



Original: **French**

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

Date: **27 March 2018**

PRE-TRIAL CHAMBER I

Before: Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adélaïde Sophie Alapini-Gansou

SITUATION IN THE REPUBLIC OF MALI

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

Under Seal

***EX PARTE* Prosecutor and Registrar**

Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

Unrepresented Applicants for Participation/Reparations

States' Representatives

Office of Public Counsel for the Defence

REGISTRY

Registrar

Mr Herman von Hebel

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

Victims Participation and Reparations Section

Other

PRE-TRIAL CHAMBER I (“Chamber”) of the International Criminal Court (“Court”) has before it an application¹ (“Application”) filed by the Prosecutor pursuant to article 58 of the Rome Statute (“Statute”) for the issuance of a warrant for the arrest of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Al Hassan”).

I. Procedural history

1. In her Application, the Prosecutor submits that there are reasonable grounds to believe that Al Hassan bears criminal responsibility under the Statute for the commission of: (a) crimes against humanity, *viz.* torture, rape, sexual slavery, persecution on religious and gender grounds and other inhumane acts perpetrated in Timbuktu, Mali, between April 2012 and January 2013; and (b) war crimes, *viz.* violence to person, outrages upon personal dignity, the passing of sentences without previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are generally recognized as indispensable, rape and sexual slavery, perpetrated in Timbuktu, Mali, between April 2012 and January 2013; and the war crime of intentionally directing attacks against buildings dedicated to religion and historic monuments, perpetrated in Timbuktu, Mali, between late June and mid-July 2012.²

II. Applicable law and jurisdiction

2. The Chamber notes articles 7, 8, 19(1), 25(3), 30, 58, 89, 91, 92 and 93 of the Statute.

3. The Chamber is satisfied that the case against Al Hassan falls within the jurisdiction of the Court. The events set forth in the Application took place between April 2012 and January 2013 on the territory of Mali, a State Party to the Statute, which on 18 July 2012 referred to the Court the situation prevailing on its territory

¹ *“Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan Ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud”*, 20 March 2018, ICC-01/12-54-Secret-Exp.

² Application, para. 50.

since January 2012, in which several crimes within the jurisdiction of the Court appeared to have been committed.

4. The Chamber observes that the analysis of the evidence and other information submitted by the Prosecutor will be set out in a decision to be issued at a later date.

III. Concise statement of the facts and specific reference to crimes within the jurisdiction of the Court

5. On the evidence submitted by the Prosecutor, the Chamber is satisfied that there are reasonable grounds to believe that an armed conflict not of an international character having commenced in January 2012 remained ongoing in Mali throughout the time frame of the events alleged in the Application. In the context of that conflict, the armed groups Al-Qaeda in the Islamic Maghreb (“AQIM”) and Ansar Dine, a primarily Tuareg movement associated with AQIM, took control over the city of Timbuktu in early April 2012 and exercised it until 17 January 2013.

6. Using their men and their own structures – such as the Islamic police, the *Hisbah* (a body founded to uphold public morals and prevent vice) and the Islamic court – these armed groups took control of Timbuktu and used terror to impose their vision of religion on the local population (who were perceived as not conforming to it) by dictating sundry rules and prohibitions that affected every sphere of the public and private lives of the people of Timbuktu. Violations of these rules were severely punished by arrest, imprisonment, sentences passed without previous judgment or with judgment pronounced by an irregularly constituted court not affording the judicial guarantees generally recognized as indispensable, flogging, torture in custody and the destruction of property dedicated to religious practices. The enforcement of prohibitions took the form of a campaign of crimes and persecution and, ultimately, was aimed at eradicating any conduct and any practice contrary to the shared religious vision of the armed groups AQIM and Ansar Dine.

7. Al Hassan became a member of Ansar Dine in the spring of 2012, joining the Islamic police force shortly after it was set up and no later than early May 2012,

and remaining until the armed groups withdrew from the city in January 2013. The mission of the Islamic police was to enforce the aforementioned rules and to monitor and punish the population of Timbuktu. His role as *de facto* chief of the Islamic police, having some forty agents under his command, meant that Al Hassan played a prominent part in the commission of the crimes and in the persecution on religious and gender grounds inflicted by these armed groups. Furthermore, Al Hassan participated in patrols to hunt down violators of the new rules and was involved in the torture of arrestees to extract confessions.

8. Al Hassan was also involved in the work of the Islamic court in Timbuktu and participated in the enforcement of its decisions. In particular, he referred numerous cases to the Islamic court, knowing that this court, which meted out physical punishments, was irregularly constituted and did not afford the judicial guarantees generally recognized as indispensable. He also participated in the execution of punishments imposed by the court, including public flogging. Al Hassan also took part in the destruction of the mausoleums of Muslim saints in Timbuktu using members of the Islamic police force on the ground.

9. Lastly, Al Hassan played a part in the policy of forced marriage which victimized the female population of Timbuktu and gave rise to repeated rapes and the sexual enslavement of women and girls.

10. Al Hassan's criminal activities in Timbuktu continued until January 2013, when he and the armed groups fled the city before the advancing Malian armed forces supported by French troops.

11. On the evidence, the Chamber finds that there are reasonable grounds to believe that the attack directed against the civilian population of Timbuktu by AQIM and Ansar Dine was conducted pursuant to an organizational policy within the meaning of article 7(2)(a) of the Statute. Furthermore, the attack was widespread and systematic, as demonstrated, *inter alia*, by the extended period over which the crimes were committed (between April 2012 and January 2013), the high number of reported victims, the means employed to commit the crimes and the structures set

up in furtherance of their commission, and lastly the general pattern of the way in which the offences were committed.

12. The Chamber finds that there are reasonable grounds to believe that the crimes against humanity of persecution on religious and gender grounds under article 7(1)(h) of the Statute, rape and sexual slavery under article 7(1)(g) of the Statute, torture under article 7(1)(f) of the Statute and other inhumane acts intentionally causing great suffering or serious injury to body or to mental or physical health, including forced marriage and physical violence, under article 7(1)(k) of the Statute, were committed in Timbuktu, Mali, between April 2012 and January 2013.

13. The Chamber finds that there are reasonable grounds to believe that these acts were committed pursuant to or in furtherance of an organizational policy and occurred in the context of the attack described above, directed against the civilian population of Timbuktu, within the meaning of article 7(1) of the Statute.

14. On the evidence, the Chamber considers that there are reasonable grounds to believe that, in the context of the aforementioned non-international armed conflict, the war crimes of violence to person and outrages upon personal dignity under articles 8(2)(c)(i) and 8(2)(c)(ii) of the Statute, respectively, the passing of sentences without previous judgment pronounced by a regularly constituted court affording all judicial guarantees which are generally recognized as indispensable, under article 8(2)(c)(iv) of the Statute and rape and sexual slavery under article 8(2)(e)(vi) of the Statute were committed in Timbuktu, Mali, between April 2012 and January 2013. The Chamber also considers that there are reasonable grounds to believe that, in the context of that conflict, the war crimes of intentionally directing attacks against buildings dedicated to religion and historic monuments under article 8(2)(e)(iv) of the Statute were committed in Timbuktu, Mali, between late June 2012 and mid-July 2012.

15. Considering the material facts of the case as outlined in the contents of the file, the Chamber is satisfied that the evidence submitted by the Prosecutor

provides reasonable grounds to believe that Al Hassan is criminally responsible within the meaning of articles 25(3)(a) and 25(3)(b) of the Statute for having committed, as an individual, jointly with another or through another person, and for having ordered, solicited or induced the commission of the aforementioned crimes against humanity and war crimes in Timbuktu, Mali, from April 2012 to January 2013. The Chamber will review at a later stage in the proceedings the question of the modes of criminal responsibility applicable to the instant case.

16. The Chamber is also satisfied that there are reasonable grounds to believe that Al Hassan acted with the requisite intent and knowledge, within the meaning of article 30 of the Statute, having regard to his prominent role in the structures set up by the armed groups AQIM and Ansar Dine in furtherance of the commission of the crimes described above. Furthermore, there are reasonable grounds to believe that he knew the crimes alleged were part of a systematic and widespread attack against the civilian population of Timbuktu. The Chamber also finds that there are reasonable grounds to believe that he was aware of both the existence of the non-international armed conflict taking place in Mali and the fact that the persons victimized by the alleged crimes were civilians.

IV. Necessity of the arrest

17. The Chamber is satisfied that the arrest of Al Hassan is necessary within the meaning of article 58(1)(b) of the Statute in order to (i) ensure his appearance before the Court; or (ii) ensure that he does not obstruct or endanger the investigation or the proceedings; or (iii) prevent him from continuing with the commission of the crime.

18. Indeed, the Chamber notes that Al Hassan fled Mali in the wake of the military operations conducted by the Malian and French armed forces. In 2015, until his arrest in April 2017, he apparently resumed his participation in the activities of armed groups in Mali. Given the people he knows in those groups, it is possible that he might receive help both to abscond from justice and to interfere with the

investigation being conducted by the Prosecutor. He could also rejoin those groups and continue with the commission of crimes within the jurisdiction of the Court.

V. Other requests made by the Prosecutor in her Application

19. On the basis of the information submitted to it regarding the current security situation in Mali, the Chamber is satisfied of the necessity of granting the Prosecutor's request that this warrant of arrest be issued under seal, *ex parte* the Prosecutor and the Registrar, both to facilitate the execution of the warrant and for the protection of the witnesses and other sources referred to in the Application. Nonetheless the Registry should be authorized to disclose the existence of this warrant and its contents to any competent authority, to the extent strictly necessary for its execution.

20. The Chamber also finds it necessary to grant the Prosecutor's request that Al Hassan be searched and that any item in his possession which may be relevant to the investigation be seized.

FOR THESE REASONS, the Chamber

HEREBY ISSUES a warrant of arrest, pursuant to article 58 of the Statute, for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, who was born on 19 September 1977 in the rural community of Hangabera, located approximately 10 kilometres north of Goundam in the region of Timbuktu, Mali, a Malian national and member of the Tuareg/Tamasheq Kel Ansar tribe, there being reasonable grounds to believe that he is criminally responsible, within the meaning of articles 25(3)(a) or 25(3)(b) of the Statute, for:

(1) Crimes against humanity:

- a. torture (article 7(1)(f) of the Statute);
- b. rape and sexual slavery (article 7(1)(g) of the Statute);
- c. persecution of the population of Timbuktu on religious and gender grounds (article 7(1)(h) of the Statute); and
- d. other inhumane acts (article 7(1)(k) of the Statute);

committed in Timbuktu, Mali, between April 2012 and January 2013;
and

(2) War crimes:

- a. violence to person and outrages upon personal dignity (articles 8(2)(c)(i) and 8(2)(c)(ii) of the Statute);
- b. the passing of sentences without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable (article 8(2)(c)(iv) of the Statute);
- c. rape and sexual slavery (article 8(2)(e)(vi) of the Statute);

committed in Timbuktu, Mali, between April 2012 and January 2013;
and

- d. intentionally directing attacks against buildings dedicated to religion and historic monuments (article 8(2)(e)(iv) of the Statute), committed in Timbuktu, Mali, between late June 2012 and mid-July 2012.

DECIDES that the warrant of arrest is to remain under seal, *ex parte* the Prosecutor and the Registrar only, but that in order to effect Al Hassan's transfer to the seat of the Court it may be communicated to third parties as necessary for its execution. The Chamber will consider in due course the reclassification of the warrant of arrest upon the surrender of Al Hassan to the Court;

ORDERS the Registrar to prepare, pursuant to article 92 of the Statute, a request for the provisional arrest of Al Hassan, and to transmit that request promptly to the competent authorities in Mali, in consultation and coordination with the Office of the Prosecutor;

ORDERS the Registrar to prepare, pursuant to articles 89 and 91 of the Statute, a request for the arrest and surrender of Al Hassan, and to transmit that request to the competent authorities in Mali, in consultation and coordination with the Office of the Prosecutor;

ORDERS the Registrar to take all appropriate measures for the arrest and surrender of Al Hassan to the Court, including, if necessary, transmitting requests for transit to the relevant States pursuant to article 89(3) of the Statute;

ORDERS the Registrar to prepare, in consultation and coordination with the Office of the Prosecutor, a request for cooperation pursuant to article 93 of the Statute, addressed to the Malian authorities, requesting that they adopt all necessary measures to effect a search of Al Hassan and to seize any items in his possession which may be relevant to the investigation, and to transfer those items promptly to the Court.

ORDERS the Registrar to transfer the Application into the file of case 01/12-01/18 as the first document in the file, maintaining its current classification; and

ORDERS the Prosecutor either to (i) prepare, if necessary, a redacted version of the Application and enter it into the case file as confidential, *ex parte* the Prosecutor and the Defence only, so that it is available to Al Hassan and his counsel by the time he arrives at the Court; or (ii) inform the Chamber that the Application can be made available to Al Hassan and his counsel unredacted.

Done in both English and French, the French version being authoritative.

[signed]

Judge Péter Kovács
Presiding Judge

[signed]

[signed]

Judge Marc Perrin de Brichambaut **Judge Reine Adélaïde Sophie Alapini-Gansou**

Dated this 27 March 2018

At The Hague, Netherlands