

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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**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

**Public redacted version of Defence request for leave to appeal (ICC-01/12-01/18-2745-
Conf-Red, 29 July 2025)**

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

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I. Introduction

1. The Defence for Mr Al Hassan seeks leave to appeal the ‘Decision on the review concerning reduction of sentence of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud’, (“the Decision”).¹

2. When weighing the criteria under Article 110 of the Statute and Rule 223 of the Rules of Procedure and Evidence, the Panel of Judges appointed by the Appeals Chamber (“the Panel”) found that although the factors under Article 110(a), Rule 223(a) and (e) were present, it was not able to make a determination under Rule 223(b) due to the absence of information concerning Mr Al Hassan’s right to enter a country other than Mali. Additionally, for Rule 223(d), the Panel found that Mr Al Hassan’s assistance was counterbalanced by the opposition of victims, taking into account the number of victims and the “the psychological and symbolic impact the present review has on them in the context of the procedural developments in the present case”.² Finally, while the Panel could not reach a “definitive” opinion on the risk of social instability, Mali and the LRV had indicated that there “could” be such a risk and “Mali, as the State that was directly affected by the crimes for which Mr Al Hassan has been convicted by the Chamber and Mr Al Hassan’s state of nationality, is in possession of direct information on the situation on the ground.”³

3. The Panel’s ultimate determination was thus influenced by:

- the location of residence used for the purpose of assessing prospects of resettlement and the risk of social instability; and
- the weight it afforded to assertions of opposition by Mali and the LRV to Mr Al Hassan’s release, which were not supported by independent evidence and which were also based on considerations related to crimes for which he was acquitted.

4. Both elements are contingent on factors that fall outside Mr Al Hassan’s control. There is a disconnect between the requirement that a sentenced person, who lacks the power to impel State cooperation, must furnish information from States, whereas States, which *do* have access to information and the power and the means to substantiate their claims, can rely on bald

¹ ICC-01/12-01/18-2743-Conf. This filing has been introduced on a confidential ex parte (Registry, Defence only) basis due to citation of filings covered by this classification. A confidential redacted version has been filed simultaneously and a public redacted version will be filed forthwith.

² ICC-01/12-01/18-2743-Conf, para. 105.

³ ICC-01/12-01/18-2743-Conf, para. 106.

assertions. The Panel's reliance on opinion rather than evidence also raises issues for the independence and impartiality of a process that is central to core liberty rights.

5. The Defence has thus identified the following issues arising from the Decision, which are of an interlocutory nature, and which satisfy the Article 82(1)(d) criteria:

- **First issue:** Whether the Panel erred by referring to the views of the 'State of resettlement' in the context of Rules 223(b) and (c), and in the absence of proof of the right to reside in a specific 'State of resettlement', treating the state of nationality as the 'State of resettlement'.
- **Second Issue:** Whether the Panel's reliance on assertions from Mali and the LRV to reach adverse findings of fact was consistent with the maxim *onus probandi incumbit actori*.
- **Third Issue:** Whether critical findings against release can be based on views and allegations related to crimes for which the sentenced person was acquitted.

II. Submissions

The Decision can be the subject of an Article 82(1)(d) Application

6. The Decision triggers the potential application of Article 82(1)(d) because of its interlocutory nature as reflected by the requirements that the Panel must first evaluate the presence of Article 110 or Rule 223 factors, and second, determine how the presence of these factors impacts the length of sentence. The presence of errors in the first level of evaluation will prevent or impede the second level of evaluation.

7. In the absence of specific provision concerning a right to appeal Article 110 decisions, Article 82(1)(d) can be invoked in relation to issues of an interlocutory nature.⁴ The category of decisions that fall within this framework has been interpreted broadly. In *Mangenda*, the Chamber found a request for leave to appeal an Article 85(1) compensation decision to be admissible due to the interlocutory nature of the decision. The Chamber considered this decision to be interlocutory since it involved a two-step process, each involving its own distinct decision.⁵ This two step process triggers Article 82(1)(d), even if the effect of the decision brings the proceedings at hand to their conclusion.⁶

8. While leave to appeal regarding an Article 85(3) compensation decision was rejected in the *Bemba* case⁷, this divergence in opinion was acknowledged in the *Mokom* case, where the

⁴ [ICC-01/05-01/08-3697](#), para. 14.

⁵ [ICC-01/05-01/13-1964](#), para. 17.

⁶ [ICC-01/05-01/13-1964](#), para. 17.

⁷ [ICC-01/14-01/22-357](#), para. 13.

Judges indicated that the Court’s jurisprudence provided for an “expansive interpretation of the scope of article 82(1)(d) of the Statute”.⁸

9. There is also no legal basis to restrict Article 82(1)(d) to decisions issued before the conclusion of the judgment and sentence, as reflected by the fact that *Mangenda* and *Mokom* involved decisions on compensation following the conclusion of the trial.⁹ In certifying leave in *Mokom*, the Panel also cited Schabas’s observation that ICC Chambers have adopted an expansive approach to the elements of Article 82(1)(d), finding, for example, that the term ‘party’ could be applied to a State in circumstances where a State exercises an equivalent adversarial role.¹⁰ Similarly, after considering the wide definition extended to decisions to certify leave to appeal by the ICC and in other international tribunals,¹¹ the *Mangenda* Panel was not convinced by arguments that compensation claims are distinct from criminal proceedings and thus excluded from Article 82(1)(d).¹²
10. This broad approach is consistent with Article 21(3) of the Statute, which requires the Article 82(1)(d) to be interpreted consistently with the internationally recognised right to an effective remedy. Since the Decision has the effect of depriving Mr Al Hassan of his liberty, greater care must be taken to ensure that the Statute is interpreted consistently with international human rights norms. For instance, in *Spoltore v Argentina*, the Inter-American Court of Human Rights rejected an appeal for a compensation claim in part due to the fact that it was not “an administrative proceeding that might imply a loss of freedom.”¹³ It

⁸ [ICC-01/14-01/22-357](#), paras 15-16.

⁹ [ICC-01/14-01/22-357](#), para. 9 and [ICC-01/05-01/13-1964](#), para. 17.

¹⁰ [ICC-01/14-01/22-357](#), para. 15 and fn 35, citing “William A. Schabas, An Introduction to the International Criminal Court (2020), p. 334, noting that in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Pre-Trial Chamber II granted the State of Jordan leave to appeal the Pre-Trial Chamber’s ruling under article 82(1)(d) of the Statute despite the fact that article 82(1)(d) states that an appeal may be filed by ‘[e]ither party’ and Jordan was arguably not a party to the proceeding. See Pre-Trial Chamber II, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on Jordan’s request for leave to appeal, 21 February 2018, ICC-02/05-01/09-319.”

¹¹ [ICC-01/14-01/22-357](#), fn. 36: “See for example International Criminal Tribunal for Yugoslavia, Appeals Chamber, *The Prosecutor v. Dusko Tadic et al.*, Appeal Judgement on Allegations of Contempt against Prior Counsel, Milan Vujin, 27 February 2001, IT-94-1-A-AR77, in which a defense counsel had been found guilty of contempt by the Appeals Chamber ruling in the first instance. While the applicable rules did not provide for an appeal against such a decision, the appeal was heard by a differently constituted Appeals Chamber. See also International Criminal Tribunal for Yugoslavia, Appeals Chamber, *The Prosecutor v. Brdanin and Talic.*, Decision on Interlocutory Appeal, 11 December 2002, IT-99-36-AR73.9, in which a decision on a motion to set aside a subpoena was heard by the Appeals Chamber despite there being no mechanism to do so in the applicable rules.”

¹² [ICC-01/14-01/22-357](#), para. 14.

¹³ IACHR, [Spoltore v. Argentina, Judgment](#), para 105.

logically follows that an appeal on a decision that would result in loss of freedom, such as a decision on early release, would be required to align with human rights protections.¹⁴

11. The word ‘decision’ in Article 82(1)(d) also contains no qualification other than the criteria set out in the article itself. The proper inquiry is simply whether the issues arising from the decision can satisfy its necessary elements, which it does in the current case. The Defence has identified issues that were necessary elements of the Panel’s resolution of the Article 110 process. These Issues impact core attributes of fairness such as the principle against non-discrimination based on national or ethnic status, the principle of equality of arms and right to adversarial process, the right an independent and impartial adjudication of sentence and the presumption of innocence. The expeditiousness of proceedings ensures that proceedings are conducted within a reasonable amount of time.¹⁵ The Three Issues deferred an informed and impartial adjudication of the Rule 223 criteria, ultimately prolonging the enforcement phase and delaying Mr Al Hassan’s release. Finally, an immediate resolution of this issue by the Appeals Chamber will materially advance proceedings. The definition of “proceedings” “extends to proceedings prior and subsequent thereto” the current Decision at hand.¹⁶ Given the length of the enforcement phase, an immediate resolution of the Three Issues is required to eliminate any appearance of error in the basis for Mr Al Hassan’s continued detention while ensuring a firm foundation for any review that may occur based on new facts and circumstances.

The First Issue Satisfies Article 82(1)(d) criteria

The First Issue Arises from the Decision

12. The Panel’s ultimate findings concerning Rule 223(b) and (c) turned on their assessment as to the consequences of Mr Al Hassan’s return to Mali, even though he expressed a clear wish and concrete plans concerning resettlement in a third country. The Panel nonetheless rejected consideration of such plans outright in the absence of proof concerning Mr Al Hassan’s right to settle in a third country. This led the Panel to rely on Mali as the ‘state of resettlement’ and to use the situation in Mali as the compass for its assessment of these criteria.

13. In preliminary remarks, the Panel stated that the purpose of the sentence review procedure “is to serve the interests of justice by ensuring a realistic prospect of resocialisation for the

¹⁴ IACHR, [Spoltore v. Argentina, Judgment](#), para 105.

¹⁵ [ICC-01/04-168](#), para. 11.

¹⁶ [ICC-01/04-168](#), para. 12.

sentenced person, while also taking into account the concerns of victims and of the State of resettlement”.¹⁷ Throughout, the Panel referenced the ‘state of resettlement’ in a manner that indicates that only Mali was viewed as the ‘statement of resettlement’.¹⁸ The Panel’s reliance on this concept led the Panel to disregard relevant conclusions from the Registry that there were prospects that Mr Al Hassan could “resocialize and successfully resettle elsewhere in the Sahel region”:¹⁹ The Panel found in contrast that it could not reach any finding in favour of Rule 223(b) because the Panel had “not received any information from [Redacted]”.²⁰ The tenor of this finding was not that Mr Al Hassan’s proposals concerning [Redacted] should be given less weight due to the absence of such information, but that the Panel was unable to assess Mr Al Hassan’s prospects for resocialization and settlement in a country other than Mali in the absence of observations from [Redacted].

14. For Rule 223(c), both the Registry and the Prosecutor agreed that the level of risk associated with Mr Al Hassan’s release either did not reach the threshold of ‘significant risk’, or was insufficiently established to satisfy the balance of probabilities required to make factual findings under Article 110 and Rule 223.²¹ The LRV in turn asserted that apprehension from unidentified victims at the abstract prospect of release was sufficient to establish this criterion as was disappointment expressed in relation to Mr Al Hassan’s acquittals.²² Mali in turn, expressed a general opposition to his release because of unspecified risks related to unspecific individuals and incidents in Northern Mali.²³ In weighing these different positions, the Panel recognized that the risk should be assessed by reference to the State where the person will return.²⁴ Yet, notwithstanding Mr Al Hassan’s unequivocal stance that he would not return to Timbuktu and did not wish to return to Mali, the Panel

¹⁷ ICC-01/12-01/18-2743-Conf, para. 23.

¹⁸ ICC-01/12-01/18-2743-Conf, para 108: The Chamber has taken into account “the concerns of victims and of the state of resettlement”.

¹⁹ ICC-01/12-01/18-2743-Conf, para. 59.

²⁰ ICC-01/12-01/18-2743-Conf, para. 63.

²¹ Registry, ICC-01/12-01/18-2743-Conf, para. 71: there is no indication that the early release of Mr Al Hassan “would give rise to significant social instability” in Mali or elsewhere”; Prosecution, ICC-01/12-01/18-2743-Conf, para. 69: stating that it had no independent information in relation to the existence of risk and that the observations of the LRV and Mali on this point were unclear and did not establish a clear level of risk. See also para. 99 noting that the “level of risk is unclear and difficult to predict”.

²² ICC-01/12-01/18-2743-Conf, para. 70.

²³ ICC-01/12-01/18-2743-Conf, para. 72.

²⁴ ICC-01/12-01/18-2743-Conf, para. 73, referring to the sentenced person’s return to the state at issue.

assessed this factor solely by reference to Mali and concerns expressed relating to his return to Timbuktu, due to the absence of “[Redacted]”.²⁵

15. For both Rule 223(b) and (c), the Panel treated the absence of information from [Redacted] as a threshold requirement as concerns whether it could consider these factors by reference to a location other than Mali. The First Issue as to “whether the Panel erred by referring to the views of the ‘State of resettlement’ in the context of Rules 223(b) and (c), and in the absence of proof of the right to reside in a specific ‘State of resettlement’, treating the state of nationality as the ‘State of resettlement’”, thus arises from the Decision.

The First Issue Significantly Impacts the Fairness of the Proceedings

16. The First Issue critically impacted the fairness of the process by introducing a requirement that discriminates between sentenced persons and which means in practice that the length of their sentence will be determined by factors beyond their control. This is the first ICC Article 110 decision requiring the sentenced person to adduce concrete proof concerning their intended location of residence and their right of residence, as part of the Rule 223(b) assessment. In *Al Mahdi*, the Panel found this factor to be present, based on Mr Al Madhi’s statements of opposition to extremism and “envisaged plans” to be “[Redacted].”²⁶ These plans were devoid of any details about his proposed country of residence, how his intentions would be monitored or how he intended to secure employment or housing. The Panel also did not employ Mali as the ‘State of resettlement’ for the purposes of assessing such prospects, even though like Mr Al Hassan, Mr Al Mahdi is a Malian national with no right to reside elsewhere. Similarly, in *Katanga*, the Panel placed weight on Mr Katanga’s indication that he would live in a specific village, even though the DRC authorities opposed his release and provided no assurances that they would monitor or ensure that he remained within the place of residence.²⁷ Critically, even though there was a potential legal impediment concerning Mr Katanga’s return to this village arising from the existence of national proceedings against him, the Panel found such information to be irrelevant.²⁸ In *Lubanga*, the Panel also accepted the sentenced person’s assertion that he would return to Kisangani, rejecting the Prosecutor’s suggestion that he might go elsewhere as

²⁵ ICC-01/12-01/18-2743-Conf, para. 75.

²⁶ ICC-01/12-01/15-434-Conf-Exp-Red, paras 50, 52.

²⁷ ICC-01/04-01/07-3615, paras 54, 60-61.

²⁸ ICC-01/04-01/07-3615, para. 60.

‘speculative’.²⁹ The Panel further clarified that, as their focus was on the intention of the sentenced person, the fact that proposed plans for resettlement were subject to approval from third persons or entities was irrelevant.³⁰ Thus, Messrs. Katanga, Lubanga and Al Mahdi were able to satisfy the threshold of Rule 223(b) even though their States of origin opposed their release.

17. In contrast, Mr Al Hassan adduced substantively more detailed plans and documentation than Messrs. Katanga, Lubanga and Al Mahdi concerning his proposed plans for resettlement and resocialization, including proof of civilian employment and housing. And, whereas the OTP opined that some kind of conditional oversight might be required in connection with Mr Al Mahdi,³¹ no such suggestion was advanced in connection with the Prosecution’s overall support for Mr Al Hassan’s immediate release. Nor was there any predicate finding from the Panel or evidential foundation that such oversight was required; to the contrary, the Registry’s observations made it clear that this factor (Rule 223(b)) was present and reflected in Mr Al Hassan’s conduct and profile. The additional requirement of documentation from [Redacted] thus resulted in Mr Al Hassan failing to satisfy this threshold in circumstances where other sentenced persons in equivalent circumstances had succeeded in doing so.

18. As concerns Rule 223(c), the Panel’s approach again appears to diverge from the position adopted with other sentenced persons, resulting in an unfair distinction that was impacted by Mr Al Hassan’s ethnicity. The Panel characterised Rule 223(c) as a “negative factor” which “if found to be present, may weigh against a reduction of sentence”.³² Since it must be “found to be present”, the Panel must have information that substantiates the existence of this factor; the absence of information will thus result in a finding that it is not fulfilled. This in turn, means that there is no burden on the sentenced person to prove the contrary. Both the *Katanga* and *Lubanga* Panels interpreted this to require information indicating the existence of significant social instability in the State or area at issue;³³ any doubts or ambiguity or

²⁹ ICC-01/04-01/06-3173, para. 52: “The Panel does not find the Prosecutor’s arguments in relation to Mr Lubanga’s “true” intention to return to Ituri, as opposed to Kisangani, to be persuasive and considers these arguments to amount to mere speculation, to which little to no weight should be afforded. In this same regard, the Panel does not find that the fact that Mr Lubanga must complete additional steps to complete his enrolment at university or that his eventual admission is subject to the approval of other individuals to be a basis for doubting the veracity of his intention to resume his studies in Kisangani if he is released”.

³⁰ ICC-01/04-01/06-3173, para. 52.

³¹ [ICC-01/12-01/15-T-010-Red-ENG](#), p.27, lns 1-20 ; p.30, lns 21-23.

³² Decision, para. 73.

³³ ICC-01/04-01/07-3615, para. 74; ICC-01/04-01/06-3375, para. 73.

absence of information weighed in favour of a determination that the factor was not satisfied.³⁴ In *Katanga*, the Panel reached its conclusion on the basis of Katanga's assertion that he would return to his village of Aru,³⁵ even though it received no proof of such and Katanga was detained at the time of proceedings. In *Lubanga*, the Panel took into account the fact that any destabilizing effect arising from his release could be "lessened by his resettlement in an area other than Bunia".³⁶ The Panels thus used the sentenced person's expressed preference concerning the location of potential release, without requiring proof or assurances that they would not return to the location where the crimes occurred. For *Lubanga*, the Panel also recognized that the sentenced person "may not have access to or be able to provide all of the necessary information relevant to the factors laid out in article 110 (4) of the Statute and rule 223".³⁷

19. While the Panel in this case cited identical legal authority in support of the requirement concerning the existence of information demonstrating the existence of significant social instability in the place where the crimes occurred (the territorial state),³⁸ the Panel deviated from *Katanga* and *Lubanga* insofar as it refused to base its assessment by reference to the release location specified by Mr Al Hassan (namely, not Mali). The requirement of proof of a right to resettle in a country other than Mali thus led the Panel to find that this factor was satisfied in connection with Mr Al Hassan, notwithstanding first, the absence of information that Mr Al Hassan's release to a country other than Mali would generate significant social instability in Mali, and second, the fact that the *Katanga* and *Lubanga* Panels had found the contrary based on very similar arguments from the territorial State and victims.

20. The unfair consequences of a requirement that the sentenced person must be able to prove their ability to resettle in a third country is brought into sharp relief when viewed in connection with [Redacted].³⁹ Article 21(3) of the Statute also prohibits the Court from drawing any adverse distinctions based on national or ethnic origin. The imposition of an

³⁴ICC-01/04-01/07-3615, para. 75 (noting that the Panel "has not received any information indicating that Mr Katanga's return to the DRC would result in significant social instability"; ICC-01/04-01/06-3375, para. 65 (no confirmation of Lubanga's plans meaning no conclusions could be drawn in relation to them); para. 73 (conflicting information meant that threshold not satisfied);

³⁵ ICC-01/04-01/07-3615, para. 75

³⁶ ICC-01/04-01/06-3173, para. 64.

³⁷ ICC-01/04-01/06-3173, para. 32.

³⁸ Decision, para. 73.

³⁹[Redacted].

evidentiary requirement concerning proof of the right to live in a specific country or area raises fundamental issues of fairness between sentenced persons, as the ability to satisfy this requirement is heavily dependent on ethnicity and nationality. This would fall foul of the prohibition, under human rights law, of unfair discrimination between prisoners based on personal status (such as ethnic or national origin).⁴⁰ The principle of non-discrimination (including based on nationality) applies with particular force to procedures for evaluating eligibility for early release.⁴¹ The Council of Europe has underlined in this regard that authorities have a positive duty to take steps to ensure that foreign prisoners do not face barriers to seeking early release due to bureaucratic or administrative requirements.⁴² It follows that a fair and non-discrimination resolution of early release proceedings at the ICC is also impacted by the extent to which the sentenced person has the means to satisfy this additional criteria.

The First Issue Significantly Impacts the Expeditionness of the Proceedings

21. The Panel appears to have accepted that Mr Al Hassan's wish not to return to Mali was genuine and legitimate, and that he lacked the means to secure entry to another State, through no fault of his own. Yet, rather than basing its assessment on i) proof of Mr Al Hassan's intent and ability to be meaningfully engaged in civilian employment; and ii) proof of Mr Al Hassan's intention not to return to the territorial state or location of the crimes, the Panel indicated that it will only assess such factors by reference to Mali, unless and until Mr Al

⁴⁰ Being a prisoner is an aspect of personal status and amounts to "other status" for the purposes of Article 14 (*Stummer v Austria*, [37452/02](#), para. 90; *P.C. v. Ireland*, [26922/19](#), para. 80 and other references cited therein); *Clift v. the United Kingdom*, [7205/07](#), paras 56-59. See *Stec and Others v. the United Kingdom*, [65731/01](#) and [65900/01](#), paras 51-53, 66 which reaffirmed that legal or administrative schemes run by the State must ensure its application does not result in unjustified differences of treatment based on 'other status' such as nationality or ethnic origin. See [Revision of the 2012 Recommendation concerning foreign prisoners](#), Rule 6 "Positive steps shall be taken to avoid discrimination in the treatment of foreign suspects, offenders and prisoners, particularly on the grounds of nationality and legal status" which states that foreign prisoners should face no discrimination, particularly due to national or social origin, as per various treaty law including Art 14 ECHR.

⁴¹ *Clift v. the United Kingdom*, [7205/07](#), paras 67-68; *Stott v. the United Kingdom*, [26104/19](#), paras 105-106: Difference in treatment in early release eligibility between the applicant and other prisoners convicted under different sentencing regimes.

⁴² See Council of Europe, 'Draft Commentary on the Recommendation concerning Foreign Prisoners', [PC-CP \(2011\) 6 rev 6](#), pp. 19-20: "In order to establish substantial equality of treatment, positive steps should be taken to ensure that foreign prisoners are considered for early release when they become eligible for such release (Rule 36.1). Given that foreign prisoners may be embroiled in immigration or other proceedings, care should be taken to avoid unnecessary bureaucratic delays to release decisions and to ensure co-ordination between relevant governmental agencies (Rule 36.2). The decision-making in respect of early release should not discriminate against foreign prisoners, but should be taken on the basis of the merits of each individual case." See also 2020 European Prison Rules, [Rec\(2006\)\(2\)-rev](#), Rule 37.1: "positive measures shall be taken to meet the distinctive needs of prisoners who are foreign nationals."

Hassan can furnish the required documentation. This has the consequence of deferring an effective evaluation of these criteria until an indeterminate event or date (that is, the point at which documentation concerning a right of entry to a third State is received). Irrespective as to correctness of this stance, it injects a significant element of delay into the proceedings by deferring Mr Al Hassan's release for a further 20 months, and making any further consideration of these elements contingent on potential cooperation from States.

The Second Issue arises from the Decision and significantly impacts the fairness and expeditiousness of the proceedings

The Second Issue Arises from the Decision

22. The Panel accepted that the phrase 'significant social instability' denotes a high degree of unrest and disruption linked to the sentenced person or his supporters.⁴³ This implies two necessary elements: *first*, proof of the severity of likely consequences, and *second*, a causal link to the sentenced person and his or her release. In the absence of the latter element, the threshold is not met.⁴⁴ The Panel also endorsed prior jurisprudence that Rule 223(c) requires proof of the existence of significant social instability arising from the persons return to the "State at issue" and that such proof may be established through "information" concerning concrete acts of a sufficiently grave nature linked to the actions of the sentenced person or his supporters.⁴⁵ The Panel nonetheless found this relatively high threshold to be satisfied by Mali's avowal that "Mali is still beset by terrorism and there remains a threat of reprisals",⁴⁶ and concerns raised by the victims concerning his potential return.⁴⁷ In so doing, the Panel issued no ruling on Defence arguments concerning the need to treat Mali's observations with caution and precedent that victim concerns, while potentially relevant to Rule 223(d), do not qualify as probative information for the purposes of Rule 223(c).⁴⁸ The Panel's approach ultimately gave both Mali and the LRV a privileged position as concerns their ability to establish adverse facts.

23. For Mali, the Panel placed particular weight on their position that "Mali, as the State that was directly affected by the crimes for which Mr Al Hassan has been convicted by the Chamber and Mr Al Hassan's state of nationality, is in possession of direct information on the

⁴³ ICC-01/12-01/18-2743-Conf, para. 73.

⁴⁴ [ICC-01/04-01/07-3615](#), para. 75.

⁴⁵ ICC-01/12-01/18-2743-Conf, para. 73.

⁴⁶ ICC-01/12-01/18-2743-Conf, para. 74.

⁴⁷ ICC-01/12-01/18-2743-Conf, para. 74.

⁴⁸ ICC-01/12-01/18-2720-Conf, paras 29-31; [ICC-01/04-01/07-3615](#), para. 77.

situation on the ground.”⁴⁹ Yet, this notion was never asserted or independently substantiated through Mali’s observations. Mali never claimed to have such information nor explained if and how it assessed the risk of Mr Al Hassan’s release.

24. This is the first ICC early release decision to specify that such deference should be afforded to the views of the State affected by crimes. In both the *Katanga* and *Lubanga*, the Panels took the opposite view, attaching no weight to submissions from the DRC, which, “[a]bsent any relevant information by which to evaluate” such claims, were treated as “bald assertions” and afforded no evidential value.⁵⁰ In *Lubanga*, the Panel also noted that the drafting history of Rule 223(c) indicated that States were concerned by the potential injection of political considerations into the judicial process.⁵¹ The approach taken in this case also deviates from a consistent line of precedent based on the Appeals Chamber’s direction that “it is an essential tenet of the rule of law that judicial decisions must be based on facts established by evidence” and, crucially, that “[p]roviding evidence to substantiate an allegation is a hallmark of judicial proceedings”.⁵² In line with the maxim *onus probandi incumbit actori*, States have been required to substantiate facts with probative and tangible evidence, with a sufficient degree of specificity.⁵³ No presumption of good faith or veracity attaches to State submissions.⁵⁴ Indeed, whereas the *Al Hassan* Panel found that it was entitled to assume the existence of supporting information from the fact that Mali was best placed to access such information, the Appeals Chamber has adopted the opposite tact, finding that if the State is able to access relevant information, then there is an expectation that it will provide such information to the Court to substantiate its claims, failing which, the Court is entitled to draw adverse conclusions.⁵⁵

⁴⁹ ICC-01/12-01/18-2743-Conf, para. 106.

⁵⁰ *Katanga*, ICC-01/04-01/07-3615, paras 75 and 78; *Lubanga*, ICC-01/04-01/06-3173, paras 58 and 64.

⁵¹ ICC-01/04-01/06-3173, para. 63.

⁵² ICC-01/21-77, para. 73 and fn. 83.

⁵³ ICC-01/21-77, paras 1, 181; See also ICC-02/18-89, para. 75, noting that when a State alleges a fact, “the State concerned is expected to provide information in support of its allegation of fact”, and para. 181 (referencing “evidence of a sufficient degree of specificity and probative value”).

⁵⁴ ICC-02/18-89, para. 154 citing, in regard to admissibility, “...the onus to substantiate the assertion that it is carrying out or has carried out relevant investigations, **is the State**.” [emphasis added]; ICC-01/11-01/11-547-Red, para. 77, rejecting claims that the ICC should trust States’ factual avowals.

⁵⁵ ICC-01/11-01/11-547-Red, para. 83: “The Appeals Chamber does not consider it to be inherent in an on-going investigation that its contours are unclear. As noted by the Prosecutor, any investigation - irrespective of its stage - will have certain defining parameters, and it is an indication that there is no concrete case under investigation if those parameters are unclear.” See also para. 116 regarding the low probative value of statements from the authorities that are not supported by independent evidence.

25. In terms of the treatment of information received from the victims, the LRV submissions concerning Rule 223(c) were couched in extremely brief terms, incorporating by reference the same views and concerns expressed in connection with Rule 223(d). These views and concerns fell into three categories: *first*, a general opposition to his release based on a disagreement with his sentence; *second*, a broad assertion from one victim, who fell directly outside the scope of Mr Al Hassan's convictions, concerning hypothetical fears that were not accompanied by any information as to actual risk; and *third*, repetition of their opposition to his release.⁵⁶ While such views may be relevant to rule 223(d), the notion of significant social instability denotes an objective factual situation, which would typically require proof of such facts. The Panel's reliance on the same views and concerns from victims to establish both rule 223(c) and (d) raises the question as to whether the high threshold under rule 223(c) was diluted such that it may be satisfied by assertions of a subjective 'impact' rather than an objectively founded risk.
26. The impact of the Panel's treatment of this issue on the way it resolved the Article 110 procedure is reflected by the divergence in outcomes in the present Decision as compared to past Article 110 proceedings, which found that similar concerns did not satisfy Rule 223(c).⁵⁷ Thus, in *Katanga*, the Panels distinguished between Rule 223(c) and (d), finding that while the views of victims was relevant to their assessment of impact under Rule 223(d), they were incapable of establishing the evidential threshold for objective facts required by Rule 223(c).⁵⁸ This distinction between the two factors is also consistent with ICC case law that the "views and concerns" of victims should be treated as submissions, and not evidence capable of substantiating objective facts.⁵⁹
27. The Panel's decision to rely on declarations and submissions from Mali and the LRV to establish facts ultimately led the Panel to find Rule 223(c) to be satisfied, notwithstanding the absence of independent evidence on this factor. The Second Issue as to "whether the Panel's reliance on assertions from Mali and the LRV to reach adverse findings of fact was consistent with the maxim *onus probandi incumbit actori*", thus arises from the Decision.

⁵⁶ [ICC-01/12-01/18-2708](#), paras 28-37.

⁵⁷ *Katanga*, [ICC-01/04-01/07-3615](#), paras 75 and 78; *Lubanga*, [ICC-01/04-01/06-3173](#), paras 58 and 64.

⁵⁸ [ICC-01/04-01/07-3615](#), para. 77.

⁵⁹ *Ongwen*, [ICC-02/04-01/15-1819-Red](#), para. 13; *Lubanga*, [ICC-01/04-01/06-2032-Anx](#), para. 25: "it needs to be stressed that the process of victims "expressing their views and concerns" is not the same as "giving evidence"; *Bemba*, [ICC-01/05-01/08-2138](#), paras 19-20.

The Second Issue Significantly Impacts the Fairness of the Proceedings

28. The Second Issue generates significant consequences for the adversarial nature of the Article 110 proceedings and the independent and impartial nature of the Panel's adjudication. It also raises considerable implications for the integrity of the process due to the real risk in the current case that Mali's security assessment concerning Mr Al Hassan is based on information obtained through torture or cruel treatment.
29. In terms of the impact on adversarial proceedings, the principle of equality of arms requires each party to be afforded an equally fair procedural opportunity to influence the outcome of the decision.⁶⁰ If one party is privileged in its ability to establish relevant matters, without enabling the other party to access and comment on the evidence for such matters, this will give rise to an inequality of arms.⁶¹ Violations of the right to a fair and adversarial hearing have been found in circumstances where Courts treated evidence from one party in a different manner than the other and where underlying evidence was not disclosed to the defence. Thus, the right to adversarial proceedings may be infringed in circumstances where national authorities are permitted to assert adverse facts, without disclosing the underlying foundation for such. Even in cases where evidence is withheld to preserve an important public interest, which at present has not been used as a justification by the Malian state, the ECtHR has clarified that only measures that are strictly necessary are permissible and must sufficiently counterbalanced by judicial authorities.⁶²
30. In contrast to the above, the low evidential threshold applied to Mali and LRV effectively gave them the means to veto or delay Mr Al Hassan's release through mere declarations of opposition and concern. This is reflected by the Panel's reliance on their blanket assertions, in preference to detailed and substantiated assessments to the contrary. Specifically, the Registry, which is responsible for monitoring the safety and security of victims and witnesses, concluded, based on an assessment of concrete information and developments, that "there is no indication that the early release of Mr Al Hassan "would give rise to significant social

⁶⁰ *Rowe and Davis v. the United Kingdom*, [28901/95](#), para 60: "It is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence. The right to an adversarial trial means, in a criminal case, that both prosecution and defence must be given the opportunity to have knowledge of and comment on the observations filed and the evidence adduced by the other party."

⁶¹ *Kuopila v. Finland*, [27752/95](#), para 38.

⁶² *Van Mechelen and Others v. the Netherlands*, [21363/93](#), [21364/93](#), [21427/93](#), [22056/93](#), para 58; *Rowe and Davis v. the United Kingdom*, [28901/95](#), para 61; *Stoll v. Switzerland*, [69698/01](#), para 54.

instability” in Mali or **elsewhere**”.⁶³ If the Panel had treated the Registry, Mali and the LRV in the same manner, then the Panel should have weighed the detailed and impartial nature of the Registry’s conclusion, against the vague and subjective nature of the positions advanced by the LRV and Mali. This would have been consistent with *Katanga* and *Lubanga* where the Panels attached no weight to submissions from the DRC, which, “[a]bsent any relevant information by which to evaluate” such claims, were treated as “bald assertions” and afforded no evidential value.⁶⁴ In *Katanga*, the Panel dismissed the DRC’s claims because they were unsubstantiated or unsupported by evidence.⁶⁵ Instead, it gave greater weight to the Registrar’s assessment, which found no indication that *Katanga*’s return would strengthen the FRPI or trigger unrest.⁶⁶ Overall, the Panel prioritized impartial, evidence-based submissions over unsupported State assertions from the DRC. In *Lubanga*, the DRC submitted similar unsubstantiated concerns regarding the risk of social instability upon a reduction of sentence.⁶⁷ Again, the Panel determined that while there was conflicting evidence of which it could be determined that there was a risk of *some* social instability, that on the balance of information presented that this was not enough to be considered “significant” as needed under Rule 223(c).⁶⁸ Thus, both *Katanga* and *Lubanga* indicate that the threshold of “significant social instability” is high and requires evidence to substantiate claims made to this effect.

31. The Panel’s departure from these precedents and ultimate reliance on the views of Mali and the LRV in preference to the Registry thus gives rise to the appearance that the Panel treated Mali and the LRV differently than the Registry or other parties. The Panel’s reliance on vague, unsubstantiated assertions also impacted Mr Al Hassan’s right to be effectively heard in connection with such claims, as it is impossible to rebut an argument that does not have a disclosed and tangible evidential foundation.

32. As concerns the independence and impartiality of the Article 110 process, when the Appeals Chamber first set out the importance of substantiating facts with evidence, it cautioned that adopting a different approach “would lead to arbitrariness and would be

⁶³ ICC-01/12-01/18-2743-Conf, para. 71.

⁶⁴ *Katanga*, [ICC-01/04-01/07-3615](#), paras 75 and 78; *Lubanga*, [ICC-01/04-01/06-3173](#), paras 58 and 64.

⁶⁵ [ICC-01/04-01/07-3615](#), paras 72, 78.

⁶⁶ [ICC-01/04-01/07-3615](#), para. 75.

⁶⁷ [ICC-01/04-01/06-3173](#), para. 58.

⁶⁸ [ICC-01/04-01/06-3173](#), para. 64.

antithetical to the rule of law”.⁶⁹ The ECHR has also underlined that notions of ‘social disturbance’ should only be relied upon to justify detention in “exceptional circumstances” and where such notions are “based on **facts** capable of showing that the accused's release would actually disturb public order” (emphasis added).⁷⁰ The Panel’s treatment of Rule 223(c) raises substantial issues as concerns reliance on political considerations from States and subjective views from participants, which are not substantiated by evidence that is capable of independent judicial scrutiny.

33. During the finalization of the ICC Rules of Procedure, the Working Group on Penalties highlighted the following apprehension:⁷¹

A concern was expressed that pardon might involve political considerations which would not be appropriate for determination by the Court, so that the authority to decide on an application for pardon might better be vested in the Permanent Committee of States Parties.

34. This footnote reflects a concern regarding the prospect of the ICC, as an independent and impartial court of law, basing its decisions on political considerations. This is also consistent with the importance human rights law places on ensuring the objective appearance of impartiality as concerns detention related decisions.⁷² The way the Panel treated the observations of Mali impacts these principles, insofar as rather than treating Mali’s position with caution, the Panel gave enhanced weight to Mali’s submissions, without due appreciation as to the extent to which they were driven by political dynamics rather than facts, based on an objective and founded security assessment.

35. Similarly, ICC case law has consistently endorsed the importance of conducting an objective appraisal of risk factors in connection with the security of victims and witnesses and assessments concerning the release of the defendant: subjective belief concerning a risk is not sufficient to grant such protection or to take steps that could curtail the rights of the defendant.⁷³ This element of objectivity of the risk must be established on the basis of ‘tangible

⁶⁹ [ICC-02/04-01/05-371](#), para. 36.

⁷⁰ *I.A. v France*, [28213/95](#), para. 104.

⁷¹ [A/AC.249/1997/L.9/Rev.1](#), p. 64, fn. 66.

⁷² *Brincat v. Italy*, [13867/88](#), paras 11 and. 20. See also *Huber v. Switzerland*, [12794/87](#), para. 43; *Hood v. the United Kingdom*, [27267/95](#), para. 57; *Nikolova v. Bulgaria*, [31195/96](#), para. 49.

⁷³ [ICC-01/04-02/06-824-Red](#), para. 6.

information⁷⁴ and should not be speculative or a remote risk.⁷⁵ This assessment cannot be exclusively based on the witness' own perspective.⁷⁶

36. Finally, the Panel's decision to assign significant probative value to Mali's submissions, notwithstanding the absence of information that was capable of independent judicial verification, impacts significantly on human rights protections arising from the exclusionary rule. The protection deriving from Article 15 of the Convention against Torture is a core plank of the right to a fair and impartial hearing. The Defence brought to the Panel's attention credible evidence that Malian security authorities had interrogated and detained Mr Al Hassan in conditions amounting to torture, and that he had never been charged or brought before a domestic judge.⁷⁷ This satisfied the real risk test, which in turn, meant that the Panel should not have accepted factual assertions from Mali unless Mali demonstrated that its assessment was based on probative and untainted sources.⁷⁸ Article 15 of the Convention against Torture applies to all formal proceedings,⁷⁹ and is of enhanced importance in relation to State levied accusations of terrorism.⁸⁰ States also cannot hide behind an absence of evidence to shield the possibility that their accusations derive from illegal or tainted sources.

The Second Issue Significantly Affects the Expeditionness of the Proceedings

37. The way the Panel treated the weight and admissibility of information furnished by Mali and the LRV directly impacted the expeditionness of the process in multiple ways. On the one hand, if the Panel had required a higher level of substantiation from Mali and the LRV, they may have required more time to meet this threshold. On the other hand, the Panel's reliance on assertions from Mali and the LRV led them to conclude that this negative criterion was fulfilled even though similar or identical arguments had been rejected in relation to other sentenced persons. The Panel's treatment of the views of Mali and the LRV thus impacted the length of Mr Al Hassan's sentence and the length of enforcement proceedings. The absence

⁷⁴ [ICC-01/04-02/06-824-Red](#), para. 11.

⁷⁵ ICC-01/12-01/18-1113-Conf-Red, para. 35; ICC-01/12-01/18-1280-Conf-Red, para. 15.

⁷⁶ ICC-01/14-01/18-906-Red2, para. 32.

⁷⁷ ICC-01/12-01/18-2717-Conf, para. 6.

⁷⁸ *Nuon Chea*, [Decision on Evidence Obtained Through Torture](#), paras 34, 36; See also Ayyash et al., STL-11-01/T/TC, [Decision denying Prosecution Application for Certification to Appeal 'Decision Admitting Statements of Witness PRH103 under Rule 158 into Evidence'](#), 20 October 2017, paras. 2, 5.

⁷⁹ [A/HRC/25/60](#), paras.17, 22.

⁸⁰ [A/HRC/25/60](#), para. 18.

of a requirement that facts must be substantiated also expands the scope of judicial inquiry, which also impacts the speediness within which such applications can be heard and resolved.

Third Issue: Whether critical findings against release can be based on views and allegations related to crimes for which the sentenced person was acquitted
The issue arises from the Decision

38. The Panel did not expressly rule on Defence arguments that it was impermissible to base the Decision on either considerations related to Mr Al Hassan’s acquittals or views and concerns from victims of crimes for which he was acquitted.⁸¹ Nonetheless, the fact that the outcome was based on LRV submissions, which derived from views and concerns related to Mr Al Hassan’s acquittals (and victims of the crimes for which he was acquitted), constitutes an implicit finding that the Panel was entitled to do so.

39. As set out in the First and Second Issues, the Panel placed a significant degree of weight on the views and concerns of victims, when reaching its conclusions concerning Rule 223(c) and (d), and also when weighing these criteria against Rule 223(a), (b) and (e). The Panel underlined in particular, the number of victims (which was not specified) and “the psychological and symbolic impact the present review has on them in the context of the procedural developments in the present case”.⁸² These findings were based on paragraphs 10, 13, 30, 32, 35 of the LRV submissions,⁸³ which in turn, were based on:

- An expression of frustration and disappointment concerning Mr Al Hassan’s acquittals, and the withdrawals of the Prosecution and Defence appeals;⁸⁴ and
- Frustration and disagreement with the length of Mr Al Hassan’s sentence,⁸⁵ which the LRV originally argued should have been lengthened to take account of disappointment arising from his acquittals.⁸⁶

40. Although the LRV did not generally identify the sources of these views and concerns by reference to either pseudonyms or victim application numbers, the LRV’s express citation of V-0001 demonstrates that their interviews with victims included individuals, who fell outside

⁸¹ For Defence arguments, see: ICC-01/12-01/18-2720-Conf, paras 31-32..

⁸² ICC-01/12-01/18-2743-Conf, para. 105.

⁸³ ICC-01/12-01/18-2743-Conf, fn 181.

⁸⁴ ICC-01/12-01/18-2708, para. 13.

⁸⁵ ICC-01/12-01/18-2708, para. 30.

⁸⁶ ICC-01/12-01/18-2641, paras 59-64.

the scope of Mr Al Hassan's convictions.⁸⁷ LRV submissions based on V-0001 were, moreover, cited in the Panel's Decision.⁸⁸ In terms of the number of victims referenced by the Panel, as things stood at the time of the Article 110 proceedings, the Registry, Prosecution and LRV had identified or pre-identified 28 direct victims related to the crimes for which Mr Al Hassan was convicted.⁸⁹ Of these 28 individuals, only three were represented by the LRV.⁹⁰ The Panel's reference to a "significant number" of victims⁹¹ thus reflects the Panel's reliance on views and concerns originating from individuals, who were not confirmed as direct victims of the crimes for which Mr Al Hassan was convicted. The Panel's reliance on such views and concerns and the significant weight attributed to them to reach adverse findings, constituted a deviation from the approach in *Katanga*, where the Panel found information concerning *other* legal proceedings to be irrelevant.⁹² The Third Issue as to whether critical findings against release can be based on views and allegations related to crimes for which the sentenced person was acquitted thus arises from the Decision.

The Third Issue significantly impacts the fairness of the proceedings

41. Article 82(1)(d) of the Statute is concerned with the *consequences* generated by the issue in question rather than the intent of the Chamber. The Panel reached findings impacting the length of Mr Al Hassan's detention based on considerations related to crimes for which he was not convicted. The consequences of this approach raise issues concerning Mr Al Hassan's presumption of innocence and protection against double jeopardy, both core planks of the right to fair proceedings.

42. Turning to the presumption of innocence, this right entails a panoply of protections, including that public statements from judicial authorities should not imply responsibility for

⁸⁷ ICC-01/12-01/18-2708, para. 31 (citing V-001). 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.

⁸⁸ ICC-01/12-01/18-2743-Conf, fn. 141, citing "[LRV Submissions](#)", paras 13, 25, 31-35."

⁸⁹ ICC-01/12-01/18-2692-Conf-Red, para. 8.

⁹⁰ ICC-01/12-01/18-2692-Conf-Red, para. 9.

⁹¹ ICC-01/12-01/18-2743-Conf, para. 106.

⁹² ICC-01/04-01/07-3615, para. 60: "this information to be irrelevant to this Sentence Review. In the Panel's view, taking this type of information into account would shift the focus of a sentence review from the relationship between the factors under article 110 (4) of the Statute and rule 223 of the Rules of Procedure and Evidence with the crimes for which the person was convicted of by this Court to an evaluation of the relationship between these factors and other potential proceedings that are unrelated to those at the Court."

crimes, where such responsibility has not been proven.⁹³ While the Panel did not pronounce directly on Mr Al Hassan's responsibility for the crimes for which he was acquitted, the Decision expressly relies on sentiments concerning disappointment related to such acquittals and Mr Al Hassan's subsequent sentence. Even though that was presumably not the intent of the Panel, such pronouncements, when tied to the decisions concerning the length of sentence, create a public perception of blameworthiness for conduct for which Mr Al Hassan was acquitted. The Panel's incorporation of such views into its ultimate assessment concerning the length of Mr Al Hassan's sentence also impacts his right not to be punished for crimes which he did not commit.

43. The impact on Mr Al Hassan's protection against double jeopardy (and the related protection against double punishment) is generated by the Panel's decision that views and concerns regarding his acquittals were relevant to the length of Mr Al Hassan's sentence, notwithstanding Trial Chamber X's explicit rejection of such. In connection with Defence arguments concerning the onerous effects in detention generated by the Covid-19 pandemic, the Panel found that it could not revisit sentencing factors that had already been disposed of by the Trial Chamber.⁹⁴ Yet, even though Trial Chamber X expressly found that the length of Mr Al Hassan's sentence should not be informed by LRV submissions based on victims of crimes for which Mr Al Hassan was acquitted,⁹⁵ the Panel relied on virtually identical argument to reach a contrary approach. This means that Mr Al Hassan has been subjected to multiple judicial determinations concerning the propriety of his acquittals and their relevance to his sentence, even though both the Trial Judgment and the Sentencing Decision have achieved the status of legal finality.

The Third Issue Significantly Impacts the Expeditionness of the Proceedings

44. As was the case with the Second Issue, the expeditious conduct of the proceedings is impacted by the expansion of the scope of judicial assessment to a broad range of perspectives, beyond individuals who were confirmed to be direct victims at the time of this process. Article 82(1)(d) requires the Chamber to forecast the consequences of an erroneous decision,⁹⁶

⁹³ ECHR, *Böhmer v Germany*, 37568/97, para. 67; *Sekanina v Austria* 13126/87, para. 48. See also 13126/87, paras 29-30; *Geerings v. Netherlands*, 30810/03, para. 49; *Minelli v. Switzerland*, 8660/79, paras 37-41.

⁹⁴ ICC-01/12-01/18-2743-Conf, para. 95.

⁹⁵ Sentencing Judgment, fn 201.

⁹⁶ ICC-01/04-168, para.13.

including the possible consequences that would result from the improper admission of evidence.⁹⁷

An Immediate Decision from the Appeals Chamber on these three issues would materially advance the proceedings

45. The Three Issues had a tangible impact on the outcome of the Article 110 process and the continued enforcement of Mr Al Hassan’s sentence. If the Panel erred in the way it resolved these issues, this could mean that Mr Al Hassan’s continued imprisonment lacks a legal basis and is thus arbitrary and should be brought to an end, or otherwise concluded before the specified date of 28 March 2027. The current date for release also triggers considerable time, efforts and resources concerning the enforcement of sentence in a third country, which might not be required. The Three Issues will also govern any potential request for reconsideration that may be introduced in relation to Rules 223(b), (c) or (d). An immediate decision by the Appeals Chamber is thus required to rid the judicial process of “possible mistakes that might taint either the fairness of the proceedings or mar the outcome”.⁹⁸



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Dated this 30th day of July 2025
At The Hague, The Netherlands

⁹⁷ ICC-01/09-01/11-1953-Red-Corr, paras 15, 23, 24

⁹⁸ [ICC-01/04-168](#), para. 14.