

ANNEXE A

Publique

**La traduction en anglais du Chef
d'accusation retenu par l'Accusation
contre Ahmad AL FAQI AL MAHDI**

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

No.: ICC-01/12-01/15

Date: 17 December 2015

PRE-TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Joyce Aluoch
Judge Péter Kovács

SITUATION IN MALI

**IN THE CASE OF
*THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI***

Public

**Charge brought by the Prosecution
against Ahmad AL FAQI AL MAHDI**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

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The Office of Public Counsel for Victims

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Other

1. **Ahmad AL FAQI AL MAHDI** (“**AL MAHDI**”), born in Agoune (Mali), and of between thirty and forty years old, is criminally responsible for having intentionally committed in Timbuktu between around 30 June 2012 and around 11 July 2012 the war crime of attacking buildings dedicated to religion and historic monuments, pursuant to, and prohibited by, article 8(2)(e)(iv) of the Rome Statute (“the Statute”).
2. **AL MAHDI** is criminally responsible under the following modes of liability: as a direct co-perpetrator under article 25(3)(a) of the Statute; for soliciting and inducing the commission of such a crime under article 25(3)(b) of the Statute; for facilitating the commission of such a crime by aiding, abetting or otherwise assisting in its commission under article 25(3)(c) of the Statute; and for contributing in any other way to the commission of such a crime by a group of persons acting with a common purpose under article 25(3)(d) of the Statute.
3. **AL MAHDI** is also criminally responsible as a direct perpetrator under article 25(3)(a) of the Statute for physically taking part in the attack against at least half of the targeted buildings dedicated to religion and historic monuments.

A. Facts and circumstances of the case

4. From January 2012, a non-international armed conflict broke out in the territory of Mali, and led to different armed groups taking control of the north of the country. Thus, in early April 2012, the groups Ansar Dine and Al-Qaeda in the Islamic Maghreb (AQIM) took control of Timbuktu. They occupied the city until mid-January 2013, when they fled in the face of the advance of the Malian Army supported by the French forces of Operation Serval.
5. During these approximately 10 months, the members of Ansar Dine and AQIM imposed their will in Timbuktu through a local government, which included an Islamic tribunal, a morality brigade (*Hisbah*), and an Islamic police force. These

structures exercised control over the population and significantly restricted and violated the rights and freedoms of the people of Timbuktu.

6. **AL MAHDI** was one of the local members who joined in and supported the action of the armed groups in Timbuktu. He was appointed to head the *Hisbah* in April 2012; he set up this structure and oversaw it until September 2012. The *Hisbah* was in charge of regulating the morality of the people of Timbuktu, and of suppressing and repressing anything perceived by the occupiers to constitute a visible vice.
7. In addition to his role as head of the *Hisbah*, **AL MAHDI** was very active in other structures set up by AQIM and Ansar Dine in Timbuktu, and in their operations. Indeed, he was viewed as an expert in matters of religion, and as such was involved in their activities, including within the Islamic tribunal.
8. **AL MAHDI** was also in direct contact with the leaders of Ansar Dine and AQIM (continuously or intermittently present in Timbuktu), such as Iyad AG GHALY (the leader of Ansar Dine), Abou ZEID (the “Governor” of Timbuktu under the armed groups), Yahia Abou AL HAMMAM (the future emir of AQIM for the Sahel), and Abdallah AL CHINGUETTI (a religious scholar within AQIM).
9. Prior to overseeing the attack in question against historic monuments and buildings dedicated to religion, **AL MAHDI** was consulted about their destruction. Subsequently, in about late June 2012, Iyad AG GHALY took the decision to destroy the mausoleums, in consultation with Abou ZEID, Yahia Abou AL HAMMAM, and Abdallah AL CHINGUETTI. Their common plan was to attack and destroy buildings dedicated to religion, which were also historic monuments.
10. **AL MAHDI** subscribed to this common plan, as did various other members of Ansar Dine and AQIM, and individuals associated with these groups, or acting under their control.

11. **AL MAHDI** and his co-perpetrators therefore directed their attack against nine mausoleums of Muslim saints and the door of a mosque. These buildings were cherished by the community, were used for religious practices, constituted an important part of the historical heritage of Timbuktu, and embodied the identity of the city, known as the “Pearl of the Desert” and the “City of 333 Saints”.
12. The attackers, including in particular **AL MAHDI**, who oversaw their actions, carried out the attack between around 30 June 2012 and around 11 July 2012, going to the places they attacked with vehicles, weapons, and tools such as pickaxes and iron bars.
13. **AL MAHDI** and his co-perpetrators first attacked and destroyed:
- The Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum;
 - The Sheikh Mohamed Mahmoud Al Arawani Mausoleum;
 - The Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum;
 - The Alpha Moya Mausoleum;
 - The Sheikh Mouhamad El Micky Mausoleum;
 - The Sheikh Abdoul Kassim Attouaty Mausoleum; and
 - The Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum.
14. The implementation of the common plan then continued, in accordance with the original decision of late June 2012, to include the attack against:
- The door of the Sidi Yahia Mosque; and
 - The two mausoleums adjoining the Djingareyber Mosque (the Ahamed Fulane Mausoleum and the Bahaber Babadié Mausoleum), which lasted until around 11 July 2012.

15. Within a period of about 10 days, 10 of the most important and well-known sites in Timbuktu, all located within the same perimeter, were attacked by the participants in the common plan, all of whom were driven by the same objective, acted with the same intention, and utilised the same pretexts and arguments.
16. These sites were buildings dedicated to religion and historic monuments, and did not constitute military objectives. Some had been designated as part of the national cultural heritage and, as such, were protected under Malian legislation. With the exception of the Sheikh Mohamed Mahmoud Al Arawani Mausoleum, these buildings were all protected World Heritage Sites.
17. The attack against these buildings/monuments took place within the geographic and temporal context of the non-international armed conflict in Mali. The attack was closely connected with the conflict.
18. **AL MAHDI** was involved in all phases of the common plan: the planning phase, the preparatory phase, and the execution phase. The attackers considered the historic monuments and buildings dedicated to religion that were attacked to be a visible vice. Their destruction therefore fell under the competence of the *Hisbah*. **AL MAHDI**, who was the head of the *Hisbah*, freely oversaw the attack against the buildings dedicated to religion and historic monuments.
19. First, **AL MAHDI** personally participated in the campaign against the religious use of the mausoleums. He identified and monitored the cemeteries visited by residents. He met local religious leaders and others with the goal of dissuading the community from conducting religious practices on site at the mausoleums; he also used the radio for this purpose. Furthermore, he conducted research on their destruction. Then he himself wrote the sermon on the destruction of the mausoleums which was read at the Friday prayer, on the eve of the launch of the attack. He also personally determined the sequence in which the buildings/monuments were to be attacked.

20. **AL MAHDI** then acted together with other individuals, who adhered to the common plan, to which he contributed in the following ways:

- (i) He oversaw the attack;
- (ii) He used his men from the *Hisbah* and supervised the other attackers who came to participate in the operations; he occasionally requested reinforcements to carry out the attack;
- (iii) He managed the financial and material (e.g., tools) aspects in order to successfully carry out the attack and decided what means of destruction to employ based on the location;
- (iv) He was present at all of the sites that were attacked, providing moral support to the attackers, to whom he gave instructions;
- (v) He participated personally in the destruction of at least five sites: the Alpha Moya Mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, the door of the Sidi Yahia Mosque, and two mausoleums — the Ahamed Fulane Mausoleum and the Bahaber Babadié Mausoleum — adjoining the Djingareyber Mosque;
- (vi) He was responsible for providing a response to journalists which explained and justified the attack, thus encouraging the attackers and reassuring them with the idea that the attack was well-founded and justified.

21. **AL MAHDI** had the requisite intent. Indeed, he deliberately engaged in the conduct in question, namely the attack on buildings dedicated to religion and historic monuments in Timbuktu, together with the other participants in the common plan. His intention was to attack and destroy the targeted buildings dedicated to religion and historic monuments. He also intended to contribute to the commission of the crime by the co-perpetrators.

22. Furthermore, **AL MAHDI** acted with the requisite degree of knowledge. He knew that the buildings targeted were dedicated to religion and had a historic character and did not constitute military objectives. He was aware of the key characteristics of the co-perpetrators and entities that were involved in the attack, and of the circumstances that allowed him to exercise, together with other participants in the common plan, control over the attack in question. **AL MAHDI** also understood the factual circumstances that established the existence of an armed conflict, and knew that his criminal conduct took place within the context of an armed conflict, and was associated with it. **AL MAHDI** contributed to the commission of the attack in full knowledge of the intention of the other persons taking part in it. He also knew that his acts would bring about, or contribute to, the commission of the crime of which he is accused.

B. Charge

23. In view of the facts and circumstances set out *supra*, **AL MAHDI** is criminally responsible for the war crime of directing an attack, as set out in article 8(2)(e)(iv) of the Statute. In Timbuktu, between approximately 30 June 2012 and 11 July 2012, he intentionally directed an attack against buildings dedicated to religion and historic monuments which were not military objectives, as follows: the Sidi Mahamoud Ben Omar Mohamed Aquit Mausoleum, the Sheikh Mohamed Mahmoud Al Arawani Mausoleum, the Sheikh Sidi El Mokhtar Ben Sidi Mouhammad Al Kabir Al Kounti Mausoleum, the Alpha Moya Mausoleum, the Sheikh Mouhamad El Micky Mausoleum, the Sheikh Abdoul Kassim Attouaty Mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, the Sidi Yahia Mosque (the door), and the Bahaber Babadié Mausoleum and the Ahamed Fulane Mausoleum, both adjoining the Djingareyber Mosque. He is criminally responsible under article 25(3)(a) (as a direct co-perpetrator), article 25(3)(b) (for soliciting and inducing the commission of the crime), article 25(3)(c) (for facilitating the commission of such a crime by aiding,

abetting or otherwise assisting), and article 25(3)(d) (for contributing in any other way to the commission of such a crime by a group of persons acting with a common purpose).

24. **AL MAHDI** is also criminally responsible under article 25(3)(a) as a direct perpetrator for his physical participation in the attack intentionally directed against the Alpha Moya Mausoleum, the Sheikh Sidi Ahmed Ben Amar Arragadi Mausoleum, the door of the Sidi Yahia Mosque, and the Ahamed Fulane Mausoleum and the Bahaber Babadié Mausoleum.

[Signed]

Fatou Bensouda, Prosecutor

Done on 17 December 2015

In The Hague (the Netherlands)