

BRIEFING PAPER

The Trial of Ahmad Al Faqi Al Mahdi at the International Criminal Court

Open Society Justice Initiative

August 2016

Ahmad Al Faqi Al Mahdi (Abu Tourab) is charged with the war crime of intentionally directing attacks against religious and historic monuments in Timbuktu, Mali. It is the first time this war crime constitutes the main charge against an individual prosecuted before the International Criminal Court (ICC). It is also the first time a member of an Islamist armed group will face war crimes charges before the court. Al Mahdi has indicated that he intends to plead guilty, which would be another first for the court. His trial is scheduled to begin August 22, 2016.

The Defendant

Ahmad Al Faqi Al Mahdi (Abu Tourab) was a member of Ansar Eddine—an Islamist armed group that seeks the imposition of sharia law in Mali—and was allegedly involved in the occupation of Timbuktu, Mali, in 2012. He purportedly worked closely with the leaders of Al Qaeda in the Islamic Maghreb (AQIM) and Ansar Eddine and was involved in the complete or partial destruction of buildings of religious and historic significance in Timbuktu. When he appeared before an ICC judge in September 2015, he said he was born “about 40 years ago,” that he graduated from the Teachers Institute in Timbuktu, Mali, and had worked as a civil servant with the Malian government’s education department.

The Charges

Pre-Trial Chamber I [confirmed the single war crime charge](#) against Al Mahdi on March 24, 2016. Al Mahdi is charged under Article 8(2)(e)(iv) of the Rome Statute with the war crime of intentionally directing attacks against religious and historic monuments in Timbuktu, Mali, between June 30, 2012 and July 10, 2012.

This is the first time the ICC prosecutor has charged an individual for crimes solely related to attacking religious sites and historic monuments. It is also the first time that a member of an Islamist armed group will face war crimes charges at the ICC. The monuments Al Mahdi is accused of destroying include cemeteries and mausoleums of Sufi Muslim saints, which a number of Islamist armed groups in Mali considered idolatrous.

AQIM and its associate Ansar Eddine took control of Timbuktu during a rebellion that started in January 2012. The prosecution alleges that Al Mahdi worked closely with the leaders of the two armed groups, and that, between May and September 2012, he headed the *Hesbah* or “Morality Brigade.” It is also alleged that he was associated with the work of the Islamic Court of Timbuktu and participated in executing its decisions. Al Mahdi is accused of having been involved in the complete or partial destruction of historic and religious monuments during this time. These monuments, including several protected mausoleums, are among the reasons UNESCO lists Timbuktu as a [world heritage site](#).

The “modes of liability” (i.e. how he participated to the commission of the crime) alleged by the prosecutor include direct perpetration (committing the crimes himself) or direct co-perpetration (committing the crimes with another person according to a common plan) under Article 25(3)(a) of the Rome Statute; aiding, abetting, or assisting the crimes (under Article 25(3)(c); and otherwise contributing to the commission of the crimes (under Article 25(3)(d)).

Warrants of Arrest and Surrender

On September 18, 2015, Pre-Trial Chamber I issued an arrest warrant for Al Mahdi for the war crime of intentionally directing attacks against religious and historic monuments in Timbuktu, Mali, in June and July 2012. Pre-trial chamber judges found that there were reasonable grounds to believe that at that time there was a non-international armed conflict and that Timbuktu was under the control of two armed groups—AQIM and Ansar Eddine.

On September 26, 2015, authorities in Niger, which borders Mali, [surrendered Al Mahdi](#) to the ICC. According to the prosecution, Al Mahdi had been in the custody of Niger since October 2014 when he was arrested in a separate, unrelated case of arms trafficking with the intent of committing acts of terror. He was originally captured near the Niger-Algeria border during an operation lead by the French military on the night of October 9-10, 2014. At the time of his capture, Al Mahdi was in a six-vehicle convoy transporting a ton of arms toward Mali.

Al Mahdi is currently detained at the ICC detention center in The Hague.

Guilty Plea

During the [confirmation of charges hearing](#) held on March 1, 2016, Al Mahdi informed Pre-Trial Chamber I that he intends to plead guilty to the single war crime charge he is facing. If Al Mahdi pleads guilty on August 22 when his trial is scheduled to begin, he will be the first accused person to do so before the ICC.

Article 65 of the Rome Statue sets out what happens when an accused person pleads guilty to the charges against him. Conviction is not automatic, and the trial chamber is still required to evaluate the prosecution's evidence to determine whether the facts of the case support a guilty plea. If the trial chamber is satisfied that the prosecution's evidence supports the guilty plea, then the trial proceeds to the conviction and sentencing stage. If the chamber is not satisfied that the prosecution's evidence supports a guilty plea, then the chamber will consider that a guilty plea was not entered and proceed with the trial or hand the case to another trial chamber.

Trial

Al Mahdi's intention to plead guilty led the Single Judge of Trial Chamber VIII to state that the trial will be of limited purpose and therefore is not expected to take more than one week.

When the trial begins, Al Mahdi is expected to formally enter his plea soon after the charge is read out to him. If he maintains his declared intention to plead guilty, then Trial Chamber VIII must confirm from Al Mahdi that he understands the implication of a guilty plea. Once the judges have done this, the trial will proceed to the opening

statements of the different parties, the lawyer for victims, and other participants. At the conclusion of these statements, Trial Chamber VIII will then hear witness testimony.

The prosecution has said they will call three witnesses who will be prosecution staff and experts. The defense will not call any witnesses during the trial, but may present the written testimony of character witnesses after the trial has been completed and for the purpose of sentencing. The lawyer for victims may also request permission from the trial chamber to call witnesses and/or victims who have been admitted to the case to testify.

Victims

No victims were admitted to the case during the pre-trial phase. Since June, however, nine victims have been admitted to the case and a lawyer was appointed to represent them in June. The victims include organizations that suffered harm as a result of the crimes.

In the prosecution's [pre-trial brief](#), Timbuktu residents are reported to have been deeply affected by the destruction of the religious and historic monuments. Many of the mausoleums that were destroyed were places where Timbuktu residents prayed on Fridays and also sought blessings on other days. Timbuktu residents also collaborated in the repair and maintenance of a number of the mausoleums.

Jurisdiction

Mali referred the situation in northern Mali to the ICC in July 2012. Mali is a state party of the ICC, having ratified the Rome Statute on August 16, 2000.

The ICC Office of the Prosecutor (OTP) began an investigation into the Mali situation in January 2013. In relation to the case against Al Mahdi, the prosecution has said there is no criminal case against him in Malian courts or any other country covering the charge or facts he is facing at the ICC.

In its pre-trial brief, the prosecution noted that there is a civil case filed against Al Mahdi in Mali. The prosecution said the case was filed March 6, 2015 and involves a range of crimes against humanity, such as rape, torture, and persecution. The prosecution also noted that there is a case against Al Mahdi in Niger, the country that surrendered him. That case, according to the OTP, involves arms trafficking with the intent to commit acts of terror. Only in circumstances when a criminal case in a national court covers the same charges and facts that a defendant is facing at the ICC could there be a question as to whether the case is admissible at the ICC. The case in Mali is a civil proceeding and not criminal in nature. The case in Niger covers different charges and facts. Thus, they do not render Al Mahdi's ICC prosecution inadmissible.

Background

In January 2012, fighting erupted between Mali government forces and rebel groups, notably the National Movement for the Liberation of Azawad (MNLA), which aims to establish an independent state for the Tuareg people. Once MNLA captured power, AQIM and Ansar Eddine, who also opposed the Malian government but played a minimal role in ejecting government forces from northern towns, started imposing sharia law in the area. These Islamist groups sought to eject their erstwhile ally MNLA from the area and set out to impose their authority in the northern towns, including the ancient city of Timbuktu. This included destruction of monuments and buildings that AQIM and Ansar Eddine considered idolatrous.

Al Mahdi is alleged to have been actively involved in the occupation of Timbuktu and the complete or partial destruction of religious and historic buildings. As UNESCO lists Timbuktu as a [world heritage site](#), the attacked monuments were considered part of the cultural heritage of mankind. The buildings were also protected under Malian law. The sites that were attacked include: 1) the mausoleum Sidi Mahmoud Ben Omar Mohamed Aquit; 2) the mausoleum Sheikh Mohamed Mahmoud Al Arawani; 3) the mausoleum Sheikh Sidi El Mokhtar Ben Sidi Mouhamad Ben Sheikh Al Kabir Al Kounti; 4) the mausoleum Alpha Moya; 5) the mausoleum Sheikh Sidi Ahmed Ben Amar Arragadi; 6) the mausoleum Sheikh Mouhamad El Mikki; 7) the mausoleum Sheikh Abdoul Kassim Attouaty; 8) the mausoleum Ahmed Fulane; 9) the mausoleum Bahaber Babadié; and 10) the door of Sidi Yahia mosque.

The conflict in northern Mali led to a coup against the country's president in March 2012. The United Nations (UN) responded with the deployment of the African-led international support mission to Mali (AFISMA) to help the interim Malian government maintain security. To stop the rapid expansion of the rebels in the north, predominantly Islamist armed groups, a French-Malian military coalition was also formed. By the end of January 2013, the coalition had managed to oust the Islamist armed groups from Timbuktu. As military operations waned, AFISMA was transformed into a UN stabilization and peacekeeping operation in July 2013. A new president, Ibrahim Boubacar Keita, was elected and installed in September 2013. To date, the situation in Mali remains volatile despite the signing of a peace accord in June 2015 among the government, the MNLA, and other secular Tuareg rebel groups. Since June, Islamist armed groups have led several disparate attacks, including attacks on hotels located in [central Mali](#) and in the country's capital, [Bamako](#).

While the Al Mahdi trial is significant because of its focus on the destruction of cultural property, some human rights groups have expressed disappointment about the limited scope of the charges and lack of other charges for serious crimes committed in Mali, especially crimes of sexual violence. In this regard, it is important to note that in addition to the crimes charged against Al Mahdi, the OTP continues to investigate other crimes that may have been committed by other people in northern Mali, including the war crimes of: (i) murder; (ii) mutilation, cruel treatment and torture; (iii) the passing of

sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court; (iv) pillaging; and (v) rape.

Why this Case Is Important

This is the first time the war crime of attacking religious and historic monuments constitutes the main charge against an individual facing trial at the ICC. This trial will set a precedent for trying individuals for this crime at a time when attacks on historic and cultural monuments as well as other cultural crimes have gained attention in Syria and elsewhere. This trial is also likely to set another precedent because it is the first time that the ICC's framework for handling guilty pleas is being tested. This could potentially provide incentives to other accused persons in the future, in particular because collaboration with the Court can be considered as a mitigating circumstance for the purpose of sentencing. ICC trials have been criticized for taking a very long time and many have called for trials to be more efficient and expeditious. The Al Mahdi case is expected to be the fastest ICC trial ever.

Timeline

August 16, 2000: Mali ratifies the Rome Statute of the International Criminal Court.

January 2012: Fighting breaks out between Mali government forces and rebel groups. By April of 2012, the National Movement for the Liberation of Azawad (MNLA), which is fighting for an independent state for the Tuareg people, captures much of northern Mali.

May-July 2012: The MNLA loses control of most of the territory it seized to former Islamist allies: AQIM and Ansar Eddine occupy Timbuktu while MUJAO (the Movement for Oneness and Jihad in West Africa) takes control of another northern city, Gao.

May 2012: After taking control of Timbuktu and surrounding areas, Ansar Eddine and AQIM fighters begin destroying cemeteries and mausoleums of saints.

July 13, 2012: The Government of Mali refers the situation in the country to the ICC.

January 2013: A coalition of French and Malian military forces regain control of Timbuktu from Ansar Eddine and AQIM. Al Mahdi leaves Timbuktu.

January 16, 2013: The ICC Office of the Prosecutor opens an investigation into the situation in Mali.

October 9-10, 2014: Al Mahdi arrested in Niger.

September 18, 2015: The ICC issues a warrant of arrest against Al Mahdi.

September 26, 2015: Al Mahdi is surrendered to the ICC by the authorities of Niger and transferred to the court's detention center in The Hague, the Netherlands.

September 30, 2015: Al Mahdi makes his first appearance before an ICC judge, where he confirms his identity and is informed of the charges against him.

March 1, 2016: Confirmation of charge hearing held. Al Mahdi tells Pre-Trial Chamber I he intends to plead guilty.

March 24, 2016: Pre-Trial Chamber I confirms the single war crime charge against Al Mahdi.

August 22, 2016: Trial scheduled to start.

CONTACT INFO

For information and monitoring on this and other trials before the International Criminal Court, please visit our international justice monitoring site at www.ijmonitor.org (Twitter: @ijmonitor).

To speak to one of our experts on this or other international justice issues, contact the Open Society Justice Initiative's communications officer:

Jonathan.Birchall@opensocietyfoundations.org

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C.
