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Mali: The hearing of Abou Tourab before the ICC is a victory, but charges must be expanded

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Description:

FIDH, AMDH and 17 other human rights organisations in Mali applaud the swift transfer of Ahmad Al Mahdi Al Faqi to the International Criminal Court (ICC) in The Hague from Niger on 26 September 2015.

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Bamako, Paris, The Hague, 30 September 2015 - FIDH, AMDH and 16 other human rights organisations in Mali applaud the swift transfer of Ahmad Al Mahdi Al Faqi to the International Criminal Court (ICC) in The Hague from Niger on 26 September 2015. His status conference hearing took place this morning. Ahmad Al Mahdi Al Faqi, alias Abou Tourab, Chief of the Islamic Police in Timbuktu during the occupation by AQMI and Ançar Dine, faces charges of war crimes at the ICC for the destruction of cultural sites in Timbuktu in 2012. Our organisations, after having conducted field missions in Northern Mali, filed a criminal complaint before the national justice system last March against him and 14 other suspects of serious international crimes committed in Timbuktu. Based on information in our filing, we insist that the ICC's Office of the Prosecutor (OTP) further consider credible allegations of Mr. Faqi's criminal responsibility for additional international crimes committed against civilians, including rape, sexual slavery and forced marriage.

"Destruction of historic and religious sites is a serious affront to humanity, as it impacts our common heritage. However, a focus solely on cultural damage should not overshadow horrific violence against individuals, especially when both types of crimes were perpetrated simultaneously by the same people," underscored our organisations. ***"For the victims of these crimes, Abou Tourab and other responsible members of Aqmir and Ançar Dine must be prosecuted for the horrendous violence they have inflicted on populations in Timbuktu and Northern Mali. In the absence of substantive progress before the Malian justice system, investigation and prosecution of these crimes lies with the ICC".***

In the past, the ICC has been criticised for too-narrow charging, leaving many victims, particularly victims of sexual and gender-based crimes, without access to justice or reparation. However, with the Office of the Prosecutor's new Policy on Sexual and Gender-based Crimes, more inclusive and representative charges have been brought in recent cases. A return to a more limited approach to charging only one crime against Al Faqi, who is allegedly responsible for a much wider spectrum of atrocities, would be a step in the wrong direction and would contribute to excluding many victims from participating in the legal process.

On 6 March, and following investigative missions in Timbuktu to interview numerous victims of jihadist armed groups, our organisations filed a complaint on behalf of 33 victims of crimes committed in Timbuktu before the High Court of the Commune 3 of Bamako. The complaint accuses Al Faqi and 14 others of war crimes and crimes against humanity, including sexual and gender-based crimes. The victims denounced abuses committed by the Islamic Police, and in particular the "Brigade des Moeurs", which was led by Abu Tourab in the early days of the occupation of Timbuktu. Crimes denounced include torture, arbitrary detentions, rape, forced marriage, sexual slavery and other sexual violence.

Our organisations regret that the national investigation has not yet made any substantive progress, and recall that it is imperative for national authorities to respect Article 46 of the Peace and Reconciliation Agreement in Mali, which was negotiated through the Alger Initiatives and signed by all parties on 15 May and 20 June 2015. This agreement excludes all impunity for those responsible for international crimes.

Background:

In January 2012, Mali faced a Tuareg armed rebellion in the north of the country. The National Liberation Movement of Azawad (MNL) quickly launched an offensive, which was opportunely joined by Islamist groups present in the

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Sahel band (Ansar Dine, Al Qaeda in the Islamic Maghreb (AQIM), the Movement for Oneness Jihad in West Africa (MUJAO), and Boko Haram). Hostilities were conducted in flagrant violation of international humanitarian law. The main northern cities fell into the hands of armed groups from early April 2012 until January 2013 at which point French Malian troops intervened.

Mali ratified the ICC Statute on 16 August 2000. It referred the situation to the ICC Prosecutor on 13 July 2012. On 16 January 2013, the OTP formally opened an investigation into possible crimes within its jurisdiction committed in Mali. On 13 February 2013, the Malian government and the ICC signed a cooperation agreement in accordance with Section IX of the Rome Statute. The Pre-Trial Chamber issued the first arrest warrant under seal in the Mali situation against Mr. Faqi on 18 September 2015. One week later, Mr. Faqi, who was in custody of Niger authorities, was transferred to the ICC.

The ICC has thus far charged Mr. Faqi with the war crime of intentionally directing attacks against religious and historical buildings in Timbuktu, as a member of the armed extremist group Ansar Eddine, affiliated with Al Qaeda. He is suspected of destroying 10 historic buildings, including multiple mausoleums and a mosque. The entire city of Timbuktu is considered a World Heritage Site by UNESCO.

According to our investigations conducted in January and February 2015, Ahmad Al Mahdi Al Faqi alias Abu Tourab, a native of the region of Timbuktu, was a member of Ansar Dine, a Malian armed jihadist group linked to al Qaeda in the Islamic Maghreb (AQIM). As head of the Islamic Police, he was one of the four commanders of Ansar Dine responsible for the brutal imposition of power of jihadist armed groups in Timbuktu. At the head of the Islamic Police, he also endorsed the actions of the "Centre for the implementation of the suitable and prohibition of the blameworthy" (Centre d'application du convenable et de l'interdiction du blâmable) of the "Manners' Brigade" of the Islamic Police. Elements of this group have persecuted women, imprisoning them, and subjecting them to forced marriages. Abu Tourab also sanctioned rape and sexual slavery, directly and by his subordinates. Evidence we have collected also shows him in the process of leading and participating in the destruction of the mausoleums of saints and other Islamic cultural property of great value. After leading the Islamic Police in Timbuktu, he likely left to fight against the French and Malian armed forces in Konna in January 2013 before retreating to northern Mali and crossing into Niger where he was arrested by French forces and handed over to Nigerian authorities.

Co-signatories

FIDH

AMDH - Association Malienne des Droits de l'Homme

AI-Amnesty International-Mali

WILDAF- Femmes Droits et Développement en Afrique

Association DEME SO

AJM-Association des Juristes Maliennes

CCC-Collectif Cri de Coeur

2R6AVEN-Réseau Régional des Associations des Victimes des Evènements du Nord (Tombouctou)

SUURI-Association des victimes (GAO)

APDF-Association pour le Progrès et la Défense des Droits des Femmes

TRIJEUD-Tribune Jeunes pour le Droit au Mali

CNDH-Commission Nationale des Droits de l'Homme

MIDA-Association Malienne pour le Droit International

COMADE-Coalition Malienne des Droits de l'Enfant

COMADDH-Coalition Malienne des Défenseurs des Droits Humains

Coalition Malienne pour la Cour Pénale Internationale

LJDH-Ligue pour la Justice, le développement et les Droits de l'Homme

Social Alert

CAPDH-Cadre d'Assistance et de Promotion de Droits Humains