

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 8 May 2025

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE REVIEW
CONCERNING 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 Annexes A,B, C.4-C.8 to W and Public Annexes C.1-C.3

Public Redacted Version of “Defence Observations on Article 110 and Rule 223”

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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☒ Counsel for the Defence

Al Hassan Defence Team

☒ Legal Representatives of the Victims
V43

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☐ Unrepresented Victims

☐ Unrepresented Applicants
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I. INTRODUCTION

1. Pursuant to Article 110(3) and Rule 223,¹ the Defence requests the Review Panel to commute Mr Al Hassan's sentence and grant immediate early release. Mr Al Hassan has served more than 70% of his 10-year sentence and fully satisfies the release threshold, based on **(i)** [REDACTED], including renunciation of his appeal rights, rendering the Trial and Sentencing Judgment final; **(ii)** genuine disassociation from the crimes, including public distancing from the underlying conduct and any form of extremism, as well as the issuance of a public apology directly communicated to victims; **(iii)** positive prospects of successful resettlement and resocialisation, including employment upon release; **(iv)** the absence of significant social instability arising from release; **(v)** concrete steps taken to the benefit of victims; and **(vi)** Mr Al Hassan's individual circumstances, including the insecurity of his family and the rapidly [REDACTED], marking significant changes in Mr Al Hassan's family responsibilities.
2. No purpose is served by continuing Mr Al Hassan's detention. The goals of punishment are met; he experienced a particularly burdensome detention as a torture survivor, who endured further deprivations occasioned by COVID. He shows clear signs of rehabilitation and capacity to re-socialise, while his family would needlessly continue to suffer in the absence of their husband, father and son. Mr Al Hassan is also committed to a civilian life with his family in an area far outside the geographic scope of the case.
3. The Defence understands and acknowledges the disappointment felt by the victim community in relation to Mr Al Hassan's acquittals, but such concerns fall outside the scope of Article 110 and Rule 223. In the same way that it would be wrong to free a guilty person due to public opposition to their conviction, it would undermine the Court's legitimacy to reject Mr Al Hassan's early release due to disagreement or disappointment concerning the outcome of a final ICC judgment.
4. A hearing is unnecessary and impractical considering the confidential and sensitive submissions concerning Mr Al Hassan and his family and may cause further delay.

¹ This submission is classified as confidential as it refers to information currently subject to such classification. The Defence will file a public redacted version forthwith.

II. SUBMISSIONS

5. The possibility of early release is engraved in the Statute and is thus a core pillar of the Court's accountability framework.² By encouraging co-operation and rewarding good behaviour in detention, early release "facilitates reintegration into society",³ which in turn serves the community's ultimate interest. The right to seek early release "is a human right [...] [that] follows from Article 10(3) of the [ICCPR]",⁴ reflecting the principle that "no penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner".⁵ This applies equally to extremely serious crimes, including those warranting a life sentence, given the societal interest in incentivising reform and rehabilitation amongst such convicted persons.⁶
6. While the LRV claim that the nature of international crimes militates against early release, this is simply another formulation for invoking gravity, which is not a relevant early release criterion at the ICC.⁷ Article 110 and Rule 223 outline an independent and forward-looking set of criteria focused on the convicted person's conduct following conviction and sentence. Conversely, the Trial Chamber calculated Mr Al Hassan's sentence by reference to 'serious abstract gravity' considerations and the need to publicly deprecate the conduct for which he was convicted;⁸ gravity has thus been fully reflected in the original sentence, which was not appealed. Reintroducing the gravity of the crimes under the guise of victim perception risks duplicating considerations already adjudicated at sentencing; an impermissible form of double-counting.⁹

² The IACtHR distinguished between early release under Article 110, ICC Statute from pardons or commutation based on executive discretion: *Barrio Altos Supervisión De Cumplimiento De Sentencia Obligación*, paras 41-42.

³ ECCC, *Duch*, [001/18-07-2007-ECCC/SC](#), para.385.

⁴ UN OHCHR, [Keynote address by the High Commissioner for Human Rights](#). ECHR, *Ezeh & Connors v United Kingdom*, [39665/98 and 40086/98](#) (Dissenting Opinion Judges Zupančič & Maruste), para. 15 ("probation and parole [...] have [...] been predicated upon the positive and flexible -that is, non-rigid and non-formalistic - prospect of rewarding prisoners' good behaviour. The[ir] historic success [...] is explained by this positive and lasting influence the rewarding of good behaviour has on the personality of the convicted criminal").

⁵ HRC, [CCPR General Comment No. 21 on Article 10](#), para.10. See also ECHR: *Vinter et al v United Kingdom* (GC) [66069/09 130/10 3896/10](#) para. 81.

⁶ ECHR: *Vinter et al v United Kingdom* (GC), [66069/09 130/10 3896/10](#), paras 65, 110-118, citing Art. 110, ICC Statute

⁷ [ICC-01/04-01/06-3173](#), para. 24. See also A Oehmichen, [Article 110\(4\)](#) "the execution of sentences should be mainly oriented towards rehabilitation and reinsertion, while criteria of retaliation and atonement have already been taken into account when determining the length of the sentence.")

⁸ [ICC-01/12-01/18-2662](#), paras 57, 67, 80.

⁹ See [ICC-02/04-01/15-2023-Anx1](#), para. 63, re double-counting.

7. The criteria for early release are not cumulative; only one need be shown.¹⁰ Likewise, the presence of a factor militating against release does not preclude it.¹¹ The onus to prove changed circumstances does not lie with the Defence.¹² Legal certainty, a cardinal aspect of the rule of law and fairness,¹³ requires early release criteria to be clear, predictable, and applied consistently to allow individuals to align actions with anticipated judicial outcomes.¹⁴ Given the adversarial nature of parole and detention processes,¹⁵ the Panel should reject allegations based on anonymous/*ex parte* information.¹⁶

i. Mr Al Hassan has demonstrated early and continued willingness to cooperate (Art. 110 (4))

8. [REDACTED], from his early participation in substantive interviews, characterised by the Trial Chamber as informed and voluntary,¹⁷ to his recent renunciation of his right to appeal the judgment and sentence. Mr Al Hassan's [REDACTED] at the earliest point possible;¹⁸ his statements were "lengthy and comprehensive", covering "a wide range of topics of direct relevance to this case", including "inculpatory information";¹⁹ he "answered questions clearly and in detail, generally providing specific, factual information which was responsive to the question posed and descriptive in nature" and cooperated by providing information that was "credible and reliable".²⁰ These statements were instrumental to the

¹⁰ Art. 110(4) ("the Court may reduce the sentence if it finds that one or more of the following factors are present"). See also [ICC-01/04-01/06-3173](#), para. 22.

¹¹ [ICC-01/04-01/06-3173](#), para. 22.

¹² [ICC-01/04-01/07-3615](#), paras 21-22; [ICC-01/04-01/06-3173](#), para.3, fn.46. See also Council of Europe, *Recommendation Rec(2003)22*, para. 20.

¹³ [ICC-01/04-02/06-2908-OPI](#), paras 2-4; [ICC-01/13-73](#), para. 48; [ICC-01/13-115-Anx](#), paras 23-24; [ICC-01/04-01/07-2297](#), para. 59; ECHR, *Nejdet Şahin and Perihan Şahin v. Turkey*, [1327/05](#), para. 57.

¹⁴ [ICC-01/04-02/06-2908-OPI](#), para. 7.

¹⁵ [ICC-01/05-01/08-323](#), paras 1, 31-32; ECHR, *Murray v. The Netherlands*, [10511/10](#), para. 16 ("decisions to keep prisoners in or recall them to prison must be taken with all procedural guarantees of fairness, such as the guarantee of a reasoned decision. The implicit conclusion to be drawn from this strong statement of principle by the Court is that the parole mechanism should also include an oral hearing of the prisoners and adequate access to their files"); Coffey, *ECtHR jurisprudence governing the release processes for life and long-term sentence prisoners*, p. 604. For ICC Art 110 precedent, see *Katanga* ([ICC-01/04-01/07-3584](#), para. 13 - no *ex parte* information); *Al Mahdi & Lubanga*, private information withheld from the Prosecution but not Defence: [ICC-01/04-01/06-3144-Red](#), para. 1; [ICC-01/12-01/15-411-Red2](#), para.2.

¹⁶ [ICC-01/12-01/18-2702](#), paras. 3, 16 (referring to unnamed victims who "consider an early release offending to their rights."); para. 17 (referring to uncited "victims and NGOs"); para. 18 (referring to unidentified human rights organisations); para. 20 (unsourced assertions that were not recorded in his case file); The LRV only cites anonymous views apart from V-0001, who falls outside the scope of Mr Al Hassan's convictions: [ICC-01/12-01/18-2662](#), fn 201.

¹⁷ [ICC-01/12-01/18-2662](#), paras 121-123.

¹⁸ [ICC-01/12-01/18-2662](#), para. 122.

¹⁹ [ICC-01/12-01/18-2662](#), para. 122.

²⁰ [ICC-01/12-01/18-2662](#), para. 122.

Trial Chamber's ability to establish the facts and ensure effective justice for victims.²¹ The withdrawal of his appeal cemented these facts and further eliminated any procedural uncertainty as to the Prosecution's ability to use the extensive information provided during such statements.²² This reflects 'continuing cooperation'²³ to the efficient administration of justice in this case and future related proceedings.²⁴ Mr Al Hassan's renunciation of his rights to appeal also paves the way for the immediate implementation of reparations, which the *Katanga* Panel noted was of "particular importance in the context of the ICC."²⁵ Timely reparations are of tangible importance to victims, as delays impede the healing process and exacerbate suffering.²⁶

9. [REDACTED].²⁷

ii. *Mr Al Hassan's conduct shows a genuine dissociation from his crimes (Rule 223 (a))*

10. Mr Al Hassan's genuine and public disassociation from crimes is evidenced by **(i)** his public apology and request for forgiveness for his role and the suffering it caused;²⁸ **(ii)** his renunciation of his rights to appeal;²⁹ and **(iii)** clear and public opposition to all forms of extremism, deprivation of fundamental liberties, and conduct targeting women.

11. Mr Al Hassan's actions demonstrate a 'change in circumstance' since they took place post-sentence.³⁰ The Trial Chamber placed no weight on Mr Al Hassan's July 2024 apology,³¹ because it was a "general request for forgiveness" that had not been "communicated personally and directly to the public and the victims".³² In contrast, Mr Al Hassan's subsequent apology of 17 December 2024 asked "for forgiveness from all those [he]

²¹ [ICC-01/12-01/18-2662](#), para. 122.

²² Ground 1.1 of the Defence's Notice of Appeal challenged TCX's decision to admit Mr Al Hassan's statements as well as their subsequent use in procedural decisions and the Trial Judgment: [ICC-01/12-01/18-2648](#), paras 6-8.

²³ [ICC-01/04-01/07-3615](#), para. 34.

²⁴ 'Cooperation' within the meaning of article 110(4)(a) can be comprised of actions which "contribute to the efficient administration of justice at the Court": [ICC-01/04-01/07-3615](#), para. 34. In *Lazarević*, even though mitigation had been granted in sentence, Prosecution interviews were relevant to early release "due to the impact such cooperation has on the efficient administration of justice": *Lazarević*, [Decision on Early Release](#), para. 23.

²⁵ [ICC-01/04-01/07-3615](#), para. 34.

²⁶ [ICC-01/04-02/06-2908-OPI](#), para. 6. See University of Edinburgh report centred on *Katanga*, which concluded that: "[t]he overwhelming response from victims to the question of the timeliness of the reparations process was negative (...) many victims were unhappy about the time taken to receive reparations": [ICC-01/04-01/07-3934-AnxC](#), p. 34.

²⁷ [REDACTED].

²⁸ [ICC-01/04-01/07-3615](#), para. 47.

²⁹ Dissociation from crimes shown by withdrawal of appeal, coupled with apology: [ICC-01/04-01/07-3615](#), para. 50.

³⁰ [ICC-01/04-01/07-3615](#), para. 50.

³¹ [ICC-01/12-01/18-2662](#), paras 97-98.

³² [ICC-01/12-01/18-2662](#), para. 97.

harm and from all the victims of Timbuktu during the period from May 2012 to January 2013, whose suffering was set out in the Trial Judgment and Decision on Sentence.”³³ Mr Al Hassan further instructed his Defence to file both apologies publicly³⁴ and to disseminate them broadly amongst affected communities, in local languages, including through national and local notables and community associations in Mali.³⁵ Where possible, it was conveyed directly to direct victims.³⁶

12. The *hadith*³⁷ cited in Mr Al Hassan’s statement is considered the consummate way to seek forgiveness in Islam.³⁸ As explained by [REDACTED], this *hadith* signifies complete repentance and a request for forgiveness from both God and fellow Muslims.³⁹ It is the sincerest form of repentance in their faith, representing a commitment, sworn before God, to never repeat the wrongdoing.⁴⁰ Asking for forgiveness also entails more vulnerability as it implies the possibility of forgiveness or rejection, and thus gives the recipient the choice as to their reaction. Mr Al Hassan has also provided a longer version, addressing his understanding of the reasons for his convictions and remorse for his conduct,⁴¹ while underlining again, his full respect for the victims’ right to choose their preferred personal response.⁴² While the decision to accept or reject an apology is deeply personal, community leaders have opined that Mr Al Hassan’s public expression of remorse and deprecation of wrongful conduct (including forced marriage and rape) will assist reconciliation and restorative justice processes in Timbuktu.⁴³ After consulting colleagues and constituents in relation to Mr Al Hassan’s apology, these leaders reported positive feedback.⁴⁴ Mr Al Hassan’s apology also contributes to reconciliation and restorative justice,⁴⁵ and in turn,

³³ [ICC-01/12-01/18-2667-AnxA](#), p.1, para. 5.

³⁴ December 2024 apology: [ICC-01/12-01/18-2667-AnxA](#); April 2025 apology: [ICC-01/12-01/18-2710-AnxA](#) (Ar); [ICC-01/12-01/18-2710-AnxC](#) (Fr). The Defence also requested ICC outreach & PIDS to disseminate.

³⁵ It was transmitted, *inter alia*, to [REDACTED].

³⁶ [REDACTED].

³⁷ [ICC-01/12-01/18-2667-AnxA](#), p. 2, para. 4.

³⁸ [Sahih al-Bukhari 6306 - Book 80, Hadith 3](#).

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ AH 09/04/25: MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng).

⁴² AH 09/04/25: MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng) at 0074, para. 20.

⁴³ [REDACTED].

⁴⁴ [REDACTED].

⁴⁵ AU Panel of the Wise, [Peace, Justice and Reconciliation in Africa](#), p. 81: “restorative measures such as (...) **public apology** (...) are equally important ingredients of justice”.

the overarching Statutory goal of deterrence and prevention.⁴⁶

13. Mr Al Hassan's renunciation of his appeal rights also conveys a personal endorsement of the legitimacy of ICC judgments,⁴⁷ operating as a direct rebuttal to public statements from regional extremist groups calling for the population to reject the United Nations and resist any form of law and order not based on *Shari'a*.⁴⁸
14. The LRV's criticism that the apology's content does not satisfy the wishes of the victims is objectively unreasonable. Immediately after the Trial Judgment's issuance, Mr Al Hassan sought the LRV's input as to how best he could repair the harm his actions caused to victims. The Defence received no feedback:⁴⁹ the LRV submissions are still silent on whether the victims believe that there is anything else that Mr Al Hassan *could and should have said*. Similarly framed criticisms have been rejected under Rule 223(a),⁵⁰ while at the *ad hoc* Tribunals, weight was placed on the *act* of apologizing /expressing remorse.⁵¹ This aligns with the fact that rehabilitation and dissociation are characteristics that are personal to the convicted person, assessed *separately* from the Rule 223(d) assessment of victims' perspectives. Within restorative justice contexts, *efforts* to make amends are viewed positively as they "encourage[d] the offenders' sense of responsibility (...), which may further their reintegration, enable redress and mutual understanding, and encourage desistance from crime".⁵²

iii. Mr Al Hassan positive prospects of resocialisation and settlement (Rule 223 (b))

15. Mr Al Hassan's prospects for successful resettlement and reintegration in society are evidenced by **(i)** an extremely supportive family, to whom he is demonstrably attached; **(ii)** genuine remorse, reflected in his direct and public apology; **(iii)** his personal circumstances, and demonstrated efforts to obtain civilian employment and settle in communities, located away from the location of the crimes.

⁴⁶ [ICC-02/04-01/15-2023-Anx1](#), p. 4, para. iv.

⁴⁷ [ICC-02/04-01/15-2023-Anx1](#), para. 152, noting the role of judgments in "combatting denial and attempts at revisionism", and recognising victim status.

⁴⁸ See [ICC-01/12-01/18-2215-Conf-AnxI](#), p. 12.

⁴⁹ The Defence reached out to the LRV to consult and receive feedback on 26 June 2024, 2 July 2024, 4 July 2024, 12 August 2024, 14 August 2024, 29 November 2024, 13 and 14 December 2024, and 16 January 2025.

⁵⁰ [ICC-01/04-01/07-3615](#), paras 100-101.

⁵¹ *Ntabakuze*, [Judgment](#), paras 292-293, finding that the Trial Chamber erred in not considering Ntabakuze's expression of regret as mitigating. See also *Nikolić*, [Judgment on Sentencing Appeal](#), para. 117; *Vasiljević*, [Appeal Judgment](#), para. 177, where remorse was evaluated based on sincerity and not victim acceptance.

⁵² [Recommendation CM/Rec\(2018\)8](#), p. 1.

16. Despite being held in a custodial setting far from home for over eight years, Mr Al Hassan has successfully maintained strong family ties.⁵³ His desire to be reunited with his family,⁵⁴ is shared equally by them.⁵⁵ Mr Al Hassan's return to the family unit is imperative to the security and welfare of his children, particularly in light of the unstable security situation.⁵⁶ As with *Delić*,⁵⁷ Mr Al Hassan's family's safety has been affected by [REDACTED],⁵⁸ [REDACTED].⁵⁹ Neither Mr Al Hassan nor his family benefit from witness protection or assistance [REDACTED].⁶⁰ Mr Al Hassan's family's decision to stand by him, [REDACTED], especially as familial attachment and support are positive indicators of rehabilitation and social re-integration after release.⁶¹
17. Mr Al Hassan's prospects for reintegration into society are further buttressed by his public apology and statements of remorse.⁶² Mr Al Hassan has reflected on the conduct for which he was convicted and what led him, in the past, to make choices that caused suffering for others,⁶³ while underscoring his commitment to abjuring such conduct in the future.⁶⁴ His statements demonstrate change and genuine internal reform.
18. Mr Al Hassan's genuine prospects for rehabilitations and resocialisation are further evidenced by concrete steps taken to establish future employment and residence in a purely

⁵³ [ICC-01/12-01/18-2707](#), para. 10.

⁵⁴ MLI-D28-0007-0638-R01 at 0651, para. 47.

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ In *Delić*, the President placed favourable weight on the fact that the defendant's family had been forced to flee Bosnia due to retaliation, and notwithstanding the crimes for which he had been convicted, had stood by him: *Delić*, [Decision for Commutation of Sentence](#), para. 21.

⁵⁸ *Per* Trial Chamber X's order, Mr Al Hassan's interview transcripts were published on the [ICC evidence site](#).

⁵⁹ [ICC-01/12-01/17-12-Anx](#); [ICC-01/12-01/18-2614-Conf-AnxD](#) (public citations of Mr Al Hassan's statements).

⁶⁰ The Trial Chamber determined that Mr Al Hassan was not a 'witness' ([ICC-01/12-01/18-2633](#), para. 16) and [REDACTED].

⁶¹ In *Katanga*, strong family attachments and familial support were found to be positive factors demonstrating "feasible prospect for resocialization and successful resettlement": [ICC-01/04-01/07-3615](#), para. 58. See A Oehmichen, "[Rule 223\(b\)](#)", citing *Mucic*, [President's Order on Early Release](#); *Blaskic*, [President's Order on Early Release](#), para. 8; *Kos*, [President's Order on Early Release](#) p. 3; *Zaric*, [President's Order on Early Release](#) e.g. the decision of the family to stand by the prisoner in spite of retributive actions against the family. See UNODC, [Recidivism and Reintegration of Offenders](#), pp. 38-39. See also *Erdemović* [President's Decision on Early Release](#), p. 2; *Furundžija*, [President's Order on the Application for Early Release](#); *Rugambarara*, [Decision on the Early Release Request](#), para. 14.

⁶² *Landžo*, [Order on Commutation of Sentence](#), para. 7 ("he feels deep remorse for his actions, accepts responsibility for them [...] and has shown a desire to live an honest and crime-free life [...] I am satisfied that Esad Landžo has demonstrated strong signs of rehabilitation.")

⁶³ AH 09/04/25: MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng) at 0072-0073, para 9; at 0073, para. 12.

⁶⁴ AH 09/04/25: MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng) at 0074, para. 16. See also MLI-D28-0008-0047 (Ar), MLI-D28-0008-0046 (Fr).

civilian context, far from Timbuktu.⁶⁵ To respect victims' views, Mr Al Hassan has provided signed assurance that he will not return to Timbuktu prior to 28 March 2028,⁶⁶ while expressing his unequivocal wish *not* to return to Mali following recent events, giving rise to a risk of *refoulement*.⁶⁷ [REDACTED].⁶⁸ [REDACTED].⁶⁹ [REDACTED],⁷⁰ [REDACTED],⁷¹ [REDACTED].⁷² [REDACTED].⁷³

19. Mr Al Hassan also made concrete employment arrangements [REDACTED],⁷⁴ [REDACTED],⁷⁵ [REDACTED].⁷⁶

20. [REDACTED], Mr Al Hassan has provided signed assurances that he will respect an array of conditions,⁷⁷ which are as, if not more, rigorous than those governing early release at other international courts.⁷⁸ While recent developments suggest that Mr Al Hassan's present return to Mali would be incompatible with his protection against *refoulement*,⁷⁹ the above statements and undertakings remain relevant insofar as they reflect [REDACTED], and Mr Al Hassan's corollary commitment to making all necessary adjustments to adhere to a peaceful, civilian life, living with his family.

21. These new statements and signed assurances constitute a significant change in circumstances, militating strongly in favour of release.⁸⁰ The weight attached to Mr Al Hassan's personal assurances also needs to reflect Mr Al Hassan's demonstrated respect

⁶⁵ Banović, [President's Decision on Commutation of Sentence](#), para. 13; Simić, [President's Order on Early Release](#), p. 2; Došen, [President's Order on Early Release](#), p. 3; Mucic, [President's Order on Early Release](#); Kolundžija, [President's Order on Early Release](#), p. 4.

⁶⁶ MLI-D28-0008-0080 (Ar); MLI-D28-0008-0081 (Eng).

⁶⁷ [ICC-01/12-01/18-2717-Conf](#), paras 11-15, 24.

⁶⁸ [REDACTED].

⁶⁹ [REDACTED].

⁷⁰ [REDACTED].

⁷¹ [REDACTED].

⁷² [REDACTED].

⁷³ See [REDACTED].

⁷⁴ [REDACTED].

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ MLI-D28-0008-0047 (Ar), MLI-D28-0008-0046 (Fr); MLI-D28-0008-0080 (Ar); MLI-D28-0008-0081 (Eng).

⁷⁸ Bahtijari, [Decision on Modification of Sentence](#) para. 62(a); Kondewa, [President's Decision on Conditional Early Release](#) para. 61(iii).

⁷⁹ [ICC-01/12-01/18-2717-Conf](#), paras 11-15, 24.

⁸⁰ A Oehmichen, [Rule 223\(b\)](#), citing Banović, [President's Decision on Commutation of Sentence](#), para. 13 (where the President viewed favourably the convicted individual's "substantial effort to return to being a productive member of society by arranging in advance for employment upon deportation to Serbia"); Simić, [President's Order on Early Release](#); Dosen, [President's Order on Early Release](#); Mucic, [President's Order on Early Release](#); Kolundžija, [President's Order on Early Release](#). See also Al Mahdi: [ICC-01/12-01/15-420-Corr-Red2](#), para. 37.

for ICC authority.⁸¹ In contrast, in the Sentencing Decision, the Chamber made no findings concerning Mr Al Hassan's prospects for rehabilitation or reintegration, focusing solely on Mr Al Hassan's actions during 2012 or in the lead up to his arrest.⁸²

iv. Mr Al Hassan's early release would not give rise to significant social instability (Rule 223(c))

22. There are no grounds that reliably establish that Mr Al Hassan's release poses a risk of significant social stability. He **(i)** is not a political, religious or military figure; **(ii)** is seeking release to an area far from victims and witnesses, where he will be engaged in civilian activities; **(iii)** was never found to have posed a substantiated threat or danger to victims or witnesses; and **(iv)** has publicly expressed his opposition to extremism, his commitment to justice and reconciliation, and his full support for the reparations process.⁸³ The absence of a risk of significant insecurity weighs in favour of his release.⁸⁴

23. Mr Al Hassan's personal profile obviates any risks. Mr Al Hassan is not a political, military or religious leader nor does he have any existing ties to such groups. The Trial Chamber acknowledged the personal exigencies, including no employment⁸⁵ [REDACTED],⁸⁶ that led Mr Al Hassan to be convinced of the necessity of working for Ansar Dine.⁸⁷ Mr Al Hassan has since accepted that his decision to do so caused suffering to the victims, and that it was wrong to contribute to a group seeking to impose values and new rules by fear and coercion.⁸⁸

24. Although he exercised a senior role in the Islamic Police, Mr Al Hassan was not a member of any of the decision-making *apparati* of the groups, had no military training, was not involved in military engagements, and did not play a role in formulating moral rules. Both Judges Mindua and Akane found that Mr Al Hassan did not adhere to extremist ideologies and was opposed to sexual violence and the detention and punishment of women for

⁸¹ [ICC-01/12-01/18-2707](#), para. 8: "Mr Al Hassan respects the authority of custodial staff".

⁸² [Sentencing Judgment](#), paras 125-129: findings as to Mr Al Hassan's assistance of victims in 2012 (fn. 350, citing back to paras 116-118), and assessing whether Mr Al Hassan had engaged in concrete steps to promote peace and reconciliation, in the period before his arrest (para. 128).

⁸³ AH 09/04/25 MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng), at 0073, para 13; at 0074, para. 21.

⁸⁴ [ICC-01/04-01/07-3615](#), para. 74, referencing Rule 223(c) "as an 'excluding criterion', meaning that if a reduction in sentence would not cause any social instability, then the factor could weigh *in favour of* release."

⁸⁵ [Trial Judgment](#), para. 1059, fn 3620; D-0803: MLI-D28-0007-0610-R02 at 0619, lns 2-5.

⁸⁶ [REDACTED].

⁸⁷ [Trial Judgment](#) para. 1059, fn 3262 referencing Mr Al Hassan's statement to the Prosecution.

⁸⁸ AH 09/04/25 MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng) at 0072-0072, paras 9-12.

violating the dress code.⁸⁹ Significantly, the Trial Chamber found no aggravating factors, while mitigation was granted due to his efforts to help the local population.⁹⁰ In the same way his ICC arrest and detention generated little attention domestically,⁹¹ his release will not negatively impact security dynamics in Mali or elsewhere.⁹² In contrast to LRV arguments,⁹³ the personal situations of Al Mahdi and Mr Al Hassan cannot be equated: unlike Mr Al Hassan, Al Mahdi was a high ranking member of Al Qaeda,⁹⁴ with more authority.⁹⁵ The difference between their security profiles is further reflected by Al Qaeda's public demand that Al Mahdi be released in exchange for a hostage,⁹⁶ [REDACTED].⁹⁷

25. Security ramifications are also eliminated further by Mr Al Hassan's intention to reside far from Timbuktu, in environments and under conditions which show his commitment to a peaceful civilian life with his family. [REDACTED],⁹⁸ and Mr Al Hassan has provided personal assurances that he will not engage in any military or political activities related [REDACTED], or change the location of his residence without prior notification to the authorities.⁹⁹ [REDACTED],¹⁰⁰ [REDACTED]. Mr Al Hassan's commitment to a civilian path is further cemented by his familial obligations and plans to work in civilian enterprises.¹⁰¹ If returned to Mali, he will live far from Timbuktu, [REDACTED],¹⁰² [REDACTED].¹⁰³

26. There is no objective, founded evidence that Mr Al Hassan's release would present a risk

⁸⁹ [Separate opinion of Judge Akane](#): paras 17, 47, 49, fn. 53; [Separate Opinion of Judge Mindua](#): paras 113-114.

⁹⁰ [Sentencing Judgment](#), para. 116; See also [Trial Judgment](#), 194, 1071, 1971, fns 3668, 3681, 3758, 5273; [Separate Opinion of Judge Mindua](#): paras 114, 118-121.

⁹¹ [REDACTED].

⁹² [ICC-01/12-01/18-2702](#), paras 12-13.

⁹³ [ICC-01/12-01/18-2708](#), para. 12.

⁹⁴ [Trial Judgment](#), paras 68-69.

⁹⁵ Trial Judgment (conf) para. 1757 [REDACTED]

⁹⁶ [‘Al Qaeda affiliate claims kidnapping of Swiss nun in Mali’](#) France 24, 27 January 2016.

⁹⁷ [REDACTED].

⁹⁸ [REDACTED].

⁹⁹ MLI-D28-0008-0047 (Ar), MLI-D28-0008-0046 (Fr), para 2; MLI-D28-0008-0080 (Ar), MLI-D28-0008-0081 (Eng).

¹⁰⁰ [REDACTED].

¹⁰¹ [REDACTED].

¹⁰² [REDACTED] similar to cases where distance militated in favour of release: [ICC-01/04-01/07-3615](#), para. 58. (noting that Aru was a “fair distance” from Bogoro); *Kondewa*, [President's Decision on Conditional Early Release](#), para. 27 (noting that Kondewa was asked to be released to Bo Town, not Koribondo (where victims were based), and the two were 32 km apart).

¹⁰³ [REDACTED].

to victims and witnesses. At the end of trial, [REDACTED].¹⁰⁴

27. Mr Al Hassan's early release will also not adversely affect the reparations process. Since Mr Al Hassan is indigent, his release will not compromise the recovery of assets, but will result in significant budgetary savings due to the current costs of detention.¹⁰⁵ Mr Al Hassan has publicly expressed his support for the reparations process while encouraging others to do so,¹⁰⁶ and [REDACTED].¹⁰⁷ The reparations process is in a nascent stage and is likely to continue several years beyond the full ten year sentence; delaying early release due to reparations will not serve any legitimate goals since Mr Al Hassan will be eligible for full release and return to Mali before reparations conclude.
28. Since reparations may be delayed for reasons beyond Mr Al Hassan's control, linkage between the two would unjustifiably condition his release on factors that have no linkage to his conduct and prospects for rehabilitation and reintegration.¹⁰⁸ Mr Al Hassan should not be prejudiced by the short period of time between sentence and Article 110 proceedings, which was caused by the duration of trial relative to the length of sentence.¹⁰⁹ If anything, sentence reduction and release are warranted because of the additional delays caused by Judge Mindua's replacement, as well as the fact that over 70% of the sentence was served in a pre-trial custodial environment.¹¹⁰
29. While opposing Mr Al Hassan's release on this ground, Mali has not adduced any specific reasons or proof that Mr Al Hassan's release would give rise to significant social instability. Speculative or unsupported assertions that release *could* lead to negative outcomes should be given no weight.¹¹¹ A degree of social instability arising from early release is not the

¹⁰⁴ [REDACTED].

¹⁰⁵ 1 person's ICC detention equals roughly 1040.86/day (379, 913 per year) [ICC-ASP/23-10](#), paras 769, 771, 775, 778 AH 09/04/25: MLI-D28-0008-0068 (Ar), MLI-D28-0008-0072 (Eng) at 0074, para. 21.

¹⁰⁶ See [ICC-01/12-01/18-2700-Red](#), paras 3, 9-10; [ICC-01/12-01/18-2687](#), para. 14.

¹⁰⁷ [ICC-01/04-01/07-3615](#), para. 97.

¹⁰⁸ [ICC-01/04-01/07-3615](#), para. 97: "Given the fact that the non-completion of the reparations proceedings prior to this Sentencing Review is not attributable to Mr Katanga, the Panel considers that this fact cannot be held against him but rather is relevant to establishing the frame of reference for evaluating his actions".

¹⁰⁹ [Ćorić](#), [Decision on Early Release](#), para. 42("that Ćorić has already served over three months more than the two-thirds benchmark of his sentence weighs in favour of his early release"); [Simba](#), [Decision on Early Release](#), para 34; ECHR: *Brand v. Netherlands*, [49902/99](#), paras 58-67: violation due to post-conviction detention in prison without rehabilitation facilities for 6 months); *James, Well & Lee v. United Kingdom*, [22119/09, 57715/09, 57877/09](#), para.221.

¹¹¹ [ICC-01/04-01/07-3615](#), para 78. In the context of pre-trial detention, the ECHR has held that reliance on social disturbance to justify detention must be exceptional and based on concrete "facts capable of showing that the accused's release would actually disturb public order": ECHR, *I.A. v France*, [\(1/1998/904/1116\)](#), para. 104.

same as *significant* social instability;¹¹² “some fear and discomfort among the victims or potential witnesses” does not equate to social instability within the meaning of the Rules.¹¹³ The Panel can place no weight on theoretical concerns (i.e. those based on Mr Al Hassan’s return to Timbuktu), which have no established nexus to the modalities of release elsewhere,¹¹⁴ or general or speculative fears,¹¹⁵ which are not supported by disclosed evidence or the Registry’s specialised security assessment.¹¹⁶ Mr Al Hassan’s publicly denunciation of both the conduct underpinning his convictions and other crimes committed by the groups also eliminates any risk that he would be likely to join extremist groups, [REDACTED].¹¹⁷

30. Mali’s views also need to be weighed in light of the [REDACTED].¹¹⁸ The discriminatory slant of Mali’s views is also evidenced by first, their claim that Mr Al Hassan should have been given the death penalty, even though domestic proceedings against the Gao Chief of Police led to his release after seven years,¹¹⁹ and second, their claim to speak in the name of victims, while taking no effective steps to secure domestic accountability and reparations for the many victims that fall outside the scope of Mr Al Hassan’s convictions.¹²⁰ Mali’s position is also identical to negative stances, adopted in previous cases, that failed to

¹¹² [ICC-01/04-01/07-3615](#), para. 79.

¹¹³ [Gucati](#), [Decision on Commutation, Modification or Alteration of Sentence](#), para. 46.

¹¹⁴ In *Kondewa*, the President found that the existence of opposition from victims or witnesses did not militate against the convicted person’s release due to the absence of evidence concerns potential negative effects or any linkage between the victims in question and the area in which the convicted person planned to reside upon release: [President’s Decision on Conditional Early Release](#), paras 27-29. In *Fofana*, the SCSL President distinguished between risks or fears that could be addressed through specific modalities of release as compared to those likely to lead to harm: *Fofana*, [President’s Decision on Conditional Early Release](#), para. 27.

¹¹⁵ ECHR, *Öcalan v Turkey* (No. 2), [24069/03](#), [197/04](#), [6201/06](#) and [10464/07](#), (Partly Dissenting Opinion of Judge Pinto De Albuquerque), para 14. See also Committee of Ministers, [Resolution 76\(2\)](#), para.10: “considerations of general prevention alone should not justify refusal of conditional release”. See also ECHR, *James, Wells, and Lee v. The United Kingdom*, [25119/09](#) [57715/09](#) [57877/09](#), para. 194; [CCPR/C/GC/35](#), fn. 60, referring to [CCPR/C/DEU/CO/6](#), 2012, para. 14.

¹¹⁶ [ICC-01/12-01/18-2702](#), paras 12-13.

¹¹⁷ [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ Aliou Toure, the Chief of the Islamic Police in Gao, who was responsible for personally amputating several individuals and flogging several women, was sentenced to 10 years (Jeune Afrique, [Aliou Mahamar Touré, condamné à 10 ans de prison](#), 19 August 2017) and released in 2020 after serving seven years (C Weiss, [Analysis: JNIM celebrates prisoner swap in Mali](#) 12 October 2020).

¹²⁰ [Registry R223 Annex](#) para. 7.

establish a risk of significant social instability.¹²¹ Given Mr Al Hassan’s public complaints that Malian security and army officials arbitrarily detained and tortured him for undisclosed ‘security’ reasons,¹²² it is contrary to Article 21(3) of the Statute to allow Mali to again invoke vague claims of national security to veto his present prospects for liberty and family reunification.

31. Finally, the Panel can place no weight on views influenced by disappointment following Mr Al Hassan’s final acquittal for SGBV crimes, and the related withdrawal of the Prosecution’s appeal.¹²³ Given his final acquittal, it is not appropriate to publicly replicate or rely on claims predicated on assertions that he is culpable for such crimes.¹²⁴ Nor can the length of Mr Al Hassan’s sentence be influenced by factors concerning crimes for which he was acquitted.¹²⁵ Reliance on disappointment concerning his acquittals would suborn the legitimacy and enforcement of acquittals by this Court,¹²⁶ and further contravene innocence protections enshrined in the Statute and human rights law.¹²⁷ Negative emotions, and general attitudes and feelings cannot be equated with social instability.¹²⁸ Negative reactions from victims or their families, even where coupled with the gravity or circumstances of the crime, do not satisfy the threshold of justifying detention for non-punitive purposes.¹²⁹ Disappointment concerning the length of sentence also does

¹²¹ While the DRC cited a risk of significant social instability when opposed the release of Katanga and Lubanga, the respective Panels found such views to be insufficient to establish the necessary threshold, finding it particularly relevant in Katanga that he intended to settle in an area away from the victim community: [ICC-01/04-01/07-3615](#), para 75. See also *Lubanga*, [ICC-01/04-01/06-3173](#), para 64.

¹²² [Registry R223 Annex](#), para. 13, fn 30.

¹²³ [ICC-01/12-01/18-2708](#), paras 13-14; [Registry R223 Annex](#) para. 23.

¹²⁴ [ICC-01/12-01/18-2708](#), para. 34, citing V-0001’s claim that she suffered because of Mr Al Hassan, even though Mr Al Hassan was acquitted of all allegations connected to her testimony. Identical LRV arguments concerning V-0001 at sentencing ([ICC-01/12-01/18-2641](#), para 60) were expressly found to fall outside the scope of the matters pertaining to Mr Al Hassan’s sentence for the crimes for which he was convicted: See Sentencing Judgment, fn 201.

¹²⁵ [ICC-01/05-01/13-2276-Red](#), para. 113 (“the convicted person is sentenced for the crime or offence for which he or she was convicted, not for other crimes or offences (...) in relation to which no conviction was entered”); [ICC-01/12-01/18-2662](#), fn 170 (the sentence may not be based on incident for which Mr Al Hassan was acquitted), and fn 201.

¹²⁶ [ICC-01/05-100](#), para. 8 (context of reparations); [Statement of the President of the Court in relation to the case of Mr Jean-Pierre Bemba Gombo](#), 14 June 2018.

¹²⁷ ECHR, *Böhrer v Germany*, [37568/97](#), para. 67; *Sekanina v Austria* [13126/87](#), para. 48: “the criminal courts’ judicial authority would be severely undermined if after an acquittal a suspicion could be maintained that the accused had committed the offences dealt with at the trial. The role of the courts, as conceived in Article 6 (Art. 6) in general and which also finds its expression in the principle of the presumption of innocence laid down in Article 6 para. 2 (Art. 6-2) excludes such a suspicion in the case of a person whose record has been cleared by a final acquittal.” See also [13126/87](#), paras 29-30; *Geerings v. Netherlands*, [30810/03](#), para. 49; *Minelli v. Switzerland*, [8660/79](#), paras 37-41.

¹²⁸ [ICC-01/04-01/07-3615](#), para. 77; Y Palmer, [Victim Impact in Early Release Decisions](#), p. 253.

¹²⁹ ECHR, *I.A. v France*, [1/1998/904/1116](#), para. 104.

not satisfy the threshold of significant social instability or constitute a rational basis for denying early release.¹³⁰ Public opinion should also never play a role in influencing the Panel's fair and impartial assessment of fundamental liberty rights.¹³¹

32. Whether released now or in three years' time, Mr Al Hassan will eventually have the right to live unconditionally in his community.¹³² Since the purpose of a sentence is to prepare the person for their eventual reintegration into society,¹³³ Rule 223 should be applied in a manner that incentivises reconciliation and steps taken by the convicted person to promote this goal. Conversely, tying the question of his release to subjective emotions influenced by his acquittals risks calcifying antagonism towards him, since Mr Al Hassan's acquittals are final and can never lawfully be reversed. It bears noting that some individuals have publicly called for Mr Al Hassan to be killed, stating that only a life sentence or death would constitute justice.¹³⁴ Their desires are not capable of being satisfied by the current judicial process, irrespective of whether Mr Al Hassan is released now or in three years.¹³⁵ Reliance on such emotions or opinions would run roughshod over the cardinal objectives of international justice to 'stay the hand of vengeance' through ICC judgments,¹³⁶ which can be convictions or acquittals.

v. Mr Al Hassan has taken significant actions for the benefit of the victims (Rule 223(d))

33. Mr Al Hassan has taken concrete and significant action for the benefit of the victims. He has apologised to all victims referred to in the Trial Judgment and Sentencing Decision and

¹³⁰ [ICC-01/04-01/07-3597-tENG](#), para.47 (rejecting arguments based on stigma/disappointment with sentence); [ICC-01/04-01/06-3369-tENG](#), para.19 (rejecting arguments that release could lead to stigma and impede reconciliation).

¹³¹ G Coffey, [ECtHR release process for life and long-term sentence prisoners](#), pp. 612-613 ("Public opinion is not a relevant criterion in sentence reviews and should not be taken into consideration by parole boards in determining whether prisoners should be conditionally released. Maintaining public confidence in such reviews could not legitimately require prolonged detention. Moreover, penal populism should not distort the overarching principle of consistency of approach by parole authorities."); ECHR, *Stafford v United Kingdom*, [46295/99](#), para 80.

¹³² *Fofana*, [President's Decision on Conditional Early Release](#), para. 27, cautioning give weight to general concerns in context where the defendant will return eventually.

¹³³ See [European Prison Rules Rule Part I](#), p.7, para. 6: ("[a]ll detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty").

¹³⁴ K. Issa, '[This is not justice: Mali victims reject Al Hassan's 10-year sentence](#)' 29 November 2024.

¹³⁵ Notably, the University of Edinburgh Katanga report found that 11 years after the reparations process had commenced, some victims still opposed Mr Katanga's release [ICC-01/04-01/07-3934-AnxC](#), p. 45.

¹³⁶ Robert Jackson, Chief Prosecutor in his [opening statement in Nuremberg](#) 21 November 1945; Y Palmer, [Victim Impact in Early Release Decisions](#), p. 253: "Requesting information on matters of health and safety, rather than asking for an assessment of the general attitudes and feelings of victims is intentional. Focusing on the former helps combat the potential counterargument that including victims in the early release process will only encourage submissions from people who seek to use the Mechanism to carry out personal vendettas. Some might worry that the modification would enable victor's justice to seep into the work of the Tribunal".

further assisted in the identification of several direct victims, facilitating their access to justice and reparations. His widely disseminated public apology is an ‘objectively significant action’ for the benefit of victims.¹³⁷ A public apology is a form of ‘satisfaction’ within the context of reparations and remedies for victims of gross violations of international human rights.¹³⁸ Mr Al Hassan’s apology aligns with this framework, acknowledging the facts underpinning his conviction and accepting responsibility for harm suffered.¹³⁹ He affirmed his commitment to justice by speaking out against the crimes for which he was convicted as well as SGBV crimes, for which he was acquitted. Even before the ICC arrest warrant’s issuance, Mr Al Hassan expressed opposition to the way women were imprisoned by *Hesbah*, describing it as contrary to *Shari’a*.¹⁴⁰ His dissociation from such actions is reflected by his facilitation of professional training and opportunities for women before and after 2012,¹⁴¹ and public advocacy for religious freedom and critical women’s rights, including education, professional development, and sexual consent.¹⁴² This demonstrates contrition not only to direct victims but also those who suffered more broadly, as reflected in his reparations submissions.¹⁴³ His public denunciation of measures restricting choice in matters of religion and personal autonomy was also made at significant personal risk.¹⁴⁴

34. While the LRV seek to minimise the positive effects of Mr Al Hassan’s apology, the question for the Panel is not whether all victims are satisfied (an impossible metric to gauge or satisfy), but whether Mr Al Hassan’s action in publicly apologising and expressing remorse objectively generated benefits,¹⁴⁵ which it reportedly did.¹⁴⁶ Even if some direct victims oppose or reject the apology, its broader acceptance by local NGOs and notables in the Timbuktu community will generate significant positive effects by removing stigma

¹³⁷ [ICC-01/04-01/07-3615](#), paras 87, 97, 100.

¹³⁸ UN General Assembly, [U.N. Doc. A/RES/60/147](#), para. 22(e).

¹³⁹ IACtHR: *Cantoral-Benavides v. Peru*, [Judgment of December 3, 2001](#) (Reparations and Costs), para 81.

¹⁴⁰ Trial Judgment, para. 1680.

¹⁴¹ D-0803: MLI-D28-0007-0610-R02 (Ar) at 0615-0618, 0623-0624; D-0801, MLI-D28-0007-0630-R01 (Fr) at 0634-0636.

¹⁴² [ICC-01/12-01/18-2667-AnxA](#), para. 6; AH 09/04/25 MLI-D28-0008-0068 (Eng), MLI-D28-0008-0072 (Eng), at 0072, para. 8; at 0074, paras. 17-19.

¹⁴³ [ICC-01/12-01/18-2687](#), paras 5-6, 12-14.

¹⁴⁴ [REDACTED].

¹⁴⁵ [ICC-01/04-01/07-3615](#), para. 91.

¹⁴⁶ [REDACTED].

for victims of these crimes, undermining alternative narratives, and creating a positive environment for the reparations process.

35. Conversely, the narrative that there can be no forgiveness until victims have received reparations is counterproductive, impeding timely reconciliation and reparations by suggesting that at this juncture, victims must choose between the two.¹⁴⁷ Mr Al Hassan has made significant efforts to expedite reparations [REDACTED], and adopting a collaborative approach in litigation. He lacks control over the timing of the award of reparations, which will be made through the Trust Fund because he is indigent. Since it is discriminatory to either favour or penalise a defendant because of their financial situation,¹⁴⁸ the Panel should conclude that Mr Al Hassan made significant efforts to assist the victims, within the sphere of his capabilities.

vi. Mr Al Hassan's individual circumstances (Rule 223(e))

36. Mr Al Hassan exhibits several relevant intersectional forms of vulnerability, which militate in favour of early release. As a torture survivor,¹⁴⁹ Mr Al Hassan has experienced significant forms of trauma and hardship,¹⁵⁰ which were relived and heightened during the COVID-19 pandemic.¹⁵¹ The emotional hardships he experiences as a foreign national are further multiplied by the insecurity and deprivation his family endures, as members of a minority group,¹⁵² which suffers various ongoing forms of persecution.¹⁵³ Such factors should properly inform the Panel's decision: this arises from the fact that detention and liberty decisions must be tailored to the profile of the convicted person, taking full account

¹⁴⁷ [REDACTED].

¹⁴⁸ [ICC-01/05-01/13-2276-Red](#), para. 190.

¹⁴⁹ ECHR: *Sassi & Benchellali v. France*, [10917/15](#), [10941/15](#) para 47: French courts suspended three out of four years of the defendants' sentence in recognition of the continuing psychological trauma and hardship caused by prior detention at Guantanamo. Domestic precedent supports the relevance to sentencing considerations: **Canada**, *R. v. Shahnawaz*, [2000] O.J. No. 4151 (QL), para 34; *R v Polanco* [2019] ONSC 3073, paras. 37-39. *R. v. M.E.*, [2012] ONSC 1078, paras. 58-59; **UK**: *R v. Khan* [2016] EWCA Crim 1292; [2016] 2 Cr. App. R. (S.) 42: See Annex R.

¹⁵⁰ For continuing effects/trauma, see MLI-D28-0007-0638-R01 (Fr) at 0640-0642.

¹⁵¹ For COVID-19 related hardships, see MLI-D28-0007-0638-R01 (Fr) at 0641-0642; T-217, p. 85 ln 1-p. 89 ln 18; [ICC-01/12-01/18-2640-Conf](#), paras 70-72; COVID restrictions were imposed over the course of approximately 3 years, meaning that Mr Al Hassan spent almost a third of his full sentence under highly restrictive detention regime.

¹⁵² [Report of ACHPR Working Group of Experts on Indigenous Communities](#), p.18; ILO and ACHR Report on the constitutional and legislative protection of the rights of indigenous peoples in 24 African countries, p. 5.

¹⁵³ Trial Judgment, para 411; Separate Opinion of Judge Mindua, [ICC-01/12-01/18-2594-OP13-tENG](#), para. 115.

of personal characteristics or vulnerabilities¹⁵⁴ that affects the severity of detention,¹⁵⁵ impacts rehabilitation requirements, or otherwise generates disproportionate consequences for family members.¹⁵⁶

37. Since Mr Al Hassan is the primary caretaker, the circumstances of his family warrant independent consideration, due to the rapid deterioration of his parent's health, the current insecurity in their place of residence, and the absence of any realistic prospect of conducting family visits while Mr Al Hassan remains in prison. In accordance with local Tuareg custom and practice,¹⁵⁷ Mr Al Hassan was the sole provider and caretaker of his family.¹⁵⁸ Due to necessity (and the absence of any social welfare services),¹⁵⁹ [REDACTED] this responsibility following Mr Al Hassan's arrest.¹⁶⁰ Since the Sentencing Decision, [REDACTED] ability to discharge this role has significantly diminished due to the sudden degradation of security [REDACTED] and his rapidly deteriorating health. [REDACTED],¹⁶¹ [REDACTED].¹⁶²
38. The deteriorating security landscape and Mr Al Hassan's absence have culminated in the physical separation of his immediate family [REDACTED].¹⁶³
39. This unwanted [REDACTED]¹⁶⁴ has re-opened emotional wounds caused by Mr Al Hassan's prolonged enforced disappearance between April 2017 and March 2018, and the death of his daughter in December 2020.¹⁶⁵ Mr Al Hassan has endured several prolonged

¹⁵⁴ The category of vulnerable detainees includes foreign nationals, minorities/indigenous peoples, and specific psychological conditions: See CAT/OP/12/6 para. 5(j), cited in 'Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty', [Advisory Opinion OC-29/22](#), 30 May 2022, IACtHR, para 46; ECtHR, *V. v. United Kingdom*, [24888/94](#), (GC) (Joint Partly Dissenting Opinions), para. 3. See also *Rasic*, [Trial Judgment and Sentence](#), para.31; *Rasic Appeals Judgment*, paras 28-32.

¹⁵⁵ *Bagaragaza Judgment on Sentence*, para. 39 (mitigation re restrictive detention measures for protection); *Rašić Appeals Judgment*, para. 31 (referencing mitigation given the subjective impact of being held in an isolating detention environment); *Bangura et al. Trial Judgement*, para. 100 (two weeks reduction due to change in detention conditions).

¹⁵⁶ 'Differentiated Approaches with Respect to Certain Groups of Persons Deprived of Liberty', [Advisory Opinion OC-29/22](#), 30 May 2022, Inter-American Court of Human Rights, paras 46, 56, 69.

¹⁵⁷ [REDACTED]; AH 19/07/24 MLI-D28-0007-0638-R01 at 0653, para.54.

¹⁵⁸ Touareg tribes in rural areas in Northern Mali do not benefit from social welfare or benefits from the State: [Report on the protection of the rights of indigenous peoples in 24 African countries](#), p.123.

¹⁵⁹ AH 19/07/24 MLI-D28-0007-0638-R01, at 0653, para. 54. See [Advisory Opinion OC-29/22](#), 30 May 2022, Inter-American Court of Human Rights, paras 282, 289, 293.

¹⁶⁰ AH 19/07/24 MLI-D28-0007-0638-R01, at 0653, para. 54.

¹⁶¹ [REDACTED].

¹⁶² [REDACTED].

¹⁶³ [REDACTED]; See also MLI-D28-0007-0638-R01 (Fr) at 0653, para. 54 [REDACTED].

¹⁶⁴ [REDACTED].

¹⁶⁵ AH 19/07/24 MLI-D28-0007-0638-R01 (Fr) at 0641 paras 27-31.

separations from family: between April 2017-March 2018;¹⁶⁶ June 2019-October 2022;¹⁶⁷ and July 2023 until present.¹⁶⁸ [REDACTED]. They also lack the financial means to purchase plane tickets. Any further detention will generate disproportionate suffering for his children as independent rights holders (including a youngest son he has never met),¹⁶⁹ and infringe Mr Al Hassan's right to family life.¹⁷⁰ The ongoing fragmentation of Mr Al Hassan's family, resulting from conditions beyond their control and compounded by his enforced absence, constitutes a significant change in his individual circumstances. Mr Al Hassan's absence, always keenly felt,¹⁷¹ now threatens the fabric of their familial existence. Without him, there is no legal or cultural mechanism capable of navigating the hurdles required to reunite the family securely: reunification is not a mere matter of sentiment - it is a humanitarian imperative.

40. Reliance on such factors falls squarely within the framework of precedent concerning a change in circumstances arising from the convicted person's family responsibilities, the ill-health of the person required to assume family responsibilities in the convicted person's absence, and hardship caused by enforced family separation.¹⁷² Recognising the special hardships endured by Mr Al Hassan as a vulnerable convicted person does not diminish the importance of the lived experiences of victims in this case. Rather, it gives effect to the Court's 'expressive function' as a vehicle for acknowledging the universality of human

¹⁶⁶ MLI-OTP-0051-0376 at 0381 ln 155 to 0382 ln 177; MLI-OTP-0060-1298 at 1299 lns 27-30; MLI-OTP-0051-0798 at 0805 lns 219-223 (telling OTP he had no contact with his family); T-001-Conf, p. 8, ln. 19 - p. 9, ln. 1.

¹⁶⁷ Family visits were suspended during COVID, AH 19/07/24 MLI-D28-0007-0638-R01 at 0641, para.20.

¹⁶⁸ Although a family visit was approved in July 2024, it was not possible to implement [REDACTED].

¹⁶⁹ General Comment 1 on Article 30 [ACERWC/GC/01 \(2013\)](#), paras 7, 14-15, 36, 39.

¹⁷⁰ ECHR: *Vintman v Ukraine*, [28403/05](#), paras 78-83: Art. 8 infringed where family unable to travel to prison location.

¹⁷¹ See AH 19/07/24 MLI-D28-0007-0638-R01 at 0653, paras 54-55.

¹⁷² In *Katanga*, the Panel gave weight to an alteration in his family responsibilities, caused by an increased number of dependents: [ICC-01/04-01/07-3615](#), para. 109. In *Al Mahdi*, the Chamber mitigated his sentence in light of his separation from his family: [Judgment and Sentence](#), para. 109. See also *Gucati*, [Decision on Commutation of Sentence](#), para. 56, the defendant's "close family ties and acknowledge[d] the difficulties he face[d] in being separated from his family, including his mother, who is in poor health", weighed in favour of the possible commutation of his sentence. For domestic precedent, see United States: See *United States v. Bucci*, 409 F. Supp. 3d 1 (D. Mass. 2019); See also U.S. Commission, [Amendment 799](#) (A)(iii) ("[t]he death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children"); [U.S. Sentencing Commission Policy Statement](#), §1B1.13; *United States v. Sprouse*, 1:20-CR-00052 (N.D. Ohio Aug. 20, 2021) (incapacitation of a caretaker of a minor child can constitute extraordinary and compelling reasons warranting release). See also *United States v. Bryant*, 19 Cr. 80-01 (S.D.N.Y. Nov. 6, 2023); *United States v. Fortson*, 2020 WL 3963729 (S.D. Ind. July 13, 2020). United Kingdom: UK, Ministry of Justice, [Early Release on Compassionate Grounds Policy Framework](#) (16 August 2023), p. 10, para. 4.31. See also Criminal Justice Act (CJA) 2003, s 248(1).

rights and the inherent dignity of every person.¹⁷³



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Dated this 8th day of May 2025
At The Hague, The Netherlands

¹⁷³ Separate & Dissenting Opinion, Judge Ibáñez Carranza, [ICC-02/04-01/15-2023-Anx1](#), paras 151-153.