



Original: French

No.: ICC-01/12-01/18

Date: 26 July 2019

THE PRESIDENCY

Before: Judge Chile Eboe-Osuji, President
Judge Robert Fremr, First Vice-President
Judge Howard Morrison

SITUATION IN THE REPUBLIC OF MALI

**IN THE CASE OF
THE PROSECUTOR *v.* AL HASSAN AG ABDOUL AZIZ AG MOHAMED AG
MAHMOUD**

Public Document

Joint Observations of the *Fédération internationale des ligues des droits de l'Homme* (FIDH) and the *Association malienne des droits de l'Homme* (AMDH)

Source: FIDH and AMDH

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

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Other

1. Having regard to the urgent request for the disqualification of the Bench of Pre-Trial Chamber I dated 11 July 2019, submitted by the Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud,¹ in which the Defence makes repeated references to the *Fédération internationale des ligues des droits de l'Homme* (FIDH) and the *Association malienne des droits de l'Homme* (AMDH), stating that:

16. On 1-3 July 2013, Judge Alapini-Gansou was invited by FIDH and other Malian human rights associations to lead a workshop on documenting human rights violations and to facilitate information sharing between decision makers and human rights activities. In her report to the African Commission during the 54th session Judge Alapini-Gansou stated that “[t]he link between this training component and the ongoing work of documenting human rights in Mali by various actors cannot be overemphasized”.²

23. In June 2014, Judge Alapini-Gansou participated in a press conference and a series of workshops in Bamako with human rights lawyers, including from FIDH and AMDH. The purpose of this workshop was to discuss collaboration between Judge Alapini-Gansou's department in MISAHÉL, and the NGOs in question.³

24. According to a contemporaneous news article, the 24 June 2014 press conference had been hosted by FIDH and AMDH, included a discussion on evidential issues concerning allegations of sexual violence committed in the North of Mali, including the difficulty of obtaining evidence.⁴

25. A month later, on 30 July 2014, the MISAHÉL human rights section hosted a conference on information exchanges with Malian civil society organisations. During this conference, MISAHÉL presented a report given to the AU Peace and Security Council in April 2014. It would appear that this report was the June 2013 report, drafted by Judge Alapini-Gansou, which included findings concerning crimes committed by Ansar Dine in Timbuktu. The MISAHÉL human rights division further advised the participants concerning the instigation of litigation concerning these violations.⁵

26. In March 2015, FIDH, AMDH and other Malian NGOs, filed a criminal complaint against Mr. Al Hassan and others in relation to allegations of sexual violence that took place in Timbuktu in 2012 and 2013. This complaint has been filed as evidence in the Al Hassan case. The failure of the Malian authorities to progress the case was relied upon by the Prosecution in its application for an arrest warrant against Mr. Al Hassan.⁶

2. Having regard to the order issued by the Presidency, dated 19 July 2019, concerning the urgent request for the disqualification of Pre-Trial Chamber I

¹ “Public redacted version of Urgent Request for the Disqualification of Pre-Trial Chamber I”, ICC-01/12-01/18-406-Red, 11 July 2019: https://www.icc-cpi.int/CourtRecords/CR2019_03645.PDF

² ICC-01/12-01/18-406-Red, para. 16.

³ ICC-01/12-01/18-406-Red, para. 23.

⁴ ICC-01/12-01/18-406-Red, para. 24.

⁵ ICC-01/12-01/18-406-Red, para. 25.

⁶ ICC-01/12-01/18-406-Red, para. 26.

submitted by the Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud.⁷

3. Our organizations hereby submit the following observations:

4. First and foremost, the FIDH and the AMDH wish to specify that the aim of these observations is not to express any opinion whatsoever on the merits of the request for disqualification filed on 11 July 2019, but simply to present the facts with respect to the nature of the relation between the FIDH and AMDH and Ms Reine Alapini-Gansou.

6. Ms Reine Alapini-Gansou was a member of the African Commission on Human and Peoples' Rights from 2005 to 2017, on which she held senior positions, including that of chairperson. She was also head of the human rights component of the African-led International Support Mission in Mali (AFISMA/MISAHHEL) from April 2013 to October 2014.

7. In that context, the FIDH and the AMDH interacted with her, as with all the members of the African Commission on Human and Peoples' Rights, to advocate human rights issues which are at the core of our organizations' mandates.

8. The Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud first makes reference⁸ to a seminar held from 1 to 3 July 2013. On those dates, the FIDH and AMDH indeed organized a training and discussion workshop on the investigation methods of civil society human rights observers. The purpose of this workshop, which moreover was publicly stated, was to train and foster discussions between civil society members from the subregion on the documentation of human rights. Ms Reine Alapini-Gansou was invited to take part in the opening and closing of this seminar, which was to include speeches by the President of the AMDH, the European Union representative, the Ministry of Justice representative and Mr Sidiki

⁷ "Order concerning the 'Urgent Request for the Disqualification of Pre-Trial Chamber I' dated 11 July 2019", ICC-01/12-01/18-414, 19 July 2019: https://www.icc-cpi.int/CourtRecords/CR2019_03928.PDF

⁸ ICC-01/12-01/18-406-Red, para. 16.

Kaba, honorary President of the FIDH at that time. In response to this invitation, she participated in the closing and helped to present certificates of training to the participants.

9. The workshop's content did not, in any way, concern the work which was conducted jointly by the FIDH and the AMDH on the documentation of situations of serious human rights violations for the purposes of litigation. Furthermore, Ms Alapini-Gansou was present only during these two formal sessions of the workshop. Ms Alapini Gansou's formal participation is in no way related to the report that she published following a fact-finding mission to the Republic of Mali from 3 to 7 June 2013 in her capacity as Commissioner for the promotion of human rights in Mali and Special Rapporteur on the rights of human rights defenders in Africa.

10. The Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud then makes reference in the aforementioned request⁹ to a press conference and a series of workshops organized in June 2014 in Bamako during which Ms Alapini-Gansou supposedly discussed collaboration with NGOs in her capacity as chief of the MISAHHEL human rights section.

11. There is clearly some confusion between this series of discussions and dialogues with civil society – in which the FIDH and AMDH joint office in Bamako naturally took part to talk about the situation of human rights and transitional justice in Mali – and a press conference called "*Paix, justice et Réconciliation : bilan et perspectives* [peace, justice and reconciliation: current situation and outlook]", organized at the joint office on 24 June 2014, which was the culmination of an advocacy campaign aimed at the national authorities carried out in the days prior in Bamako by the FIDH and the AMDH, led by Mr Patrick Baudouin and Mr Moctar Mariko, Honorary President of the FIDH and President of the AMDH, respectively.

⁹ ICC-01/12-01/18-406-Red, paras. 23, 24, 25.

12. Lastly, the reference in the request¹⁰ to a complaint filed with the senior investigating judge of the Court of First Instance of Commune III of Bamako by our organizations, along with a press conference held in March 2015, as being connected with the above-mentioned relation between FIDH and AMDH and Ms Reine Alapini-Gansou, and which suggests that she participated in some way in the documentation work which took place before this complaint was filed, is completely without basis.

13. In cooperation with a group of lawyers, the FIDH and the AMDH jointly and confidentially conducted all of the activities that resulted in the above-mentioned complaint. The confidentiality of this work is safeguarded not only by the FIDH and AMDH's joint methodology covering documentation for the purposes of litigation and legal assistance to victims of international crime, but also by the code of ethics of the lawyers brought together through the FIDH Legal Action Group.

¹⁰ ICC-01/12-01/18-406-Red, para. 26.

[signed] [signed]

Mr Drissa Traoré,
Vice President, *Fédération internationale des ligues des droits de l'Homme*
(FIDH)

Mr Moctar Mariko, President, *Association malienne des droits de l'Homme*
(AMDH)

Dated this 26 July 2019,
At Paris and Bamako