Cour Pénale Internationale



International Criminal Court

Original: English

No.: ICC-01/12-01/15

Date: 6 October 2021

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

Before: Judge Solomy Balungi Bossa, Presiding

Judge Marc Perrin de Brichambaut

Judge Gocha Lordkipanidze

SITUATION IN THE REPUBLIC OF MALI

IN THE CASE OF THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI

Public

Public Redacted Version of "Prosecution's submissions on Mr Al Mahdi's sentence review" (ICC-01/12-01/15-419-Conf-Exp)

Source: Office of the Prosecutor

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

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Mr Gilles Dutertre Mr Mohamed Aouini

Legal Representative of the Victims Legal Representatives of the Applicants

Mr Mayombo Kassongo

Unrepresented Victims Unrepresented Applicants

(Participation/Reparation)

The Office of Public Counsel for The Office of Public Counsel for the

Victims Defence

States' Representatives Amicus Curiae

The Republic of Mali

The United Kingdom of Great Britain Other

and Northern Ireland The Presidency

REGISTRY

Registrar Counsel Support Section/ Division of

Mr Peter Lewis Court Services

Victims and Witnesses Unit Detention Section

Victims Participation and Reparations Other

Section

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I. Introduction

- 1. Pursuant to the scheduling order by the three Judges of the Appeals Chamber appointed for the review concerning reduction of sentence ("Panel"), the Office of the Prosecutor ("Prosecution") provides its written submissions on Mr Al Mahdi's sentence review, addressing (1) the criteria for review concerning reduction of sentence under article 110(4)(a) to (c) of the Rome Statute ("Statute") and rule 223(a) to (e) of the Rules of Procedure and Evidence ("Rules"); and (2) the observations of the Registry, the Republic of Mali³ and the United Kingdom.⁴
- 2. On 27 September 2016, Trial Chamber VIII ("Chamber") sentenced Mr Al Mahdi to a term of nine years' imprisonment. Mr Al Mahdi was convicted as a co-perpetrator under article 25(3)(a) for the war crime under article 8(2)(e)(iv) of intentionally directing attacks against protected objects.⁵ Mr Al Mahdi had made an admission of guilt on a single count of intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu, Mali, between around 30 June 2012 and 11 July 2012.⁶
- 3. Before his conviction and sentencing, on 18 February 2016, the Prosecution and Mr Al Mahdi had reached an agreement regarding the said admission of guilt ("Agreement"). The Agreement provided in relevant part that if Mr Al Mahdi "

 during any period of imprisonment imposed by the Trial Chamber, and so long as the factors and criteria identified in article 110 of the Statute and rule 223 of the Rules are consistent with a reduction in sentence, the

4. Mr Al Mahdi will have served two thirds of the sentence imposed on him on 18 September 2021.9

Prosecutor will support any request by him for release after he has served two thirds of his

sentence."8

¹ ICC-01/12-01/15-392, para. 4(c).

² ICC-01/12-01/15-411-Conf-Red ("Registry Observations").

³ ICC-01/12-01/15-410-Conf-Anx. See also English translation ICC-01/12-01/15-410-Conf-Anx-tENG ("Mali Observations"). See ICC-01/12-01/15-410 (transmitting ICC-01/12-01/15-410-Conf-Anx).

⁴ ICC-01/12-01/15-413-Conf-Anx-Red ("UK Observations"). See ICC-01/12-01/15-413 (transmitting the United Kingdom's observations as a confidential *ex parte* annex and indicating that a confidential redacted version would be filed).

⁵ ICC-01/12-01/15-171, para. 63.

⁶ ICC-01/12-01/15-171, paras. 7, 10-11, 63.

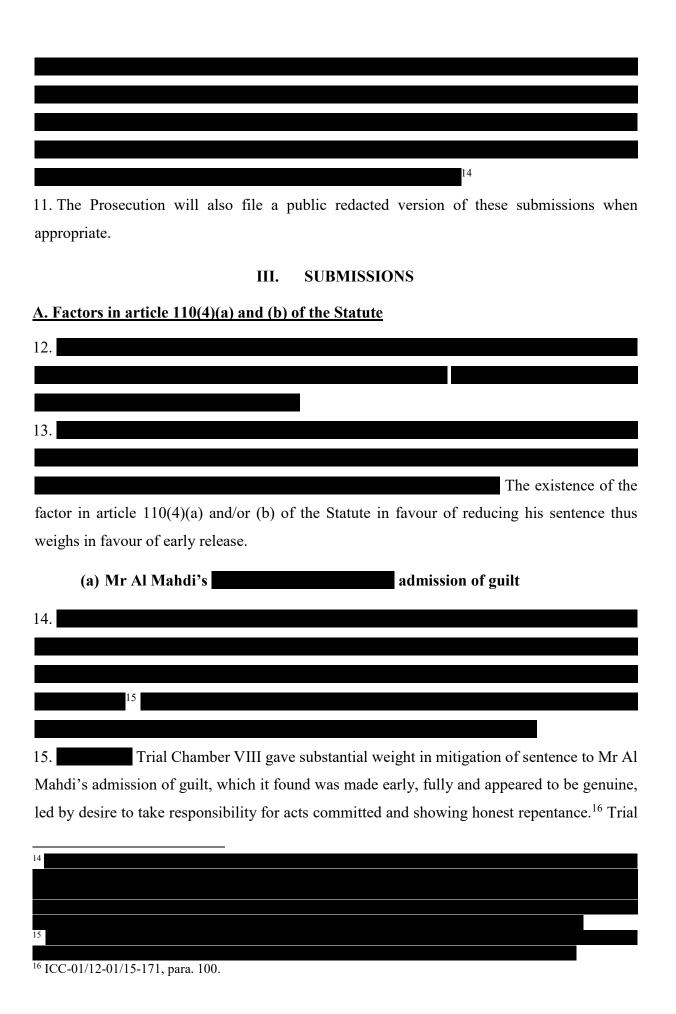
⁷ See ICC-01/12-01/15-78-Conf-Exp-Anx1 and ICC-01/12-01/15-78-Conf-Exp-Anx2-Corr. See also English translation: ICC-01/12-01/15-78-Conf-Exp-Anx1-tENG ("Agreement").

⁸ Agreement, para. 19(d).

⁹ ICC-01/12-01/15-392, p. 3.

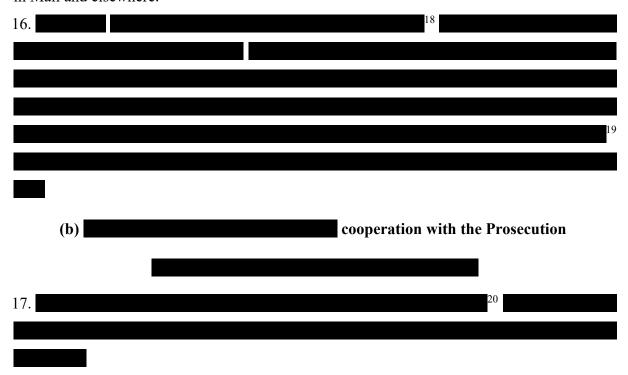
5. Based on the information available to the Prosecution at this stage, factors 10 identified in
article 110(4) of the Statute and rule 223(a) to (e) of the Rules are present and consistent with
a reduction of sentence.
6.
admission of guilt
and cooperation with the Prosecution demonstrate the existence of the
factor in article 110(4)(a) and/or (b) of the Statute in favour of reducing his sentence. Mr Al
Mahdi's expression of remorse also illustrates a genuine dissociation from his crime,
a factor under article 110(4)(c) of the Statute and rule 223(a) of the Rules in favour of reducing
his sentence.
7. The Prosecution notes
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under rule 223(d). The Prosecution awaits receipt of the written submissions of Mr Al
Mahdi and the Legal Representative of Victims ("LRV") regarding this factor. 12
8. Weighed together with the information available to the Prosecution at this stage regarding
other factors, the Prosecution supports Mr Al Mahdi's early release based on Mr Al Mahdi's
admission of guilt, cooperation and expression of
remorse.
II. Confidentiality
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The terms "factors" and "criteria" in article 110(4) of the Statute and rule 223 of the Rules, respectively, "are
not meant to have distinct meanings." (ICC-01/04-01/06-3173, fn. 34). The term "factors" is used throughout these submissions for clarity.
12 ICC-01/12-01/15-392, para. 4(c). ICC-01/12-01/15-412, para. 7.
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Chamber VIII considered that this admission of guilt contributed to the case's rapid resolution, may further peace and reconciliation in Northern Mali and may constitute a deterrent to others in Mali and elsewhere.¹⁷



18. Trial Chamber VIII took into account as an important factor in mitigation of his sentence that Mr Al Mahdi substantially cooperated with the Prosecution.²¹ As noted by the Chamber, this cooperation was spontaneous, started on the first day of his interviews and touched upon his own acts, thus providing the Prosecution with information contributing to his conviction.²² 19. Before his conviction and sentencing, Mr Al Mahdi was interviewed by the Prosecution over a period of five days before his arrest and transfer to the Court,²³

²⁴ On those occasions Mr Al Mahdi cooperated in good faith with the Prosecution's investigation into crimes in the Mali situation.²⁵

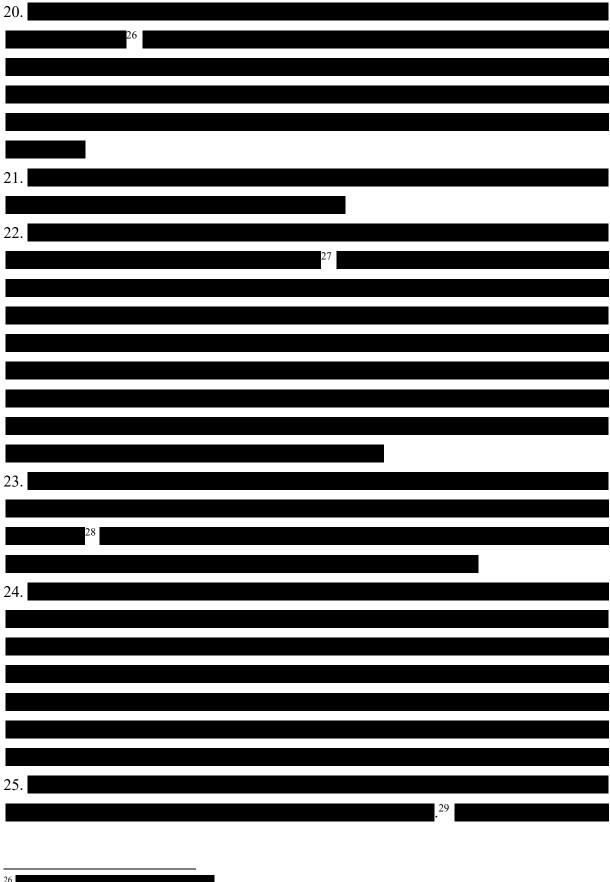
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17 ICC-01/12-01/15-171, para. 100.

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21 ICC-01/12-01/15-171, para. 102.
22 ICC-01/12-01/15-171, para. 101.
23 P-0182, ICC-01/12-01/15-T-4-CONF-ENG ET, p. 117, ls. 9-11 (open session).

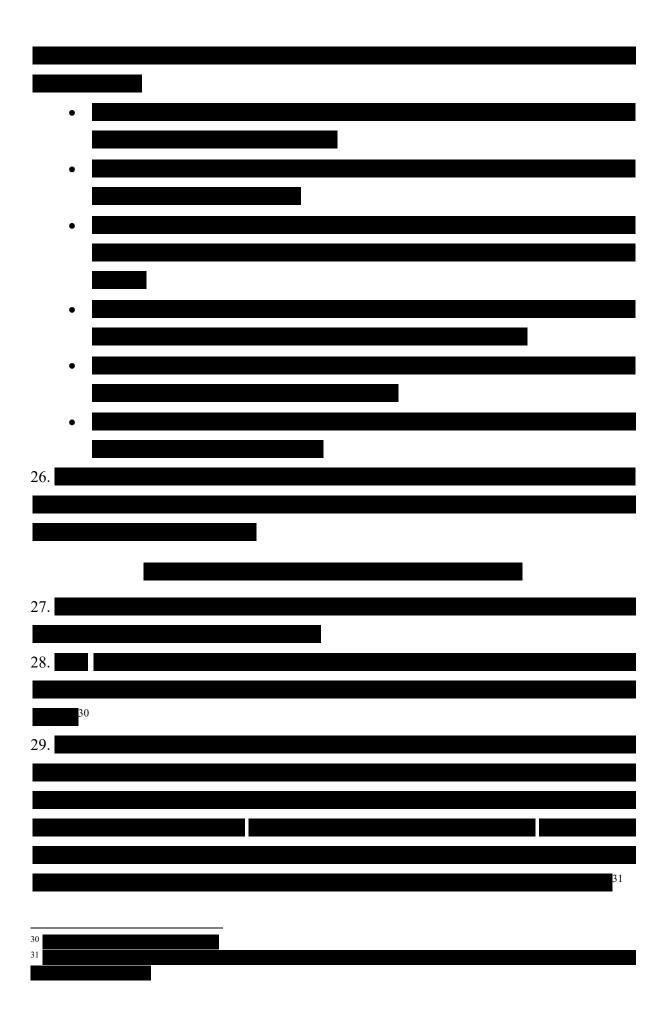
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21 ICC-01/12-01/15-171, para. 102.
21 ICC-01/12-01/15-171, para. 101.
22 ICC-01/12-01/15-171, para. 101.
23 P-0182, ICC-01/12-01/15-T-4-CONF-ENG ET, p. 117, ls. 9-11 (open session).
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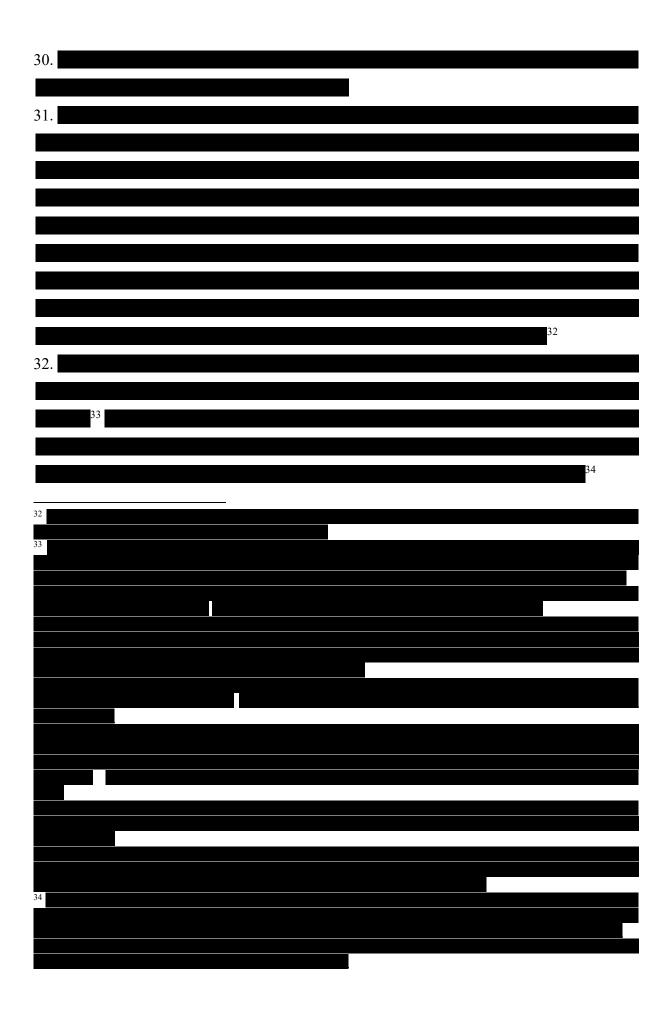
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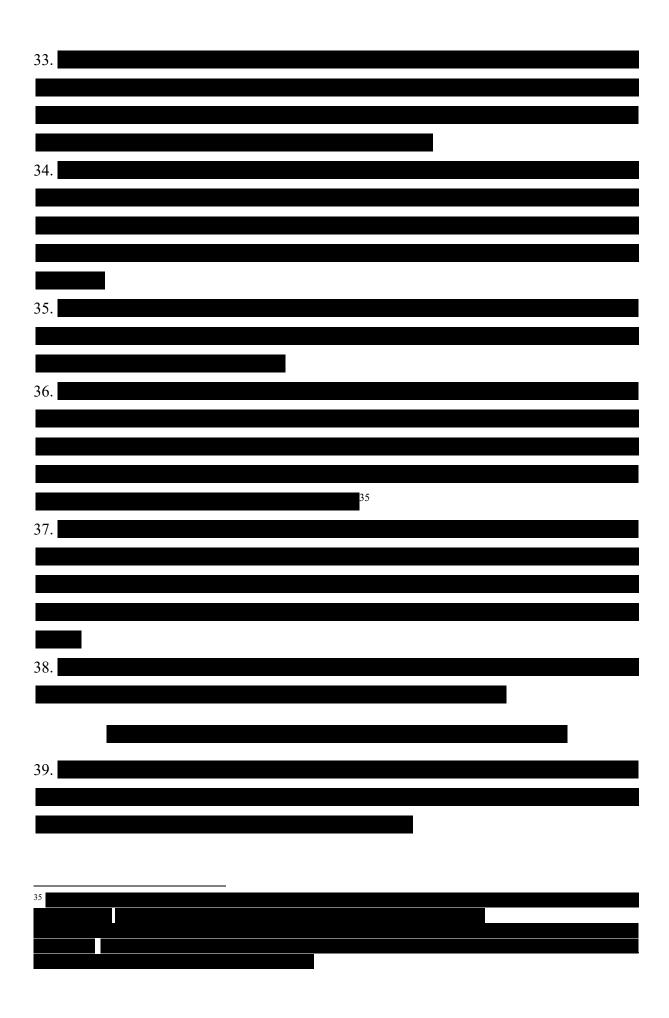
01/15-T-5-CONF-ENG ET, p. 15, ls. 13-22 (open session).

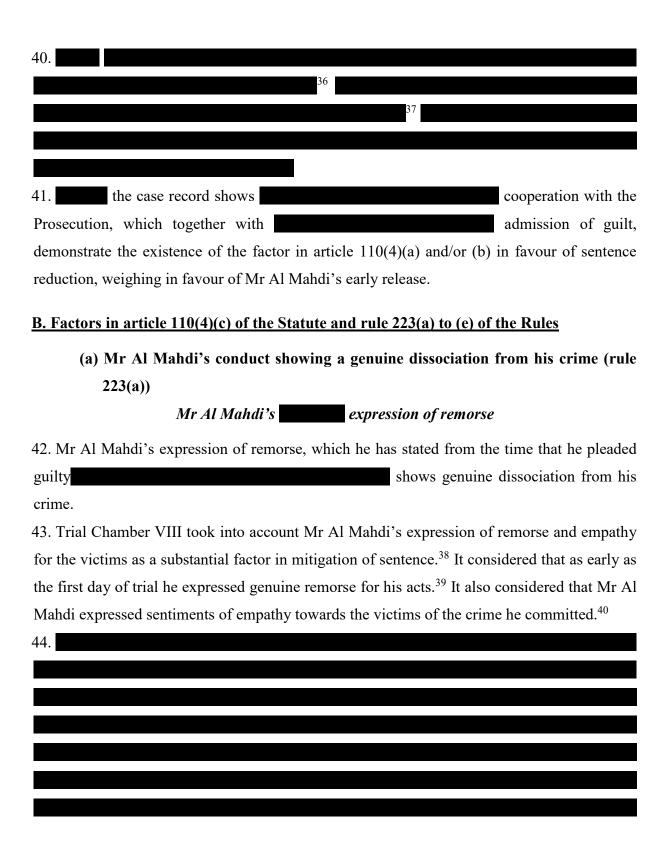


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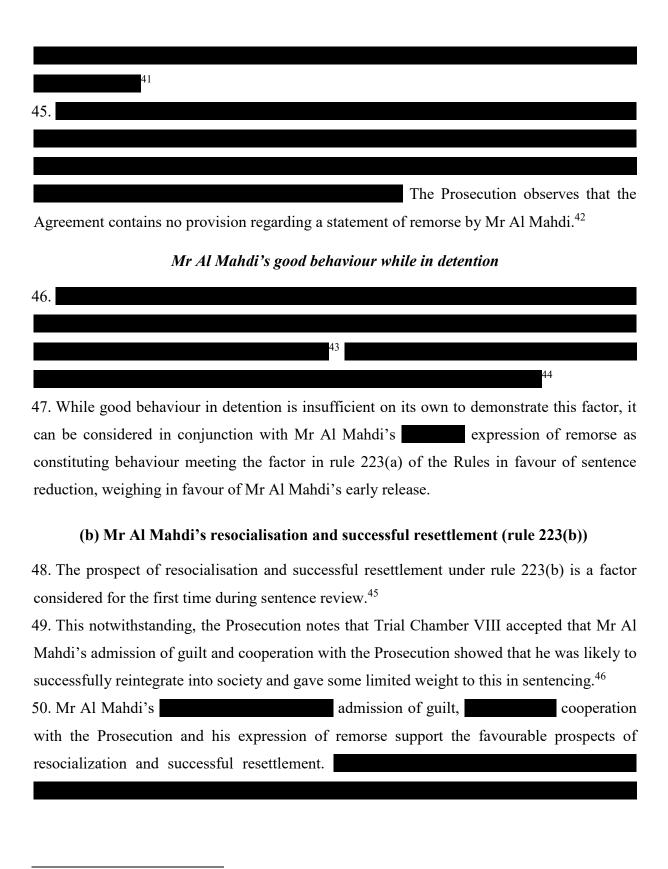


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³⁸ ICC-01/12-01/15-171, para. 105.

³⁹ ICC-01/12-01/15-171, para. 103.

⁴⁰ ICC-01/12-01/15-171, para. 104.



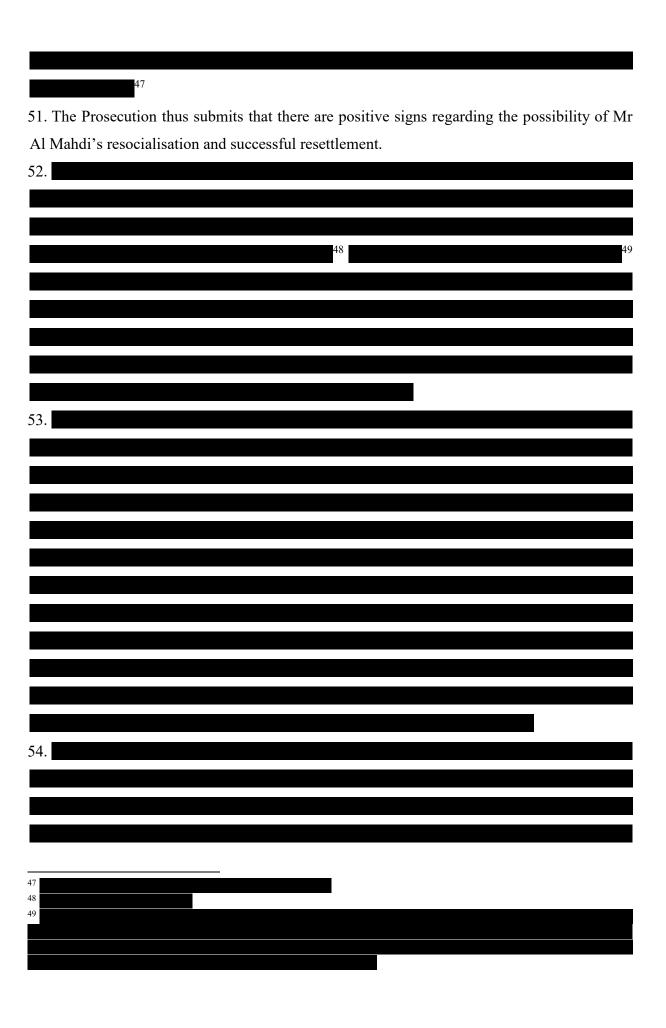
⁴² See ICC-01/12-01/15-139-Red, para. 57.

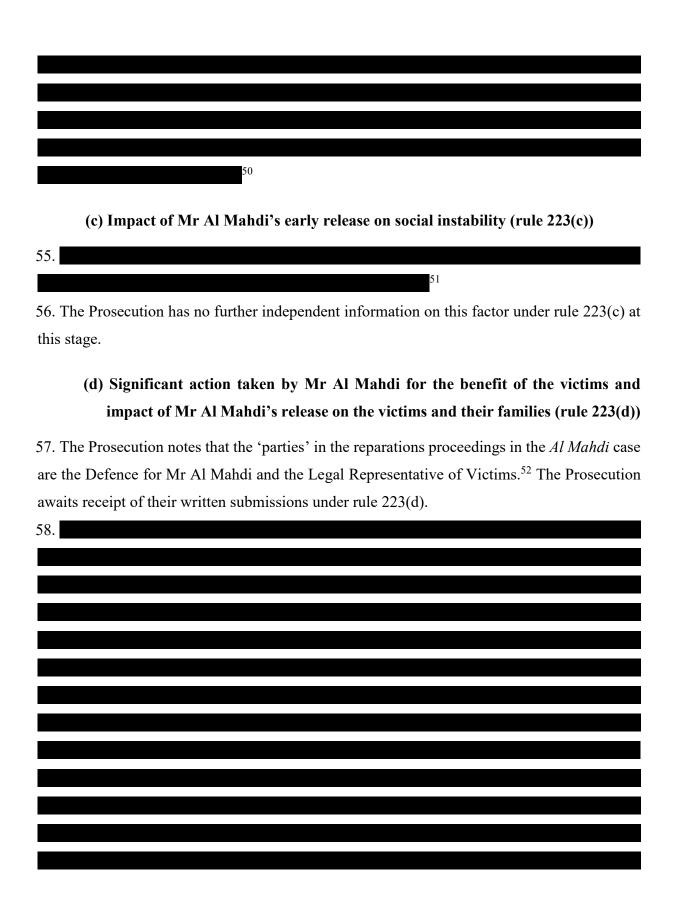
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⁴⁵ ICC-01/04-01/06-3173, para. 28.

⁴⁶ ICC-01/12-01/15-171, para. 97.

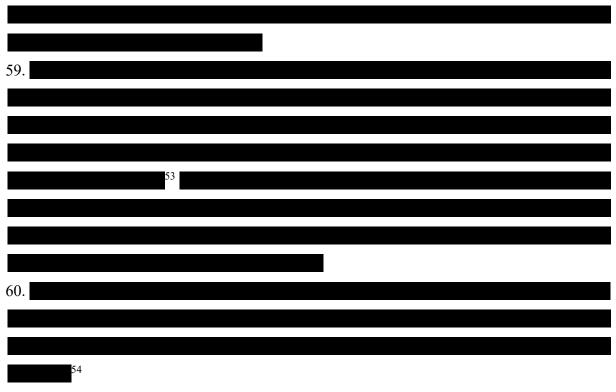




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⁵² ICC-01/12-01/15-236, para. 7.



61. In the end, the Prosecution notes that the factor under rule 223(d) "requires the Panel to consider actions taken by the sentenced person, as well as the perspective of the victims regarding those actions". ⁵⁵ As a result, Mr Al Mahdi and the Legal Representative of Victims will be best placed to convey their views and concerns, and in the interim the Prosecution has no further independent information.

(e) Mr Al Mahdi's individual circumstances (rule 223(e))

63. The Prosecution has no independent information on Mr Al Mahdi's individual circumstances.⁵⁷



⁵⁷ See Registry Observations, para. 13 (redacted).

IV. Conclusion

64. For the reasons explained above and based on the information available, the Prosecution supports Mr Al Mahdi's early release.

Karim A. A. Khan QC, Prosecutor

Dated this 6th day of October 2021 At The Hague, The Netherlands.