

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

**Original: English**

**No.: ICC-01/14-01/21  
Date: 29 October 2024**

**TRIAL CHAMBER VI**

**Before:** Judge Miatta Maria Samba, Presiding Judge  
Judge María del Socorro Flores Liera  
Judge Sergio Gerardo Ugalde Godínez  
Judge Keebong Paek, Alternate Judge

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC II  
IN THE CASE OF  
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

**Public Redacted**

**Decision on the Prosecution's Request for partial reconsideration of the  
'Decision on the Prosecution's Request under Rule 68(2)(c) to Introduce the  
Prior Recorded Testimony of Two Witnesses', 02 October 2023, ICC-01/14-  
01/21-637-Conf'**

Decision 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  
Ms Holo Makwaia

**Counsel for the Defence**

Ms Jennifer Naouri  
Mr Dov Jacobs

**Legal Representatives of Victims**

Ms Sarah Pellet

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
for Participation/Reparations**

**The Office of Public Counsel  
for Victims**

**The Office of Public Counsel  
for the Defence**

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Osvaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

**Victims Participation and  
Reparations Section**

**Other**

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**TRIAL CHAMBER VI** of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64(2), 64(6)(b) and (f), 69(2), 93(1)(a), (b), (d) and (l), and 99(1) of the Rome Statute (the ‘Statute’), rule 68(2)(c) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Request for partial reconsideration of the ‘Decision on the Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses’, 02 October 2023, ICC-01/14-01/21-637-Conf’.

## **I. PROCEDURAL HISTORY**

1. On 31 July 2023, the Office of the Prosecutor (the ‘Prosecution’) filed a request under rule 68(2)(c) of the Rules to introduce the prior recorded testimony of P-0975 (the ‘Initial 68(2)(c) Request’).<sup>1</sup>
2. On 24 August 2023, the Defence filed its response to the First Request (the ‘Initial 68(2)(c) Response’).<sup>2</sup>
3. On 2 October 2023, the Chamber issued its “Decision on the Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses” (the ‘Initial 68(2)(c) Decision’).<sup>3</sup> Therein, the Chamber instructed the Prosecution to take further steps to ascertain the whereabouts of P-0975, including by requesting a summons or state cooperation.<sup>4</sup>
4. On 19 October 2023, the Prosecution requested that the Chamber issue a summons for P-0975, submitting that it had exhausted all avenues to secure P-0975’s

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<sup>1</sup> Public Redacted Version of “Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of P-0975”, ICC-01/14-01/21-627-Conf, dated 31 July 2023, 1 August 2023, [ICC-01/14-01/21-627-Red](#). A confidential version was filed on 31 July 2023 (ICC-01/14-01/21-627-Conf).

<sup>2</sup> Réponse consolidée de la Défense à la « Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of P-0975 » (ICC-01/14-01/21-627-Conf) et la « Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of P-2269 » (ICC-01/14-01/21-628-Conf), 24 August 2023, ICC-01/14-01/21-633-Red. A confidential version was filed on the same day (ICC-01/14-01/21-633-Conf).

<sup>3</sup> Decision on the Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses, 2 October 2023, ICC-01/14-01/21-637-Red. A confidential version was issued simultaneously (ICC-01/14-01/21-637-Conf).

<sup>4</sup> Initial 68(2)(c) Decision, ICC-01/14-01/21-637-Red, para. 17.

voluntary attendance (the ‘Summons Request’).<sup>5</sup> Therein the Prosecution stated that it had last had contact with P-0975 in April 2021 and had made multiple attempts in 2021, 2022, and 2023 to contact P-0975 through his known telephone numbers, without success, as well as engaging with local authorities in the Central African Republic (‘CAR’) to learn about his whereabouts.<sup>6</sup> In this regard, the Prosecution concluded that it was apparent that P-0975 would not testify unless located by the CAR authorities and compelled to appear before the Court.<sup>7</sup>

5. On 2 April 2024, the Chamber issued the Decision on the Prosecution’s Request to Issue a Summons for P-0975 (the ‘Summons Decision’). Therein the Chamber found that the Prosecution had failed to comply with its instruction in the Initial Decision.<sup>8</sup> In particular, the Chamber found that the Prosecution had not taken any independent steps to locate P-0975 since the Initial Decision.<sup>9</sup> The Chamber concluded that it was necessary to issue a summons to ascertain: (i) whether P-0975 is still alive; (ii) if so, where he currently resides; and (iii) whether or not he is willing to testify.<sup>10</sup> The Chamber accordingly directed the Registry to: (i) prepare and transmit a cooperation request to the CAR authorities, (ii) collaborate where necessary and appropriate with the CAR authorities, (iii) prepare and transmit the summons to appear for P-0975, (iv) identify a qualified lawyer to assist P-0975 and appoint him or her if the witness so wishes, and (v) report on the implementation of the directed steps.<sup>11</sup>

6. On 8 October 2024, the Chamber issued its Third Directions on the Conduct of Proceedings (the ‘Third Directions’) and ordered the Prosecution to inform the Chamber as soon as possible, and no later than 23 October 2024, if it intended to present P-0975’s testimony.<sup>12</sup>

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<sup>5</sup> Public redacted version of “Prosecution’s Request to Summon a Witness”, ICC-01/14-01/21-638-Conf, dated 19 October 2022, 20 November 2023, [ICC-01/14-01/21-638-Red](#), para. 11. A confidential redacted version was filed on 25 October 2023 (ICC-01/14-01/21-638-Conf-Red). A confidential, *ex parte*, version was filed on 19 October 2023 (ICC-01/14-01/21-638-Conf).

<sup>6</sup> Summons Request, ICC-01/14-01/21-638-Red, paras. 12-15.

<sup>7</sup> Summons Request, ICC-01/14-01/21-638-Red, para. 20.

<sup>8</sup> Decision on the Prosecution’s Request to Issue a Summons for P-0975, 2 April 2024, ICC-01/14-01/21-735-Conf (the ‘Summons Decision’), para. 21.

<sup>9</sup> Summons Decision, ICC-01/14-01/21-735-Conf, para. 21.

<sup>10</sup> Summons Decision, ICC-01/14-01/21-735-Conf, para. 23.

<sup>11</sup> Summons Decision, ICC-01/14-01/21-735-Conf, disposition.

<sup>12</sup> Third Directions on the Conduct of Proceedings, 8 October 2024, ICC-01/14-01/21-873, para. 5.

7. On 17 October 2024, the Prosecution requested the disclosure of any report by the Registry confirming whether P-0975's summons was successfully served, in accordance with the Summons Decision of 2 April 2024.<sup>13</sup>
8. On the same day, the Chamber directed the Registry to urgently file a report on the implementation of the Summons Decision of 2 April 2024.<sup>14</sup>
9. On the same day, the Registry filed its Report on the Status of Execution of the Chamber's Decision ICC-01/14-01/21-735-Conf (the 'Registry Report').<sup>15</sup>
10. On 22 October 2024, the Prosecution requested that the Chamber partially reconsider the Initial 68(2)(c) Decision and authorise introduction of P-0975's witness statement and two items of associated materials pursuant to rule 68(2)(c) (the 'Reconsideration Request').<sup>16</sup>
11. On 23 October 2024, the Common Legal Representative of Victims informed the Chamber that she would not respond to the Request for Reconsideration.<sup>17</sup>
12. On 25 October 2024, the Defence responded to the Request submitting that it be rejected (the 'Response').<sup>18</sup>

## II. SUBMISSIONS

### A. Registry Report

13. In the Registry Report, the Registry confirms that it transmitted a request for assistance to the CAR authorities on 2 May 2024.<sup>19</sup> The Registry also states that it

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<sup>13</sup> Email from the Prosecution to the Chamber, dated 17 October 2024, at 11:16.

<sup>14</sup> Email from the Chamber to the Parties, dated 17 October 2024, at 16:38.

<sup>15</sup> Registry's Report on the Status of Execution of the Chamber's Decision ICC-01/14-01/21-735-Conf, 17 October 2024, ICC-01/14-01/21-878-Conf.

<sup>16</sup> Prosecution's request for partial reconsideration of the 'Decision on the Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses', 02 October 2023, ICC-01/14-01/21-637-Conf, 22 October 2024, ICC-01/14-01/21-882-Conf (the 'Request for Reconsideration'), paras. 13-15.

<sup>17</sup> Email from the Common Legal Representative of Victims to the Chamber, dated 23 October 2024, at 09:01.

<sup>18</sup> Réponse de la Défense à la "Prosecution's request for partial reconsideration of the 'Decision on the Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses', 02 October 2023, ICC-01/14-01/21-637-Conf, ICC-01/14-01/21-882-Conf", 25 October 2024, ICC-01/14-01/21-885-Conf.

<sup>19</sup> Registry Report, ICC-01/14-01/21-878-Conf, para. 4.

[REDACTED].<sup>20</sup> The Registry explains that this information was confirmed by the CAR [REDACTED].<sup>21</sup> In this regard, the Registry submits that the CAR authorities further indicated that they were not in a position to serve P-0975 with the summons as this would require cooperation and coordination with the [REDACTED].<sup>22</sup> Last, the Registry notes that on 7 October 2024, it sent an additional note verbale requesting the CAR authorities' cooperation, if necessary through the [REDACTED], to obtain the correct contact details for P-0975 in [REDACTED] in order to allow the Registry to contact him directly and ascertain his willingness to testify.<sup>23</sup> The Registry gave the CAR authorities a 15 October 2024 deadline but, to date, has not received a response.<sup>24</sup>

### **B. Reconsideration Request**

14. The Prosecution submits that the Chamber should reconsider the Initial 68(2)(c) Decision on the grounds that there is new information contained in the Registry Report. In particular, the Prosecution claims that the fact that the Registry has been unable to contact P-0975 or to execute the summons affects the basis of the Initial 68(2)(c) Decision.<sup>25</sup>

15. The Prosecution further avers that P-0975 should be deemed unavailable for the purposes of rule 68(2)(c) of the Rules on the grounds that the Registry was unable to serve the summons and that he is now [REDACTED].<sup>26</sup> The Prosecution further claims that P-0975's whereabouts remain unascertained.<sup>27</sup>

### **C. Response**

16. The Defence asks the Chamber to reject the Request. It points out that the process of locating and ascertaining P-0975's willingness to testify is still ongoing and that it is incumbent upon the Registry to continue to interact with the CAR and [REDACTED] authorities.<sup>28</sup>

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<sup>20</sup> Registry Report, ICC-01/14-01/21-878-Conf, Annex II.

<sup>21</sup> Registry Report, ICC-01/14-01/21-878-Conf, Annex III.

<sup>22</sup> Registry Report, ICC-01/14-01/21-878-Conf, para. 9

<sup>23</sup> Registry Report, ICC-01/14-01/21-878-Conf, para. 10.

<sup>24</sup> Registry Report, ICC-01/14-01/21-878-Conf, para. 10.

<sup>25</sup> Reconsideration Request, ICC-01/14-01/21-882-Conf, paras 13-15.

<sup>26</sup> Reconsideration Request, ICC-01/14-01/21-882-Conf, paras 16-18.

<sup>27</sup> Reconsideration Request, ICC-01/14-01/21-882-Conf, para. 18.

<sup>28</sup> Response, ICC-01/14-01/21-885-Conf, paras 16-26.

### III. APPLICABLE LAW

17. The Chamber refers to the applicable law sections of the Initial 68(2)(c) Decision<sup>29</sup> and the Summons Decision, which are hereby incorporated.<sup>30</sup>

### IV. ANALYSIS

18. The Chamber notes that the Registry was not able to serve a summons to P-0975 but that it was informed about P-0975's location. In particular, the Chamber understands that P-0975 is currently stationed at [REDACTED].<sup>31</sup> It is thus not correct for the Prosecution to argue that P-0975's whereabouts remain unascertained.<sup>32</sup> In addition, the Chamber notes the position of the CAR authorities that they cannot serve P-0975 with a summons as this will require cooperation and coordination with the [REDACTED]. It therefore remains unascertained whether P-0975 is willing and able to testify in this case.

19. Under these circumstances, the Chamber is unable to make a finding regarding P-0975's availability to testify orally for the purposes of rule 68(2)(c) of the Rules.

20. The Chamber notes that the presentation of the Prosecution's evidence is scheduled to end soon and the opportunity to hear P-0975's testimony is diminishing. The Chamber thus considers it necessary to obtain clarity as soon as possible on whether P-0975 will testify in the present proceedings before the Winter Recess.

21. Given the advanced stage of the proceedings, and bearing in mind that it is the calling party's primary responsibility to maintain contact with its witnesses, the Chamber finds that it is incumbent upon the Prosecution to make a final effort, in close collaboration with the Registry, to obtain P-0975's presence before the Chamber. Accordingly, the Chamber orders the Prosecution to take all reasonable steps, including requesting cooperation from the [REDACTED] CAR authorities and/or contacting P-0975 directly in order to ascertain his willingness to testify. At the same time, the

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<sup>29</sup> Initial 68(2)(c) Decision, ICC-01/14-01/21-637-Conf, paras 6-9.

<sup>30</sup> Summons Decision, ICC-01/14-01/21-735-Conf, paras 13-16

Registry is instructed to follow up with the CAR authorities concerning the *note verbale* transmitted on 7 October 2024 to obtain the contact details of P-0975 and impress the urgency of the matter upon them.<sup>33</sup>

22. The Prosecution must inform the Chamber and the Registry by 8 November 2024 whether or not they have succeeded in contacting P-0975 and, if so, if the witness is willing to testify before the start of the Winter Recess.

23. If P-0975 is willing to give evidence, the Registry is instructed to make all necessary arrangements to allow P-0975 to testify, if possible pursuant to rule 68(3) of the Rules, either in person or via audio-visual link, before the start of the Winter Recess.

24. The Prosecution is instructed to report to the Chamber of steps taken to comply with this decision by 8 November 2024.

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<sup>33</sup> Registry Report, ICC-01/14-01/21-878-Conf

**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Reconsideration Request;

**INSTRUCTS** the Prosecution to make all reasonable efforts, in close consultation with the Registry, to contact P-0975, including by requesting the cooperation of the CAR, [REDACTED], or other States, and to inform the Chamber, the Registry as well as the Defence and the Common Legal Representative by 8 November 2024 if it has been able to ascertain whether the witness is willing to testify or not; and

**INSTRUCTS** the Registry to make all reasonable efforts to assist the Prosecution in facilitating the testimony of P-0975 if the witness is prepared to testify before the start of the Winter Recess; and

**INSTRUCTS** the Prosecution to report to the Chamber of steps taken to comply with this decision.

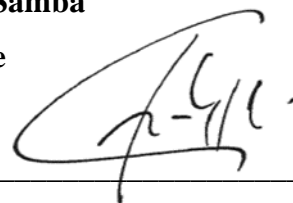


**Judge Miatta Maria Samba**

**Presiding Judge**



**Judge María del Socorro Flores Liera**



**Judge Sergio Gerardo Ugalde Godínez**

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

Dated 29 October 2024

At The Hague, The Netherlands