

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Date: **20 November 2023**

**TRIAL CHAMBER VI**

**Before:** Judge Miatta Maria Samba  
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 Summon a Witness", ICC-01/14-01/21-638-Conf, dated 19 October 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 KC  
Mr Mame Mandiaye Niang  
Ms Holo Makwaia

**Counsel for Defence**

Ms Jennifer Naouri  
Mr Dov Jacobs

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for Participation/Reparations**

**The Office of Public Counsel  
for Victims**

Ms Sarah Pellet  
Tars Van Litsenborgh

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Mr Oswaldo Zavala Giler

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation  
and Reparations Section**

**Other**

## I. INTRODUCTION

1. On 2 October 2023 Trial Chamber VI (“Chamber”) instructed the Office of the Prosecutor (“Prosecution”) to take further steps to ascertain the whereabouts of Witness P-0975, including by requesting a summons or state cooperation, as appropriate.<sup>1</sup> The Prosecution hereby requests the Chamber to require the assistance of the Central African Republic (“CAR”) or any State, on whose territory P-0975 may be found, to take all necessary measures to compel the Witness’ testimony before the Court, including to locate, summons, and/or provisionally detain him, as necessary to ensure his prompt appearance via video-link, pursuant to articles 64 and 93(1)(b), (d) and (l).
2. P-0975 is a CAR national, believed to have resided in [REDACTED], in 2022 he is a listed Prosecution witness in this case. His August 2016 statements provide important evidence relevant to the war crimes committed during the non-international armed conflict between the Seleka and Anti-Balaka during the period material to the charges.<sup>2</sup> Furthermore, his evidence is cumulative to or corroborates other evidence to be presented at trial. His testimony is therefore relevant and material to the current proceedings and potentially necessary for the determination of the truth.
3. Despite numerous efforts by the Prosecution throughout 2022 and the first half of 2023 to locate or contact P-0975 to secure his testimony, P-0975 remains unreachable. It is therefore necessary, and as ordered by this Chamber, to take urgent steps to obtain the assistance of the CAR authorities or those of any State on whose territory the Witness may be found, to summon the Witness to testify before the Chamber.

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<sup>1</sup> ICC-01/14-01/21-637-Conf, para.17.

<sup>2</sup> See Pre-Confirmation Brief, ICC-01/04-01/21-155-Red, paras. 33-38, 45-46.

## II. CONFIDENTIALITY

4. Request is filed as “Confidential, *Ex Parte* only available to the Prosecution and VWU” because it pertains to information which the Defence has no procedural right to or interest. A confidential redacted version will be filed as soon as possible.

## III. APPLICABLE LAW

5. It is established that Chambers of this Court have the power to compel the testimony of witnesses pursuant to article 64(6)(b).<sup>3</sup> The Appeals Chamber has also confirmed the legal obligation of States Parties to, *inter alia*, compel witnesses to appear in domestic courts to give testimony before a Trial Chamber *in situ* or via video-link, pursuant to article 93(1)(b).<sup>4</sup>
6. In evaluating whether to exercise this power and issue summonses to witnesses, Chambers will conduct a case-by-case assessment of the individual circumstances surrounding each witness and consider whether the request to a State to assist in summoning each witness is (i) relevant, (ii) specific and (iii) necessary.<sup>5</sup> Only when these tripartite principles are met, Chambers may issue a binding cooperation request requiring a State to employ compulsory measures to compel the appearance of the witnesses summoned. Furthermore, in evaluating necessity in the context of whether to issue a summons to a witness, a Chamber has to consider whether: (a) the anticipated testimony of the witness is potentially necessary for the determination of the truth; and (b) a summons, as a compulsory measure, is necessary to obtain the testimony of the witness.

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<sup>3</sup> ICC-01/09-01/11-1598, paras. 107, 113.

<sup>4</sup> ICC-01/09-01/11-1598, paras. 128, 132; see also para 123.

<sup>5</sup> ICC-01/09-01/11-1274-Corr2, paras. 180-181; ICC-01/14-01/18-804-Conf, para.15.

7. As described below, these requirements are met.

#### IV. SUBMISSIONS

##### **A. Relevance: P-0975's Anticipated Testimony is relevant to the case and the crimes charged**

8. P-0975's evidence is relevant to the chapeau elements of article 8 of the Statute, specifically, the existence of a non-international armed conflict between the Seleka and Anti-Balaka during the period material to the charges. P-0975 provides evidence about the Seleka's arrival in Bangui, the Anti-Balaka's formation, gathering and training in Gobere, advancement on Bangui and the 5 December 2013 Bangui attack.<sup>6</sup>
9. [REDACTED].<sup>7</sup> The Witness also confirms that by September 2013 the Anti-Balaka were engaged in intense hostilities with the Seleka in western CAR, starting in Bossangoa.<sup>8</sup> P-0975 further confirms that the Anti-Balaka's attacks from September 2013 culminated in a large-scale assault on Bangui on 5 December 2013 which was planned and coordinated.<sup>9</sup>

##### **B. Specificity: P-0975 is clearly identified and is believed to reside within the jurisdiction of the competent authorities of CAR**

10. P-0975 is identified as referenced in paragraph 9 above of this Request. His last known whereabouts are [REDACTED], where it is believed he resided in

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<sup>6</sup> See Pre-Confirmation Brief, ICC-01/04-01/21-155-Red, paras. 33-38, 45-46.

<sup>7</sup> [REDACTED].

<sup>8</sup> P-0975: CAR-OTP-2107-1329-R01 at 1335, para. 32.

<sup>9</sup> P-0975: CAR-OTP-2107-1329-R01 at 1336, paras. 37-40.

2022.<sup>10</sup> Given that the Witness is clearly identified and within the jurisdiction of the competent CAR authorities, the requirement of specificity is satisfied.<sup>11</sup>

**C. Necessity: a summons, as a compulsory measure, is necessary to obtain the testimony of the Witness**

11. The Prosecution has so far exhausted all avenues to secure P-0975's voluntary attendance. P-0975 was last successfully contacted by the Prosecution in [REDACTED],<sup>12</sup> on which occasions he expressed concern regarding his availability to testify, and that he [REDACTED]. [REDACTED]<sup>13</sup> [REDACTED].<sup>14</sup>
12. [REDACTED], after several attempts to call P-0975's phone, [REDACTED].<sup>15</sup>
13. The Prosecution then made several unsuccessful attempts to recontact P-0975 by phone throughout [REDACTED].<sup>16</sup> Similar attempts were made to contact P-0975, [REDACTED] to no avail.<sup>17</sup>
14. Between May and December 2022, the Prosecution established that three of the four phone numbers potentially linked to P-0975, were switched off and the other answered by [REDACTED] who had not heard of P-0975.<sup>18</sup> On

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<sup>10</sup> Public Redacted Version of "Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of P-0975" ("First Request"), ICC-01/14-01/21-627-Red, para.11, Investigation Report CAR-OTP-00001687 at 000003.

<sup>11</sup> *Gicheru* Decision on the Request for a Summons for a Prosecution Witness, ICC-01/09-01/20-279-Red, para. 14; *Bemba et al*, Summons Decision, ICC-01/05-01/13-1343-Red, para. 22; *Ruto*, Summons Decision, ICC-01/09-01/11-1274-Corr2, paras. 180-181.

<sup>12</sup> Public Redacted Version of "Prosecution's Request under Rule 68(2)(c) to Introduce the Prior Recorded Testimony of P-0975" ("First Request"), ICC-01/14-01/21-627-Red, para.9, Investigation Report CAR-OTP-00001687 at 000002.

<sup>13</sup> First Request, ICC-01/14-01/21-627-Red, para.10; Investigation Report, CAR-OTP-00001687 at 000003.

<sup>14</sup> First Request, ICC-01/14-01/21-627-Red, para.10; CAR-OTP-00001687 at 000003.

<sup>15</sup> First Request, ICC-01/14-01/21-627-Red, para. 11; CAR-OTP-00001687 at 000003.

<sup>16</sup> [REDACTED]; First Request, ICC-01/14-01/21-627-Red, para. 12; CAR-OTP-00001687 at 000003.

<sup>17</sup> First Request, ICC-01/14-01/21-627-Red, para. 12; CAR-OTP-00001687 at 000003.

<sup>18</sup> First Request, ICC-01/14-01/21-627-Red, para. 13; CAR-OTP-00001687 at 000004.

[REDACTED] the Prosecution made another attempt to contact P-0975 and [REDACTED] but both numbers were switched off.<sup>19</sup>

15. On [REDACTED] after another attempt to call P-0975's declared phone numbers, it was established that one number was not operational, and another was in use by an unidentified person [REDACTED].<sup>20</sup>
16. [REDACTED].<sup>21</sup>
17. [REDACTED].<sup>22</sup>
18. On [REDACTED] the Prosecution called P-0975's declared numbers and that of [REDACTED] without success.<sup>23</sup>
19. [REDACTED].<sup>24</sup>
20. In the light of the above information, it is apparent that P-0975 will not testify in this trial unless located by the CAR authorities and compelled to appear before the Court to testify.

## V. CONCLUSION

21. For the above reasons, the Chamber should compel P-0975's appearance and direct the Registrar to prepare and transmit a request for assistance to the CAR authorities, pursuant to article 93(1)(b), (d) and (l) to:
  - serve a summons on the Witness; and

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<sup>19</sup> First Request, ICC-01/14-01/21-627-Red, para. 13; CAR-OTP-00001687 at 000004.

<sup>20</sup> First Request, ICC-01/14-01/21-627-Red, para. 14; CAR-OTP-00001687 at 000004.

<sup>21</sup> First Request, ICC-01/14-01/21-627-Red, para. 15; CAR-OTP-00001687 at 000004.

<sup>22</sup> First Request, ICC-01/14-01/21-627-Red, para. 16; CAR-OTP-00001687 at 000004 – 000005.

<sup>23</sup> First Request, ICC-01/14-01/21-627-Red, para. 17; CAR-OTP-00001687 at 000005.

<sup>24</sup> First Request, ICC-01/14-01/21-627-Red, para. 18; CAR-OTP-00001687 at 000004 – 000005.

- compel and ensure the Witness' appearance to give testimony before the Court *in situ* or *via* video link at a date to be determined, upon resumption of the hearings in the SAID trial.

22. In addition, the Prosecution respectfully, requests that the Chamber request the CAR authorities to take all available measures in accordance with the applicable national laws to ensure the Witness' compliance with the summons pursuant to article 99(1).

A handwritten signature in blue ink, appearing to be 'K.A.K.', followed by a horizontal line and a period.

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

Dated this 20<sup>th</sup> day of November 2023  
At The Hague, The Netherlands