, at 1656.

⁴⁷ CAR-OTP-2066-1510, at 1510.

⁴⁸ [REDACTED] CAR-OTP-2093-0010, at 0037.

⁴⁹ CAR-OTP-2066-1510, at 1514; T-069, p. 54, l. 10 – p. 55, l. 8; [REDACTED] CAR-OTP-2025-0324, at 0324, 0337, para. 90.

⁵⁰ CAR-OTP-2066-1510, at 1516.

⁵¹ CAR-OTP-2066-1510, at 1517-1518. [REDACTED] at CAR-OTP-2006-1210; *See also* CAR-OTP-2080-2394 and CAR-OTP-2084-0111, [REDACTED]; *see contra* CAR-OTP-2025-0380, [REDACTED].

⁵² CAR-OTP-2066-1510, at 1534.

⁵³ CAR-OTP-2066-1510, at 1534.

⁵⁴ CAR-OTP-2066-1510, at 1523, 1526.

its origin, the context in which it was created, the method with which the information contained therein was compiled, and the availability of corroborative evidence.⁵⁵

24. The collection of Facebook Evidence as a whole is self-authenticating. The compilation and maintenance of accurate and complete records is undertaken in the regular course of business and in accordance with domestic laws. The Facebook Evidence was obtained from an objective primary source, [REDACTED], pursuant to a RFA to the competent authorities [REDACTED] sent in 2017.⁵⁶ [REDACTED],⁵⁷ and which the Prosecution now moves to submit.

25. Further, the [REDACTED], provide further indicia of reliability and authenticity.

26. Finally, there is corroboration for the information described above in the form of other Facebook Evidence, witness evidence, Call Data Records, and emails.

D. The probative value of the Facebook Evidence outweighs any prejudicial effect

27. The submission of the Facebook Evidence does not cause any undue prejudice to the Accused. First, the Defence did not object to its submission into evidence. Further, the Defence was in possession of these items since 9 November 2020 and was already on notice as to which parts of the Facebook materials are of particular importance to the Prosecution's allegations, given the Prosecution's Trial Brief.⁵⁸ Finally, the Defence will continue to have the opportunity to address the relevance and probative value of this evidence.

⁵⁵ ICC-01/04-01/06-1399, paras. 36-40; *see also* ICC-01/04-01/07-1665-Corr, para. 98.

⁵⁶ CAR-OTP-2130-0259.

⁵⁷ CAR-OTP-2130-0409.

⁵⁸ ICC-01/14-01/18-723-Red.

IV. RELIEF SOUGHT

28. For the above reasons, the Prosecution requests the Chamber to recognise the formal submission of the Facebook Evidence listed in the confidential Annex to this filing.

A handwritten signature in blue ink, appearing to be 'AK', followed by a horizontal line and a period.

Karim A. A. Khan KC, Prosecutor

Dated this 8th day of March 2024
At The Hague, The Netherlands