

Initial Appearance

(Open Session)

ICC-01/14-01/21

1 International Criminal Court
2 Pre-Trial Chamber II
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Mahamat Said Abdel Kani - ICC-01/14-01/21
5 Single Judge Rosario Salvatore Aitala
6 Initial Appearance - Courtroom 2
7 Friday, 29 January 2021
8 (The hearing starts in open session at 1.04 p.m.)
9 THE COURT USHER: [13:04:45] All rise.
10 The International Criminal Court is now in session.
11 Please be seated.
12 SINGLE JUDGE AITALA: [13:05:04] Good morning, everyone.
13 The hearing for the first appearance of Mr Mahamat Said Abdel Kani is now open.
14 Madam court officer, would you please call the case.
15 THE COURT OFFICER: [13:05:26] Thank you, Mr President.
16 The situation in Central African Republic II, in the case of The Prosecutor versus
17 Mahamat Said Abdel Kani, ICC reference 01/14-01/21.
18 And we are in open session.
19 SINGLE JUDGE AITALA: [13:05:42] Thank you very much.
20 So, first of all, I would like to say that I regret I had to adjourn the hearing to today,
21 and again on behalf of the Court, I apologise to Mr Said for this delay.
22 At this stage, Madam Prosecutor, would you please introduce yourself and your
23 colleagues.
24 MS BENSOUDA: [13:06:08] Thank you, Mr President.
25 Mr President, may I say that the representation is the same for the Office of the

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1 Prosecutor as yesterday.

2 SINGLE JUDGE AITALA: [13:06:16] Thank you very much.

3 Mr Counsel for Mr Said, would you please introduce yourself again, for the records.

4 MR MADOUKOU: [13:06:37](Interpretation) Thank you. I am

5 Maître Jean Pierre Madoukou. I am counsel for the suspect Said Mahamat in these
6 proceedings.

7 In the course of this hearing I will be assisted by two collaborators from the OPCD,
8 namely Vedrana Residovic and Marie O'Leary.

9 Thank you.

10 SINGLE JUDGE AITALA: [13:07:12] Thank you very much. Welcome to you and
11 also to the representatives of the OPCD.

12 Mr Representative of the Registry, will you please introduce yourself.

13 MR DUBUISSON: [13:07:24] (Interpretation) Thank you, Mr President.

14 Representing the Registrar, Peter Lewis, I am Marc Dubuisson, the director of judicial
15 support services. Thank you.

16 SINGLE JUDGE AITALA: [13:07:44] (Interpretation) Good morning, Mr Dubuisson.
17 (Speaks English) Again, I am still the same. I am Judge Rosario Salvatore Aitala and
18 my colleagues from Pre-Trial Chamber II are Judge Antoine Mindua, who is
19 the Presiding Judge, and Judge Tomoko Akane.

20 As mentioned yesterday, Mr Said is attending the hearing via video link in light of the
21 measures related to the ongoing pandemic.

22 Mr Said, can you see us and hear me clearly?

23 Mr Said, can you hear me?

24 Well, clearly he is not hearing us.

25 MR SAID: [13:09:05](No interpretation)

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1 SINGLE JUDGE AITALA: [13:09:19] I understand he is speaking Sango, but I can't
2 hear the interpretation.

3 MR SAID: [13:09:26](Interpretation) I was able to hear you in English, but I couldn't
4 hear you in French, so I, I didn't hear you, what you were saying.

5 SINGLE JUDGE AITALA: [13:09:45] Mr Said, can you hear the Sango
6 interpretation?

7 MR SAID: [13:09:55](Interpretation) The Sango interpreter I think is on line, I think
8 he should be following you to interpret.

9 SINGLE JUDGE AITALA: [13:10:08] No, what I'm asking you, if you can hear now
10 the interpreter translating what I am saying now in English into Sango?

11 MR SAID: [13:10:19](Interpretation) Well, I can still speak in French. That's fine
12 with me.

13 SINGLE JUDGE AITALA: [13:10:27] No, sir. The entire matter yesterday was to
14 allow you to hear a full translation in Sango. So I would like to know if you're
15 hearing the Sango interpretation, which is the language you have chosen at the
16 beginning. But now, we will talk about this again, but please confirm you can hear
17 the Sango interpretation.

18 Madam court officer, please can you please check whether everything is running
19 smoothly with the Sango interpretation?

20 THE COURT OFFICER: [13:11:33] Your Honour, I'm listening the Sango now
21 coming through and it was working so far on channel number 4. I'm just going to
22 maybe ask the technician who is present in the transmission room at the detention to
23 maybe assist and check if he's -- the suspect is receiving the right channel to confirm
24 that Sango is going through.

25 Could my colleague in the transmission room please assist and check whether

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1 the right channel is transmitted to the suspect, please.

2 Your Honour, I'm hearing background noise, meaning that the assistant is currently
3 ongoing, I believe. I will update you.

4 SINGLE JUDGE AITALA: [13:12:41] That's fine, thank you.

5 THE COURT OFFICER: [13:13:17] Your Honour, I'm just informed by my colleagues
6 that in order for the suspect to hear the Sango channel, he needs to disengage his own
7 microphone. We think this is the source of the issue and should be shortly solved
8 now.

9 SINGLE JUDGE AITALA: [13:13:39] That's fine. You let me know when I can
10 continue, please.

11 THE COURT OFFICER: [13:13:45] I will, your Honour.

12 (Pause in proceedings)

13 THE COURT OFFICER: [13:14:59] Your Honour, I'm informed that the Chamber
14 now can ask again the question to the suspect. The suspect will remain invisible so
15 he will be able to basically hear the debate in the courtroom. And if he needs to
16 answer, then he will have to activate the microphone and be able for us to hear him.
17 Thank you.

18 SINGLE JUDGE AITALA: [13:15:24] Thank you. Fair enough.

19 Mr Said, would you please state your name, your full name, the date and the
20 place of birth.

21 MR SAID: [13:15:46](No interpretation)

22 THE INTERPRETER: From the English interpreter: The French interpretation did
23 not come through.

24 SINGLE JUDGE AITALA: [13:16:15] Okay, that's fine. We've heard it, it's fine.

25 Thank you, Mr Said.

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1 In light of Regulation 47 of the Regulations of the Registry, Mr Said, can you confirm
2 that you are in telephone connection with your legal counsel?

3 MR SAID: [13:17:02](No interpretation)

4 THE INTERPRETER: [13:17:08] From the English booth: Unfortunately, we still
5 could not get the French relay.

6 SINGLE JUDGE AITALA: [13:17:18] Madam court officer, I'm forced to ask you to
7 deal with this matter. We need to hear the English translation as well.

8 THE COURT OFFICER: [13:17:37] I'm checking, your Honour.

9 SINGLE JUDGE AITALA: [13:17:39] I'm grateful.

10 THE COURT OFFICER: [13:17:55] Can I please ask the English booth to speak again
11 so we can check if it goes through this time. Thank you. And run a quick test.
12 Thank you.

13 THE INTERPRETER: [13:18:07] The English booth would like to say that they were
14 unable to receive a translation from Sango into French.

15 THE COURT OFFICER: [13:18:20] Can I ask the French booth now to run the test.
16 Thank you.

17 Can I now ask my colleague, the Sango interpreter, to speak again to check whether it
18 can be translated into French and English, please. Thank you.

19 THE INTERPRETER: [13:19:07] Message from the English booth: We would have
20 to ask that the suspect speak once again in Sango.

21 THE COURT OFFICER: [13:19:15] I am not hearing the Sango channel.

22 SINGLE JUDGE AITALA: [13:19:21] Mr Said, would you mind telling us your name
23 again. It's just for a matter -- a technical matter.

24 MR SAID: [13:19:44](No interpretation)

25 SINGLE JUDGE AITALA: Thank you.

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1 THE INTERPRETER: [13:20:02] From the English booth: Unfortunately still no
2 French translation.

3 THE COURT OFFICER: [13:20:15] Could you hear the Sango interpretation in
4 the French booth? No. I'm informed that the French booth could not hear
5 the interpretation. I could hear, hear the Sango interpretation on channel 4, but you
6 could not hear in the booth the Sango interpretation; am I understanding well?

7 THE INTERPRETER: [13:20:51] Message from the English booth: Might I,
8 might I explain?

9 THE COURT OFFICER: [13:21:31] Can I please listen to the message from
10 the English booth, thank you.

11 THE INTERPRETER: [13:21:37] Yes, Carine, we're trying to find a solution. We
12 think that what we're going to do -- the main problem comes from the field office for
13 the interpretation into French. That's the main problem. So what we're going to do
14 is use the interpreter we have in Paris to go in both directions, that's our only solution
15 at this very moment.

16 SINGLE JUDGE AITALA: [13:21:58] Okay, (inaudible), court officer, I will suspend
17 the hearing for a few minutes if it's not a short matter. If it takes a little bit, then I
18 will suspend the hearing. You let me know. If you're almost ready, we can all wait.

19 THE COURT OFFICER: [13:22:11] Thank you very much, your Honour. Much
20 appreciated. I am just informed by the English booth that they're going to ask
21 the Sango interpreter to translate into -- to interpret in both directions. The source of
22 the issue now is that apparently one of the Sango interpreters who is supposed to
23 translate in the other language is not working now. So we're going to ask the Sango
24 interpreter we have and functional to speak in both directions.

25 And I'm going to ask now the confirmation from the booth that this is feasible now,

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1 otherwise I will need to inform the Chamber and we will have to suspend.

2 Thank you.

3 SINGLE JUDGE AITALA: [13:22:47] Thank you. Take your time.

4 THE INTERPRETER: [13:22:51] Carine, thank you. We are just trying to call him.

5 His telephone is not on, he can't hear the telephone so he hasn't answered.

6 So I think, Judge, we will need to suspend briefly. Our apologies.

7 SINGLE JUDGE AITALA: [13:23:01] Okay, the hearing is suspended briefly until

8 the matter is resolved. Thank you.

9 THE COURT USHER: [13:23:08] All rise.

10 (Recess taken at 1.23 p.m.)

11 (Upon resuming in open session at 1.55 p.m.)

12 THE COURT USHER: [13:55:35] All rise.

13 Please be seated.

14 SINGLE JUDGE AITALA: [13:55:52] Good afternoon, again. Let's hope for

15 the better.

16 Mr Said, would you please again respond to my question, which wasn't translated for

17 us, on whether you are in direct telephone contact with your counsel?

18 MR SAID: [13:56:27](Interpretation) That is correct. I have had telephone contact

19 with my lawyer.

20 SINGLE JUDGE AITALA: [13:56:41] Thank you very much.

21 Now, I need to explain, especially to you, Mr Said, that the ongoing initial appearance

22 hearing is not a trial and is not a hearing regarding the confirmation or

23 non-confirmation of charges of accusations against you. No evidence will be

24 adduced today or will be presented and the individual responsibility of Mr Said will

25 not be discussed. Pursuant to Article 60(1) of the Rome Statute of the International

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1 Criminal Court and of Rule 121 of the Rules of Procedure and Evidence, the scope of
2 this hearing today is limited to allowing the Single Judge to be satisfied that
3 the person subject to a warrant of arrest is informed of the crimes he is alleged to have
4 committed; that this person is informed of his rights under the Rome Statute; and
5 the date on which the Chamber intends to hold the hearing to confirm or decline to
6 confirm the charges will be announced later.

7 Mr Said, have you been informed of the crimes you are alleged to have committed?

8 MR SAID: [13:58:47](Interpretation) Yes, that is correct. I have been provided with
9 the necessary documents and I have read them.

10 SINGLE JUDGE AITALA: [13:59:04] Thank you very much.

11 The Registry has indeed informed the Chamber that Mr Said has been served with
12 a version of the warrant of arrest dated 31 January 2019, containing only minimal
13 redactions.

14 Now I would like to clarify that the warrant of arrest issued for Mr Said on
15 7 January 2019 is still under seal, that it's not yet available to the public, not even in
16 redacted form. The reason for this is that a request from the Office of the Prosecutor
17 to apply redactions to the warrant is pending and will be decided by the Chamber in
18 due course.

19 The Chamber considers the publicity of criminal proceedings a cornerstone of fair
20 trial and restrictions to this principle can be justified only by the proven need to
21 preserve other interests provided for by the Statute and, first and foremost,
22 the security of witnesses and victims in accordance with Article 68(1).

23 In any case, for the purpose of these proceedings, the Chamber is fully satisfied that
24 Mr Said has been informed as necessary of the crimes he is alleged to have committed
25 on the basis of the warrant of arrest.

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1 Now, Madam court officer, I would kindly ask you to read out the charges in
2 the format and content allowed by the publicity restrictions I have just discussed
3 earlier.

4 THE COURT OFFICER: [14:01:15] Thank you, your Honour.

5 On 7 January 2019, Pre-Trial Chamber II concluded that there were reasonable
6 grounds to believe that Mr Mahamat Said Abdel Kani, a national of the Central
7 African Republic, born on 25 February 1970 in Bria, Ndele province, is criminally
8 responsible pursuant to Articles 25(3)(a), (b), (c) and (d) and 28(a) of the Statute for
9 the crimes against humanity of:

10 (a) imprisonment or other severe deprivation of liberty, Article 7(1)(e) of the Statute;

11 (b) torture, Article 7(1)(f) of the Statute;

12 (c) persecution, Article 7(1)(h) of the Statute;

13 (d) enforced disappearance, Article 7(1)(i) of the Statute;

14 (e) and other inhumane acts, Article 7(1)(k) of the Statute;

15 As well as for the war crimes of:

16 (f) torture, Article 8(2)(c)(i) of the Statute; and

17 (g) cruel treatment, Article 8(2)(c)(i) of the Statute, all committed in the Central
18 African Republic in 2013, as set forth in detail in the warrant of arrest.

19 SINGLE JUDGE AITALA: [14:03:16] Thank you very much, Madam court officer.

20 Mr Said, now we will dwell upon your rights. Have you been informed of the rights
21 which are accorded to you as a suspect under the Rome Statute of the International
22 Criminal Court?

23 MR SAID: [14:04:01](Interpretation) I am not yet very fully informed of my rights.

24 I am aware that as a suspect I am presumed innocent.

25 SINGLE JUDGE AITALA: [14:04:23] Thank you, Mr Said. You are indeed

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1 presumed innocent. And now -- (Overlapping speakers)

2 MR SAID: [14:04:25] (Interpretation) That is pending any trial.

3 SINGLE JUDGE AITALA: [14:04:27] -- I will help you out and I will outline the main
4 rights you are accorded with by the Rome Statute.

5 You have the right to be informed promptly and in detail of the nature, the cause and
6 content of the charges in a language that you fully understand and speak.

7 Would you please, Mr Said, indicate which language or languages you fully
8 understand and speak?

9 MR SAID: [14:05:24](Interpretation) I speak Sango very well.

10 SINGLE JUDGE AITALA: [14:05:31] Thank you very much. This is noted.

11 You have also the following rights:

12 The right to have free of cost the assistance of a competent interpreter and such
13 translations as are necessary to meet the requirements of fairness;

14 You have the right to be allowed adequate time and facilities for the preparation of
15 your defence and the right to communicate freely with a counsel of your choosing;

16 You have the right to remain silent and not to be compelled to testify against yourself
17 or to confess guilt;

18 You have the right to make an unsworn oral or written statement in your defence in
19 due course, not today;

20 You have the right to receive, as soon as possible, material showing or tending to
21 show your innocence or mitigating your guilt or affecting the credibility of
22 incriminating evidence;

23 At the confirmation of charges hearing, you will have the right to object to the charges,
24 to challenge the evidence presented by the Prosecutor, and to present evidence
25 yourself. If the charges are not confirmed, there will not be a trial in this case and

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1 the proceedings would be terminated;

2 Finally, you have the right to apply for interim release pending trial.

3 Have you heard and understood well, Mr Said, what I've just said?

4 MR SAID: [14:08:26](Interpretation) Yes, indeed, I have fully understood all
5 the rights that you have enumerated to me.

6 SINGLE JUDGE AITALA: [14:08:40] Thank you very much, Mr Said.

7 Now I will set the date for the confirmation of charges hearing.

8 We have considered all relevant factors, including the need for the parties and
9 the participants to prepare, the rights of Mr Said, especially his right to be tried
10 without undue delay, as well as the current exceptional circumstances due to
11 the COVID-19 pandemic. Therefore, the date for the commencement of the
12 confirmation of charges hearing is set for Tuesday, 5 October 2021. Depending on
13 the development of the proceedings, this date may be changed as provided for in
14 Rule 121(7) of the Rules of Procedure and Evidence upon request of either
15 the Prosecutor or the Defence or by the Pre-Trial Chamber on its own motion.
16 Before concluding the hearing, I inform the parties of the following steps in these
17 proceedings.

18 First, it is recalled that pursuant to Rule 121(2)(b) of the Rules of Procedure and
19 Evidence, status conferences shall be held to ensure that disclosure takes place in
20 a transparent, efficient and expeditious manner. Such status conferences may be
21 scheduled by the Single Judge by its own initiative *proprio motu* but also upon request
22 of the parties.

23 Second, I would like to inform the parties that in due course, a set of decisions will be
24 issued by the Chamber to ensure that the proceedings are conducted properly and
25 expeditiously. Namely, decisions on the modalities and procedure for evidence

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1 disclosure; decision on the calendar for the disclosure of evidence to ensure organised
2 and smooth disclosure between the parties with communication of disclosed evidence
3 to the Chamber; a decision on principles for redactions; and a decision on victims'
4 participation.

5 Third, with a view to ensuring that disclosure commences as soon as possible and
6 takes place under satisfactory conditions, I instruct the Prosecutor to file observations
7 on the modalities and procedure for evidence disclosure by no later than
8 5 February 2021.

9 Now I would kindly ask the parties if there are any additional points they would like
10 to raise that were discussed today.

11 I start with you, Madam Prosecutor.

12 MS BENSOUDA: [14:12:18] No, Mr President. We don't have any further
13 observations to make.

14 SINGLE JUDGE AITALA: [14:12:24] Thank you very much, Madam Prosecutor.

15 Mr Counsel for Mr Said, do you have any point you wish to raise?

16 MR MADOUKOU: [14:12:37](Interpretation) Thank you very much, Mr President.
17 Gentlemen and ladies of the Court, thank you. I would like to reiterate the fact that
18 my client and myself fully respect your Court. Given my contacts with Mr Said, he
19 has reassured me of his full cooperation with the International Criminal Court. He is
20 fully prepared to cooperate with the Court, so he will be available to be tried, if
21 necessary.

22 However, we would like in the Defence to request that the Office of the Prosecutor
23 should disclose to us all the materials related to this case. It is true that my client is
24 in The Hague and I am based in Bangui, so there are difficulties at that level, but we
25 really need to have all the materials available to us in good time so that we can

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1 properly prepare the defence.

2 What is clear is that, as at this date, my client is presumed to be innocent. And if we
3 have possession of all the evidentiary materials, we will arrange for our own
4 witnesses, certain of the witnesses to testify for the Defence.

5 I am aware that this is only the beginning of the procedure. We have followed up all
6 the charges laid out by the Prosecutor and we are prepared to defend my client
7 against those charges. Mr Said is prepared himself.

8 And as I have said, the procedure is only beginning, but the truth will out. And

9 I can say clearly that that truth will come out in favour of Mr Said, based on
10 everything that we have at our disposal.

11 Thank you very much, Mr President.

12 SINGLE JUDGE AITALA: [14:15:31] Thank you, Mr Counsel, your points are noted.

13 I can reassure you, as I mentioned earlier, that the Court is fully committed to
14 ensuring an expeditious conduct of the proceedings. It is indeed the duty and
15 the commitment of the Office of the Prosecutor and of the Chamber under
16 the Rome Statute to ensure that disclosure and any other requirements are met in due
17 course and expeditiously.

18 Thank you for your intervention.

19 Mr Said, are there any points you would like to raise before I declare the end of this
20 hearing?

21 MR SAID: [14:16:32](Interpretation) I have nothing to add. I will be silent for now
22 and I will express myself when the time comes.

23 SINGLE JUDGE AITALA: [14:16:50] Thank you very much.

24 We have therefore come to the end of the hearing on the initial appearance of

25 Mr Mahamat Said Abdel Kani.

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- 1 I wish to thank the parties, our interpreters, our field office in Bangui, the courtroom
- 2 staff and also the technical staff for sorting out the problems, the technical problems
- 3 we have encountered yesterday.
- 4 The hearing is now closed and I wish everyone a good afternoon.
- 5 THE COURT USHER: [14:17:24] All rise.
- 6 (The hearing ends in open session at 2.17 p.m.)