



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:*

The Office of the Prosecutor

Mr Karim A. A. Khan QC

Mr Gilles Dutertre

Counsel for Mr Ahmad Al Faqi Al

Mahdi

Mr Mohamed Aouini

Legal Representative of the Victims

Mr Mayombo Kassongo

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

The Republic of Mali

The United Kingdom of Great Britain
and Northern Ireland

Amicus Curiae

Other

The Presidency

REGISTRY

Registrar

Mr Peter Lewis

**Counsel Support Section/ Division of
Court Services**

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

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”),¹ 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,² 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”).⁷ The Agreement provided in relevant part that if Mr Al Mahdi “[REDACTED] 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 Prosecutor will support any request by him for release after he has served two thirds of his sentence.”⁸
4. Mr Al Mahdi will have served two thirds of the sentence imposed on him on 18 September 2021.⁹

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, factors¹⁰ 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. [REDACTED]
[REDACTED] admission of guilt and [REDACTED] 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 [REDACTED] 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 [REDACTED]
[REDACTED]
[REDACTED],¹¹ [REDACTED]
[REDACTED] 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 [REDACTED] admission of guilt, [REDACTED] cooperation and expression of remorse.

II. Confidentiality

9. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10. [REDACTED]
[REDACTED]
[REDACTED]¹³ [REDACTED]
[REDACTED]

¹⁰ 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.

¹¹ [REDACTED]

¹² ICC-01/12-01/15-392, para. 4(c). ICC-01/12-01/15-412, para. 7.

¹³ [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁴

11. The Prosecution will also file a public redacted version of these submissions when appropriate.

III. SUBMISSIONS

A. Factors in article 110(4)(a) and (b) of the Statute

12. [REDACTED]

[REDACTED]

[REDACTED]

13. [REDACTED]

[REDACTED]

[REDACTED] The existence of the factor in article 110(4)(a) and/or (b) of the Statute in favour of reducing his sentence thus weighs in favour of early release.

(a) Mr Al Mahdi's [REDACTED] admission of guilt

14. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁵ [REDACTED]

[REDACTED]

15. [REDACTED] Trial Chamber VIII gave substantial weight in mitigation of sentence to Mr Al Mahdi's admission of guilt, which it found was made early, fully and appeared to be genuine, led by desire to take responsibility for acts committed and showing honest repentance.¹⁶ Trial

¹⁴ [REDACTED]

[REDACTED]

[REDACTED]

¹⁵ [REDACTED]

[REDACTED]

¹⁶ ICC-01/12-01/15-171, para. 100.

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

16. [REDACTED]¹⁸ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]¹⁹
 [REDACTED]
 [REDACTED]

(b) [REDACTED] cooperation with the Prosecution

17. [REDACTED]²⁰ [REDACTED]
 [REDACTED]
 [REDACTED]

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 [REDACTED]
 [REDACTED]

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

¹⁷ ICC-01/12-01/15-171, para. 100.

¹⁸ [REDACTED]

¹⁹ [REDACTED]

²⁰ [REDACTED]

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).

²⁴ [REDACTED]
 [REDACTED]
 [REDACTED]

²⁵ [REDACTED] P-0182, ICC-01/12-01/15-T-5-CONF-ENG ET, p. 15, ls. 13-22 (open session).

20. [Redacted]
[Redacted] ²⁶ [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

21. [Redacted]
[Redacted]

22. [Redacted]
[Redacted] ²⁷ [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

23. [Redacted]
[Redacted]
[Redacted] ²⁸ [Redacted]
[Redacted]

24. [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

25. [Redacted]
[Redacted] ²⁹ [Redacted]

26 [Redacted]
27 [Redacted]
28 [Redacted]
29 [Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

26. [Redacted]

[Redacted]

[Redacted]

[Redacted]

27. [Redacted]

[Redacted]

28. [Redacted]

[Redacted]

[Redacted]³⁰

29. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]³¹

³⁰ [Redacted]

³¹ [Redacted]

30. [Redacted]

31. [Redacted]

32. [Redacted]

32. [Redacted]

33. [Redacted]

34. [Redacted]

33. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

34. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

35. [REDACTED]
[REDACTED]
[REDACTED]

36. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁵

37. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

38. [REDACTED]
[REDACTED]
[REDACTED]

39. [REDACTED]
[REDACTED]
[REDACTED]

³⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

40. [REDACTED]
 [REDACTED]³⁶ [REDACTED]
 [REDACTED]³⁷ [REDACTED]
 [REDACTED]
 [REDACTED]

41. [REDACTED] the case record shows [REDACTED] cooperation with the Prosecution, which together with [REDACTED] admission of guilt, demonstrate the existence of the factor in article 110(4)(a) and/or (b) in favour of sentence reduction, weighing in favour of Mr Al Mahdi's early release.

B. Factors in article 110(4)(c) of the Statute and rule 223(a) to (e) of the Rules

(a) Mr Al Mahdi's conduct showing a genuine dissociation from his crime (rule 223(a))

Mr Al Mahdi's [REDACTED] expression of remorse

42. Mr Al Mahdi's expression of remorse, which he has stated from the time that he pleaded guilty [REDACTED] shows genuine dissociation from his crime.

43. Trial Chamber VIII took into account Mr Al Mahdi's expression of remorse and empathy for the victims as a substantial factor in mitigation of sentence.³⁸ It considered that as early as the first day of trial he expressed genuine remorse for his acts.³⁹ It also considered that Mr Al Mahdi expressed sentiments of empathy towards the victims of the crime he committed.⁴⁰

44. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

³⁶ [REDACTED]

³⁷ [REDACTED]

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.

[REDACTED]
[REDACTED]⁴¹

45. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Prosecution observes that the Agreement contains no provision regarding a statement of remorse by Mr Al Mahdi.⁴²

Mr Al Mahdi's good behaviour while in detention

46. [REDACTED]
[REDACTED]
[REDACTED]⁴³ [REDACTED]
[REDACTED]⁴⁴

47. While good behaviour in detention is insufficient on its own to demonstrate this factor, it can be considered in conjunction with Mr Al Mahdi's [REDACTED] expression of remorse as constituting behaviour meeting the factor in rule 223(a) of the Rules in favour of sentence reduction, weighing in favour of Mr Al Mahdi's early release.

(b) Mr Al Mahdi's resocialisation and successful resettlement (rule 223(b))

48. The prospect of resocialisation and successful resettlement under rule 223(b) is a factor considered for the first time during sentence review.⁴⁵

49. This notwithstanding, the Prosecution notes that Trial Chamber VIII accepted that Mr Al Mahdi's admission of guilt and cooperation with the Prosecution showed that he was likely to successfully reintegrate into society and gave some limited weight to this in sentencing.⁴⁶

50. Mr Al Mahdi's [REDACTED] admission of guilt, [REDACTED] cooperation with the Prosecution and his expression of remorse support the favourable prospects of resocialization and successful resettlement. [REDACTED]
[REDACTED]

⁴¹ [REDACTED]

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

⁴³ [REDACTED]

⁴⁴ [REDACTED]

⁴⁵ ICC-01/04-01/06-3173, para. 28.

⁴⁶ ICC-01/12-01/15-171, para. 97.

[Redacted]

[Redacted]⁴⁷

51. The Prosecution thus submits that there are positive signs regarding the possibility of Mr Al Mahdi’s resocialisation and successful resettlement.

52. [Redacted]

[Redacted]

[Redacted]

[Redacted]⁴⁸ [Redacted]⁴⁹

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

53. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

54. [Redacted]

[Redacted]

[Redacted]

[Redacted]

⁴⁷ [Redacted]

⁴⁸ [Redacted]

⁴⁹ [Redacted]

[Redacted]

[Redacted]

[REDACTED]

(c) Impact of Mr Al Mahdi’s early release on social instability (rule 223(c))

55. [REDACTED]

56. The Prosecution has no further independent information on this factor under rule 223(c) at this stage.

(d) Significant action taken by Mr Al Mahdi for the benefit of the victims and impact of Mr Al Mahdi’s release on the victims and their families (rule 223(d))

57. The Prosecution notes that the ‘parties’ in the reparations proceedings in the *Al Mahdi* case are the Defence for Mr Al Mahdi and the Legal Representative of Victims.⁵² The Prosecution awaits receipt of their written submissions under rule 223(d).

58. [REDACTED]

⁵⁰ [REDACTED]

⁵¹ [REDACTED]

⁵² ICC-01/12-01/15-236, para. 7.

[REDACTED]

59. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

53

60. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

54

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.

62. [REDACTED]

[REDACTED]

[REDACTED]

56

(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

53

54

55 ICC-01/04-01/07-3615, para. 90.

56

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.