

Situation in Central African Republic II

Update: 26 January 2021

ICC-01/14-01/21

Initial appearance of Mahamat Saïd Abdel Kani at the ICC 28 January 2021

WHO IS MAHAMAT SAÏD ABDEL KANI AND WHAT IS HE SUSPECTED OF?

Mr Mahamat Saïd Abdel Kani, also known as "Mahamat Saïd Abdel Kain" and "Mahamat Saïd Abdelkani" ("Mr Saïd"), is a national of the Central African Republic (CAR), born on 25 February 1970 in Bria and is alleged to have been a Seleka commander. Mr Saïd was surrendered to the International Criminal Court (ICC) on account of an ICC warrant of arrest issued under seal on 7 January 2019.

Mr Saïd is suspected of the following war crimes and crimes against humanity allegedly committed in Bangui (CAR) in 2013:

- 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).

Mr Saïd is suspected of having committed these crimes jointly with others and/or through others or ordered, solicited or induced these crimes or aided, abetted or otherwise assisted in the commission of these crimes; or in any other way contributed to the commission or these crimes.

When issuing the warrant of arrest, the Single Judge of Pre-Trial Chamber II, Rosario Salvatore Aitala, found that there were reasonable grounds to believe that an armed conflict not of an international character was ongoing on the territory of the CAR from at least March 2013 until at least January 2014 between the Seleka – a coalition of armed groups predominantly composed of Muslims opposed to former president François Bozizé – and the Anti-Balaka – a movement opposed to the Seleka and supportive of former president Bozizé. Moreover, the Single Judge found reasonable grounds to believe that, from at least March 2013 until at least January 2014, a widespread and systematic attack was conducted by members of the Seleka against the civilian population and those perceived to be collectively responsible for, complicit with or supportive of the former Bozizé government and, later, of the Anti-Balaka.

WHAT HAPPENED AFTER MR SAÏD'S ARRIVAL AT THE ICC DETENTION CENTRE?

Once a suspect is surrendered to ICC's custody, the Court ensures that the person receives a copy of the warrant of arrest in a language which he fully understands and speaks. After his arrival at the Detention Unit of the ICC, the Pre-Trial Chamber schedules an initial appearance hearing.

WHAT IS AN INITIAL APPEARANCE HEARING?

The suspect's first appearance before the Court takes place shortly after his arrival in The Hague. The initial appearance of Mr Saïd is scheduled for 28 January 2021 before the Single Judge of Pre-Trial Chamber II, Rosario Salvatore Aitala. During the first appearance, the judge confirms the identity of the suspect, ensures that the suspect understands the charges, confirms that language in which the proceedings should be conducted and sets the date for the opening of the confirmation of charges hearing. The suspect enjoys rights as recognised in the Rome Statute, including the right to have adequate time and facilities for the preparation of his or her Defence and to have the assistance of a Counsel, without payment if the person lacks sufficient means to pay for it.

WHAT WILL HAPPEN AFTER THE INITIAL APPEARANCE HEARING TAKES PLACE?

After the initial appearance hearing, the Pre-Trial Chamber will start the process leading to the confirmation of charges hearing. The purpose of the confirmation of charges hearing is for the judges to determine whether or not there is sufficient evidence to establish substantial grounds to believe that the suspects committed each of the crimes charged. It is only if the charges are confirmed, in full or in part, that the case would be transferred to a Trial Chamber, which will conduct the subsequent phase of the proceedings: the trial.

This process may take several months, depending on the complexity of the case, and also on the challenges which may arise during this period. After the initial appearance, the process of disclosure of evidence will start. During this process, the Prosecutor will have to provide to the Defence team the evidence she has collected during his investigation and on which she wants to rely for the confirmation of charges hearings. As indicated by the Rome Statute, the Prosecutor also has a duty to disclose exonerating information or materials to a suspect which in any way tend to suggest his innocence or mitigate his or her guilt, or which may affect the credibility of the Prosecution's evidence. At the confirmation of charges hearing – which is not a trial, but a pre-trial hearing – the Prosecution must present sufficient evidence for the case to go to trial. The suspect's defence may object to the charges, challenge the Prosecution's evidence and also present evidence.

WHAT RIGHTS DO SUSPECTS HAVE?

Suspects before the ICC are presumed innocent. Unless exempted by the Judges, they are present in the courtroom during the trial, and they have a right to a public, fair and impartial hearing of their case. To this end, a series of guarantees are set out in the Court's legal documents, including, to mention a few:

- to be defended by the counsel (lawyer) of their choice, present evidence and witnesses of their own and to use a language which they fully understand and speak;
- to be informed in detail of the charges in a language which they fully understand and speak;
- to have adequate time and facilities for the preparation of the defence and to communicate freely and in confidence with 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 his possession or control which he believes shows or tends to show the innocence of the suspects or accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

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. If convicted of crimes under the ICC's jurisdiction, they do not serve their sentences at the ICC Detention Centre as it is not a facility made for the purposes of managing a regime of convicted prisoners; they are transferred to a prison outside of The Netherlands to serve their time, subject to an agreement between the ICC and the State of enforcement.

WHO ARE THE JUDGES SITTING IN THIS CASE?

Pre-Trial Chamber II is composed of Judge Antoine Kesia-Mbe Mindua (Presiding Judge), Judge Tomoko Akane and Judge Rosario Salvatore Aitala. Judge Rosario Salvatore Aitala was designated as Single Judge responsible for carrying out the functions of the Chamber in the present case. 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.