

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/18
Date : 17 February 2026

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

**Before: Judge Luz del Carmen Ibáñez Carraza, Presiding Judge
Judge Gocha Lordkipanidze
Juge Erdenebalusren 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 “Submissions on the “Defence Application for Full
Commutation and Release, pursuant to Rule 224 (3) of the Rules of the Procedure
and Evidence””, submitted on 13 February 2026, ICC-01/12-01/18-2767-Conf**

Source: Office of Public Counsel for Victims

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D28

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I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”), acting on behalf of four Victims,¹ opposes the “Defence Application for Full Commutation and Release, pursuant to rule 224 (3) of the Rules of the Procedure and Evidence” (the “Defence Application”).²

2. The Principal Counsel posits that the Defence Application should be dismissed *in limine* as not receivable. Indeed, the legal framework of the Court does not provide for the possibility of a second review of a convicted person’s sentence after a first successful application .

3. Should the Panel of Judges consider that the Defence Application is receivable, it should nonetheless be rejected on the basis that the facts pleaded by the Defence do not constitute new circumstances of enough significance within the meaning of rule 223 of the Rules of Procedure and Evidence (the “Rules”) to justify a further reduction of Mr Al Hassan’s sentence.

4. Finally, the Principal Counsel recalls that the Panel of Judges has already recognised that the impact that early release can have on Victims³ is a factor to be considered when evaluating whether a reduction of sentence is appropriate. She posits that this principle has to be applied also in the present circumstance should the Panel of Judges decide to proceed in assessing the merits of the Defence Application. Indeed, Victims expect the convicted person to fully serve the appropriate sentence imposed on him for the crimes which so greatly affected them. In this regard, it cannot be

¹ See the “Decision on the LRV’s submission on a potential conflict of interest” (Trial Chamber X), [No.ICC-01/12-01/18-2728-Conf](#) and [No.ICC-01/12-01/18-2728-Red](#), 5 June 2025 (the “Appointment Decision”).

² See the “Defence Application for Full Commutation and Release, pursuant to Rule 224 (3) of the Rules of the Procedure and Evidence”, No. [ICC-01/12-01/18-2758-Conf](#) with confidential annexes and one public annex (ICC-01/12-01/18-2758-AnxC), 27 January 2026 (the “Defence Application”).

³ See the “Decision on the review concerning reduction of sentence of Mr Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud” (Panel of Judges), No. [ICC-01/12-01/18-2743-Conf](#) and [No. ICC-01/12-01/18-2743-Red](#), 23 July 2025, para. 105 (the “Review Decision”).

disregarded that the request for full commutation and immediate release has an egregious impact on the well-being of the Victims.

II. PROCEDURAL BACKGROUND

5. On 5 June 2025, Trial Chamber X appointed the Office to represent four Victims (the “Appointment Decision”).⁴

6. On 23 July 2025, following a four-month procedure, Mr Al Hassan’s sentence was reduced by 12 months (the “Review Decision”).⁵ His sentence is due to expire on 28 March 2027.

7. On 27 January 2026, the Defence for Mr Al Hassan submitted the Application.⁶

8. On 6 February 2026, the three judges of the Appeals Chamber appointed for the review concerning reduction of sentence (the “Panel of Judges” or the “Panel”) granted⁷ the Office’s request to have access to the Defence Application⁸ and directed Counsel to submit her observations by 13 February 2026 (the “Order”).

9. On 12 February 2026, the Panel of Judges granted a subsequent Office’s request⁹ to access the confidential version of the Review Decision, as well as the Prosecution’s and Legal Representatives of Victims’ responses to the Defence Application.¹⁰

⁴ See the “Appointment Decision”, *supra* note 1.

⁵ See the Review Decision, *supra* note 3.

⁶ See the Defence Application *supra* note 2.

⁷ See the “Order concerning access to a confidential document” (Panel of Judges), [No. ICC-01/12-01/18-2761-Conf](#), 6 February 2026.

⁸ See the “Request for access to the ‘Defence Application for Full Commutation and Release, pursuant to Rule 224 (3) of the Rules of the Procedure and Evidence’”, [No. ICC-01/12-01/18-2759](#), 5 February 2026 (reclassified as public on 12 February 2026).

⁹ See the “Second Request for access to documents related to the “Defence Application for Full Commutation and Release, pursuant to Rule 224 (3) of the Rules of the Procedure and Evidence”, [No. ICC-01/12-01/18-2764-Conf](#), 11 February 2026 (reclassified as public on 12 February 2026).

¹⁰ See the “Order concerning access to confidential documents and other procedural matters” (Panel of Judges), [No. ICC-01/12-01/18-2765](#), 12 February 2026.

III. CONFIDENTIALITY

10. Pursuant to regulation 23bis(2) of the Regulations of the Court, this document is filed as confidential following the level of classification of the Order and as it refers to information bearing the same classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

1. The Defence Application should be dismissed *in limine* as not receivable

11. The Principal Counsel posits that the legal framework of the Court does not provide the convicted person with the opportunity to request a second review of their sentence, after a previous successful review.

12. The wording of article 110 of the Statute is, in the Office's view, unequivocal and, read in line with the object and purpose of the Statute, it favours the interpretation that the sentence of a convicted person can be reviewed only once, in particular when said review lead to a reduction of the sentence.

13. Article 110(3) provides that "*When the person has served two thirds of the sentence, or 25 years in the case of life imprisonment, the Court shall review the sentence to determine whether it should be reduced*". In turn, under sub-paragraph 5, **only** "*if the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals [...] as provided for in the Rules of Procedure and Evidence*". It appears evident from the plain reading of the provision that no such possibility is open in case of a successful first review. Otherwise the drafters of the Statute would have expressly cater for such opportunity.

14. In essence, paragraph 3 creates a **single, obligatory initial review** at a fixed point in time. Paragraph 5 does *not* create a new right to review; it creates a *continuing mechanism* only if the first review does not result in a reduction of the sentence.

15. This interpretation is confirmed by the practice of the Court. In the *Lubanga* case, at the time of the initial review, the appointed panel of Judges considered that said reduction was not appropriate, therefore triggering the mechanism foreseen in paragraph 5 of the provision.¹¹ In the *Katanga* case, at the initial review, a reduction of sentence was considered appropriate and, consequently, there were no subsequent periodic review, meaning that paragraph 5 did not apply.

16. This interpretation is also confirmed by the object and purpose of the provision read in light of the object and purpose of the Statute. As underlined by the Panel of Judges in the Review Decision, reasons pleading for the early release of a convicted person are to be weighed against other factors, in particular the views of the Victims and their interests, including the impact that early release can have on them.¹² According to the Panel of Judges, the decision to reduce a sentence “*reflects its [...] duty to serve the interests of justice by ensuring a realistic prospect of resocialization for the sentenced person, while also taking into account the concerns of victims of the state of resettlement, in the hope of ultimately contributing to the healing of affected communities*”.¹³

17. Offering convicted persons the opportunity to seek multiple reviews of their sentence is at odd with this objective. Victims are drained by the length of judicial

¹¹ See the “Decision on the review concerning reduction of sentence of Mr Thomas Lubanga Dyilo”, [No. ICC-01/04-01/06-3173](#), 22 September 2015 (Panel of three judges), para. 12 (“*The Chamber is required to undertake a review of the sentence once the convicted person has served two-thirds of the sentence, in order to determine whether it should be reduced*”); para. 23 (“*Having considered the criteria under Rule 223, the Chamber concludes that it is not appropriate to reduce the sentence at this stage*”); and para. 25 (“*In accordance with Article 110(5) and Rule 224, the Chamber will review the question of reduction of sentence in three years’ time*”). See in the same sense, the “Decision on the review concerning reduction of sentence” [No. ICC-01/12-01/15-403-Red3](#), 3 September 2021 (Panel of three judges), paras. 12, 33 and 35.

¹² See the Review Decision, *supra* note 5, para. 105.

¹³ *Idem*, para. 108.

procedures. In the present proceedings, they are still awaiting reparations. Yet, less than a year after having been informed of the anticipated early release of Mr Al Hassan because of a reduction of sentence, they are now consulted again on this new request for full commutation of the sentence and immediate release. The mere fact that the application is made is in and of itself a source of great concern for Victims and, far from “*contributing to the healing of the affected communities*”, it perpetuates trauma.

2. In the alternative, the Defence Application should be dismissed since the Defence does not show a significant change in circumstances under rule 223 of the Rules

18. Should the Panel of Judges consider that the Defence Application is receivable, the Principal Counsel submits that the request should be dismissed since the Defence does not show a **significant** change of circumstances concerning the factors listed in rule 223(b), (c) and (d) of the Rules which could justify a further reduction.

a) Applicable law

19. The Principal Counsel recalls the principles of law set out in the Review Decision.¹⁴ Of particular relevance to the present proceedings is the Panel of Judges’ ruling according to which “*in so far as the factors listed in rule 223 (a), (d) and (e) of the Rules were considered by a trial chamber when imposing an appropriate sentence, it is necessary to find that there is a ‘clear and significant change of circumstances’ in relation to these factors from the time that the sentence was imposed*”.¹⁵

20. In this regard, she posits that the same approach should apply at this juncture in the Panel’s assessment of the factors listed in rule 223 (b) of the Rules- namely the prospect of resocialization and successful resettlement -; and (c) whether early release would give rise to significant social instability.

¹⁴ *Idem*, paras. 20-25.

¹⁵ *Idem*, para. 24.

21. In the Review Decision, a “clear” change of circumstances is defined as “*free from doubt*” “*unambiguous*” and “*very obvious*”, while “significant” is defined as “*large enough to be noticed or have an effect*” or “*of a measurable large amount*”.¹⁶

b) Observations on the Merits

22. In the Review Decision, the Panel of Judges reached its conclusion to reduce Mr Al Hassan’s sentence after considering: (i) his decision not to appeal the conviction and sentence, as well as “*his offer to provide assistance in the reparations proceedings*” (article 110(4))¹⁷; (ii) the fact that, to a certain extent, he distanced himself from the crimes (rule 223 (a) of the Rules); and (iii) a significant change in his individual circumstances, [REDACTED] (rule 223 (e) of the Rules).¹⁸

23. The Panel further found that: (i) no determination could be made regarding prospects for resocialization and resettlement due to the limited information available, the instability of the situation on the ground, Mr Al Hassan’s unsettled preferences (rule 223 (b) of the Rules); and (ii) although there were some indications that he took steps toward Victims, the available information showed that the latter expressed serious reservations (rule 223 (d) of the Rules). The Panel also took into account the number of Victims and the “*psychological and symbolic impact the [...] review has on them.*”¹⁹

24. The Defence argues that, since the Review Decision, a number of events have occurred that - evaluated together – represent new circumstances of such significance that would warrant immediate release. Specifically, the following facts would be “new”: (i) a purported change of circumstances concerning Mr Al Hassan’s resocialisation prospects (namely the fact that [REDACTED], the willingness [REDACTED] and an employment prospect) (addressed *infra* under 1); (ii) a purported

¹⁶ *Ibid.* and footnotes contained therein.

¹⁷ *Idem*, para. 104.

¹⁸ *Idem*, para. 97.

¹⁹ *Idem*, para. 105.

change of circumstances in the actions he took for the benefit of Victims (addressed *infra* under 3); and (iii) a purported change of circumstances in the impact his release would have on the social stability (addressed *infra* under 2).

25. Preliminarily, the Principal Counsel notes that Mr Al Hassan is a person convicted for egregious international crimes. In its Judgement, Trial Chamber X found that he committed the crimes against humanity of torture, persecution and other inhumane acts, as well as the war crimes of torture outrages upon personal dignity, mutilation, cruel treatment and passing sentences without previous judgment pronounced by a regularly constituted court. Some of these crimes were committed directly by him while he assisted in the commission of others.²⁰

26. Although his status as a convicted person does not deprive him of certain procedural rights, the fact that he was convicted for serious international crimes must be adequately taken into account when assessing whether new circumstances arose that are so significant to justify reviewing his sentence a second time. In this regard, the Panel of Judges is no longer balancing the right of an accused against the rights of the Victims and other interests. It is balancing the rights of an individual convicted of serious crimes with the right and interests of the Victims to see the perpetrator of the crimes they suffered from serving the fair sentence inflicted upon him for his actions.

1) The “new” circumstances surrounding Mr Al Hassan’s personal situation are not significant enough to warrant a further review of his sentence

27. In support of the fact that there are significant change to Mr Al Hassan’s personal situation, the Defence submits that some members of his family [REDACTED],²¹that [REDACTED] and that he has secured an employment promise [REDACTED].²²

²⁰ See the “Trial Judgement “(Trial Chamber X), [No. ICC-01/12-01/18-2594-Red](#), 26 June 2024, disposition.

²¹ See the Defence Application *supra* note 2, [REDACTED].

²² *Idem*, [REDACTED].

28. These circumstances are neither new nor significant enough to warrant a further review of sentence, let alone its commutation.

29. First, not every fact connected to Mr Al Hassan's life is of relevance to assess whether there is a new circumstance warranting a further reduction of his sentence. In this regard, it is far from being certain that the [REDACTED]. Indeed, as plainly apparent from the Defence Application, [REDACTED]. Therefore, this fact does not even constitute a change of circumstance, let alone a significant change.

30. Second, Mr Al Hassan's ability [REDACTED]. [REDACTED] was already known at the time of the Review Decision.²³

31. Third, that Mr Al Hassan secured an employment promise might be new but it is in no way significant enough to be considered as a factor warranting a further reduction of his sentence. In this regard, it is incidentally noted that the convicted person should be released in one year and it can only be expected that he is preparing for his life after release.

2) The "new" circumstances pertaining to whether Mr Al Hassan's release would cause social instability are of no significance

32. In support of the fact that there is a significant change as to whether Mr Al Hassan's release would give rise to significant social instability, the Defence submits that the political situation in Mali has evolved - with Mali announcing his withdrawal from the Rome Statute -²⁴ and that, in any event, the convicted person is now bringing concrete evidence of [REDACTED]. Consequently, according to the

²³ See the Review Decision, *supra* note 5, paras. 61-64 and 105.

²⁴ See the Defence Application *supra* note 2, para. 17.

Defence, the risk of social instability should be evaluated in relation to said country leading to the conclusion that no such risk exists.²⁵

33. First, the Defence's assertion according to which this factor had an impact on the length of the reduction is not supported by any consideration in the Review Decision. Social instability was not a factor that led to Mr Al Hassan's sentence to be reduced²⁶. The Panel of Judges simply did not give any positive nor negative weight to that factor.

34. Second, rule 223(c) of the Rules provides a safeguard against the release of a convicted person when would cause havoc within the community. The mere fact that a convicted persons' release is unlikely to significantly destabilise a community does not in itself create an automatic right to a reduction of sentence.

35. Third, Mr Al Hassan's early release would cause significant disruption within the community of Victims,[REDACTED].²⁷ The Principal Counsel respectfully notes that the Panel of Judges should adopt a very cautious approach in evaluating this factor insofar as the extent of the full community of beneficiaries for reparations in the current proceedings is still unknown pending issuance of the reparations order.

36. The Office's clients, consulted in the matter, [REDACTED], indicated that, while the release of the convicted person might not be threatening for them, they would feel "something" in knowing that they could meet him in their community considering the extent of the harm they suffered at the hands of Mr Al Hassan. According to them,

²⁵ *Idem*, paras 29-36.

²⁶ *Idem*, para. 29. Citing paragraph 110 of the Review Decision, the Defence indicates that the risk of social instability impacted the extent of the reduction. However, neither paragraph 110 nor any other part of the Review Decision support such a reading.

²⁷ See the "Réponse des Représentants légaux des victimes à « Defence Application for Full Commutation and Release, pursuant to Rule 224(3) of the Rules of the Procedure and Evidence" (ICC-01/12-01/18-2758-Conf) » 27 Janvier 2026" [No. ICC-01/12-01/18-2762-Conf](#), 9 February 2026, [REDACTED].

releasing the convicted person earlier in a country where some of his Victims also reside would cause “a lot of trouble”. [REDACTED].²⁸

3) Mr Al Hassan’s purported support to the reparations process does not constitute a significant change of circumstances warranting a further review of his sentence

37. In support of his request, Mr Al Hassan further submits that he took new concrete steps to support the reparations process, in particular by providing handwritten copies of his apology and by contributing money to the Trust Fund for Victims.²⁹

38. Mr Al Hassan issued his apology in December 2024, reiterated it in April 2025³⁰ and handwrote it in October 2025.³¹ Said apology was filed in the record of the case **concerning the review of his sentence** and subsequently used in the reparations proceedings. This factor was debated and considered at length in the Review Decision and does not constitute a new circumstances.³² Since then, no other apology was proffered by the convicted person.

39. Turning to the substance of the apologies, the reality remains that at no point did Mr Al Hassan explicitly apologised **for his own actions**.

40. On Mr Al Hassan purported general support to the reparations process, none of the steps he has allegedly taken have resulted in the furtherance of reparations. In this regard, the Victims represented by the Office indicated that they consider that Mr Al Hassan’s behaviour has no positive bearing on Victims. They indicated that the fate of Mr Al Hassan is of no relevance for them and that they would go on about their

²⁸ See the Defence Application *supra* note 6, [REDACTED].

²⁹ *Idem*, paras 13-16.

³⁰ See [Annex B](#) to the “Defence Disclosure of Evidence, including a statement from Mr Al Hassan”, [No. ICC-01/12-01/18-2710](#), 15 April 2025 (Panel of Judges).

³¹ See Annex C to “Request to file correction/clarification to reparations submissions, transmission of handwritten version of Mr Al Hassan’s apology, and provision of further information concerning his proposed contribution to the Trust Fund for Victims”, [No. ICC-01/12-01/18-2752-Conf](#), 3 October 2025.

³² See the Review Decision, *supra* note 5, paras. 41-53 and 104.

life whether he would be released or not but they equally insisted that his conduct was not one that would justify his release and that he should serve his sentence until the expiration of its term.

41. Additionally, a considerable portion of the reparations hearings³³ was devoted to discussing the value of Mr Al Hassan's apology, rather than the harm suffered by Victims or concrete reparations measures.

42. In this regard, it is also worth noting that the written submissions on reparations by Mr Al Hassan consisted of proposals entirely disconnected from the harm he caused, such as aiming at structural issues in Mali (*i. e.* suggestion to address gender dimensions and the role that female lawyers should play across the country);³⁴ or at furthering Mr Al Hassan's fight against racial discrimination towards his ethnic group (including the structural causes of discrimination against the Tuareg).³⁵

43. The above considerations allow for the conclusion that Mr Al Hassan supports the reparations process when there is no direct tangible impact on his life. This is the Victims' perception and the Defence's insistence on apology has, in fact, a negative impact on their legitimate wish to move on with their life.

44. Mr Al Hassan's continuous interference in the reparations process did leave the Victims puzzled and questioning the motives behind these steps. Indeed, in light of the Defence Application, the steps allegedly taken by Mr Al Hassan's in the reparations proceedings now appear as instrumental to a strategic attempt to seek a further reduction of his sentence rather than a genuine effort to alleviate the suffering of the Victims.

³³ See the Transcript of the hearing held on 17 September 2026, No. [ICC-01/12-01/18-T-219-CONF-ENG CT](#) and [ICC-01/12-01/18-T-219-Red-ENG CT WT](#), pp. 49-54.

³⁴ See the "Defence Observations on Reparations", [No. ICC-01/12-01/18-2729](#), 11 June 2025, para. 42.

³⁵ *Idem*, paras. 38-41.

45. Turning lastly to the only tangible step taken by Mr Al Hassan, namely his financial contribution to the Trust Fund for Victims,³⁶ while it can be perceived as meaningful, at the same time it could be extremely detrimental if it was to be used as the basis to justify commutation of his sentence. Further, the Defence Application necessarily misrepresents the situation. Indeed, since no reparations order has been issued yet, at this point in time no contribution can be earmarked for that purpose.³⁷

46. Finally, the Principal Counsel notes that, in the Review Decision, the Panel of Judges had correctly underlined that the impact that early release can have on Victims³⁸ is a factor to be considered when evaluating whether a reduction of sentence is appropriate.

47. This principle has to be applied also in the present circumstance should the Panel of Judges decide to proceed in assessing the merits of the Defence Application. Seeking a further review of Mr Al Hassan's sentence just six months after he was granted a 12 months reduction is very disturbing for Victims who expect justice to be achieved by also having the convicted person serving the appropriate sentence imposed on him for the crimes which so greatly affected them, their families and their community.

³⁶ See the Defence Application *supra* note 2, para. 16.

³⁷ See Regulation 27 of the Regulation of the Trust Fund for Victims .

³⁸ See the Review Decision, *supra* note 5, para. 105.

V. CONCLUSION

48. For all the above reasons, the Principal Counsel respectfully request the Panel of Judges to dismiss the Defence Application *in limine* as not receivable.

49. In the alternative, should the Panel of Judges decide that the Defence Application is receivable, to find that no new significant elements in the sense of rule 223 of the Rules exist which could warrant a further reduction of the convicted person's sentence and therefore reject the Application.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 17th day of February 2026

At The Hague, The Netherlands