



Original: English

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

Date: 2 October 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
*THE PROSECUTOR v. MAHAMAT SAID ABDEL KANI***

Public Redacted Version of

**Decision on the Prosecution's Requests under Rule 68(2)(c) to Introduce the
Prior Recorded Testimony of Two Witnesses**

Decision to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

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**Unrepresented Applicants
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**Victims Participation and
Reparations Section**

Other

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to article 69(2) of the Rome Statute (the ‘Statute’) and rule 68 of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Prosecution’s Requests under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Two Witnesses’.

I. PROCEDURAL HISTORY

1. On 21 February 2022, the Chamber issued the ‘Decision Setting the Commencement Date of the Trial and Related Deadlines’ setting deadlines for the filing of applications pursuant to rule 68 of the Rules by the Office of the Prosecutor (the ‘Prosecution’).¹ Further directions on the filing of applications under rule 68 of the Rules were issued on 9 March 2022 and on 11 May 2022.² At the time, it was anticipated that P-0975 and P-2269 would testify in the case of *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona* (the ‘*Yekatom and Ngaïssona Case*’), and the deadline for the submission of rule 68 requests pertaining to these witnesses was extended until 20 days after the completion of their testimony.³ Further extensions were subsequently granted to facilitate efforts to locate the witnesses.⁴

¹ Decision Setting the Commencement Date of the Trial and Related Deadlines, 21 February 2022, [ICC-01/14-01/21-243](#), para. 28.

² Directions on the Conduct of Proceedings, 9 March 2022, [ICC-01/14-01/21-251](#) (the ‘Directions on the Conduct of Proceedings’).

³ Directions on the Conduct of Proceedings, [ICC-01/14-01/21-251](#), paras 37-39; Decision on Requests to Vary the Time Limits pertaining to the Introduction of Prior Recorded Testimony of Witnesses pursuant to Rule 68 (ICC-01/14-01/21-300-Conf-Red and ICC-01/14-01/21-291), 11 May 2022, [ICC-01/14-01/21-305](#), para. 17.

⁴ Email from the Chamber, 7 September 2022, at 09:35; 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, 15 December 2022, ICC-01/14-01/21-574-Conf-Exp. A confidential redacted version was filed on the same day (ICC-01/14-01/21-574-Conf-Red) and a public redacted version was filed on 20 January 2023 ([ICC-01/14-01/21-574-Red](#)); Email from the Defence, 11 January 2023, at 14:56; Email from the CLRV, 11 January 2023, at 17:39; Email from the Chamber, 13 January 2023, at 10:38; Email from the Prosecution, 13 February 2023, at 16:39; Email from the Defence, 14 February 2023 at 13:07; Email from the CLRV, 14 February 2023 at 14:25; Email from the Chamber, 1 June 2023, at 11:35; Email from the Prosecution, 8 June 2023 at 13:18; Email from the Defence, 12 June 2023, at 15:40; Email from the Chamber, 12 June 2023, at 17:49.

2. On 31 July 2023, the Prosecution filed a request under rule 68(2)(c) of the Rules to introduce the prior recorded testimony of P-0975 (the ‘First Request’).⁵
3. On 31 July 2023, the Prosecution filed a request under rule 68(2)(c) of the Rules to introduce the prior recorded testimony of P-2269 (the ‘Second Request’).⁶
4. On 24 August 2023, the time limits for responses to non-urgent filings having been suspended by the Chamber during the judicial recess,⁷ the Defence filed its response to the two requests (the ‘Response’).⁸
5. The Common Legal Representative of Victims did not respond to the requests.

II. APPLICABLE LAW

6. For the applicable law regarding the requirements of rule 68(2)(c) of the Rules, the Chamber refers to its ‘Decision on the Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses’ (the ‘First Rule 68(2)(c) Decision’).⁹ Given that the present decision concerns witnesses who are allegedly unavailable to testify orally because they cannot be located, the Chamber supplements the First Rule 68(2)(c) Decision with the additional considerations set out below regarding the notion of ‘unavailable’ within the meaning of rule 68(2)(c) of the Rules.
7. The Chamber adopts the jurisprudence of other chambers of the Court which found that the term ‘unavailable’ in rule 68(2)(c) of the Rules is undefined and must be interpreted broadly so as to accommodate the full range of obstacles that may prevent

⁵ Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of P-0975, 31 July 2023, ICC-01/14-01/21-627-Conf. A public redacted version was notified on 1 August 2023 ([ICC-01/14-01/21-627-Red](#)).

⁶ Prosecution Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of P-2269, 31 July 2023, ICC-01/14-01/21-628-Conf. A public redacted version was notified on 3 August 2023 ([ICC-01/14-01/21-628-Red](#)).

⁷ Email from the Chamber, 20 July 2023, at 16.01.

⁸ 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-Conf. A public redacted version was notified on the same day (ICC-01/14-01/21-633-Red).

⁹ Decision on the Prosecution’s Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of Six Witnesses, 20 October 2022, ICC-01/14-01/21-506-Conf. A public redacted version was notified on 26 October 2022 ([ICC-01/14-01/21-506-Red](#)).

a witness from testifying orally.¹⁰ One such obstacle is the inability of the calling party to locate the witness, but in such circumstances rule 68(2)(c) of the Rules requires the exercise of reasonable diligence in attempts to overcome this obstacle and trace the witness.

8. The Chamber has had regard to the jurisprudence of other trial chambers that have dealt with the issue of witnesses who cannot be located.¹¹ Bearing in mind that this jurisprudence must be read in light of efforts detailed by the Prosecution in their applications and the particular security situation in the relevant state or region, the Chamber considers that other trial chambers adopted a strict standard in determining whether reasonable diligence had been exercised in attempts to locate witnesses.

9. In particular, Trial Chamber X found that rule 68(2)(c)'s requirement that the witness must be unavailable to testify orally 'must be interpreted in a manner that would properly reflect the different standards' set out in sub-rule (b) and (c) of rule 68(2) of the Rules.¹² The Chamber indeed notes that rule 68(2)(b) of the Rules contains a number of mandatory considerations and conditions for the introduction of prior recorded

¹⁰ Trial Chamber V, *Yekatom and Ngaïssona* Case, First Decision on the Prosecution Requests for Formal Submission of Prior Recorded Testimonies pursuant to Rule 68(2)(c) of the Rules, 12 July 2023, ICC-01/14-01/18-1975-Conf. A public redacted version was notified on 12 July 2023 ([ICC-01/14-01/18-1975-Red](#)), paras 27-28; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the Defence's request for variation of the time limit related to the accompanying declarations of Rule 68(2)(b) witnesses and the introduction into evidence of the prior recorded testimony of D-0002 and D-0146 pursuant to Rule 68(2)(c) of the Rules, 16 December 2022, ICC-01/12-01/18-2445-Conf-Exp. A public redacted version was notified the same day ([ICC-01/12-01/18-2445-Red](#)) (the '*Al Hassan* Rule 68(2)(c) Decision'), para. 21 et seq; Trial Chamber VII, *The Prosecutor v. Jean Pierre Bemba Gombo et al.*, Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence', 12 November 2015, ICC-01/05-01/13-1481-Conf-Exp, a public redacted version was filed on 23 February 2017 ([ICC-01/05-01/13-1481-Red-Corr](#)), para. 16.

¹¹ Trial Chamber V, *Yekatom and Ngaïssona* Case, Second Decision on the Prosecution Request for Formal Submission of Prior Recorded Testimony pursuant to Rule 68(2)(c) of the Rules concerning Witness P-1819, 11 August 2023, [ICC-01/14-01/18-2021](#), paras 10-17; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on the introduction into evidence of the prior recorded testimony of D-0008, D-0611 and D-0627 pursuant to Rule 68(2)(c) of the Rules and the Defence's request for reconsideration of the decision rejecting the introduction into evidence of D-0146's prior recorded testimony pursuant to Rule 68(2)(c) of the Rules, 30 January 2023, ICC-01/12-01/18-2461-Conf. A public redacted version was notified the same day ([ICC-01/12-01/18-2461-Red](#)), para. 11; *Al Hassan* Rule 68(2)(c) Decision, [ICC-01/12-01/18-2445-Red](#), paras 21-29; Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Decision on the Prosecution's second application to introduce the prior recorded testimony of P-0085 under Rule 68(2)(c), 14 December 2022, [ICC-02/05-01/20-834](#), paras 5-7; Decision on the Prosecution's request to introduce prior recorded testimonies under Rule 68(2)(c), 21 February 2022, ICC-02/05-01/20-603-Conf. A public redacted version was notified the same day ([ICC-02/05-01/20-603-Red](#)), paras 27-32.

¹² *Al Hassan* Rule 68(2)(c) Decision, [ICC-01/12-01/18-2445-Red](#), para. 22.

testimony, whereas rule 68(2)(c) of the Rules is more permissive given the particular difficulties associated with the circumstances regulated therein. Considering this context, the Chamber agrees with Trial Chamber X's finding that the requirements of rule 68(2)(c) of the Rules must not be reduced or interpreted in a manner that would allow it to be used as 'a loophole to circumvent the procedural requirements under Rule 68(2)(b) of the Rules.'¹³

A. P-0975 (First Request)

10. In the First Request, the Prosecution seeks the introduction of a witness statement taken from P-0975 on 11 and 12 August 2016¹⁴ and two items of associated material.¹⁵ According to the information provided by the Prosecution, investigators contacted P-0975 in [REDACTED], at which time he expressed concern regarding his availability to testify, and again in [REDACTED].¹⁶ The Prosecution submits that investigators called P-0975 [REDACTED] and spoke to [REDACTED], who identified himself as [REDACTED].¹⁷ The Prosecution notes that [REDACTED].¹⁸ The Prosecution indicates that an investigator spoke to [REDACTED].¹⁹ The Prosecution contends that further attempts to contact P-0975 in the course of 2022 were unsuccessful and that calls to the numbers associated with him were either answered by someone else or the phones were switched off.²⁰

11. The Prosecution submits that it also explored the possibility of [REDACTED].²¹ The Prosecution subsequently contacted [REDACTED].²²

¹³ *Al Hassan* Rule 68(2)(c) Decision, [ICC-01/12-01/18-2445-Red](#), para. 22.

¹⁴ First Request, [ICC-01/14-01/21-627-Red](#), paras 24, 26; Witness Statement CAR-OTP-2033-7885.

¹⁵ ICC-01/14-01/21-627-Conf-AnxA.

¹⁶ First Request, [ICC-01/14-01/21-627-Red](#), para. 9; Investigation Report, CAR-OTP-00001687, at 000002.

¹⁷ First Request, [ICC-01/14-01/21-627-Red](#), para. 10; Investigation Report, CAR-OTP-00001687, at 000003.

¹⁸ First Request, [ICC-01/14-01/21-627-Red](#), para. 10; Investigation Report, CAR-OTP-00001687, at 000003.

¹⁹ First Request, [ICC-01/14-01/21-627-Red](#), para. 11; Investigation Report, CAR-OTP-00001687, at 000003.

²⁰ First Request, [ICC-01/14-01/21-627-Red](#), paras 12-14; Investigation Report, CAR-OTP-00001687, at 000004.

²¹ First Request, [ICC-01/14-01/21-627-Red](#), para. 15; Investigation Report, CAR-OTP-00001687, at 000004.

²² First Request, [ICC-01/14-01/21-627-Red](#), paras 16, 18; Investigation Report, CAR-OTP-00001687, at 000004-000005.

12. In the Prosecution's submission, this 'sequence of events demonstrate[s] P-0975's inaccessibility for over two years, and the reasonable diligence exercised by the Prosecution during that period to overcome the existing obstacles hindering P-0975 from testifying orally before the Court [and] demonstrate[s] that there is no reasonable likelihood that P-0975 can be contacted, located or that a summons to secure his testimony could be successfully executed in the circumstances.'²³

13. The Defence opposes the First Request, arguing that it is reasonable to conclude from the events outlined by the Prosecution that P-0975 has chosen to cease interacting with the Prosecution and cooperating with the Court and that this is not a basis to declare the witness unavailable within the meaning of rule 68(2)(c) of the Rules.²⁴

14. In respect of the Defence's submissions regarding the unwillingness of P-0975 to testify, the Chamber finds that, at present, there is insufficient information to make such a determination.

15. That notwithstanding, the Chamber finds that the Prosecution has not demonstrated that it has exercised reasonable diligence in its efforts to locate the witness. While the information provided by the Prosecution explains the attempts it made to locate the witness, it does not explain why it believes that further efforts, including through requesting the cooperation of the CAR authorities or a summons for the witness's appearance, would not be reasonably likely to succeed. The Chamber further notes that the Prosecution appears to not have taken any further steps at all to locate the witness following information received from the [REDACTED].

16. The Chamber considers that the Prosecution still has time to continue to try and make contact with P-0975 given that the presentation of the Prosecution case is not complete and that hearings are currently suspended.

17. Accordingly, the Chamber instructs the Prosecution to take further steps to ascertain the whereabouts of this witness, including by requesting a summons or state cooperation, as appropriate, and to report to the Chamber by 20 November 2023.

²³ First Request, [ICC-01/14-01/21-627-Red](#), para. 23.

²⁴ Response, ICC-01/14-01/21-633-Red, paras 22, 24.

B. P-2269 (Second Request)

18. According to the Prosecution, P-2269 is an Anti-Balaka insider whose statement provides information relevant to establishing the contextual elements of war crimes, in particular regarding the level of organisation of the pro-Bozizé forces and the intensity of hostilities.²⁵ The Prosecution contends that the information provided by P-2269 does not go to the acts and conduct of Mr Said and introduction of his statement would not be prejudicial to or inconsistent with the rights of the accused.²⁶ In addition to the witness statement, the Prosecution seeks to introduce four annexes [REDACTED].²⁷

19. The Prosecution submits that it last had direct contact with P-2269 [REDACTED].²⁸ According to the Prosecution, further attempts since then to contact the witness directly, or through intermediaries and family members have proved futile.²⁹ In February 2022, the Prosecution received information that P-2269 had passed away, but the CAR police subsequently confirmed that he was in fact still alive.³⁰ In July 2022, the Prosecution contacted persons alleging [REDACTED] and received ‘contradictory information on whether the Witness was dead or alive.’³¹ Further searches carried out by the Prosecution in 2022 yielded no clear result on the question of whether P-2269 was alive or dead and further attempts to contact him or obtain information about his current whereabouts were unsuccessful.³²

20. On 31 January 2023, Trial Chamber V in the *Yekatom and Ngaiissona* Case [REDACTED].³³ The Prosecution submits that [REDACTED] in CAR conducted two missions in March and April 2023 [REDACTED] and could not locate or contact P-2269, but received information from the *Chef de Groupe du quartier* that P-2269 had

²⁵ Second Request, [ICC-01/14-01/21-628-Red](#), paras 19-20.

²⁶ Second Request, [ICC-01/14-01/21-628-Red](#), para. 25.

²⁷ Second Request, [ICC-01/14-01/21-628-Red](#), para. 19; Annex A to the Second Request, p. 2, referring to [REDACTED], CAR-OTP-2111-0362; [REDACTED], CAR-OTP-2111-0364; [REDACTED], CAR-OTP-2111-0365; [REDACTED], CAR-OTP-2111-0367.

²⁸ Second Request, [ICC-01/14-01/21-628-Red](#), para. 10.

²⁹ Second Request, [ICC-01/14-01/21-628-Red](#), para. 10.

³⁰ Second Request, [ICC-01/14-01/21-628-Red](#), para. 11.

³¹ Second Request, [ICC-01/14-01/21-628-Red](#), para. 12.

³² Second Request, [ICC-01/14-01/21-628-Red](#), paras 13-15.

³³ Second Request, [ICC-01/14-01/21-628-Red](#), para. 15, referring to ICC-01/14-01/18-1738-Conf.

been killed [REDACTED].³⁴ The [REDACTED] provided a *Proces-verbal de carence* dated 30 April 2023 to attest to his findings.³⁵ The Prosecution went on to make additional, unsuccessful attempts to call P-2269 in March, April and May 2023.³⁶

21. The Defence opposes the Second Request for the same reasons it opposed the First Request - that it is reasonable to conclude that P-2269 has chosen to cease interacting with the Prosecution and cooperating with the Court and that this is not a basis to declare the witness unavailable within the meaning of rule 68(2)(c) of the Rules.³⁷

22. The Chamber notes the indications that the witness may not have been willing to continue his cooperation with the Court as highlighted by the Defence, but also notes that information gathered by the Prosecution points to the alternative possibility that the witness is actually deceased. The Chamber finds that, at present, there is insufficient information to determine that P-2269 is unwilling to testify.

23. The Chamber notes that the Prosecution made considerable efforts in attempting to locate P-2269 on its own motion, through intermediaries and with the assistance of the CAR authorities. Having exhausted the measures it could take in locating P-2269, [REDACTED].

24. In the circumstances outlined above, the Chamber is satisfied that: (i) P-2269 is unavailable to testify orally as he cannot be found despite the exercise of reasonable diligence by the Prosecution and he may in fact be deceased; and (ii) the need to take measures under article 56 could not have been anticipated. Nonetheless, given that hearings are currently suspended and the Prosecution's presentation of evidence is ongoing, the Prosecution is instructed to inform the Chamber should it prove possible to re-establish contact with this witness in the future or determine more definitely his passing, if indeed that is the case.

³⁴ Second Request, [ICC-01/14-01/21-628-Red](#), para. 16, referring to First [REDACTED] mission report, CAR-OTP-00001702; Second [REDACTED] mission report, CAR-OTP-00001710.

³⁵ Second Request, [ICC-01/14-01/21-628-Red](#), para. 16, referring to Second [REDACTED] mission report, CAR-OTP-00001710; *Proces-verbal de carence*, CAR-OTP-00001709.

³⁶ Second Request, [ICC-01/14-01/21-628-Red](#), para. 17.

³⁷ Response, ICC-01/14-01/21-633-Red, paras 22, 24.

25. The Chamber notes that P-2269's statement was given: (i) in accordance with rule 111 of the Rules and signed by the witness together with a declaration that the statement was true to the best of his knowledge and recollection; (ii) voluntarily on the understanding that it could be used in proceedings before the Court; and (iii) in Sango, a language the witness spoke and understood, and translated into English by a qualified interpreter.³⁸ The witness was [REDACTED].³⁹ Thus, the Chamber is satisfied that the statement has sufficient indicia of reliability for the purposes of introduction pursuant to rule 68(2)(c) of the Rules.

26. The Chamber notes the Defence submissions that P-2269's statement is central to the Prosecution's case as it concerns the *chapeau* elements of the war crimes charged under article 8 of the Statute and that the Prosecution has failed to demonstrate that the information contained therein is corroborated by other evidence.⁴⁰ In this respect, the Chamber acknowledges that the information provided by the witness may be important to the case against the accused in a general sense. Nonetheless, it notes that the prior recorded testimony of P-2269 does not concern the acts and conduct of the accused, concerns the contextual elements and is generally cumulative and corroborative of the evidence of other witnesses identified by the Prosecution.⁴¹ In these circumstances, the Chamber is satisfied that the introduction of P-2269's statement would not be prejudicial to or inconsistent with the rights of the accused.

27. The Defence argues that P-2269's statement discusses the content of eight documents that were shown to him and that these documents form an integral part of that earlier statement yet seven of them were not included in the Prosecution List of Evidence.⁴² The Defence contends therefore that P-2269's statement cannot be introduced since part of the statement, namely the aforementioned seven items, are not on the Prosecution List of Evidence.⁴³

³⁸ Witness statement, CAR-OTP-2111-0336, at 0336-0337, 0360-0361.

³⁹ Witness statement, CAR-OTP-2111-0336, at 0337.

⁴⁰ Response, ICC-01/14-01/21-633-Red, paras 33-35, 41-44.

⁴¹ The Chamber recalls its approach to assessing corroboration for the purposes of rule 68(2)(c) of the Rules: First Rule 68(2)(c) Decision, [ICC-01/14-01/21-506-Red](#), paras 24-25.

⁴² Response, ICC-01/14-01/21-633-Red, paras 25-28.

⁴³ Response, ICC-01/14-01/21-633-Red, para. 28.

28. The Chamber notes that the section of the witness's statement discussing the documents in question relates to 2014 events concerning the Anti-Balaka and, in principle, are not relevant to the subject-matter of the present case. The Prosecution has not sought the addition of these items to its list of evidence or the introduction of these documents through this witness or through other means. The Chamber considers that it would not be in the interests of streamlining the presentation of evidence to order the introduction of items of evidence that appear to bear no relevance to the present case simply because they are referred to in a witness's statement. Equally, the Chamber does not see the logic in precluding the introduction of P-2269's statement simply because part of the statement deals with events subsequent to the matters under consideration and refers to documents that appear at this point in time to be irrelevant to the present case. Therefore, the Chamber rejects the Defence's argument that P-2269's statement cannot be introduced because documents referred to therein are not included on the Prosecution List of Evidence.

29. Accordingly, the Chamber authorises the Prosecution to introduce P-2269's statement pursuant to rule 68(2)(c) of the Rules.

30. The Chamber notes that the Prosecution also seeks the introduction of four documents that are annexed to P-2269's statement.⁴⁴ While these documents were not included in the Prosecution List of Evidence, it reserved the right to request additions to the list at the time of filing, specifically referring to items that may be used with the witnesses whose testimony was anticipated in the *Yekatom and Ngaiissona* Case.⁴⁵

31. The Chamber notes that the Defence has not raised any specific objection to the submission of the annexes and associated items of evidence sought to be introduced in the Second Request. Given the stage of proceedings and the nature of the documents, the Chamber is satisfied that the Defence would not be prejudiced by the introduction of the documents in question. It therefore authorises the Prosecution to add the items to the Prosecution List of Evidence and, in line with the Chamber's decision to recognise the submission of evidence without a prior ruling on its admissibility, recognises the

⁴⁴ [REDACTED], CAR-OTP-2111-0362; [REDACTED], CAR-OTP-2111-0364; [REDACTED], CAR-OTP-2111-0365; [REDACTED] CAR-OTP-2111-0367.

⁴⁵ Prosecution List of Evidence, 13 June 2022, [ICC-01/14-01/21-358](#), para. 4.

submission of CAR-OTP-2111-0362, CAR-OTP-2111-0364, CAR-OTP-2111-0365, and CAR-OTP-2111-0367 and will defer its consideration of the standard evidentiary criteria of such items until its deliberations on the judgment under article 74(2) of the Statute.

32. Finally, the Chamber notes that the witness corrected certain information provided in his statement right after his interview on 14 June 2019.⁴⁶ The Investigation Note documenting this clarification is included in the Second Request as material necessary to understand the statement, but introduction of this document as evidence is not sought by the Prosecution and it is not included on the Prosecution List of Evidence.⁴⁷ The Defence argues that this document must be introduced into evidence with the witness's statement since without this correction the statement would be erroneous.⁴⁸ The Chamber agrees that this document is necessary to understand the witness's statement and must be introduced into evidence with it. Accordingly, the Chamber authorises the introduction of CAR-OTP-2111-0481 and will defer its consideration of the standard evidentiary criteria of this item until its deliberations on the judgment under article 74(2) of the Statute.

⁴⁶ Second Request, [ICC-01/14-01/21-628-Red](#), para. 22.

⁴⁷ Annex A to the Second Request, p. 2, referring to Investigation report on P-2269's clarification of Witness Statement, CAR-OTP-2111-0481.

⁴⁸ Response, ICC-01/14-01/21-633-Red, para. 49.

FOR THESE REASONS, THE CHAMBER HEREBY

ORDERS the Prosecution to take further steps to ascertain the whereabouts of P-0975 and to report to the Chamber by 20 November 2023;

GRANTS the Second Request;

AUTHORISES the introduction of the prior recorded testimony and associated material of P-2269 (CAR-OTP-2111-0336, CAR-OTP-2118-2197, CAR-OTP-2111-0362, CAR-OTP-2111-0364, CAR-OTP-2111-0365, CAR-OTP-2111-0367, and CAR-OTP-2111-0481) under rule 68(2)(c) of the Rules; and

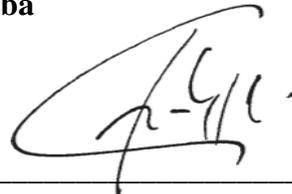
ORDERS the Prosecution to submit an Updated List of Evidence in line with the present decision.



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 2nd October 2023

At The Hague, The Netherlands