

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: *English*

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

Date: 3 April 2025

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW
CONCERNING THE REDUCTION OF SENTENCE**

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
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

with Confidential *EX PARTE* Annex I available only to the Registry

**Registrar's observations on the criteria set out in rule 223 (a) to (c) of the Rules of
Procedure and Evidence**

Source: Registry

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☒ Detention Section

☒ Victims Participation and
Reparations Section

☒ Other

The Presidency

External Operations Support Section

Judicial Cooperation Support Section

I. Introduction

1. In its “Order setting the timetable regarding the review concerning reduction of sentence of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”¹ (“Order” and “Mr Al Hassan”, respectively) the three judges of the Appeals Chamber appointed for the review concerning the reduction of the sentence of Mr Al Hassan requested the Registrar to file written observations on the criteria set out in rule 223(a) to (e) of the Rules of Procedure and Evidence (“Rules”) by 3 April 2025 and to consult as necessary with any states considered to have potentially relevant information in relation to these criteria.²

II. Applicable Law

2. The following provisions are of particular relevance to the present observations: article 110 of the Rome Statute, and rules 223 and 224 of the Rules.

III. Classification

3. Annex I is classified as confidential, *ex parte* available only to the Registry as it contains sensitive information on the Registry’s internal operations, including assessments of matters related to cooperation and operations, privileged information obtained from confidential sources shared with the Registry for internal planning and informational purposes and not for use in judicial proceedings, as well as private information in relation to Mr Al Hassan.

IV. Submissions

4. The following observations follow the sequence of criteria listed in rule 223(a) through (e) of the Rules, and relate to each one in turn.

Rule 223(a) of the Rules: Whether the conduct of Mr Al Hassan while in detention shows a genuine dissociation from his crime

¹ Three Judges of the Appeals Chamber appointed for the review concerning reduction of sentence, “Order setting the timetable regarding the review concerning reduction of sentence of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 20 March 2025, ICC-01/12-01/18-2698.

² *Ibid.*, para.1.

5. The Registry does not have observations on this point. The ICC Detention Centre is not set up as a rehabilitation centre and is therefore not qualified to adequately provide a response. For further observations, please see the section on the individual circumstances of Mr Al Hassan while in detention.

Rule 223(b) of the Rules: Whether Mr Al Hassan shows good prospects of resocialization and successful resettlement

6. Conducting an individual risk assessment regarding Mr Al Hassan's potential return to the Republic of Mali ("Mali") (prospects of resocialization and successful resettlement) is challenging due to changes in his statements, shifts in his positions over the past two years and the political and security situations in the country (see Annex I). To enable a more comprehensive assessment, the following information would be necessary: 1) the timing of any potential return (particularly compared to the reparations process); 2) the location of the return; and 3) whether the sentenced individual has any intention of making a public apology or amends of any sort (such as a contribution to the reparations process).
7. Yet, based on the information in Annex I, there is no indication that Mr Al Hassan would face any threats if he were released but did not return to Mali. While *Jama'at Nasr al-Islam wal-Muslimin* ("JNIM") has a well-established reach across the Sahel, there are prospects that he could resocialize and successfully resettle elsewhere in the region. Further assessments would be required regarding any specific location and subject to the timing of his release.
8. Additionally, since his conviction became final in December 2024, Mr Al Hassan has not been introduced to a rehabilitation programme due to his continued detention at the ICC Detention Centre. The ICC Detention Centre is not mandated by the Court's legal texts to undertake those responsibilities, does

not have the specialist staff with the requisite skills, and is not designed for that purpose.

9. Through his time at the ICC Detention Centre Mr Al Hassan has been regularly attending the visits of the spiritual advisor, and enthusiastically participates in the education program and the creativity classes.
10. Mr Al Hassan has also been participating in the ICC Detention Centre's work program, performing the assigned tasks meticulously and at his own initiative without needing to be reminded. In addition, on his own initiative and out of respect, Mr Al Hassan has been voluntarily cleaning the cell of another detained person for several years.
11. Mr Al Hassan's interaction with other detained persons, staff, and custody officers in detention does not suggest any impediment to his resocialization.

Rule 223(c) of the Rules: Whether an early release of Mr Al Hassan would give rise to significant social instability (preliminary conclusion)

12. To date, the ICC cases before the Court in the Mali situation have not attracted significant attention to the extent that gatherings or social unrest have been triggered in Bamako, Timbuktu or elsewhere in Mali. Throughout the trial phase for the present case – including the March 2018 transfer, the June 2024 verdict which included a conviction on some charges and an acquittal on charges related to sexual violence and the November 2024 sentencing – there have been no observable or reported incidents to the Registry. There is no indication that the early release of Mr Al Hassan “would give rise to significant social instability” in Mali or elsewhere.

13. It should be noted that following Mr Al Hassan's acquittal on charges related to sexual violence as well as the Prosecution's decision not to appeal the acquittal, victim communities and activists have indicated in various forums, including the media, that they are upset, angry, frustrated and disappointed.³ There is, however, no indication that such sentiment would give rise to significant social instability in Mali or elsewhere. As outlined in Annex I, the prevailing political and security conditions across the country are not conducive to public gatherings, protests, demonstrations, or rallies, due to the potential risks to participants. Accordingly, the likelihood of significant social instability resulting from any potential early release of Mr Al Hassan is assessed as low.

Rule 223(d) of the Rules: Whether Mr Al Hassan has taken any significant action for the benefit of the victims, and whether his early release could have any impact on the victims and their families

14. The Registry has been in contact with the Defence regarding ongoing reparation proceedings in the Case. The Defence has indicated to the Registry its "willingness to provide any information in its possession that could help in the exercise of identifying any of the direct victims on the Chamber's list."⁴ The Registry is currently waiting for the Chamber's appreciation of the matter before engaging further.⁵

15. In addition, the Registry has collected some observations from interlocutors in the field on the potential impact of an early release of Mr Al Hassan on victims

³ Women in Law and Development in Africa (WiLDAF), "Déclaration des Représentants légaux des victimes dans l'affaire Al Hassan", 17 December 2023 at <https://wilda-mali.org/declaration-des-representants-legaux-des-victimes-dans-laffaire-al-hassan/> (accessed on 28 March 2025).

⁴ Office of the Prosecutor, Legal Representatives of the Victims and Registry, "Joint Report pursuant to Trial Chamber X's "Order for Submissions on Reparations" (ICC-01/12-01/18-2666) and request for extension of time", 13 March 2025, ICC-01/12-01/18-2692-Conf-Exp, para. 21.

⁵ *Id.*, para. 25.

and their families. Recent field activities have been conducted with some NGOs and victims in Bamako and in Timbuktu during which the question of potential early release has been discussed.⁶

16. The main trends are the following: It was reported by a number of interlocutors that it will be perceived as an additional suffering for the victims consulted.⁷ For the victims consulted, Mr Al Hassan should remain in prison and serve the full sentence, which they consider to be minimal for the crimes committed by Mr Al Hassan. They (the victims) consider an early release offending to their rights.

17. The victims and NGOs consulted believe that the early release of Mr Al Hassan would have an impact on the security situation, especially if he were to return to Timbuktu. For the victims, the security situation is already worrying in the city and region of Timbuktu. According to them, there are still sleeper cells in Timbuktu to which Mr Al Hassan is linked. These cells could benefit from his support, thereby jeopardising the safety of the victims and their families.

18. Human rights organisations consulted share the same concerns as the victims: frustration due to the outcome of the Judgment which did not meet their expectations regarding the plight of victims, a risk of worsening of the security situation for the victims, which would also have a negative impact on their psychological situation, thus increasing their vulnerability.

19. The organisations consulted also believe that the pardon expressed by Mr Al Hassan's family should not conceal his involvement and responsibility in the

⁶ Consultations were not made extensively but rather in a spot check fashion due to the available time window.

⁷ E.g. « la Cour non seulement innocente M. Al Hassan de certains crimes dont les violences sexuelles ensuite elle voudrait lui accorder une liberté anticipée afin qu'il vienne nous narguer! Cela sera une souffrance terrible pour nous les victimes".

commission of certain serious crimes. In their view, he should serve his full sentence, and justice should address the harm caused to victims, including victims who are now stigmatised in their communities.

Rule 223(e) of the Rules: Mr Al Hassan's individual circumstances, including a worsening state of physical or mental health or advanced age

20. Mr Al Hassan has been generally cooperative with staff throughout his time in the ICC Detention Centre. Nevertheless, it regularly occurred that his comments and behavior caused friction between groups of detained persons or between detained persons and staff.

21. Mr Al Hassan does not have any disciplinary incidents on his record.

Invitation to the Republic of Mali to file written observations

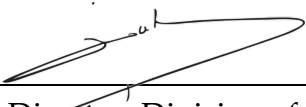
22. The Registry would like to take this opportunity to report that on 21 March 2025, it transmitted the invitation *via* a Note Verbale to the Malian authorities to file written observations pursuant to the Order⁸. The French version of the Order was also transmitted to the Malian authorities through the said Note Verbale. The authorities acknowledged receipt of the documents in writing only on 2 April 2025, after they familiarised themselves with these. The Registry is yet to receive any observations from the Malian authorities.

V. Conclusion

23. Information available to the Registry suggests that any early release and/or potential return to Mali could have an impact on ICC cooperation with the

⁸ Three Judges of the Appeals Chamber appointed for the review concerning reduction of sentence, "Order setting the timetable regarding the review concerning reduction of sentence of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", 20 March 2025, ICC-01/12-01/18-2698, para. 2.

Malian authorities and/or ICC cooperation with victim communities. The Registry, therefore, underscores the importance of proactive awareness-raising and communication efforts to explain any decision the Chambers may reach regarding a potential sentence reduction and/or release to these key stakeholders. The Registry remains available to provide an impact assessment in this regard, if required.



Marc Dubuisson, Director, Division of Judicial Services
on behalf of
Osvaldo Zavala Giler, Registrar

Dated this 3 April 2025

At The Hague, The Netherlands