

Situation in the Republic of Mali

Update: July 2020

The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

Opening of the trial in the Al Hassan case, 14 July 2020

WHO IS MR AL HASSAN AND WHAT IS HE ACCUSED OF?

Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, a Malian national from the Tuareg/Tamasheq Kel Ansar tribe, born on 19 September 1977 in the community of Hangabera, about 10 kilometres north of Goundam in the region of Timbuktu was allegedly a member of Ansar Dine and the *de facto* chief of the Islamic Police. He is also alleged to have been involved in the work of the Islamic court in Timbuktu and to have participated in executing its decisions.

Mr Al Hassan is accused of the following crimes:

- Crimes against humanity allegedly committed in Timbuktu, Mali, in the context of a widespread and systematic attack by armed groups Ansar Eddine / Al Qaeda in the Islamic Maghreb against the civilian population of Timbuktu and its region, between 1 April 2012 and 28 January 2013: Torture, rape, sexual slavery, other inhumane acts, including, inter alia, forced marriages, persecution; and
- War crimes allegedly committed in Timbuktu, Mali, in the context of an armed conflict not of an international nature occurring in the same period between April 2012 and January 2013: Torture, cruel treatment, outrages upon personal dignity, passing of sentences without previous judgement pronounced by a regularly constituted court affording all judicial guarantees which are generally recognized as indispensable, intentionally directing attacks against buildings dedicated to religion and historic monuments, rape and sexual slavery.

WHAT CAN BE EXPECTED AT THE OPENING OF THE TRIAL?

The trial in the Al Hassan case will open on 14 July before ICC Trial Chamber X. Due to the current situation linked to Covid-19, hearings participants will take part either from the seat of the Court or from separate locations outside the Court. The trial will open with the reading of the charges against Mr Al Hassan. The Judges will verify that the accused person understood the nature of the charges. The Judges will ask him whether he makes an admission of guilt or pleads not guilty to the charges. The Prosecution will then deliver its opening statement.

The Legal Representatives of Victims and the Defence intend to deliver their opening statements at a later stage before the beginning of their respective presentations of evidence. These will follow the Prosecution's presentation of evidence that will commence on 25 August 2020.

The trial will resume on 25 August 2020, when the Prosecution will begin to present its case and witnesses before the judges. The Prosecution's case is likely to take some time, and after it is finished the Legal Representatives of Victims may submit observations, and the Defence will have the opportunity to make opening statements, present its case and call witnesses.

While the Prosecution must prove the guilt of the accused, the Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt. At the end of the trial hearings, the Judges will render their judgement within a reasonable period of time. The verdict will be read out in public and will either acquit or convict the accused. If the accused is convicted, a sentence will be imposed on him. The Prosecution and the Defence may appeal the judgement and/or the decision on sentencing before the ICC's Appeals Chamber.

HOW LONG WILL THE TRIAL OF MR AL HASSAN LAST?

The trial may last several years, depending on the complexity of the case and challenges that may arise. Judges ensure that the rights of all parties and participants are respected. Cases involving war crimes and crimes against humanity tend to be complex, because of the range of incidents and extended time period involved in the charges, as well as other logistic and linguistic measures that have to be taken to protect the accused' rights, protect the witnesses and facilitate the victims' participation. But the Judges are committed to expedite the trial as much as possible.

WHAT ARE THE RIGHTS GRANTED TO THE ACCUSED DURING THE TRIAL?

Mr Al Hassan is presumed innocent and is entitled to several rights during the trial including, to mention a few:

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

IF MR AL HASSAN IS FOUND GUILTY AFTER THE TRIAL, WHAT PENALTIES MAY BE IMPOSED BY THE COURT?

There is no death penalty at the ICC in the event of a conviction. The Judges may impose a prison sentence, to which may be added a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The maximum sentence is 30 years. However, in extreme cases, such as the specific circumstances of the accused conviction, the Court may impose a term of life imprisonment.

Persons convicted of crimes under the jurisdiction of the ICC do not serve their sentence at the ICC Detention Centre in The Hague as the facility is not designed for long-term imprisonment. Convicted persons are therefore transferred to a prison in a State designated by the Court from a list of States which have indicated their willingness to allow convicted persons to serve their sentence there.

ARE VICTIMS PARTICIPATING IN THIS TRIAL AND HOW?

The majority of the 880 victims who participated in the preliminary phase are awaiting a decision from the Chamber regarding their participation in the trial phase. About 270 new victims who did not participate in the preliminary phase are also awaiting a decision by the Chamber. The Registry of the Court will continue to collect forms in connection with the participation of victims in the Al Hassan trial. It is therefore up to the judges to decide which victims can participate in the trial. The victims are represented by their lawyers, Counsels Seydou Doumbia, Mayombo Kassongo and Fidel Nsita Luvengika.

Through their Legal Representatives, participating victims can exercise the following rights at trial:

- to consult the record of the case, including: decisions of the Chamber, submissions of the parties, participants and the Registrar, transcripts and evidence disclosed by the parties and communicated to the Chamber;
- to be notified of documents filed;
- to attend all public and non-public hearings in the case;
- to make written submissions on points of fact and on law and to respond to submissions;
- to make opening statements;
- to present evidence, should leave to do so be granted by the Chamber;
- to question witnesses.

CAN VICTIMS RECEIVE REPARATIONS?

Throughout the procedure, the ICC Registry may collect forms from victims wishing to seek reparations in this case. But the issue of reparations for victims is dealt with by ICC judges if the accused is found guilty after the trial. At the end of a trial, the Trial Chamber may then order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty. Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials. The Court may award reparations on an individual or collective basis, whichever is, in its opinion, the most appropriate for the victims in the particular case. The Court may request the Trust Fund for Victims to participate in the implementation of reparations orders, including when the convicted person does not have sufficient financial resources for this purpose.

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?

Trial Chamber X is composed of Judge Antoine Kesia-Mbe Mindua, Presiding Judge, Judge Tomoko Akane and Judge Kimberly Prost. 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.