



Original: English

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

Date: 3 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

**Decision on the Certification Procedure pursuant to Rule 68(2)(b) of the Rules of
Procedure and Evidence concerning Witness P-2386**

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	
Registrar Mr Osvaldo Zavala Giler	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other Mr Thomas Henquet (Registry Legal Office)

TRIAL CHAMBER VI of the International Criminal Court, in the case of *The Prosecutor v. Mahamat Said Abdel Kani*, having regard to articles 64, 67 and 69 of the Rome Statute (the ‘Statute’), rule 68(2)(b) of the Rules of Procedure and Evidence (the ‘Rules’) and regulations 24, 28, 29, 34, and 35 of the Regulations of the Court (the ‘Regulations’) issues this ‘Decision on the Certification Procedure pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence concerning Witness P-2386’.

I. PROCEDURAL HISTORY

1. On 2 August 2024, the Chamber issued the Decision on the Certification of Accompanying Declarations Made by Witnesses Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, in which it, *inter alia*, instructed the Registry to submit a report on how P-2386’s identity was verified by the Witnessing Officer.¹ Specifically, the Chamber noted that the Witnessing Officer had stated that during the certification procedure the quality of the video image did not allow her to see more than the contours of the witness’ identity document and photo, and it was therefore unclear to the Chamber how the Witnessing Officer was able to verify P-2386’s identity.²
2. On 28 August 2024, the Registry filed a Report on the Certification Procedure pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence concerning Witness P-2386 (the ‘Registry Report’).³

II. SUBMISSIONS

3. The Registry submits that, prior to the certification, it was provided with a copy of P-2386’s passport by the Office of the Prosecutor (the ‘Prosecution’) in order to

¹ Decision on the Certification of Accompanying Declarations Made by Witnesses Pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, 2 August 2024, [ICC-01/14-01/21-833-Red](#). A confidential version was filed simultaneously (ICC-01/14-01/21-833-Conf) (the ‘Certification Decision’).

² Certification Decision, [ICC-01/14-01/21-833-Red](#), paras 31-32.

³ Registry’s Report on the Certification Procedure pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence concerning P-2386, 28 August 2024, ICC-01/14-01/21-841-Conf.

enable the Witnessing Officer to verify the identity of P-2386 pursuant to rule 68(2)(b)(iii) of the Rules.⁴

4. The Registry notes that the certification was conducted remotely via video link on 16 May 2023, and that the Witnessing Officer had the identification information in her possession with which she could fulfil the identity verification requirement set out in rule 68(2)(b)(iii) of the Rules.⁵ Specifically, the Registry explains that the Witnessing Officer asked P-2386 to state: (a) his date of birth; (b) the passport number; (c) the date of issuance of the passport; and (d) the date of expiration of the passport. The Witnessing Officer checked whether this information matched the information on the copy of the passport received prior to certification.⁶

5. Last, the Registry submits that the Witnessing Officer asked the witness to show his passport into the camera.⁷

6. The Parties did not make submissions in respect of the Registry Report.

III. APPLICABLE LAW

7. Rule 68(2)(b)(iii) of the Rules provides, in relevant part:

(iii) Accompanying declarations must be witnessed by a person authorized to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing the date and place of the declaration, and that the person making the declaration:

- is the person identified in the prior recorded testimony [...].

⁴ Registry Report, ICC-01/14-01/21-841-Conf, para. 4

⁵ Registry Report, ICC-01/14-01/21-841-Conf, paras 5 and 6; *see also* Annex XV to the Registry's Transmission of the Declarations made by Witnesses P-1523, P-0529, P- 0882, P-1825, P-1277, P-1427, P-1432, P-1970, P-2042, P-2295, P-2087, P-0100, P-2239, P-0966, P-2386, P-2337, and P-1424 pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, 19 February 2024, ICC-01/14-01/21-692-Conf.

⁶ Registry Report, ICC-01/14-01/21-841-Conf, para. 7.

⁷ Registry Report, ICC-01/14-01/21-841-Conf, para. 8, *see also* Annex XV to the Registry's Transmission of the Declarations made by Witnesses P-1523, P-0529, P- 0882, P-1825, P-1277, P-1427, P-1432, P-1970, P-2042, P-2295, P-2087, P-0100, P-2239, P-0966, P-2386, P-2337, and P-1424 pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence, 19 February 2024, ICC-01/14-01/21-692-Conf.

IV. ANALYSIS

8. The Chamber finds that the Registry has satisfactorily explained how the Witnessing Officer verified P-2386's identity and met the requirements set out in rule 68(2)(b)(iii) of the Rules. As the Prosecution and Defence have previously agreed that the changes made by this witness to his prior recorded testimony do not invalidate the Chamber's provisional authorisation to introduce the prior recorded testimony pursuant to rule 68(2)(b),⁸ the Chamber finds that P-2386's prior recorded testimony can be introduced with the accompanying declaration.

FOR THESE REASONS, THE CHAMBER HEREBY

ALLOWS introduction pursuant to rule 68(2)(b) of the Rules of the prior recorded testimony of P-2386 as amended by the witness during the certification process, as well as the Associated Materials; and

INSTRUCTS the Registry to file a public redacted version of the Registry Report or request reclassification, as appropriate.



Judge Miatta Maria Samba

Presiding Judge



Judge María del Socorro Flores Liera



Judge Sergio Gerardo Ugalde Godínez

⁸ Email from the Prosecution, dated 13 March 2024, at 16:41; Version publique expurgée des « Observations de la Défense sur la « Registry's Transmission of the Amendments to the Prior Recorded Testimonies of Witnesses P-1523, P-0529, P-0882, P-1825, P-1427, P-1432, P-1970, P-2042, P-2087, P-0100, P-2239, P-0966, P-2386 and P-2337 pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence » (ICC-01/14-01/21-705-Conf) ». (ICC-01/14-01/21-721-Conf), 18 March 2024, [ICC-01/14-01/21-721-Red](#), para. 17. A confidential version was filed on 13 March 2024 (ICC-01/14-01/21-721-Conf).

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

Dated 3 October 2024

At The Hague, The Netherlands