

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/12-01/18**
Date: **06 February 2026**

**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 ABDLOUL AZIZ AG MOHAMED AG
MAHMOUD***

Public Redacted with Confidential Annexes A, B, D, E, F, H, I, J, K, Confidential Ex Parte (Defence, Registry only) Annex G, Confidential Redacted Annex G and Public Annex C.

Defence Application for Full Commutation and Release, pursuant to Rule 224(3) of the Rules of the Procedure and Evidence

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

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

☒ **The Office of the Prosecutor**

☒ **Counsel for the Defence**

Al Hassan Defence Team

☒ **Legal Representatives of the Victims**
V43

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants**
(Participation/Reparation)

☐ **The Office of Public Counsel for Victims**

☐ **The Office of Public Counsel for the Defence**

☐ **States' Representatives**

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☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations Section**

☐ **Other**

I. INTRODUCTION

1. Further to Rule 224(3) of the ICC Rules of Procedure and Evidence ('the RPE'), the Defence for Mr Al Hassan Ag Abdoul Aziz ('the Defence') respectfully requests the Panel of Judges appointed by the Appeals Chamber ('the Panel') to:
 - Find that there has been a significant change in circumstances since the Panel issued its Decision on the Reduction of Mr Al Hassan's sentence ('the First Article 110 Decision');
 - Exercise its discretion to review Mr Al Hassan's sentence; and
 - Reduce his sentence to allow for his immediate release [Redacted].¹
2. Since the Panel issued the First Early Release Decision:
 - [Redacted];
 - [Redacted];
 - Mr Al Hassan obtained a concrete offer of employment [Redacted];
 - Mr Al Hassan provided funds directly to the Trust Fund for Victims ('TFV') and a signed commitment concerning future cooperation with the TFV, and took steps to facilitate the reparations process;
 - Mali expressed its intention to withdraw from the ICC Statute; and
 - Mr Al Hassan has served 94 months – which is over $\frac{3}{4}$ of his original sentence and almost $\frac{4}{5}$ of his new sentence – in a pre-conviction detention unit that is geographically remote from his family and community. [Redacted].
3. These developments ("the New Circumstances") significantly impact the Panel's assessment as to Mr Al Hassan's positive prospects for rehabilitation and resettlement [Redacted] and appreciably reduce the risks for social instability associated with his release. Full commutation of sentence is fair, proportionate and the only solution that ensures Mr Al Hassan's right to family life and the related rights of his children. Given that the average life expectancy in Mali is 61.7 years,² every moment he can spend with his children and parents counts.

II. SUBMISSIONS

1. Mr Al Hassan is entitled to submit a new application for commutation of sentence

4. The plain language of Rule 224(4), relevant ICC precedent, and human rights law militate in favour of the Panel exercising its discretion to receive this application.

1.1 The language of Rule 224(3) read in light of the Statute and Rules

¹ This application has been filed confidentially as all references [Redacted] should remain confidential. Mr Al Hassan is not seeking a hearing for this application.

² WHO, [Health data overview for the Republic of Mali](#), 2023 (valid as of 2021).

5. Rule 224(3) states that, “[i]n case of a significant change in circumstances, those three judges may permit the sentenced person to apply for a review within the three-year period or such shorter period as may have been set by the three judges.” Rule 224(3) thus allows the sentenced person to submit a new Article 110 application, before the established period for review, upon demonstration of a significant change of circumstances. This interpretation is consistent with Article 60(3) of the Statute, which governs interim release applications that are considered periodically after an initial application is rejected. While Article 60(3) of the Statute requires the Pre-Trial Chamber to review detention at set periods, it also empowers the Chamber to do so at *any* point in the interim, upon application from the defendant demonstrating changed circumstances.³ Since Article 60(3) empowers the detainee “to question the need for the continuation of his/her detention at any time thereafter with no limitation as to the number of times that he/she may invoke the jurisdiction of the Court for this purpose”,⁴ and Rule 224(3) employs the same language as Article 60(3),⁵ Rule 224(3) also permits the sentenced person to apply for release whenever a significant change in circumstances arises.

1.2 Relevant ICC and ICL precedent

6. The *Lubanga* Panel affirmed that Rule 223(3) allows the sentenced person “to apply for a new review of his sentence in case of a significant change in circumstances,”⁶ before the set date for mandatory review or in the absence of such a date.⁷ The Practice Directions and case law from the SCSL,⁸ ICTY,⁹ and ICTR¹⁰ also confirm that the ‘finality’ of a sentence review decision is without prejudice to the sentenced person’s right to submit a

³ Rule 118(2) ICC RPE: “The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.” See also [ICC-01/21-01/25-326-Red](#), para. 34.

⁴ Separate opinion, Judge Pikis, [ICC-01/04-01/06-824](#), p.52, para. 16.

⁵ R Gardiner, [Treaty Interpretation](#) p. 36 (p. 209 printed version): “It is a general principle in interpretation of a well-drafted document to expect the same term to have the same meaning throughout a single instrument”.

⁶ [ICC-01/04-01/06-3375](#), para. 95.

⁷ [ICC-01/04-01/06-3375](#), para. 95.

⁸ Article 2(f), [SCSL Practice Direction on Conditional Early Release](#) “The decision on eligibility for consideration for Conditional Early Release is not subject to appeal or review. In the event of denial, the President may permit re-application within a time-frame designated by the President”

⁹Article 9, [ICTY Practice Direction on Pardon, Commutation of Sentence, and Early Release](#): “In cases involving applications for early release, in the event that the President decides that early release is inappropriate, the decision shall specify the date on which the convicted person will next become eligible for consideration for early release, unless specified by the domestic law of the enforcing State”; Article 10 “The decision of the President shall be final and not subject to appeal.”

¹⁰ [Rutaganira Decision on the Motion for Reconsideration of the Denial of Early Release](#), paras 4-5.

new application. Hence, in *Bralo*, following the first rejection of early release, the Presidency set a two-year review date, while confirming Bralo's right to submit a new application at an earlier juncture "if circumstances require".¹¹ The KSC Practice Direction distinguishes between commutation (meaning full reduction triggering immediate release) and modification or alteration of sentence leading to release in the future.¹² If the sentenced person is granted a modification of sentence, they may submit a new application for full commutation, upon demonstration of a significant change in circumstances.¹³ These precedents establish that the existence of a 'final' decision partially reducing Mr Al Hassan's sentence does not preclude the submission of a new application for further/full reduction based on a significant change of circumstances.

1.3 Human Rights Law

7. Three fundamental human rights principles support Mr Al Hassan's right to submit a new application for a further reduction in sentence. **First**, sentenced persons must be given an effective and timely means to seek review whenever a significant change in circumstances arises.¹⁴ **Second**, if the sentenced person is able to demonstrate a significant change in circumstances, a fair and effective judicial procedure should take place to evaluate the continuing necessity and proportionality of detention.¹⁵ **Third**, the sentenced person

¹¹ *Bralo* [Decision on Early Release](#), 31 December 2019, para 84.

¹² Article 10, KSC [Practice Direction](#): "Where the President finds that a commutation of sentence is not appropriate, he or she may decide to modify or alter the sentence in accordance with Article 51(2) of the Law."

¹³ Rule 196(5), KSC [Rules of Procedure and Evidence](#): "1.If the President determines in his or her review under paragraph (3) that it is not appropriate to commute the sentence, he or she shall review the question of commutation of sentence every three (3) years, unless he or she establishes a shorter interval in his or her reasoned decision rendered under paragraph (3). 2 In case of a significant change in circumstances, the President may permit the imprisoned person to apply for a review within the three-year period or such shorter period as may have been set by the President."

¹⁴ ECtHR, *Kafkaris v. Cyprus*, [Decision on Admissibility](#), 2011, 9644/09, para. 58: "in cases where the grounds justifying the person's deprivation of liberty are susceptible to change with the passage of time, the possibility of recourse to a body satisfying the requirements of Article 5 and 4 of the Convention is required."; *Oldham v The United Kingdom*, [36273/97](#) paras 36-37: "the Court has already noted the flexibility in the system as mitigating the application of an automatic two-year review system. However, while the DLP could recommend an earlier review and the Secretary of State direct an earlier date, there was no possibility for an applicant himself to apply for a review within a two-year period. The applicant in the present case, who had finished the rehabilitation work required of him in the first eight months of his recall, therefore had no possibility of bringing his case back before the Parole Board in the absence of the Secretary of State's exercising his discretion in his favour as an exceptional case. The Court concludes in the circumstances of this case that the two-year delay between reviews was not reasonable and that the question of whether his continued detention was lawful was not decided "speedily" within the meaning of Article 5 § 4 of the Convention." See also *Wynne v. the United Kingdom* (no. 2), [67385/01](#), paras 24-27.

¹⁵ [HRC General Comment No. 35 \(Art. 9\)](#), paras 20-21; See also *Kafkaris v Cyprus*, [Decision on Admissibility](#), 2011, 9644/09; *Stafford v. the United Kingdom* [GC], no. [46295/99](#), paras 87-90; *Waite v. the United Kingdom*, no. [53236/99](#), para. 56; *Wynne v. the United Kingdom* (no. 2), no. [67385/01](#), para. 24

should have the right to trigger such a review *as soon* as a significant change in circumstances has occurred,¹⁶ and also at reasonably regular junctures.¹⁷ Reasonableness is determined by reference to both the length of the sentence and the personal circumstances of the sentenced person:¹⁸ shorter sentences require shorter periods between review.¹⁹ The length of the interval between reviews should also take account of the reasons why release was initially rejected: if these reasons have been addressed, the sentenced persons should be afforded an effective opportunity to challenge the continued justification for detention in a timely manner.²⁰

1.4 The above sources of law support the receivability of the current application

8. As set out in the next section, the New Circumstances are comprised of developments that fell outside the control of Mr Al Hassan. Mr Al Hassan has obtained documentation that addresses the bases for the adverse findings in the First Decision, which he was unable to submit during the first review process for reasons beyond his control. He has less than 1/5 of the current 9-year sentence to serve. It is therefore fair and reasonable to extend Mr Al Hassan an effective means to obtain a new judicial ruling concerning the impact of the New Circumstances on the Rule 223 criteria.

2. The existence of New Circumstances

9. The New Circumstances relate to [Redacted]; his future residence and employment [Redacted]; his positive contribution to reparations; the political situation in Mali; and the passage of time and Mr Al Hassan's current detention situation.

2.1 The [Redacted]

¹⁶ *Oldham v The United Kingdom*, [36273/97](#) paras 36-37.

¹⁷ *Rameka v New Zealand*, Communication no. 1090/2002, [U.N. Doc. CCPR/C/79/D/1090/2002](#) (2003), para 7.3.

¹⁸ ECHR: *Daniel Faulkner v. the United Kingdom* [68909/13](#) para. 41: "Article 5 § 4 enshrines the right to have the legality of detention reviewed speedily by a court with the power to order release. This implies not only that the competent courts must reach their decisions speedily but also that, where an automatic review of the lawfulness of detention has been instituted, their decisions must follow at "reasonable intervals"; *See also* ECHR: *Blackstock v the United Kingdom*, [59512/00](#), para. 43; *Oldham v. the United Kingdom*, no. [36273/97](#), para. 30.

¹⁹ [ICC-01/04-01/06-3173](#), para. 79. *See also* R Mulgrew, *Early Release in International Criminal Law*, pp. 51-52 noting that the three year period is disproportionately long for short sentences, considering domestic practice (permitting review after a few months) and the drafting history, indicating that the three year period was intended for life sentences with a different review period for shorter sentences (citing Schabas, who cites Chairman's working paper on article 75, [UN Doc. A/CONF.183/C.1/WGP/L.3/Rev.1](#)).

²⁰ ECHR: *Blackstock v United Kingdom*, [59512/00](#), paras 44-45; *Hirst v United Kingdom*, [40787/98](#), paras 41-44; *Oldham v The United Kingdom*, [36273/97](#), paras 36-37. *See also* COE, [Rec\(2003\)22 - Recommendation of the Committee of Ministers to member states on conditional release \(parole\)](#), principle 21: "If the decision-making authority decides not to grant conditional release it should set a date for reconsidering the question. In any case, prisoners should be able to reapply to the decision-making authority as soon as their situation has changed to their advantage in a substantial manner."

10. Following [Redacted], [Redacted] fled to [Redacted] to live with [Redacted].²¹ Due to the ongoing threat [Redacted]. [Redacted].²²
11. The daily living conditions of Mr Al Hassan's wife and children [Redacted] are extremely difficult and will remain until they are reunited with Mr Al Hassan. Given the distance [Redacted] and the circumstances in which they [Redacted], [Redacted]. [Redacted].²³ [Redacted].²⁴ [Redacted]. Mr Al Hassan's release will extract his family from these circumstances, [Redacted]. [Redacted],²⁵ which is beneficial for the children. His parents also plan [Redacted] so that Mr Al Hassan can take care of them.

2.2 Mr Al Hassan's ability to resettle [Redacted]

12. The Defence sought the assistance [Redacted] to identify a release solution [Redacted] and which would facilitate reunification with his family. Following an inquiry [Redacted].²⁶ Mr Al Hassan has also obtained a guarantee of civilian employment [Redacted],²⁷ which will allow him to rent a modest house.²⁸ This will enable his family to [Redacted] live together [Redacted].

2.3 Support and voluntary cooperation with reparations

13. Since the First Article 110 Decision, Mr Al Hassan took additional concrete steps to underscore his support for the reparations process. This includes signed assurances cementing his future cooperation with the reparations process,²⁹ the provision of a handwritten version of his apology,³⁰ voluntary cooperation with VPRS concerning the identification of direct and indirect victims, and confirmation that he will not return to Timbuktu, even after the conclusion of the initial date of his sentence, unless requested to do so by the Court or local officials.³¹
14. Waiving his right of silence, Mr Al Hassan assisted the Registry to establish communication with several direct and indirect victims publicly named in the Trial

²¹ [MLI-D28-0008-0037-R01](#) at 0040.

²² Annex F.

²³ [Redacted]

²⁴ [Redacted]

²⁵ [Redacted]

²⁶ Annex K. [Redacted].

²⁷ Annex G.

²⁸ Based on the letter of his employer, M. Al Hassan will be paid [Redacted]

²⁹ Annex H.

³⁰ [ICC-01/12-01/18-2752-AnxC](#) (Also disclosed as MLI-D28-0009-0063).

³¹ Annex H.

Judgment, whose locations/contact details were previously unknown to the Prosecution, LRV or Registry.³² This assistance, which continued to be extended after the First Article 110 Decision and in consultation with VPRS and the LRV,³³ facilitated the victims' participation in the reparations process, while demonstrating Mr Al Hassan's support for their right to reparations.³⁴

15. In his October 2025 handwritten apology, Mr Al Hassan publicly communicated his full support for reparations, calling on local community leaders to support the reparations process, while underscoring that victims have the right to full reparations from him irrespective as to whether they accept his apology or not.³⁵ Mr Al Hassan also sought to positively influence similarly situated individuals by elaborating on the path that led him to appreciate the reasons for his conviction, and why his actions were legally and morally wrong and inconsistent with the values to which he is now committed to live by.³⁶ Mr Al Hassan also carefully explained why the Court's judgment against him was not directed against Islam and why his acquittal for crimes such as rape and forced marriage does not diminish the importance of recognising and condemning the wrongfulness of such conduct.³⁷ These words have been widely disseminated amongst various influential sectors of the Timbuktu community and diaspora [Redacted].³⁸ Mr Al Hassan public condemnation of both his own role in 2012 and the crimes committed by groups engages considerable risk to himself and his family, who, [Redacted], benefit from no protective measures or assistance from the Court.³⁹
16. Significantly, Mr Al Hassan's words were accompanied by tangible support for the reparations process, as reflected by his willingness to make individual financial contributions, notwithstanding his indigence and the extremely difficult circumstances of

³² [ICC-01/12-01/18-T-219-CONF-ENG](#), p. 54 lns 13-17.

³³ Annex I ; [ICC-01/12-01/18-2727-Conf](#), para. 12.; [ICC-01/12-01/18-T-219-CONF-ENG](#), p. 53 ln 22- p. 55 ln 1 ; [ICC-01/12-01/18-2687](#), para. 14; [ICC-01/12-01/18-2692-Conf-Red](#), para. 21.

³⁴ [ICC-01/12-01/18-T-219-CONF-ENG](#), p. 53 ln 22- p. 55 ln 1.

³⁵ [ICC-01/12-01/18-2752-AnxC](#) (handwritten apology); [ICC-01/12-01/18-2752-AnxC-tENG](#), paras 20-21.

³⁶ [ICC-01/12-01/18-2752-AnxC](#) (handwritten apology); (English translation): [ICC-01/12-1/18-2752-AnxC-tENG](#).

³⁷ [ICC-01/12-01/18-2752-AnxC-tENG](#), paras 7-8.

³⁸ [ICC-01/12-01/18-2752-Conf-Exp-AnxB](#).

³⁹ ECHR: *Marcello Viola v Italy* (no. 2), [77633/16](#) – finding that parole authorities cannot draw adverse conclusions or deny parole because sentenced person did not engage in specific actions that could attract reprisals to them or their family (paras 113-120). It was incumbent on the authorities to employ sufficiently broad indicators to capture evidence of potential progress based on actions that did not expose the sentenced person to undue risk (para 121).

his family.⁴⁰ He is the first ICC defendant to have done so, in a step “welcomed” by the TFV.⁴¹ The transferred funds amount to 17 weeks’ income and are greater than the amount described as “meaningful” by the LRV in *Katanga*.⁴² The use of prison derived income for this purpose has been described by expert commentators as “particularly demanding”.⁴³ Mr Al Hassan provided the details of his future employer to the Panel and Registry⁴⁴ and further engaged to maintain contact with the TFV to facilitate the implementation of the future reparations order.⁴⁵

2.4 The political situation in Mali

17. Since the First Article 110 Decision, the current Malian regime has engaged in several actions and omissions that impact the weight and credibility of their positions as concerns either Mr Al Hassan or ICC proceedings,[Redacted]. In September 2025, Mali announced its intention to withdraw from the ICC Statute, labelling it an “instrument of neo-colonialist repression”.⁴⁶ Along with Niger and Burkina Faso, Mali relied on their fight against terrorism to justify both their ICC withdrawal,⁴⁷[Redacted].⁴⁸ This follows Mali’s withdrawal from ECOWAS and suspension from the African Union and ECOWAS.⁴⁹ These developments appear to be linked to the *junta*’s refusal to convene elections [Redacted],⁵⁰[Redacted].⁵¹ The regime also refused offers of assistance [Redacted], such

⁴⁰ [ICC-01/12-01/18-T-219-CONF-ENG](#), p.55, lns 2-13.

⁴¹ [ICC-01/12-01/18-T-219-CONF-ENG](#), p.47, lns 16-21: “As a final point, your Honours, I would like to emphasise as well that the Trust Fund would welcome any contribution that Mr Al Hassan could make economically, however modest, to meet his financial obligations under the reparation order. The evaluations that we have conducted on reparation programmes show that any gesture by the convicted person, even a symbolic one, can have a significant effect on the value of any measure that the Court may issue.”

⁴²In *Katanga*, the LRV accepted that a symbolic payment of 1 euro for each victim was “meaningful”: [ICC-01/04-01/07-3728-tENG](#), para. 298.

⁴³ *De Ridder et al., Does Reintegration Need REHAB? Early Release Procedures for Prisoners without a Legal Permit of Residence in Belgium*, at 34: “Taking into account that working in prison is not evident and very badly paid and that the prisoners have to pay all their personal needs during imprisonment with the limited amount of money they can earn in prison, this requirement to be released is particularly demanding for this group of often socially vulnerable prisoners.”

⁴⁴ Annex G (confidential *ex parte* version).

⁴⁵ Annex H.

⁴⁶ BBC, ‘[Three West African countries to quit International Criminal Court](#)’, 23 September 2025.

⁴⁷ [Statement of the Malian Prime Minister before the UN](#), 26 September 2025.

⁴⁸ [Redacted]

⁴⁹ Mali first announced its intention to withdraw from ECOWAS in January 2024: [The withdrawal of three West African states from ECOWAS](#), June 2024; The African Union suspended Mali in June 2021 due to the second coup d’état: [Mali suspended from African Union, threatened with sanctions](#), 2 June 2021.

⁵⁰ [Redacted]

⁵¹ [Redacted]

as the African Union, claiming that Mali's efforts to combat groups such as JNIM were "successful".⁵²

18. [Redacted],⁵³[Redacted], [Redacted]. [Redacted],⁵⁴[Redacted] .⁵⁵

2.5 The passage of time and Mr Al Hassan's detention situation

19. Mr Al Hassan has spent this year incarcerated at the ICC detention unit, under a pre-conviction legal regime custody that lacks rehabilitation and reintegration programmes.⁵⁶ He will likely remain there for the foreseeable future, which means that he will serve his sentence under stricter conditions than those that would otherwise apply to prisoners in a formal enforcement setting, where measures are taken to ensure that the prisoner's regime progressively reflects the freedoms of the outside world.⁵⁷
20. Mr Al Hassan's family's [Redacted] also eliminates their ability to visit Mr Al Hassan in either The Hague [Redacted]. [Redacted]⁵⁸ and [Redacted].⁵⁹[Redacted].⁶⁰ Consequently, his family must choose between [Redacted] and their right to see Mr Al Hassan.⁶¹ This circumstance, which is incompatible with fundamental human rights principles concerning the right to family life,⁶² was unknown at the time of the initial Article 110 decision.

⁵² Reuters, '[Jihadist takeover of Mali is far-fetched, foreign minister says](#)', 13 November 2025.

⁵³ [Redacted]

⁵⁴ [Redacted]

⁵⁵[Redacted]

⁵⁶ICC-01/12-01/18-2702, para. 8 noting that, "Mr Al Hassan has not been introduced to a rehabilitation programme due to his continued detention at the ICC Detention Centre. The ICC Detention Centre is not mandated by the Court's legal texts to undertake those responsibilities, does not have the specialist staff with the requisite skills, and is not designed for that purpose."

⁵⁷UN [Mandela Rules](#), Rule 87: "Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same prison or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid". Council of Europe [European Prison Rules](#) Rule 103.6 "There shall be a system of prison leave as an integral part of the overall regime for sentenced prisoners." In The Netherlands, prisoners are short-term reintegration leave, longterm reintegration leave and reintegration leave for extramural work. There is also the possibility of incidental leave on humanitarian grounds ([Resocialisation and Reintegration in the Netherlands](#), pp. 417-418). The United Kingdom: [Leaving prison: Temporary release from prison - GOV.UK](#) "A prisoner may be allowed to leave prison for short periods towards the end of their sentence - whatever its type or length". Spain also allows for weekend release and external work programmes: [Real Decreto 190/1996, de 9 de Febrero, Por el Que Se Aprueba el Reglamento Penitenciario](#), 15 February, 1996, Articles 86 (1)-(4), 87(1)-(2), 154(1), 155. These schemes apply to persons sentenced by the ICTY: Rajić participated in a tour to Madrid mountains ([Rajić Early Release Decision](#), para. 20).

⁵⁸ [Redacted]

⁵⁹Annex J

⁶⁰ [Redacted]

⁶¹ [Redacted]

⁶² ECHR: *Vintman v Ukraine*, [28403/05](#), paras 78-83: Art. 8 (right to family life) infringed where family unable to travel to prison location. The IACtHR also stated that separating a child from their detained parents constitutes a violation of the right of family life: *Rohac Hernández et al v. El Salvador*, [Judgment of October 14 2014](#), para. 104.

3. The New Circumstances Amount to a Significant Change in Circumstances

21. The New Circumstances give rise to a material change in the facts underpinning the Panel's findings on Rule 223(b) and (c),⁶³ specifically, that Mr Al Hassan's plans for resettlement were not settled or clear,⁶⁴ and that the risk of instability needed to be assessed by reference to his potential release to Mali and the consequent impact on victims.⁶⁵ Mr Al Hassan's individual circumstances also strongly militate in favour of immediate release. Since Rule 224(3) contemplates review rather than reconsideration proceedings, the Panel's assessment is restricted to evaluating the impact of the changed circumstances on its prior finding.⁶⁶ Thus, in line with the Court's approach to 'changed circumstances' in the context of Article 60(3) of the Statute (interim release), if the Panel is satisfied that the information provided by the Defence changes its assessment of Rule 223(b),(c) and (e) then there is no need to revisit the Panel's determination concerning the other criteria.⁶⁷ Conversely, if the Panel decides to consider matters concerning other criteria as raised by other parties, then in line with appellate jurisprudence, Mr Al Hassan should first be afforded a right to be heard on such matters.⁶⁸

3.1 Mr Al Hassan's positive prospects for resettlement [Redacted] are now demonstrated

22. The New Circumstances establish that Mr Al Hassan's plans for resettlement are concrete, settled, and consistent with his stated commitment to living a peaceful civilian life with his family. In accordance with Article 107 of the Statute, the Court is required to release Mr Al Hassan to either a State which is obliged to accept Mr Al Hassan or one that has agreed to accept him. [Redacted].

23. Consistent with *Katanga*,⁶⁹ *Al Mahdi*,⁷⁰ ICC commentary,⁷¹ and restorative justice standards, which recognise that the sentenced person's objective efforts to make amends may "further their reintegration, enable redress and mutual understanding, and encourage

⁶³ [ICC-01/05-01/08-631-Red](#), para. 1.

⁶⁴ [First Article 110 Decision](#), para. 105.

⁶⁵ [First Article 110 Decision](#), para. 75.

⁶⁶ *Barayagwiza*, Decision on Request for Review or Reconsideration, [Separate Opinion Judge Shahabudeen](#), para 2.

⁶⁷ [ICC-01/05-01/13-969](#), para. 48.

⁶⁸ [ICC-01/05-01/08-1937-Red2](#), paras 64, 66.

⁶⁹ [ICC-01/04-01/07-3615](#), paras 58-59: the Panel discounted LRV arguments that it was necessary for the sentenced person to obtain the support of victim communities in relation to the proposed settlement plans.

⁷⁰ [Redacted][ICC-01/12-01/15-418-Conf-Red2](#), para. 14. The Decision placed no weight on such views in connection with Rule 223(b): [ICC-01/12-01/15-434-Red3](#), paras 49-53.

⁷¹ A Oehmichen, '[Rule 223\(d\)](#)': "sub-para. b) relates to the convict's self-critical attitude towards his own actions".

desistance from crime”,⁷² the Panel should thus base their assessment of this criterion primarily on the Registry’s evaluation coupled with information concerning the plans and actions of Mr Al Hassan. During the initial proceedings, the LRV also recognised the limits of their ability to make informed submissions on this criterion, deferring to the Registry.⁷³

24. Whereas the Panel previously found that it could not reach a positive determination under Rule 223(b) because “the information at its disposal in relation to this factor is limited, the situation on the ground is unstable, and Mr Al Hassan’s preferences are unsettled”,⁷⁴ the opposite is now true. Mr Al Hassan’s plans are clear, feasible, and substantiated with reliable documentation. This undercut the basis for the Panel’s prior finding that [Redacted].⁷⁵ Since this finding had led the Panel to disregard Mr Al Hassan’s plans [Redacted] and the Registry’s assessment that there were “prospects that [Al Hassan] could resocialize and successfully resettle elsewhere in the Sahel region”,⁷⁶ the Panel should now find Rule 223(b) to be satisfied on the basis of these substantiated plans.
25. Similarly, as concerns the Registry’s indication that further information was required as to whether “Mr Al Hassan intends to make a public apology or take other steps to make amends”,⁷⁷ there is now no ambiguity on these points. Mr Al Hassan’s ongoing efforts to make amends to the victims, including through direct financial transfers to the TFV, are probative as to his commitment to honour the words set out in his apology and his engagement to avoid future association with armed groups or groups adhering to extremist ideologies.⁷⁸ These actions speak to his positive rehabilitation and militate in favour of release.⁷⁹ Unlike *Lubanga*,⁸⁰ Mr Al Hassan has already executed these measures. In

⁷² Council of Europe, [Recommendation CM/Rec\(2018\)8](#), p. 1.

⁷³ [ICC-01/12-01/18-2708](#), para. 27.

⁷⁴ [First Article 110 Decision](#), para. 105.

⁷⁵ [First Article 110 Decision](#), paras 63, 108.

⁷⁶ [First Article 110 Decision](#), para. 59.

⁷⁷ [ICC-01/12-01/18-2702](#), para. 6.

⁷⁸ Art. 2(c)(iv) [SCSL practice direction for conditional release](#) describes the following as relevant to conditional release eligibility: “Positive contribution to peace and reconciliation in Sierra Leone and the region such as public acknowledgement of guilt, public support for peace projects, public apology to victims, or victim restitution”.

⁷⁹ Art. 2(c)(iii) [SCSL practice direction for conditional release](#)

⁸⁰ [ICC-01/04-01/06-3375](#), para 85: “Turning to the proposal to organise a public ceremony at which Mr Lubanga could meet the victims of the crimes of which he was convicted and during which he would offer his apologies, although constituting a change of circumstance, it is not sufficiently significant for the Panel to consider modifying Mr Lubanga’s sentence on this basis. This is because, as mentioned above, there is currently no indication as to if and when the proposal is to be put into practice. In other words, while there is a proposal, no action has yet been taken.”

Januzi, the KSC found that the sentenced person's agreement to pay a small amount to the victim was evidence of rehabilitation.⁸¹ International and domestic early release provisions also treat such assistance as relevant.⁸²

26. Mr Al Hassan's resettlement plans also exceed the degree of specificity that was accepted in *Katanga*,⁸³ and *Al Mahdi*, [Redacted].⁸⁴ In contrast, Mr Al Hassan has *already* obtained a guarantee of employment [Redacted].⁸⁵ Since the principle of equality of treatment governs parole proceedings,⁸⁶ the Panel should find that Mr Al Hassan's plans satisfy Rule 223(b).

27. Mr Al Hassan's future employment will allow him to honour his commitment [Redacted].⁸⁷ Mr Al Hassan has demonstrated that he has a strong work ethic, directed towards supporting his family, as evidenced by his reliable execution of work assignments at the detention unit over the last 6 ¾ years.⁸⁸ This bodes favourably as concerns his positive prospects for resettlement [Redacted].⁸⁹ The strength of Mr Al Hassan's commitment to settle with his family and secure a livelihood for them is heightened by the dire circumstances they currently experience [Redacted].⁹⁰ Mr Al Hassan's resolve to adhere to the proposed plans for resettlement is also reflected in his signed commitments concerning his future conduct and cooperation with the Court,⁹¹ which he made voluntarily

⁸¹ *Januzi*, [Decision on Commutation, Modification or Alteration of Sentence](#), para. 19.

⁸² Art. 2(c)(iii) [SCSL Practice Direction on Conditional Early Release](#). In Belgium, efforts to pay civil parties are one of the four criteria considered for early release proceedings: *De Ridder et al. Does Reintegration Need REHAB? Early Release Procedures for Prisoners without a Legal Permit of Residence in Belgium*, (2012) 21-36 at 33. In the French civil-law system, victim compensation is expressly recognized as a positive factor in parole (libération conditionnelle), [Code de Procédure Pénale, Article 729](#).

⁸³ [ICC-01/04-01/07-3615](#), paras 54, 60-61.

⁸⁴ [Redacted]

⁸⁵ Annex G. [Redacted]

⁸⁶ [CM\(2009\)187 add3](#), para. 63; ICTY, *Gvero Decision of President on Early Release of Milan Gvero*, para. 7; ECHR, *Clift v. the United Kingdom*, [7205/07](#) paras 73-79.

⁸⁷ [Redacted]

⁸⁸ Registry report : [ICC-01/12-01/18-2702](#), para. 10: "Mr Al Hassan has also been participating in the ICC Detention Centre's work program, performing the assigned tasks meticulously and at his own initiative without needing to be reminded. In addition, on his own initiative and out of respect, Mr Al Hassan has been voluntarily cleaning the cell of another detained person for several years."

⁸⁹ ICTY: *Obrenovic*, [Decision of the President on Early Release](#), 21 September 2011, paras 21-24 (custodial reports concerning Obrenovic's reliable execution of responsibilities were relevant to his prospects for rehabilitation); *Tadic*, [Decision of the President on the Application for Pardon or Commutation of Sentence](#), 17 July 2008, para. 8, 16 (reliable execution of tasks was relevant to prospects for rehabilitation).

⁹⁰ [UK Risk Assessment Guidance](#), para 2.9: the risk of releasing foreign national prisoners to a third country is lessened by proof of strong family ties in a third country along with fact that a "foreign prisoner does not wish to jeopardise their chances of (...) remaining in [the third] country".

⁹¹ Annex H.

as an expression of his commitment to a peaceful, civilian life with his family.

28. These developments fall within the four corners of precedent, where the threshold of a significant change of circumstances was found to be met through: [Redacted],⁹² concrete resettlement and employment plans;⁹³ and steps taken to make amends to victims or participate in reparations.⁹⁴

3.2 Release [Redacted] will not give rise to a risk of significant social instability

29. The Panel previously found that: first, the risk of social instability should be assessed by reference to the State where the person will return;⁹⁵ and second, this risk should be assessed by reference to Mali [Redacted].⁹⁶ This led the Panel to place weight on the victims' concerns relating to the prospect of Mr Al Hassan's return to Mali⁹⁷ and the views of Mali, as the 'state of resettlement',⁹⁸ while disregarding the Registry and Prosecution's assessments that the risk of release, including to a country other than Mali, did not satisfy Rule 223(c).⁹⁹ This ultimately impacted the extent of the reduction.¹⁰⁰ The foundation for this disposition has now been altered by first, [Redacted]; and second, Mr Al Hassan's efforts to apologise and support the reparations process, which reduces the possibility or likely scale of adverse public reaction to his release.
30. Mr Al Hassan's ability to settle [Redacted] with his family materially changes the Panel's evaluation of the risks associated with Mr Al Hassan's release. [Redacted],¹⁰¹ [Redacted].¹⁰² [Redacted],¹⁰³ [Redacted].¹⁰⁴ [Redacted]¹⁰⁵ [Redacted]. Since Mr Al

⁹² [ICC-01/05-01/08-1626-Red](#), paras 52-53; [Banović, President's Decision on Commutation of Sentence](#), 3 September 2008, paras 12-13.

⁹³ [Banović, President's Decision on Commutation of Sentence](#), 3 September 2008, paras 12-13.

⁹⁴ [ICC-01/04-01/06-3375](#), para 85; [Januzi, Decision on Commutation, Modification or Alteration of Sentence](#) para. 19: the sentenced person's contribution to reparations satisfied the reconsideration threshold in release proceedings.

⁹⁵ [First Article 110 Decision](#), para. 73, referring to the sentenced person's return to the state at issue.

⁹⁶ [First Article 110 Decision](#), paras 74-75.

⁹⁷ [First Article 110 Decision](#), para. 74.

⁹⁸ [First Article 110 Decision](#), para. 74.

⁹⁹ Registry, (as cited in First Article 110 Decision), 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, First Article 110 Decision, 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 and noting the Registry's assessment that the risk of release to a country other than Mali was low;. See also para. 99 noting that the "level of risk is unclear and difficult to predict" and not opposing release.

¹⁰⁰ [First Article 110 Decision](#), para. 110.

¹⁰¹ [Redacted]

¹⁰² [Redacted]

¹⁰³ [Redacted]

¹⁰⁴ [Redacted]

¹⁰⁵ [Redacted]

Hassan's sentence is final, it is also not necessary to receive assurances concerning [Redacted].¹⁰⁶

31. Mr Al Hassan proposed resettlement [Redacted] also lessens the weight that should be placed on concerns from Mali and victims related to his potential return to Timbuktu. In line with *Lubanga* and *Katanga*, the fact that Mr Al Hassan is seeking to be released to an area that is geographically distant and distinct from the zone of military operations in Mali in either 2012 or the present, lessens the risk of social instability.¹⁰⁷ As observed by Oehmichen,¹⁰⁸

While potential social instability must undoubtedly be taken into account for the decision of sentence reductions, it is hard to understand in how far this should affect the prisoner's right to have his sentence reviewed and, if other conditions are met, reduced, especially if he himself does not want to cause any trouble. It does not seem fair to deny [a sentenced person] sentence reduction in such circumstances, on the exclusive basis that other people in his home country will protest against his release. In such cases, a way to reconcile the society's interest in social stability with the prisoner's interest in sentence reduction would be to allow for his release in another than his home country.

32. The exceptional context in which he joined Ansar Dine, in conjunction with his subsequent apology for his wrongful conduct, lessen the risks associated with his release [Redacted]. Thirteen years have elapsed since Mr Al Hassan, a young father with a pregnant wife, was convinced of the necessity of working for the Islamic Police,¹⁰⁹ after the groups had already taken control of Timbuktu and the surrounding areas,¹¹⁰ and at a time when he "generally faced a danger from the Malian army".¹¹¹ Mr Al Hassan has recognised that the decisions he took in 2012 to protect his family exposed them to greater harm and further led to the victims' suffering, for which he has apologised. Since Mr Al Hassan will be living with his family [Redacted], his strong family ties also mitigate risk.¹¹² He will also be employed in a purely civilian position that has no linkage to the role he performed in Ansar Dine in 2012. Mr Al Hassan's personal circumstances can thus be contrasted with those of a long-standing soldier or politician, whose vocation presents future risks of

¹⁰⁶ *Hariqija*, [Decision on Motion of Astrid Hariqija on Provisional Release](#), para. 14, noting that since the appeal was still pending, conditions were required to ensure availability for surrender in case of increase in sentence on appeal.

¹⁰⁷ [ICC-01/04-01/06-3173](#), para. 64; [ICC-01/04-01/07-3615](#), para. 75.

¹⁰⁸ A Oehmichen, 'Rule 223(c)' CLICC Commentary Rules of Procedure and Evidence

¹⁰⁹ [Trial Judgment](#), para. 1059.

¹¹⁰ [Trial Judgment](#), para. 1752.

¹¹¹ [Trial Judgment](#), para. 1754.

¹¹² In addition to promoting positive prospects for rehabilitation, strong family ties also lessen the risk of recidivism or future offending : UNODC, [Handbook on the Prevention of Recidivism](#), p. 122. See also [UK Risk Assessment Guidance](#), para 2.9. The Panel accepted Mr Al Hassan's strong family ties in the First Article 110 Decision but did not rely on them due to the absence of information concerning his future plans: para. 63).

insecurity or recidivism.

33. Moreover, while Mali's observations complained about the insecurity caused by armed groups, such as JNIM, the phrase 'significant social instability' denotes a high degree of unrest and disruption linked to the sentenced person or his supporters.¹¹³ This entails 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.¹¹⁴ The steps taken by Mr Al Hassan to widely disseminate his personal denunciation of the conduct underpinning the common plan adopted by Ansar Dine/AQIM eliminate any basis for inferring that he would re-establish links with a group that is likely to view him as a "traitor".¹¹⁵ Given the highly politicised nature of Mali's statements concerning the ICC, and in line with human rights standards, the Panel should disregard any assertions that are not supported by objective and probative (torture-free) evidence concerning Mr Al Hassan,¹¹⁶ disclosed to all participants.¹¹⁷ Since Mr Al Hassan is from an ethnic minority that experiences significant systemic discrimination,¹¹⁸ the Panel should also exercise caution in relation to sentiments that may be influenced by irrelevant and/or discriminatory factors.¹¹⁹ Mali's claim that Mr Al Hassan's early release would be incompatible with domestic law is also inconsistent with Malian law¹²⁰ and Mali's submission to the ICTR that the early release of Mr Nahimana, an ICTR defendant who had served two-thirds of a 30-year sentence for genocide and extermination, was consistent with Malian law.¹²¹ Malian law is, in any case,

¹¹³ [First Article 110 Decision](#), para. 73.

¹¹⁴ [ICC-01/04-01/07-3615](#), para. 75.

¹¹⁵ [Registry R223 Annex](#), para. 18.

¹¹⁶ ECHR: *Letellier v France*, [12369/86](#), para. 51, public order and social disturbance "can be regarded as relevant and sufficient only provided that it is based on facts capable of showing that the accused's release would actually disturb public order. In addition detention will continue to be legitimate only if public order remains actually threatened". See also ECCC: *Nuon Chea*, [Decision on Appeals against Provisional Detention Order](#), paras 75-76.

¹¹⁷ In *Beina*, the Pre-Trial Chamber found that it would be incompatible with the right to adversarial proceedings to rely on an *ex parte* report that had not been shared with all the participants: [ICC-01/14-217-Red](#), para 68. The Chamber also characterised as 'speculative' allegations that did not directly concern the defendant (para. 71).

¹¹⁸ See paras 17-18 above.

¹¹⁹ [OL MLI 1/2023](#) p. 6: letter from UN special procedures & mandate holders, expressing concern regarding regarding overly vague and broad definitions of terrorism employed in Malian law and the promulgation of ethnic stereotypes and targeting of entire ethnic groups, such as Tuaregs.

¹²⁰ Article 1226 [Malian Code of Criminal Procedure](#) (as amended Dec. 2024), allowing for parole after 50% of the sentence is served, based on good conduct in detention and propensity for rehabilitation.

¹²¹ *Nahimana*, [Public Redacted Version of the 22 September 2016 Decision of the President on the Early Release of Ferdinand Nahimana](#) para. 11: "According to the provisions of Article 35 of Law No. 01-003 of 27 February 2001 on the prison system and supervised education, 'detainees who have provided sufficient proof of their improvement could be eligible for parole or semi-custodial treatment.'" The Malian authorities state that Nahimana "meets the conditions set out in Malian legislation for parole or semi-custodial treatment".

irrelevant to the calculation of ICC sentences.¹²²

34. The Defence accepts that victims may continue to reject Mr Al Hassan’s apology and/or release: as remarked by Trial Chamber VIII in *Al Mahdi*, “[s]ome victims may already be satisfied with the apology given, and others will not be satisfied no matter what kind of further apologies are given. This is inevitable, and eminently understandable.”¹²³ Nonetheless, their subjective opinion is not sufficient on its own to give rise to an objective factual foundation that establishes a risk of significant social instability, as required by Rule 233(c)¹²⁴ and human rights law.¹²⁵ The *number* of affected victims also does not satisfy the threshold of Rule 223(c) in and of itself. During sentencing, the Trial Chamber declined to take the number of victims into consideration as an aggravating factor, noting that for the purpose of sentence, there were 14 victims of public punishments, who fell within the total number of 49 victims,¹²⁶ and further, that it was not possible to ascertain discriminatory motive in connection with the 25 individuals who were victims of count 6 and not the other counts.¹²⁷ This means that there were 14 identified victims of persecution for the purposes of sentencing, and 49 in total. While the number of victims for reparations may differ, these numbers cannot be altered for sentencing purposes.
35. The further dissemination of Mr Al Hassan’s public apology and condemnation of extremism and wrongful conduct also lessens the objective risk of social instability because it “may lead to the broader community more readily accepting the historical narrative of what occurred as found by the Court, which can also lead to a broader recognition and acknowledgement of the harms that were done to the victims”.¹²⁸ Additionally, Mr Hassan’s public and tangible support for victims’ right to reparations

¹²² [ICC-02/05-01/20-1281-Red](#), paras 34-36 (Sudanese law inapplicable to ICC penalties).

¹²³ [ICC-01/12-01/15-236](#), para. 69.

¹²⁴ [ICC-01/04-01/07-3615](#), para 77.

¹²⁵ ECHR, *I.A. v France*, [1/1998/904/1116](#), para. 104, finding that the threshold of social disturbance required to justify detention was not satisfied by reference to abstract findings concerning “the nature of the crime concerned, the circumstances in which it was committed and, occasionally, the reactions of the victim’s family”. The sentenced person must also have a real and effective means of taking steps to satisfy the criteria for parole: *Marcello Viola v Italy* (no. 2), [77633/16](#) para. 113. This would not be the case if the views of victims could veto release.

¹²⁶ [Sentencing Judgment](#), fn 111: “Counts 1 and 3: 13 victims; Counts 2 and 4: 1 victim; Count 5: 14 victims; Count 14: 1 victim. The Chamber declines to take multiplicity of victims into account as an aggravating factor for the crimes under Counts 1, 3 and 5, as requested by the Prosecution (contra Prosecution Sentencing Brief, paras 60, 75). The Chamber notes that these are the victims as named in the charges”.

¹²⁷ [Sentencing Judgment](#), fn 180.

¹²⁸ [ICC-01/04-01/07-3615](#), para. 101.

rebutts any claim that he would engage in reprisals if released and further eliminates the incentive for any members of his community to impede the process or retaliate against victims participating in the process. As explained in his August 2024 signed statement, Mr Al Hassan believes that it is wrong to blame others for his own misfortunes.¹²⁹ He is also opposed to acts of retaliation or revenge.¹³⁰ These sentiments are consistent with the credible evidence of Prosecution witnesses such as P-0065¹³¹ and P-0654, who described Mr Al Hassan as generally “peace loving”,¹³² and also the Trial Chamber’s own findings that Mr Al Hassan was known for resolving disputes or disturbances “in a peaceful way”.¹³³ The Chamber rejected arguments that Mr Al Hassan’s subsequent conduct could either be characterized as zealous or an abuse of authority,¹³⁴ while finding that in 2012, he was “generally well liked by the population, notably because he was considered by many as someone who would (try to) help the people who sought him out.”¹³⁵ Of particular import, the Trial Chamber found that :“Mr Al Hassan was known to be easy to approach and have good inter-personal skills: he was described as someone polite, nice with the population, and keen to help”;¹³⁶ he had in fact helped members of the civilian population;¹³⁷ and further, such actions “showed good character and a willingness to help the local population and victims of unfair actions.”¹³⁸ These findings reflect both a lessened propensity to engage in future actions directed against civilians and also Mr Al Hassan’s capacity to establish constructive and peaceful relations if released [Redacted].

36. Mr Al Hassan’s confidential release [Redacted] also lessens the risk of psychological trauma occasioned by his potential presence in Timbuktu. In *Katanga*, the Trial Chamber took account of the fact that Mr Ngudjolo’s early release had not generated any insecurity

¹²⁹ [MLI-D28-0007-0638-R01](#), at 0643, para. 31.

¹³⁰ [MLI-D28-0007-0638-R01](#) at 0651, para. 45.

¹³¹ P-0065, [Trial Judgment](#), fns 3626, 3750 (describing Al Hassan as a non-extremist/regular person who joined Ansar Dine to help protect the local community from the inside).

¹³² P-0654, [T-133-Red2-Eng](#), p. 43 ln 15 – p. 44 ln 1; *See also* D-0272, [T-182-Red](#), p.12, lns 24-25 : “I know that he is very much a peace-loving person, very calm. He is not aggressive at all.” The Trial Chamber found these witnesses to be generally fair and credible: [Trial Judgment](#), paras 41-55 (P-0065), 264-266 (D-0272) fn 1503 (P-0654).

¹³³ [Trial Judgment](#), para. 194.

¹³⁴ [Sentencing Judgment](#), para. 38.

¹³⁵ [Trial Judgment](#), para. 1070.

¹³⁶ [Sentencing Judgment](#), para. 116; [Trial Judgment](#), para. 1070.

¹³⁷ [Trial Judgment](#), fns 3668, 3681.

¹³⁸ [Sentencing Judgment](#), para. 118.

in the release destination.¹³⁹ Similarly, the absence of any indication that Mr Al Mahdi's confidential release to a third country generated insecurity in Mali or the region also bodes favourable for Mr Al Hassan's release [Redacted]. The absence of any social disturbances caused by the First Article 110 Decision also supports the conclusion that Mr Al Hassan's confidential release [Redacted] will not generate significant social instability in Mali or the region.

3.3 The passage of time and Mr Al Hassan's individual circumstances in detention

37. There are three reasons why the passage of time and Mr Al Hassan's detention situation are relevant to the Panel's assessment of Rule 223(b), (c) and (e) and support immediate release.
38. **First**, consistent with appellate caselaw that the effluxion of time affects the relevance and weight of factors related to detention,¹⁴⁰ the minimal remainder of his sentence lessens the weight that should be afforded to Rule 223(c) (the risk of significant social insecurity) as a justification for denying immediate release, while the additional length of separation from his family increases the weight that should be afforded to his individual circumstances (as established in the First Article 110 Decision).¹⁴¹ The relevance of Rule 223(c) as a factor that could militate against immediate release is reduced because the security situation [Redacted] is unlikely to change in the next 12 months and the ICC reparations process will not be completed by that point: the impact of release will thus be the same irrespective as to whether he is released now or in March 2027. In line with international and domestic precedent, the fact that Mr Al Hassan has now served more than ¾ of his sentence also eliminates the need for an enforcement procedure to govern his conduct on release. In *Bagaragaza*, while the ICTR President declined to release Mr Bagaragaza at the two-thirds mark due to the absence of any means for enforcing conditions of release, the President subsequently found that it was appropriate to consider *unconditional* release after Mr Bagaragaza had served 3/4 of his sentence.¹⁴² Later ICTR decisions clarified that this cut off point militated in favour of the unconditional release of

¹³⁹ [ICC-01/04-01/07-3615](#), para. 75.

¹⁴⁰ [ICC-01/05-01/13-969](#), paras 49-50.

¹⁴¹ The Panel confirmed that deteriorations in the situation of Mr Al Hassan's family were relevant to Rule 223(e): [First Article 110 Decision](#), paras 96-97.

¹⁴² *Bagaragaza*, [Decision on Early Release](#), paras 9-10.

similarly situated persons (i.e. convicted persons with low sentences who cooperated with the Prosecution at an early stage).¹⁴³

39. **Second**, the fact that Mr Al Hassan has now spent another year (2½ in total) without seeing his family and they in turn, have passed another year without the benefit of his support and succour, heightens the weight that should be afforded to his strong family ties, the positive consequences for resettlement and reintegration generated by his immediate release,¹⁴⁴ and his family responsibilities to his parents, wives and children.¹⁴⁵ The ICC Presidency has consistently underscored the importance of in-person visits for both the mental welfare of detainees and their children: the possibility to conduct telephone or video calls is an ancillary right and not a replacement.¹⁴⁶ Subsequent ICC caselaw has now affirmed that it may be appropriate to mitigate sentence to take account of increased hardship in detention caused by the sentenced person's protracted separation from their family.¹⁴⁷ While the Panel was unable to reconsider the Trial Chamber's approach to Covid-related family separation, the Panel may now consider the totality of separation which Mr Al Hassan has endured, in conjunction with the impossibility of rectifying this situation for the remainder of his sentence.
40. **Third**, human rights law specifies that the sentenced person must be provided an effective opportunity to satisfy the criteria for early release through appropriately crafted prison programmes; the absence of such programmes potentially renders lawful post-conviction detention, unlawful.¹⁴⁸ The criteria for evaluating parole eligibility also cannot discriminate against prisoners that lack access to prison rehabilitation and reintegration schemes.¹⁴⁹ In Mr Al Hassan's situation, this means that his detention should not be maintained for the purpose of promoting further reform or rehabilitation in non-existent programmes. He is also entitled to an effective remedy as concerns the fact that he has

¹⁴³ *Rugambarara* [Decision on Rugambarara's Application for Early Release](#), para. 12.

¹⁴⁴ Principle 14.3, CM/Rec(2012)12 [Recommendation of the Committee of Ministers to member States concerning foreign prisoners](#) :“To avoid disproportionate hardship and obstacles to social reintegration, account shall be taken when considering sentences of the possible impact that such sentences may have on individual offenders and their dependents, without prejudice to the independence of the judiciary.”

¹⁴⁵ [First Article 110 Decision](#), paras 96-97.

¹⁴⁶ [ICC-RoR217-02/08-8](#), paras. 35-36; [ICC-RoR220-01/19-2-Red](#), paras. 19-21. *See also* ‘[Guidance Document on the Nelson Mandela Rules](#)’, p. 122, “other forms of remote communication are not substitutes for in-person visits.”

¹⁴⁷ *Yekatom & Ngaissona*, [Judgment and Sentence](#), paras 4433-4434. The Prosecution did not appeal this finding.

¹⁴⁸ ECHR: *Brand v. Netherlands*, [49902/99](#), paras 58-67: Art. 5(1) violated due to imprisonment without rehabilitation facilities for 6 months; *James, Well & Lee v. United Kingdom*, [22119/09](#), [57715/09](#), [57877/09](#), para.221.

¹⁴⁹ ECHR, *Rangelov v Germany* [5123/07](#) paras 93-95, 99; *Clift v The United Kingdom*, [7205/07](#) paras 43, 62.

served almost the entirety of his sentence in a facility without such programmes, which is best secured through immediate release.¹⁵⁰

4. The significant changes in circumstances justify immediate release

41. The New Circumstances eliminate the penal justification for Mr Al Hassan to remain in prison. During the first proceedings, the Prosecution did not oppose Mr Al Hassan's immediate release.¹⁵¹ The LRV argued that if Mr Al Hassan were to be released, he should not be released to Timbuktu and his release should occur after he apologises to victims.¹⁵² These two conditions are now satisfied through the present application. Mr Al Hassan's request to be released [Redacted] also eliminates the special relevance previously afforded to the views of Mali,¹⁵³ and the weight consequently attached to Rule 223(c).¹⁵⁴ The fact that Mr Al Hassan has served an additional 6 months and taken further steps to apologise and aid the reparations process, along with the worsening situation of his family, further tilt the balance of proportionality towards a full commutation of sentence and immediate release.



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Dated this 06th day of February 2026
At The Hague, The Netherlands

¹⁵⁰ Article 5(4) of the ECHR establishes a right to seek release for unlawful detention. *James, Well & Lee v. United Kingdom*, [22119/09, 57715/09, 57877/09](#), paras 229-232 (violation of article 5(1) but no violation of Art 5(4) because applicants could have raised lack of rehabilitation programme in context of parole proceedings);

¹⁵¹ [First Article 110 Decision](#), para 99.

¹⁵² [First Article 110 Decision](#), para. 100.

¹⁵³ [First Article 110 Decision](#), para. 106.

¹⁵⁴ [First Article 110 Decision](#), para. 107.