



Forced Marriage Case Notes

Al Hassan Case

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

ICC-01/12-01/18

April 2021

Key dates of the case



What happened?

In 2012, several insurgent groups rose against the Malian government, fighting for independence or greater autonomy for northern [Mali](#). During the armed conflict, the city of Timbuktu was seized and fell under the control of [Ansar Eddine](#) and [Al Qaeda in the Islamic Maghreb](#) (AQIM). The group imposed a strict version of Sharia law through which they exercised control, especially over women's public and private lives. The new rules included a strict dress code; stringent regulations for relations between men and women; and a ban on music, tobacco, alcohol, and religious celebrations. They were violently enforced through harsh punishments such as beatings, floggings, amputations, and detention in inhumane conditions. Members of Ansar Eddine and AQIM have been implicated in attacks against religious and historic monuments, attacks against and religious and gender-based persecution of civilians, extrajudicial punishment, torture, forced marriages, rape and sexual slavery.

Al Hassan Ag Abdoul Aziz was a member of Ansar Eddine and de facto chief of the Islamic police which was one of the institutions through which Ansar Dine and AQIM sought to impose their religious vision and ideology. Additionally, Al Hassan was involved in the work of the Islamic court in Timbuktu and executed its decisions.

The International Criminal Court [charged Al Hassen](#), amongst others, with rape, sexual slavery, other inhumane acts including forced marriages and persecution, and outrage upon personal dignity.

The International Criminal Court

[The International Criminal Court](#) (ICC) was established in 1998 and began operations in 2002. It is headquartered in The Hague in the Netherlands with a Liaison Office to the United Nations in New York and seven Country Offices in Kinshasa and Bunia (DRC), Kampala (Uganda), Bangui (Central African Republic), Abidjan (Côte d'Ivoire), Tbilisi (Georgia), and Bamako (Mali). The ICC is the first independent, permanent international criminal court to investigate and try individuals for the most serious crimes of international concern: genocide, war crimes, crimes against humanity and the crime of aggression. The ICC can investigate and prosecute crimes committed within member states, crimes committed by nationals of member states, and crimes in situations referred to the Court by the United Nations Security Council. It is intended to complement national judicial systems. Therefore, it can exercise its jurisdiction only when national courts are unable or unwilling to prosecute alleged criminals. The Rome Statute serves as the Court's foundational document. It is a multilateral treaty and States which become party to it become members of the ICC. As of September 2020, there are 123 ICC Member States. The Office of the Prosecutor opened official investigations in 13 countries and indicted 45 individuals, including Al Hassan in Mali. Mali ratified the Rome Statute and referred the situation in its territory to the ICC.



What does the case say about forced marriage and modern slavery?

In the coercive context of the occupation of Timbuktu, women were forced into marriage in two ways. Following up on complaints made by husbands, Ansar Eddine and AQIM forced women who had left their husbands to return. Women were also forced into marriage by and with members of Ansar Eddine and AQIM, men who were feared because they were known to wield power in the city, to be armed and to use violence. Some men engaged local mediators to convince families to marry their daughters. Most, however, propositioned women at their home or in streets with offers of money provided by superiors. They used intimidation, coercion, or violence if the victim or her parents refused, making genuine consent impossible.

Forced temporary marriages were concluded without a marriage ceremony and it was not always clear to whom, out of a group of men, women were married. Once married, forced wives were under the power and authority of their forced husband, deprived of their liberty and unable to freely express their choice. They were veiled, taken from their homes, and confined or detained. They were threatened with death and subjected to acts of physical and sexualised violence perpetrated by their forced husband and other members of Ansar Eddine and AQIM, sometimes at gunpoint, before they were swiftly and unilaterally divorced again. Some women also had to perform domestic tasks such as cooking and doing laundry. They could not refuse nor escape.

As a result of forced marriage, ex-forced wives suffered physical and psychological harm. Some feared their forced husband might come back to look for them, alleging that they were still married. They felt ashamed, embarrassed, and scared to leave their homes, especially if they had children born of forced marriage. Ex-forced wives experienced a significant degree of stigmatisation, were ostracised in society, and accused of marrying members of Ansar Eddine and AQIM for financial gain. The prejudice against them meant that they were unlikely to be able to marry again.

Ansar Eddine and AQIM saw women as sexual objects. Forced marriage was used as a means to gain and exercise control over the local population and their land. It was a way to prevent adultery and legitimise sexual intercourse between members of the armed groups and local women and girls to create a new society. Rape through forced marriage was also racially motivated and used as a form of punishment for non-compliance with the new rules. Members of Ansar Eddine and AQIM might also have engaged in forced marriage as a way to obtain housing.

The Prosecutor, referring to the case against Dominic Ongwen before the ICC, understood the crimes of rape, sexual slavery and forced marriage to be distinct crimes with at least one material element not contained in the other.

She also argued that the stigmatisation forced wives experienced was a harm distinctive from and in addition to that arising from the sexual violence. [The Defence](#), in contrast, argued that rape and sexual slavery should not be confirmed as charges as they are subsumed under the crime of forced marriage.

[The Pre-Trial Chamber](#) agreed with the Prosecutor when it determined that the crime of forced marriage encompasses a unique conduct, protects different interests, causes distinct harm, and seeks to achieve particular objectives that are different from rape and sexual slavery.

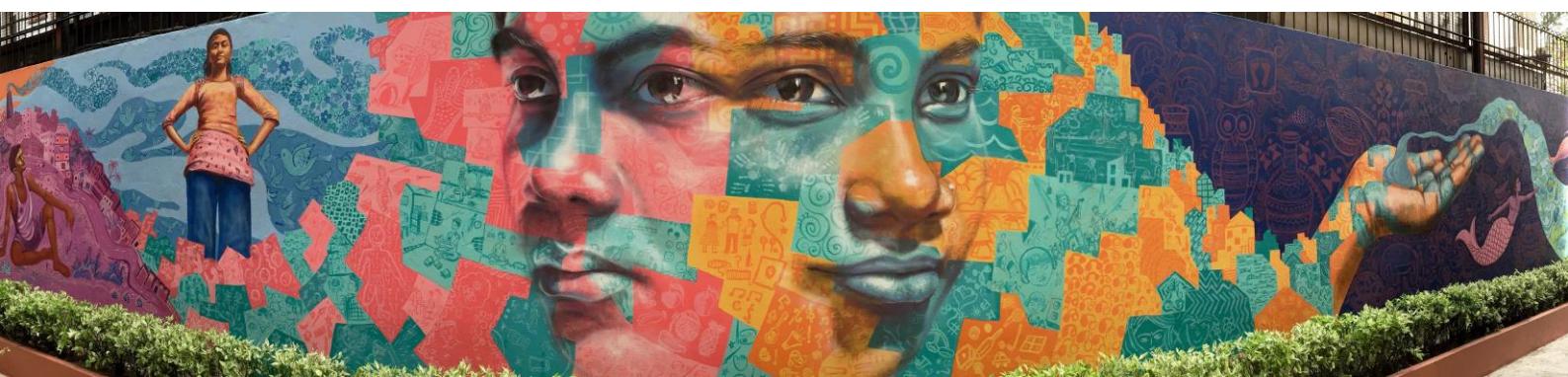
Regarding the conduct, the Chamber considered that a forced marriage did not have to be lawful. Rather, the subjective views of the victim, third parties and the perpetrator as to whether they were married were key. Referring to the jurisprudence of the [Special Court for Sierra Leone](#) (SCSL), the Pre-Trial Chamber was of the opinion that forced marriage can be characterised by exclusivity, forced domestic labour and the lack of traditional marriage ceremonies but stressed that these are only three factors among others to indicate a situation of forced marriage. Other factors that the Chamber considered were whether a proposal was made and a dowry paid.

Drawing on the Ongwen case, the Pre-Trial Chamber specified that the crime of forced marriage protects the right to consensually marry, to choose a spouse and to found a family. Regarding the harm caused by forced marriage, the Pre-Trial Chamber emphasised the very particular long-term social stigma ex-forced wives suffer which goes beyond the harm caused by sexual violence alone and can lead to ostracization, hindering reintegration and recovery.

Drawing on the jurisprudence of the SCSL, the Chamber also highlighted the psychological traumatisation resulting from being forcibly reduced to the status of wife, a label that was deliberately and strategically used to psychologically manipulate forced wives. Additionally, forced wives suffer a lack of choice of spouse and timing of childbearing.

Taking into account its sexual aspects as well as its social and domestic dimension, the Chamber defined forced marriage as “the imposition of a marriage” (para 553) that “consists of forcing a person, regardless of his or her will, to enter into a conjugal union with another person through the use of physical or psychological force, the threat of force or coercive environment.” (para 559)

Importantly, the Pre-Trial Chamber stressed that forced marriage does not require proof of the victim’s lack of consent. Additionally, the Prosecutor emphasised the continuous nature of the crime of forced marriage which means that, when the requisite elements of the crime are fulfilled, the conduct is unlawful and remains unlawful as long as the elements continue to be met.



Significance and points to note

The case against Al Hassan highlights the broad range of acts of violence, sexual and non-sexual, that women experience in times of armed conflict. Charging all of them and bringing cumulative charges has the potential to create an important legal precedent.

Regarding forced marriage, the Al Hassan case deals with yet two more variations, situations where women are forced to return to husbands they had separated from and forced temporary marriages. In the face of this diversity, courts have to adopt a broad understanding of the crime of forced marriage.

In the case against Al Hassan the ICC moved away from the previous focus on exclusivity of the relationship, forced domestic labour and the absence of a marriage ceremony and stressed that these are only three among many indicators of forced marriage.

The Al Hassan case is also the first case that engages further with the link between rape and forced marriage, interpreting forced marriage as a means to commit other sexual and gender-based crimes.

The Court understood the policy of forced marriage to lead to rape and sexual slavery. Here it departed from previous interpretations of forced marriage as being subsumed within sexual slavery.



Other institutions and decisions which informed the Decision on the Confirmation of Charges

Rape

- Prosecutor v Jean-Paul Akayesu (Trial Judgment) ICTR-96-4-T (02 September 1998): para 537
- Prosecutor v Jean-Pierre Bemba Gombo (Confirmation of Charges) ICC-01/05-01/08 (15 June 2009): para 537, 542
- Prosecutor v Jean-Pierre Bemba Gombo (Trial Judgment) ICC-01/05-01/08 (21 March 2016): para 536, 537, 538, 539, 542
- Prosecutor v Alex Tamba Brima, Brima Bazzi Kamara and Santigie Borbor Kanu (Trial Judgment) SCSL-04-16-T “AFRC Case” (20 June 2007): para 537
- Prosecutor v Kaing Guek Eav (Trial Judgment) 001/18-07-2007/ECCC/TC “Case 001” (26 July 2010): para 539
- Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui (Confirmation of Charges) ICC-01/04-01/07 (30 September 2008): para 537, 542
- Prosecutor v Germain Katanga (Trial Judgment) ICC-01/04-01/07 (07 March 2014): para 535, 536, 537, 538, 539, 542
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Trial Judgment) ICTY IT-96-23-T and IT-96-23/1-T “Foča case” (22 February 2001): para 537
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Appeals Chamber Judgment) ICTY IT-96-23 and IT-96-23/1-A “Foča case” (12 June 2002): para 537, 539
- Prosecutor v Bosco Ntaganda (Trial Judgment) ICC-01/04-02/06 (08 July 2019): para 536, 537, 538, 539
- Prosecutor v Emmanuel Rukundo (Trial Judgment) ICTR-2001-70-T (27 February 2009): para 537
- Prosecutor v Charles Taylor (Trial Judgment) SCSL-03-01-T (18 May 2012): para 539

Sexual Slavery

- Commission on Human Rights ‘Final Report of the Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflict’ (22 June 1998) UN Doc E/CN.4/Sub.2/1998/13: para 545, 546, 547
- Convention to Suppress the Slave Trade and Slavery (25 September 1926) 60 LNTS 253, Registered No. 1414 (Slavery Convention): para 545
- Prosecutor v Alex Tamba Brima, Brima Bazzi Kamara and Santigie Borbor Kanu (Trial Judgment) SCSL-04-16-T “AFRC Case” (20 June 2007): para 546, 547
- Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui (Confirmation of Charges) ICC-01/04-01/07 (30 September 2008): para 545, 546, 548
- Prosecutor v Germain Katanga (Second Decision on the Defence’s Challenge to the Jurisdiction of the Court in Respect of Counts 6 and 9) ICC-01/04-01/07 (04 January 2017): para 545
- Prosecutor v Germain Katanga (Trial Judgment) ICC-01/04-01/07 (07 March 2014): para 546, 547, 548, 551
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Trial Judgment) ICTY IT-96-23-T and IT-96-23/1-T “Foča case” (22 February 2001): para 546, 547
- Prosecutor v Bosco Ntaganda (Confirmation of Charges) ICC-01/04-02/06 (09 June 2014): para 546
- Prosecutor v Bosco Ntaganda (Trial Judgment) ICC-01/04-02/06 (08 July 2019): para 546, 547
- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement) SCSL-04-15-PT “RUF Case” (02 March 2009): para 546, 547
- Prosecutor v Charles Taylor (Trial Judgment) SCSL-03-01-T (18 May 2012): para 546, 547
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (08 June 1977) 1125 UNTS 609 (Additional Protocol II): para 545

Forced Marriage

- American Convention on Human Rights (22 November 1969) (Pact of San Jose): para 554
- Arab Charter on Human Rights (15 September 1994): para 554
- Cairo Declaration on Human Rights in Islam (5 August 1990): para 554
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (07 November 1962) 521 UNTS 231: para 554
- Convention on the Elimination of Discrimination against Women (18 December 1979) 1279 UNTS 13 (CEDAW): para 554
- European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14 (04 November 1950) ETS 5 (ECHR): para 554
- Human Rights Committee ‘CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men

and Women)' (29 March 2000) CCPR/C/21/Rev.1/Add.10: para 554

- International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171 (ICCPR): para 554
- International Covenant on Economic, Social and Cultural Rights (16 December 1966) 993 UNTS 3 (ICESCR): para 554
- O'Brien M, “‘Don’t Kill Them, Let’s Choose Them as Wives’: The Development of the Crimes of Forced Marriage, Sexual Slavery and Enforced Prostitution in International Criminal Law” (2016) 20(3) *The International Journal of Human Rights* 356: para 556
- Prosecutor v Alex Tamba Brima, Brima Bazzi Kamara and Santigie Borbor Kanu (Trial Judgment) SCSL-04-16-T “AFRC Case” (20 June 2007): para 560
- Prosecutor v Alex Tamba Brima, Brima Bazzi Kamara and Santigie Borbor Kanu (Appeals Chamber Judgment) SCSL SLS-2004-16-A “AFRC case” (22 February 2008): para 553, 555, 558, 559, 562
- Prosecutor v Nuon Chea and Khieu Samphan, 002/19-09-2007/ECCC/TC “Case 002/02”: para 561
- Prosecutor v Dominic Ongwen (Confirmation of Charges) ICC-02/04-01/15 (23 March 2016): para 553, 554, 555, 557, 558, 559, 560, 561
- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement) SCSL-04-15-PT “RUF Case” (02 March 2009): para 553, 555, 558, 559, 560
- Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (11 July 2003) (Maputo Protocol): para 554
- United Nations General Assembly ‘Declaration on the Elimination of Violence against Women’ (20 December 1993) UN Doc A/RES/48/104 (DEVAW): para 554
- Universal Declaration of Human Rights (10 December 1948) UN Doc A/RES/217 A (III) (UDHR): para 554



Additional reading and resources

Burke J, ‘ICC Prosecutes Islamist Militant on Groundbreaking Gender-Based Charges’ (02 April 2018) *The Guardian* (available [here](#)).

Burke J, ‘Islamist Fighter’s Case Begins in First ICC Trial for Gender Persecution’ (14 July 2020) *The Guardian* (available [here](#)).

Coalition for the International Criminal Court, ‘ICC Pre Trial Chamber I Confirms Charges Against Al Hassan’ (2019) (available [here](#)).

Epure G, ‘Writing the Jurisprudence on Gender-based Persecution: Al Hassan on Trial at the ICC’ (16 July 2020) *International Justice Monitor* (available [here](#)).

International Criminal Court, ‘Mali’ (available [here](#)).

International Criminal Court, ‘Al Hassan Case’ (available [here](#)).