



Original: English

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

Date: 18 July 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 “Prosecution’s Request for Partial Reconsideration of the “Decision on the Prosecution Request to Add 21 Items to its List of Evidence and Extend Examination Time for P-0889 (ICC-01/14-01/18-1301-Conf)”, ICC-01/14-01/18-1372-Conf , 20 April 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

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Prosecution seeks a partial reconsideration of the Trial Chamber V's ("Chamber") "Decision on the Prosecution Request to Add 21 Items to its List of Evidence and Extend Examination Time for P-0889" ("Decision"),¹ namely in respect of two particular Facebook conversations (CAR-OTP-2131-3120 and CAR-OTP-2132-6963) ("Two Items").

2. New facts bearing on the relevance of the Two Items justify reconsideration of the Decision, without which an injustice will result. Specifically, the Two Items corroborate the recent testimony of P-0889 and P-0966 concerning (a) [REDACTED], and (b) NGAIKOSSET's son having joined the GOBERE group. Both are directly relevant to the facts and circumstances at issue in the case and this nexus, if less apparent from the Prosecution's prior request to add 21 items to its List of Evidence ("LoE"), is now very clear.

3. The addition of the two Items to the LoE on reconsideration would cause no prejudice to the Accused or to a fair trial. Rather, if ultimately submitted, the Two Items would assist in the Chamber's determination of the credibility of the witnesses and of the truth.

II. CONFIDENTIALITY

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court ("RoC"), this Request is filed as "Confidential", as the referenced Decision is of the same designation. A public redacted version will be filed as soon as practicable.

¹ ICC-01/14-01/18-1301-Conf, para. 14, p. 9.

III. SUBMISSIONS

A. Reconsideration is justified

5. A Trial Chamber has the discretion to reconsider its decisions under several circumstances.² These include, *inter alia*, when new or previously unavailable facts or circumstances come to its attention.³

a. New facts and information have emerged since the Decision

6. As detailed below, new facts and information have emerged since the Prosecution's initial request and the corresponding Decision that warrant reconsideration.

7. The Prosecution sought to add the Two Items to the LoE because they showed that Eugene and Claude NGAIKOSSET participated in the military organisation of the Anti-Balaka from at least August 2013 and that they were communicating and coordinating with Anti-Balaka members in different areas in and outside the Central African Republic ("CAR").⁴ In balancing the probative value and potential prejudice of the Two Items based on the information put forward, the Chamber rejected the request.⁵

8. The recent testimony of P-0889 and P-0996⁶ substantially changes this balance. The new information bears directly on the assessment of the evidentiary factors

² See ICC-01/04-01/07-3833, para. 25; ICC-02/04-01/15-1547, para. 7; ICC-02/04-01/15-711, para. 4; ICC-02/04-01/15-468, para. 4 (when necessary to prevent an injustice); see ICC-01/04-01/06-2705, paras. 13-18; ICC-02/04-01/05-50, para. 18; ICC-01/04-01/06-772 OA4, paras. 36-39 (when the consequences of a decision are manifestly unsatisfactory); see ICC-01/04-01/07-3833, para. 25; ICC-01/09-01/11-1813, para. 19; ICC-01/09-02/11-863, para. 11; ICC-02/04-01/15-1210, para. 6; ICC-02/04-01/15-1259, para. 12; and ICC-01/12-01/18-734, para. 11.

³ See *e.g.* ICC-01/05-01/08-1691-Red, para. 17 ("[a]s the Chamber has previously held, the Chamber will not revisit its previous decisions in the absence of new facts or circumstances that may influence that decision."); see also ICC-01/12-01/18-734, para. 11 (noting that "[n]ew facts and arguments arising since the decision was rendered may be relevant to [assess whether reconsideration is necessary to prevent an injustice]").

⁴ ICC-01/14-01/18-1285-Conf-Anx, pp. 1-2, 5, counts 3, 12.

⁵ ICC-01/14-01/18-1301-Conf, para. 14, p. 9.

⁶ P-0889's testimony on 9, 14, 16-17 March 2022; P-0966's testimony on 4-5 April 2022.

underpinning the Decision, significantly enhancing and clarifying both the relevance and probative value of the Two Items in respect of live issues in the case.

9. During his testimony, P-0889 [REDACTED].⁷ Moreover, P-0966 testified that the son of Eugène NGAIKOSSET, a well-respected FACA, joined the Anti-Balaka members early on, when they were descending from GOBERE. P-0966 clarified that he joined the group of Alexis MANDAGO (aka “Sol-Sol”) and fought alongside them until they arrived in BOSSEMBELE.⁸ P-0966 also confirmed that they met NGAIKOSSET’s son following the attack on BENZAMBE,⁹ a strategic step in the lead up to the Anti-Balaka’s attacks on BOSSANGO. The Two Items corroborate that Jean Noel NGAIKOSSET (aka ‘Johnmaster’)¹⁰ is Eugène NGAIKOSSET’s son.¹¹ Importantly, they also confirm that he was in or around BENZAMBE on 29 August 2013.¹²

10. P-0889’s and P-0966’s recent testimony comprises new evidence and facts, heightening the relevance and probative value of the Two Items. *First*, they corroborate P-0966’s narrative and anchor the time-frame discussed, *i.e.* that Jean Noel NGAIKOSSET was in or around BENZAMBE at the end of August 2013.¹³ *Second*, they provide contemporaneous information that important and well-respected FACA members joined the Anti-Balaka descending from GOBERE early on. *Lastly*, they support the Prosecution’s proposition that the GOBERE group was not isolated from

⁷ ICC-01/14-01/18-T-108-CONF-ENG ET, p. 39, l. 1-12.

⁸ ICC-01/14-01/18-T-116-CONF-FRA ET, p. 13, l. 26-p. 14, l. 16; ICC-01/14-01/18-T-117-CONF-FRA ET, p. 25, l. 1-p. 26, l. 16.

⁹ ICC-01/14-01/18-T-116-CONF-FRA ET, p. 13, l. 26-p. 14, l. 3.

¹⁰ On ‘Johnmaster’s name being Jean Noel NGAIKOSSET see CAR-OTP-2131-3120, at 3126-3127 ([REDACTED]).

¹¹ CAR-OTP-2132-6963, at 6969 ([REDACTED]). [REDACTED] see *e.g.* at CAR-OTP-2102-9367, at 9384; CAR-OTP-2103-4073, at 4093.

¹² CAR-OTP-2131-3120, at 3122 ([REDACTED]).

¹³ This fits P-0966’s narrative about the attack on BENZAMBE occurring prior to the first attack on BOSSANGO, which would have taken place early September 2013. See *for e.g.* CAR-OTP-2061-1428, ICC-01/14-01/18-T-100-CONF-ENG ET, p. 29, l. 8-10.

the other Anti-Balaka, but rather integrated with them, sharing information and keeping in contact with Anti-Balaka members outside CAR.¹⁴

b. Injustice will result absent the Chamber's reconsideration

11. Absent the Chamber's reconsideration, the exclusion of the Two Items from the LoE would result in an injustice. It would, *inter alia*, (a) preclude the Prosecution from submitting the Two Items into evidence and thus adversely affect the weight accorded to the testimonies of P-0889 and P-0966; and (b) deprive the Chamber from holistically appreciating and evaluating the narrative of events leading up to the 5 December 2013 BOSSANGO attack, specifically regarding the involvement of FACA members with close ties to François BOZIZE in the Anti-Balaka as a *group* from its inception, as well as relevant evidence on its organisation and composition.

c. No prejudice would result from including the Two Items on the LoE

12. The addition of the two Items to the LoE would not prejudice the Accused. In addition to the explanation provided in the initial request, hereby incorporated,¹⁵ the Two Items are limited in volume and the topic of Eugène NGAIKOSSET's well respected son, a FACA member, joining the GOBERE group is also relevant to the Defence, as NGAISSONA questioned P-0966 specifically on this.¹⁶

B. Prospective relevance of Facebook material

13. The present request is made promptly after P-0889 and P-0966's testimony, is limited, and will significantly contribute to the Chamber's evaluation of the witnesses' testimony, and search for the truth. The Prosecution notes that it is also likely that the relevance of some of the Facebook conversations will continue to become clearer and/or emerge as the trial unfolds, and particularly as new information is provided

¹⁴ ICC-01/14-01/18-T-108-CONF-ENG ET, p. 48, l. 12-p. 49, l. 22 ([REDACTED]); On Eugène NGAIKOSSET (aka 'Djambar') being in ZONGO (RDC) on 29/08/2013, [REDACTED], and Djambar still being in RDC on 19/11/2013 see CAR-OTP-2131-3120, at 3121, 3123, 3126; CAR-OTP-2132-6963, at 6967.

¹⁵ ICC-01/14-01/18-1285-Red, paras. 15-22.

¹⁶ ICC-01/14-01/18-T-117-CONF-FRA ET, p. 25, l. 1-p. 26, l. 16.

by witnesses (whom were all interviewed by the Prosecution before the Facebook conversations were obtained from the Irish authorities).

IV. RELIEF SOUGHT

14. For the above reasons, the Prosecution seeks a partial reconsideration of the Decision, and the Chamber's authorisation to add the Two Items to the LoE.

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

Karim A. A. Khan QC, Prosecutor

Dated this 18th day of July 2022
At The Hague, The Netherlands