

BRIEFING PAPER

Ahmad Al Faqi Al Mahdi at the ICC: Confirmation of Charges

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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 for the destruction of historical and cultural monuments before the court. Hearings to determine whether there is sufficient evidence to continue to trial are scheduled for March 1, 2016.

The Defendant

Ahmad Al Faqi Al Mahdi (Abu Tourab), who is from the Ansar Tuareg tribe, was a member of Ansar Eddine—an Islamist armed group that seeks the imposition of sharia law in Mali—and was allegedly actively involved in the occupation of Timbuktu, Mali during 2012. He purportedly worked closely with the leaders of Al Qaeda in the Islamic Maghreb (AQIM) and Ansar Eddine and was involved in the destruction of buildings dedicated to religious and historic monuments. 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 education department.

The Charges

Al Faqi 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 19, 2012 and July 10, 2012.

This is the first time the ICC prosecutor has charged an individual for crimes only related to the attacking of 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 for the destruction of historic and cultural monuments. The monuments Al Faqi is accused of destroying include cemeteries and mausoleums of Sufi Muslim saints - which a number of Islamist armed groups in Mali considered idolatrous - and several thousands of ancient manuscripts.

The prosecution alleges that, during a rebellion that started in January 2012, once AQIM and its associate Ansar Eddine took control of Timbuktu, Al Faqi worked closely with the leaders of the two armed groups. It is alleged that, between May and September 2012, he headed the *Hesbah* or “Manners’ Brigade.” It is also alleged that he was associated with the work of the Islamic Court of Timbuktu and participated in executing its decisions. It is during this time that Al Faqi is accused of having been involved in the destruction of historic monuments and buildings dedicated to religion.

As to the “modes of liability” (i.e. how he participated to the commission of the crime), Al Faqi is charged with 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)).

Warrant of Arrest and Surrender

On September 18, 2015, Pre-Trial Chamber I issued an arrest warrant for Al Faqi 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 this 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, the authorities of Niger, which neighbors Mali, surrendered Al Faqi to the ICC. He is currently imprisoned at the ICC detention center in The Hague.

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 AQIM and Ansar Eddine considered idolatrous.

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 Islamist armed groups in the North, 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, 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](#).

Al Faqi is alleged to have been actively involved in the occupation of Timbuktu and the destruction of buildings dedicated to religion and historic monuments. As UNESCO lists Timbuktu a [world heritage site](#), the attacked monuments were considered part of the cultural heritage of mankind. These include: 1) the mausoleum Sidi Mahmoud Ben Omar Mohamed Aquit, 2) the mausoleum Sheikh Mohamed Mahmoud Al Arawani, 3) the mausoleum Sheikh Sidi Mokhtar Ben Sidi Muhammad Ben Sheikh Alkabir, 4) the mausoleum Alpha Moya, 5) the mausoleum Sheikh Sidi Ahmed Ben Amar Arragadi, 6) the mausoleum Sheikh Muhammad El Micky, 7) the mausoleum Cheick Abdoul Kassim Attouaty, 8) the mausoleum Ahamed Fulane, 9) the mausoleum Bahaber Babadié, and 10) Sidi Yahia mosque.

ICC Prosecutor Fatou Bensouda opened an investigation into war crimes in Mali in January 2013 after the situation had been under preliminary examination for about a year. In its decision to investigate, the Office of the Prosecutor (OTP) observed that there were no ongoing domestic proceedings against perpetrators who may bear the greatest responsibility for crimes committed in Northern Mali. This is partly due to the fact that, during the conflict, the judiciary institutions that would have had jurisdiction over the alleged crimes were forced out of the northern territory and are only recently slowly recovering their functions. This is also what prompted the Government to refer the situation in Northern Mali to the ICC. As a result, the OTP concluded that the complementarity requirement of ICC investigations vis-à-vis national jurisdictions was satisfied.

In addition to the crimes charged against Al Faqi, the OTP is also continuing to investigate other crimes that may have been committed, 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 prevalence and attention in Syria and elsewhere.

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, and by April of that year, 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 territory 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 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 16, 2013: The ICC Office of the Prosecutor opens an investigation into the situation in Mali.

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

September 26, 2015: Al Faqi 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 Faqi makes his first appearance before an ICC judge, where he confirms his identity and is informed of the charges against him.

March 1, 2016: The scheduled date for a hearing to determine whether there is sufficient evidence for his case to go to trial.

CONTACT INFO

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

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

Jonathan.Birchall@opensocietyfoundations.org

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