

Situation in the Central African Republic II

Update: September 2022

The Prosecutor v. Mahamat Said Abdel Kani

Opening of the trial in the Said case, 26 September 2022

WHO IS MR SAID AND WHAT IS HE ACCUSED OF?

Mahamat Said Abdel Kani, also known as "Mahamat Said Abdel Kain" and "Mahamat Saïd Abdelkani", is a national of the Central African Republic (CAR), born on 25 February 1970 in Bria. He is alleged to have been a Seleka commander. He is accused of crimes against humanity (imprisonment or other severe deprivation of liberty; torture; persecution; enforced disappearance and other inhumane acts) and war crimes (torture and cruel treatment) allegedly committed in Bangui (CAR) in 2013.

WHAT CAN BE EXPECTED AT THE OPENING OF THE TRIAL? AND WHAT WILL COME NEXT?

The trial will open on 26 September 2022 before ICC Trial Chamber VI. The trial will open with the reading of the charges against Mr Said. The Judges will verify that Mr Said understood the nature of the charges and will ask him whether he makes an admission of guilt or pleads not guilty to the charges. The Chamber will then hear opening statements by the Prosecution, the Legal Representatives of Victims and the Defence. The Prosecution and Defence were granted 4.5 hours for their statements and 1 hour for the Legal Representatives of Victims. The first Prosecution witness is scheduled to start testifying after the end of the opening statements. The Prosecution is currently expected to call 43 witnesses. After it is finished, the Legal Representative of Victims may submit observations, and the Defence will have the opportunity to present its case and call witnesses.

At the end of the trial hearings, the Judges will render their judgement within a reasonable period of time. The Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt. The verdict will be read out in public and will either acquit or convict the accused. If the accused is convicted, a sentence will be imposed on him. The Prosecution and the Defence may appeal the judgement and/or the decision on sentencing before the ICC's Appeals Chamber.

HOW LONG WILL THE TRIAL LAST?

The trial may last several years, depending on the complexity of the case and challenges that may arise. Judges ensure that the rights of all parties and participants are respected. Cases involving war crimes and crimes against humanity tend to be complex, because of the range of incidents and extended time period involved in the charges, as well as other logistic and linguistic measures that have to be taken to protect the accused' rights, protect the witnesses and facilitate the victims' participation. But the Judges are committed to expedite the trial as much as possible.

WHAT ARE THE RIGHTS GRANTED TO THE ACCUSED DURING THE TRIAL?

Mr Said is represented by his Counsel, Jennifer Naouri, and her team. Mr Said is presumed innocent and is entitled to several rights during the trial including, to mention a few:

- to be defended by the counsel (lawyer) of his choice, present evidence and witnesses of his own and to use a language which he fully understands and speaks;
- to be informed in detail of the charges in a language which he fully understands and speaks;
- to have adequate time and facilities for the preparation of his defence and to communicate freely and in confidence with his Counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose to the Defence evidence in her possession to the defence or control which he believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

IF MR SAID IS FOUND GUILTY AFTER THE TRIAL, WHAT PENALTIES MAY BE IMPOSED BY THE COURT?

The Judges may impose a prison sentence, to which may be added a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The maximum sentence is 30 years. However, in extreme cases, such as the specific circumstances of the accused conviction, the Court may impose a term of life imprisonment. There is no death penalty at the ICC in the event of a conviction.

Both the Prosecution and the Defence may appeal the sentencing decision before the ICC Appeals Chamber. Persons convicted of crimes under the jurisdiction of the ICC do not serve their sentence at the ICC Detention Centre in The Hague as the facility is not

designed for long-term imprisonment. Convicted persons are therefore transferred to a prison in a State designated by the Court from a list of States which have indicated their willingness to allow convicted persons to serve their sentence there.

ARE THERE VICTIMS PARTICIPATING IN THIS TRIAL AND HOW?

Yes, 20 victims are participating in the trial, and other victims may be added during the trial if the judges authorize them. The victims are represented by their legal representative, Sarah Pellet. Through their Legal Representative, and according to the conditions set by the Chamber, participating victims can exercise the following rights at trial:

- to consult the record of the case, including: decisions of the Chamber, submissions of the parties, participants and the Registrar, transcripts and evidence disclosed by the parties and communicated to the Chamber;
- to be notified of documents filed;
- to attend all public and non-public hearings in the case;
- to make written submissions on all questions concerning their personal interests;
- to make opening statements at the beginning of the trial and submit written conclusions before the delivery of the verdict;
- to present evidence and/or present their views and concerns in person; and
- to question witnesses.

CAN VICTIMS RECEIVE REPARATIONS?

Throughout the procedure, the ICC Registry may collect forms from victims wishing to seek reparations in this case. But the issue of reparations for victims is dealt with by ICC judges if the accused is found guilty after the trial. At the end of a trial, the Trial Chamber may then order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty. Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials. The Court may award reparations on an individual or collective basis, whichever is, in its opinion, the most appropriate for the victims in the particular case. The Court may request the Trust Fund for Victims to participate in the implementation of reparations orders, and invite the Fund to use these resources when the convicted person does not have sufficient financial resources for this purpose.

WHAT ARE THE CONDITIONS OF DETENTION AT THE ICC DETENTION CENTRE?

The ICC Detention Centre is located within a Dutch prison complex in Scheveningen - on the outskirts of The Hague, in the Netherlands. It functions to hold in safe, secure and humane custody those persons detained under the authority of the ICC. The Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated. Detained persons are presumed innocent until proven guilty.

WHO ARE THE JUDGES SITTING IN THIS CASE?

Trial Chamber VI is composed of Judge Miatta Maria Samba (President Judge), Judge Socorro Flores Liera and Judge Sergio Gerardo Ugalde Godínez. The ICC Judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity. The Judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights.

WHICH OTHER CASES ARE CURRENTLY ONGOING AT THE ICC CONCERNING THE SITUATION IN THE CAR?

On 30 May 2014, in the wake of a violent conflict between the Séléka and the anti-Balaka armed groups, the Central African Republic authorities referred the situation in the country to the Prosecutor, requesting an investigation into all crimes committed on its territory since 1 August 2012. On 24 September 2014, the Prosecutor announced the opening of an investigation – the ICC's second investigation in CAR. The Prosecutor's Office has been focusing on allegations of ICC crimes committed by both sides of the conflict - meaning by the armed groups known as, or linked to, the Séléka and the anti-Balaka. Investigations into this situation are ongoing. On the basis of evidence collected during the Prosecution's investigation, the following four people have been arrested to date and proceedings are pending against them: Mr Alfred Yekatom, Mr Patrice-Edouard Ngaïssona, Mr Mahamat Said Abdel Kani, and Mr Maxime Jeoffroy Eli Mokom Gawaka. A fifth suspect, Mr Mahamat Nouradine Adam, is still at large.

WHAT IS THE RELATIONSHIP BETWEEN THE ICC AND THE SPECIAL CRIMINAL COURT IN THE CAR?

The ICC and the SCC are two separate and independent institutions. However, these two institutions cooperate in order to guarantee justice for the victims of the conflict in the CAR. According to its founding treaty, the ICC does not replace national criminal justice systems. Rather, it complements those. The ICC can only investigate and, when warranted, prosecute and try people, if the State concerned has not opened investigations, is genuinely unable to do so or does not have the intention to act in this direction. This is the principle of "complementarity" which aims to give priority to national systems.