

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/14-01/21**

Date: **20 January 2023**

**TRIAL CHAMBER VI**

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

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

**Public**

**Public Redacted Version of "Prosecution's Request to vary the limit for application to introduce the prior recorded testimony of witnesses P-2269 and P-0975 pursuant to Rule 68", ICC-01/14-01/21-574-Conf-Exp, dated 15 December 2022**

**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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**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation  
and Reparations Section**

**Other**

## I. INTRODUCTION

1. The Office of the Prosecutor (“Prosecution”) notifies Trial Chamber VI (“Chamber”) of the status of witnesses P-2269 and P-0975 and requests an extension of time pursuant to regulation 35 of the Regulations of the Court (“Regulations”) regarding the submission of applications under rule 68 of the Rules of Procedure and Evidence (“Rules”) related to these two witnesses until 15 February 2023. The Prosecution submits that the requested extension is justified and supported by good cause for the reasons described below. Further, granting the Request would not cause undue prejudice to the Accused Mahamat Said Abdel Kani (“Mr SAID”).

## II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the Prosecution files this submission Confidential *ex parte* because it contains information about Prosecution submissions in another case of the same designation and sensitive information related to the current whereabouts of Prosecution witnesses. A confidential redacted version will be filed simultaneously.

## III. SUBMISSIONS

3. The Trial Chamber set the deadlines for the submission of Rule 68 applications for these two witnesses to 20 days after completion of their respective testimony before Trial Chamber V; with the possibility to inform the Chamber as well as the parties and participants if it becomes clear that the witnesses will not complete their testimony before the trial.<sup>1</sup> The Chamber further instructed that should the testimony of the

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<sup>1</sup> ICC-01/14-01/21-305.

witnesses P-2269 and P-0975 not take place before the end of this year, the Prosecution is ordered to notify the Chamber by 15 December 2022 about their status.<sup>2</sup>

#### **A. The requested extension is justified**

4. Regulation 35(2) of the Regulations stipulates that the Chamber can extend the time limits “if good cause is shown”. The Appeals Chamber has held, that “[a] cause is good if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Chamber. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.”

5. The requested extension is justified by a good cause. The two witnesses have not testified in the *Yekatom & Ngaïssona* case yet. In fact, they are not scheduled to appear for the foreseeable future as they are currently unavailable. The Prosecution therefore requests additional limited time to establish whether they can still be contacted within a reasonable period of time given the state of the proceedings or whether the criteria of rule 68(2)(c) of the Rules are met if additional steps are taken.

6. For rule 68(2)(b) of the Rules to be successfully applied the prior recorded testimony will have to be accompanied by a declaration by the testifying person that the contents of the testimony are true and correct. While the certification procedure is applied only after a decision is rendered, the Prosecution cannot reasonably submit an application to the effect without having established that the certification is likely to be concluded. Furthermore, the two witnesses have not testified in *Yekatom & Ngaïssona* but are still listed as trial witnesses in that case meaning that if they appear transcripts will have to be included in the application.

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<sup>2</sup> E-mail decision of the Chamber dated 7 September 2022 at 09h35.

7. By contrast, a request for introduction pursuant to rule 68(2)(c) could only be made if a person has died, must be presumed dead, or is, due to obstacles that cannot be overcome, unavailable to testify orally. The Chamber will have to be satisfied that the witness is unavailable to testify orally due to obstacles that cannot be overcome with reasonable diligence.<sup>3</sup> “Unavailability” is to be construed broadly to cover such situations as the precarious legal situation of a witness (such as his/her illegal status in the country of residence), or generally impossibility to trace the person after taking all reasonable steps, which can include the attempt to have a person summoned to appear.<sup>4</sup>

8. Concerning P-2269 the Prosecution informs that [REDACTED].<sup>5</sup> [REDACTED]. [REDACTED].

9. The Prosecution in the case against Mr SAID [REDACTED].

10. [REDACTED].

11. To enable the above outlined additional steps, the Prosecution respectfully requests a short extension until 15 February 2023 to substantiate its applications for these two witnesses.

## **B. Absence of any undue prejudice**

12. Granting the Request would not cause any undue prejudice. While the trial is ongoing, only 14 of the Prosecution’s witnesses have been heard. Further, approximately 47 witnesses will appear before the Chamber from 16 January onwards and in line with the Chamber’s current hearing schedule.<sup>6</sup> It is anticipated that the

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<sup>3</sup>ICC-01/09-01/11-1938-Conf, para. 138.

<sup>4</sup> ICC-01/05-01/13-1481-Red, para. 16.

<sup>5</sup> CAR-OTP-00000017-000001.

<sup>6</sup> E-Mail from Chamber dated 3 November 2022 at 18h05.

Prosecution's case will be concluded at the earliest at the end of May 2023, if no postponements and other unforeseeable logistical impediments arise. The two witnesses provide reliable, probative and relevant information relevant to the contextual elements of war crimes, and therefore the Prosecution should retain the possibility of requesting the introduction of their prior recorded testimony into evidence. The inclusion of their testimony will also assist the Parties and Participants as well as the Chamber in ascertaining the truth.

13. Extending the deadline would not materially affect the Defence's trial preparations. The prior recorded testimony of the two witnesses has been disclosed to the Defence well in advance of the start of the trial.<sup>7</sup> The Defence will have had ample opportunity to familiarise itself with the relevant witnesses, their prior statement and evidence. If the deadline is extended until 15 February 2023 the Defence would have sufficient time to respond to the application pursuant to either rule 68(2)(b) or (c) and a decision could be rendered well ahead of the conclusion of the Prosecutions' case.

#### **IV. RELIEF SOUGHT**

14. For the reasons outlined above, the Prosecution requests that the Chamber extends the deadline imposed for the submission of the rule 68 requests for P-2269 and P-0975 until 15 February 2023.



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**Karim A. A. Khan KC, Prosecutor**

Dated this 20<sup>th</sup> day of January 2023

At The Hague, The Netherlands

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<sup>7</sup> P-2269: Pre-Confirmation Rule 77 package 006 20 August 2021 and Pre-Trial INCRIM package 083 11 August 2022; P-0975: Pre-Confirmation INCRIM package 023 15 June 2021 and Pre-Trial INCRIM package 082 04 August 2022.