

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **3 April 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 *THE PROSECUTOR v.*
*ALFRED ROMBHOT YEKATOM & PATRICE-EDOUARD NGAÏSSONA***

Public

Public Redacted Version of the "Second Defence request for leave to amend its List of Evidence", 11 March 2024, ICC-01/14-01/18-2402-Conf

Source: Defence for Mr. Alfred Rombhot Yekatom

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

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INTRODUCTION

1. The Defence for Mr. Alfred Rombhot Yekatom ('Defence') respectfully requests leave of the Chamber to amend its List of Evidence.
2. Specifically, the Defence requests the addition of a small quantity of audio-visual material, along with accompanying investigation report and a PowerPoint document¹, which it submits will facilitate the Chamber and Parties' understanding of the evidence of P-4011 regarding the destruction of the Boeing Mosque.

PROCEDURAL HISTORY

3. On 29 March 2023, Trial Chamber V issued the Further Directions on the Conduct of the Proceedings (Presentation of Evidence by the CLRV and the Defence) ('Further Directions').²
4. On 11 September 2023, the Prosecution filed the Prosecution's Notice of the Close of its Case-in-Chief.³
5. On 17 November 2023, the Defence filed the Yekatom Defence's List of Witnesses and Evidence.⁴
6. On 13 December 2023, VWU informed the Defence that P-4011 [REDACTED] and would therefore be unable to testify as anticipated in the 11-15 December 2024 Evidentiary Block.⁵
7. On 14 February 2024, VWU informed the Defence that P-4011 had been [REDACTED].⁶

¹ The PowerPoint has been uploaded as a PDF document in Nuix as Nuix cannot read the PowerPoint format.

² ICC-01/14-01/18-1892.

³ ICC-01/14-01/18-2089.

⁴ ICC-01/14-01/18-2212-Conf.

⁵ Email from VWU to Defence, 13 December 2023 at 11:36 (available on request).

⁶ Email from VWU to Yekatom Defence of 14 February 2024 at 14:35 (available on request).

8. On 4 March 2024, VWU informed the Defence that P-4011 would [REDACTED] in the 11-22 March 2024 Evidentiary Block.

SUBMISSIONS

9. Over the course of its interviews with witness P-4011, the Defence realized that she had [REDACTED] issues and would therefore not be in a position to comment on any documents, maps or videos that the Defence may have intended to use during her examination. While VWU has yet to give its final recommendation on how to proceed with the witness during her testimony, the Defence understands that [REDACTED].
10. In the absence of certainty regarding the nature and extent of these issues, the Defence was initially resigned to putting questions to the witness without using any documents.
11. However, following the postponement of her anticipated evidence,⁷ and given that the [REDACTED] is core to understanding her anticipated evidence, including to show exactly where she was when she witnessed the destruction of the Boeing Mosque ('Mosque'), the Defence thought about a way to overcome the difficulty posed by [REDACTED].
12. It was thus decided to have a Defence team member record four videos (with accompanying GPS coordinates) of the short trip between [REDACTED] and the Mosque, and in which the witness confirms [REDACTED] and the Mosque. As seen in one such video, a few questions were put by said Defence team member to the witness to confirm the [REDACTED] and the configuration of the surrounds at the time of the events.

⁷ As the Chamber is aware, P-4011's appearance before the Chamber was been postponed multiple times on account of [REDACTED], having initially been scheduled in December 2023, subsequently in January 2024 and in March 2024.

13. Therefore, the Defence wishes to add to its List of evidence the following items (collectively, 'Items'):

- an investigation report detailing the process used to record the videos and take the GPS coordinates of [REDACTED] and the mosque (CAR-D29-0024-0002-R01)
- a video first recording at the Mosque, then recording [REDACTED]; and in which she answers questions put to her by the Defence team member (CAR-D29-0008-0105);
- a video in which the Defence team member asks P-4011 questions regarding [REDACTED] (CAR-D29-0008-0106);
- the transcripts of the dialogue between the Defence team member and P-4011 in videos CAR-D29-0008-0105 and CAR-D29-0008-0106 (CAR-D29-0006-1404 and CAR-D29-0006-1405 respectively);
- a video recording [REDACTED] to the Mosque [REDACTED] (CAR-D29-0008-0107);
- a video recording the Mosque seen from [REDACTED] (CAR-D29-0008-0108);
- four screenshots depicting GPS coordinates of locations taken during the process of recording the above videos (CAR-D29-0003-0202, CAR-D29-0003-0203, CAR-D29-0003-0204, CAR-D29-0003-0205);
- a PowerPoint document entitled '[REDACTED] and Mosque Orientation Exercise' in which screenshots from the above videos and GPS coordinates are inlaid against satellite

imagery of the area of the Mosque and [REDACTED], produced by the Defence (CAR-D29-0003-0206); and

- three photographs depicting the Mosque, taken from the area of [REDACTED] (CAR-D29-0010-0205, CAR-D29-0010-0206 and CAR-D29-0010-0207).

14. The Defence is cognisant of the fact that this Request comes nearly four months after the Defence List of Evidence deadline of 17 November 2023.

15. However, it submits that certain external factors provide a degree of context to the timing of this Request.

16. Specifically, it was during a meeting with P-4011 on [REDACTED] that it first became apparent to the Defence that P-4011 [REDACTED]. However, the nature and extent of these [REDACTED] remained unclear. It was ultimately on [REDACTED], during a Defence visit to P-4011 [REDACTED], that it became clear to the Defence that [REDACTED]. At that stage however, until [REDACTED], preparing and producing the Items was an impossibility in light of [REDACTED].

17. The Defence concedes that specific steps could have been taken in the period between [REDACTED] and [REDACTED] [REDACTED] to determine the extent of [REDACTED] and its potential impact on her examination. It also concedes that it was after the Defence's visit [REDACTED] on [REDACTED] that the Defence took the opportunity to consider how to better assist the Chamber [REDACTED] vis-à-vis the Mosque, in light of said [REDACTED], further to which the decision was made to prepare and seek to rely on the Items.

18. In the circumstances however, it is respectfully submitted that any lack of diligence on the part of the Defence in respect of this matter is not sufficiently grave to warrant dismissal of this Request.

19. In any event, the Defence submits that the late addition of the Items is in the interest of justice.
20. Firstly, the intended purpose of the Items, and their prospective significance in light of the charges, militates in favour of their late addition.⁸ The Items will help the Chamber, the Parties and Participants to have a concrete visualisation of P-4011's [REDACTED] and the degree to which it is [REDACTED] to the Mosque. When P-4011 was scheduled to testify in December, the Prosecution had indicated it intended to use a map during their cross-examination, showing that the [REDACTED] is of particular interest not merely to the Defence. However, because of [REDACTED] [REDACTED]. On the contrary, her appearance on the video and the GPS coordinates of the Mosque and [REDACTED] will give accurate details on the locations she will testify about.
21. In the same vein, and akin to the advantages brought by judicial site visits, the Items will allow a more comprehensive and multi-dimensional appreciation of the scene of the alleged crime charged under Counts 6 and 8. They will also allow a more complete understanding of the anticipated evidence of Defence witnesses P-4011 and P-4013, and enable the Chamber to better envisage their accounts regarding the destruction of the Mosque. It will also assist the Chamber in assessing the contested allegations of Prosecution witness P-1339.
22. Secondly, the fact that the witness can be heard in videos CAR-D29-0008-0105 and CAR-D29-0008-0106 will allow her to confirm that it is indeed her voice on the video, [REDACTED]. The Parties will also be able to address the circumstances of the video recording with the P-4011 should they so wish.
23. Finally, the addition of the Items will not cause prejudice to any Party, given their nature and amount.⁹ The summary of P-4011 anticipated testimony made

⁸ See, ICC-01/14-01/18-989-Conf, para. 5.

⁹ Ibid.

clear that [REDACTED] “[REDACTED]”¹⁰ [REDACTED].¹¹ The audio-visual material consist of photographs and brief videos of a combined length of 3 minutes 8 seconds, and a short ‘PowerPoint’ document that will assist the Chamber’s and Parties’ understanding of the Items; and the text-based documents are limited to a short investigation report; screenshots with GPS coordinates that are very straightforward, and two short transcripts of 40 lines in total. The Parties and Participants will thus have ample time to familiarize themselves with the Items before her appearance, which is not anticipated to take place before 8 April 2024.¹² In addition, the Items were disclosed to the Parties and Participants on 6 March 2024,¹³ ahead of the present request.

CLASSIFICATION

24. This request is filed on a confidential basis as it pertains to confidential material. A public redacted version will be filed in due course.

RELIEF SOUGHT

25. For the above reasons, the Defence respectfully requests that Trial Chamber V: **GRANT** leave to add the Items to the Defence List of Evidence.

RESPECTFULLY SUBMITTED ON THIS 3RD DAY OF APRIL 2024



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¹⁰ See ICC-01/14-01/18-2212-Conf-AnxC, p. 8-9.

¹¹ See [REDACTED].

¹² Email from the Yekatom Defence to the Chamber, Parties and Participants, 8 March 2024 at 18 :34.

¹³ The transcripts of the videos CAR-D29-0008-0105 and CAR-D29-0008-0106 (CAR-D29-0006-1404 and CAR-D29-1405 respectively) were disclosed to Parties and Participants on 8 March 2024.