

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: ICC-01/12-01/18
Date: **19 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
Judge Erdenebalusren Damdin**

SITUATION IN THE REPUBLIC OF MALI

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

Confidential

OPCV Response to the “Defence Request for Leave to Reply”

Source: Office of Public Counsel for Victims

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

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I. PROCEDURAL BACKGROUND

1. On 5 June 2025, Trial Chamber X appointed the Office of Public Counsel for Victims (the "OPCV" or the "Office") to represent four participating victims (the "Appointment Decision").¹
2. On 23 July 2025, following a four-month procedure, Mr Al Hassan's sentence was reduced by 12 months (the "Review Decision").²
3. On 27 January 2026, the Defence for Mr Al Hassan filed an Application for Full Commutation and Release, pursuant to rule 224 (3) of the Rules of the Procedure and Evidence (the "Defence Application").³
4. On 13 February 2026, following and Order by the Panel of the Judges,⁴ the Office submitted its observations on the Defence Application (the "OPCV Submissions").⁵
5. On 18 February 2026, the Defence asked leave to reply to the OPCV Submissions (the "Request to Reply").⁶

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](#), disposition, 5 June 2025 (the "Appointment Decision").

² 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").

³ 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) and [No. ICC-01/12-01/18-2758-Red](#), 27 January 2026 (the "Defence Application").

⁴ See the "Order concerning access to a confidential document" (Panel of Judges), [No. ICC-01/12-01/18-2761](#), 6 February 2026 (the "Order") reclassified as public on 12 February 2026.

⁵ See the "Submissions on the "Defence Application for Full Commutation and Release, pursuant to Rule 224 (3) of the Rules of the Procedure and Evidence"", [No. ICC-01/12-01/18-2767-Conf](#) and [No. ICC-01/12-01/18-2767-Red](#), 13 February 2026 (the "OPCV Submissions").

⁶ See the "Defence Request for Leave to Reply to OPCV", [No. ICC-01/12-01/18-2772-Conf](#), 18 February 2026 (the "Request to Reply").

II. CONFIDENTIALITY

6. Pursuant to regulation 23bis(2) of the Regulations of the Court (the "Regulations") the present submission is filed confidential following the classification chosen by the Defence. However, it does not contain confidential information and can be reclassified as public.

III. SUBMISSIONS

7. In accordance with Regulation 24(5) of the Regulations a party or participant seeking leave to reply must demonstrate that the issue(s) raised in the response could not have been anticipated.⁷

8. The Defence seeks leave to make observations on two issues raised in the OPCV Submissions, namely: (i) the fact that the pronoun "*they*" was used, at paragraph 36, as a way to refer to an individual without making their sex or gender clear;⁸ and (ii) the argument in paragraph 47 according to which "*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*".⁹

9. Regarding the **first issue**, the use of "*they*" as a non-binary pronoun is completely standard in modern English and it is also practice at the Court. In fact,

⁷ See Regulation 24(5) of the Regulations stating that "[p]articipants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated". See also, *inter alia*, the "Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled 'Ninth decision on the review of Mr Laurent Gbagbo's detention pursuant to Article 60(3) of the Statute'" (Appeals Chamber), [No. ICC-02/11-01/15-208 OA6](#), 8 September 2015, para. 22.

⁸ See the Request to Reply, *supra* note 6, paras. 14-16.

⁹ *Idem*, paras. 17-20.

English speakers have used *they/them/their* for a single person since at least the 13th century. Examples appear in Shakespeare¹⁰ and Jane Austin.¹¹

10. Referring to someone as he or she reveals a piece of personal data, accordingly for security purposes in proceedings before the Court, it is preferable to use 'they' to keep the information private and make submissions publicly. Therefore, the Principal Counsel fails to comprehend how this matter could not have been anticipated (or understood) by the Defence. Moreover, she submits that there is no reason to correct the record of the case since no ambiguity or error arises from said chosen formulation. In any event, the Defence already argues the issue in its Request for Reply¹² and therefore, there is no unclarity left.

11. Regarding the **second issue**, the Principal Counsel submits that the Defence could have anticipated that the parties or participants would make submissions on Mr Al Hassan's reliance on his contribution to the Trust Fund for Victims (the "TFV" or the "Fund") to justify his request for immediate release. It is equally incorrect to state that it could not be anticipated that the Office – which has been involved in multiple reparations proceedings and which has expertise in reparations matters – would point out to the fact that said amount could not be treated as contribution to the reparations yet, as no order in this regard has been issued.

12. In fact, the plain reading of the relevant provisions of the TFV is unequivocal and the issue was so predictable that even the Fund had to file observations before Trial Chamber X requesting guidance on "*the legal nature of the Transfers*" received by Mr Al Hassan in the absence of a reparations order.¹³ In any event, as for the first issue, there is no unclarity left to address since all relevant information pertaining to the legal

¹⁰ See W. Shakespeare, *The Comedy of Errors* (1592), Act IV, Scene 3 : "*There's not a man I meet but doth salute me As if I were their well-acquainted friend.*"

¹¹ See J. Austen, *Pride and Prejudice* (1813) : "*If a person does not talk much, I like them better.*"

¹² See the Request for Reply, *supra* note 6, paras. 15-16.

¹³ See the "Trust Fund for Victims' Notification of Transfers from Mr Al Hassan", [No. ICC-01/12-01/18-2770-Conf](#) and [No. ICC-01/12-01/18-2770-Red](#), 16 February 2026, para. 12 (the "Request for Guidance").

framework applicable to contribution made to the TFV are available in the Request for Guidance.

IV. CONCLUSION

13. For the foregoing reasons, the Principal Counsel respectfully requests the Appeals Chamber to reject the Defence's Request for Leave to Reply to the OPCV Submissions.



Paolina Massidda
Principal Counsel

Dated this 19th day of February 2026

At The Hague, The Netherlands