

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**
Date: **16 January 2025**

THE APPEALS CHAMBER

Before:

Judge Tomoko Akane, President of the Appeals Chamber
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin.

SITUATION IN THE REPUBLIC OF MALI

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

Public

REQUEST TO COMPOSE AN ARTICLE 110(3) PANEL

Source: Defence for Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud

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

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**Unrepresented Applicants
(Participation/Reparation)**

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Reparations Section**

Other

1. The Defence for Mr Al Hassan hereby requests the Appeals Chamber to take the necessary steps to compose a panel of three judges to review Mr Al Hassan's sentence to determine whether it should be reduced.

2. On 20 November 2024, Mr Al Hassan was sentenced to 10 years' prison and time served for his detention at the ICC detention unit from 28 March 2018.¹ As of 17 January 2025, he has served 6 years, 9 months and 19 days. He has thus served 2505 days of a total of 3653 days.² This is 69% of his total sentence.

3. Article 110(3) of the Statute provides that "when the person has served two-thirds of their sentence (...) the Court **shall** review the sentence to determine whether it should be reduced". Rule 224 states in turn that a hearing will be convened by a panel of three judges from the Appeals Chamber, appointed by the Appeals Chamber.

4. In all prior cases, the Appeals Chamber *proprio motu* appointed a panel of three judges for the purpose of conducting the review concerning sentence.³ These panels were composed and issued orders seeking relevant observations from the parties and participants in advance of the date of the two-thirds eligibility threshold.⁴ These decisions were taken by the Appeals Chamber, sitting in its formal composition, rather than the specific appellate bench assigned to hear appeals arising from the Trial Judgment or Decision on Sentence.⁵ For this reason, the current request has been

¹ [ICC-01/12-01/18-2662](#), p. 68.

² 2020 and 2024 were leap years, with 366 days. There will be one more leap year before the 10 year sentence will conclude on 27 March 2028.

³ *Lubanga*: [ICC-01/04-01/06-3137](#); *Katanga*: [ICC-01/04-01/07-3572](#).

⁴ In *Katanga*, the two-thirds expired on 18 September 2015. The panel was composed on 3rd August 2015 and the parties were initially ordered to file observations by 11 September 2015: [ICC-01/04-01/07-3574](#), para 4. In *Lubanga*, the two-thirds expired on 16 July 2015. The panel was composed on 15 June 2015 and the parties were ordered to file observations on 10 July 2015: [ICC-01/04-01/06-3137](#), para. 4. In *Al Mahdi*, the two-thirds expired on 18 September 2021. The panel was composed on 28 June 2021 ([ICC-01/12-01/15-388](#)) and sought observations by 6 September 2021 ([ICC-01/12-01/15-388](#)).

⁵ *Katanga*: [ICC-01/04-01/07-3572](#), referring on the cover page to Judge Silvia Fernández de Gurmendi, Judge Sanji Mmasenono Monageng, Judge Christine Van den Wyngaert, Judge Howard Morrison, Judge Piotr Hofmanski, whereas the appeal was filed before Judge Sanji Mmasenono Monageng, Judge Sang-Hyun Song Judge Cuno Tarfusser Judge Erkki Kourula, Judge Joyce Aluoch. *Lubanga*: [ICC-01/04-01/06-3137](#), referring to Silvia Fernández

filed before the standard composition of the Appeals Chamber rather than the bench assigned to the Al Hassan appeal.

5. There is no procedural impediment as concerns the commencement of the review process. In line with the right to equal treatment, enshrined by Article 67(1) of the Statute, the fact that Mr Al Hassan is currently serving his sentence at the ICC detention unit, rather than an enforcement state, should not affect either his eligibility for sentence review or the potential calendar of such.⁶ Under the Rome Statute framework, the existence of a pending appeal also does not preclude the initiation of the review process and potential release. Neither Article 110 nor Rule 223 require finalisation of the judgment and sentence as a precondition to the review process. Indeed, the word ‘shall’ in Article 110 clarifies that the Appeals Chamber has no discretion to defer such review to a later date or to make the review process conditional on finalisation of the judgment or sentence. Article 83(1)(b) of the Rome Statute also provides that “[w]hen a convicted person's time in custody exceeds the sentence of imprisonment imposed, that person shall be released, except that if the Prosecutor is also appealing, the release may be subject to the conditions under subparagraph (c) below.”⁷ Article 81(4) further clarifies that the sentence is not suspended for the purpose of calculating whether release is warranted, pursuant to Article 81(3). When read in conjunction with Article 110, these provisions require the Court to review a person’s sentence when the two-thirds point is reached. If the sentence is reduced to such an extent that it has been fully served and an appeal is pending, the Court is then required pursuant to Article 81(3)(b) to release the person unconditionally, or exceptionally, with conditions.⁸

6. If the Appeals Chamber has already composed a panel for the Article 110 hearing, the Defence withdraws this request as moot.

de Gurmendi, Judge Howard Morrison Judge Piotr Hofmański, whereas the appeal was heard by Judge Erkki Kourula, Judge Sang-Hyun Song Judge Sanji Mmasenono Monageng Judge Anita Ušacka Judge Ekaterina Trendafilova

⁶ See also ICTY, *Gvero* [Decision of President on Early Release of Milan Gvero](#), 28 June 2010, para. 7; ECHR, *Clift v. the United Kingdom*, [7205/07](#) paras 73-79

⁷ In *Bemba et al.*, the Trial Chamber since the sentences had already been served at the time the sentence was issued, any issue of provisional release during appeal was ‘moot’: [ICC-01/05-01/13-2123-Corr](#), p.98.

⁸ [ICC-02/11-01/15-1251-Red](#), paras 1-2.



Melinda Taylor
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Dated this 16th day of January 2025

At The Hague, The Netherlands