

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: French

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
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 Document

**Public Redacted Version of the
“Defence Request for the Reduction of Mr Al Mahdi’s Sentence”
(ICC-01/12-01/15-420-Conf-Exp-Corr) of 13 September 2021**

Source: Defence for Mr Ahmad Al Faqi Al Mahdi

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

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The Republic of Mali

The United Kingdom

REGISTRY

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Other

The Presidency

CLASSIFICATION

[REDACTED].

LEGAL PROVISIONS

Considering article 8(2)(e)(iv) (Elements of Crimes of the Rome Statute (“Statute”), rules 223 and 224(1) of the Rules of Procedure and Evidence, articles 23, 25(3)(a), 65, 76-78, 110(3) and 110(4) of the Rome Statute (“Statute”) and rules 139 and 145 of the Rules of Procedure and Evidence (“Rules”).

I – PROCEDURAL HISTORY

1. On 7 July 2021, the panel of three judges of the Appeals Chamber appointed for the review, in accordance with article 110 of the Statute, concerning reduction of the sentence of Mr Ahmad Al Faqi Al Mahdi, issued an order scheduling the hearing for the purpose of that review for 21 and 22 September 2021 and directing written observations from the various parties and participants in the case, by 30 August 2021 for some (the Registry, the Republic of Mali and the United Kingdom) and by 6 September 2021 for others (Mr Al Mahdi, the Prosecutor and the Legal Representative of Victims).¹
2. On 19 July 2021, the Prosecutor stated that the scheduled dates presented some problems, given that another case was taking place at the same time; he therefore

¹ ICC-01/12-01/15-392, 7 July 2021; ICC-01/12-01/15-392-tFRA, 11 July 2021.

suggested that the judges schedule the hearing for the week of 27 September 2021 instead.²

3. The Defence for Mr Al Mahdi, for its part, did not raise any objection to the dates the judges had set.³
4. On 21 July 2021, the judges issued an order⁴ inviting Mr Al Mahdi, the Registrar, the United Kingdom, the Republic of Mali and the Legal Representatives of Victims to respond by Monday, 26 July 2021 to the aforementioned observations and suggestion of the Prosecutor.
5. On 26 July 2021, the Defence stated that it did not have any objection to the Prosecutor's request,⁵ and the Legal Representative of Victim's input on the ground given by the Prosecutor was that the original dates set coincided with those of case ICC-01/12-01/18 in which they were both participating.⁶
6. On 27 July, the Registry reported that the United Kingdom raised no objection to the dates chosen by the Chamber or to those proposed by the Prosecutor. The Registry similarly reported that the Malian authorities raised no objection to the dates suggested by the Prosecutor.⁷
7. On 29 July 2021, the three-judge panel issued an order rescheduling the aforementioned hearing to 12 and 13 October 2021, given that the original dates set

² ICC-01/12-01/15-396.

³ ICC-01/12-01/15-397-tENG.

⁴ ICC-01/12-01/15-398.

⁵ ICC-01/12-01/15-400.

⁶ ICC-01/12-01/15-401.

⁷ ICC-01/12-01/15-402 + Anx.

coincided with those of the Al Hassan trial, in which the Prosecutor and the Legal Representative of Victims were both participating.⁸

8. On 25 August 2021, the Prosecutor requested the three-judge panel to grant him, under rule 35(2) of the Regulations of the Court, as well as Mr Al Mahdi and the Legal Representative of Victims, a time extension of seven days, until 13 September 2021, for the submissions expected of them by 6 September 2021.⁹
9. On 26 August 2021, the judges issued an order instructing Mr Al Mahdi and the Legal Representative of Victims to submit, by 30 August 2021, their responses to the abovementioned request of the Prosecutor.¹⁰
10. On 27 August 2021, the Defence¹¹ echoed the Prosecutor's request. The Legal Representative of Victims followed suit.¹²
11. On 31 August 2021, the present Chamber granted the request of the Prosecutor, according him, the Defence and the Legal Representative of Victims an extension until 13 September 2021 to file their views on the reduction of Mr Al Mahdi's sentence.¹³
12. Considering that article 110(3) of the Statute provides in relevant part that "[w]hen the person has served two thirds of the sentence [...], the Court shall review the sentence to determine whether it should be reduced [...] and that "[s]uch a review shall not be conducted before that time";

⁸ ICC-01/12-01/15-403.

⁹ ICC-01/12-01/15-404.

¹⁰ ICC-01/12-01/15-406.

¹¹ ICC-01/12-01/15-407.

¹² ICC-01/12-01/15-409.

¹³ ICC-01/12-01/15-412.

13. The Defence for Mr Al Mahdi, as part of the review concerning reduction of Mr Al Mahdi's sentence, has the honour to present the following submissions to the judges.

II – SUBMISSIONS OF THE DEFENCE FOR MR AL MAHDI

14. The Defence submissions rest essentially on:

- (a) the sentence which Mr Al Mahdi has already served and the legal provisions which allow for reduction of sentence;
- (b) the exceptionally difficult conditions of his incarceration at certain times;
- (c) Mr Al Mahdi's attitude and actions from the time of his arrest to the present day and his exemplary conduct throughout his detention at different sites;
- (d) the Trial Chamber's assessment of Mr Al Mahdi's conduct; and
- (e) his proven ability to reintegrate into society.

A - The sentence of imprisonment and length of Mr Al Mahdi's detention – verdict, facts and legal provisions

15. Mr Al Mahdi was sentenced to nine years of detention:

The Chamber finds that the crime for which Mr Al Mahdi is being convicted is of significant gravity. This said, the Chamber has found no aggravating circumstances and five mitigating circumstances, namely: (i) Mr Al Mahdi's admission of guilt;¹⁴ (ii) his cooperation with the Prosecution;¹⁵ (iii) the remorse and the empathy he expressed for the victims;¹⁶ (iv) his initial reluctance to commit the crime and the steps he took to limit the damage caused;¹⁷ and (v), even if of limited importance, his good behaviour in detention

¹⁴ Judgment ICC-1/12-01/15-171, footnote 186: See paras. 98-100.

¹⁵ Judgment ICC-1/12-01/15-171, footnote 187: See paras. 101-102.

¹⁶ Judgment ICC-1/12-01/15-171, footnote 188: See paras. 103-104.

¹⁷ Judgment ICC-1/12-01/15-171, footnote 189: See paras. 89, 91, 93.

despite his family situation.¹⁸ Taking into account all these factors, the Chamber sentences Mr Al Mahdi to 9 years of imprisonment.¹⁹

16. On 29 September 2015, Mr Al Mahdi was transferred to The Hague where he was held at the Scheveningen Detention Centre.²⁰ Upon the arrival of another detainee in a related case (Al Hassan), Mr Al Mahdi was placed in isolation for a prolonged period – almost from the time Mr Al Hassan arrived at the Scheveningen Detention Centre – until he was transferred from the Netherlands [REDACTED] to the United Kingdom to serve his sentence. [REDACTED].

17. [REDACTED] with his trial at an end and all the Court's discussions with various countries completed, Mr Al Mahdi was transferred to an SPS [Scottish Prison Service] facility in the United Kingdom.²¹

18. [REDACTED]²² [REDACTED]²³ [REDACTED].

19. [REDACTED].

20. By 18 September 2021, Mr Al Mahdi will have served two thirds of his sentence. The provisions of rule 223 of the Rules of Procedure and Evidence and article 110(3) of the Statute, which allow for reduction of sentence, therefore apply here since the conditions the provisions lay down are met as regards Mr Al Mahdi.

¹⁸ Judgment ICC-1/12-01/15-171, footnote 190: See para. 97.

¹⁹ Judgment ICC-1/12-01/15-171, 27 September 2016, para. 109.

²⁰ ICC-01/12-01/15-411-Conf-Red, para. 4.

²¹ See ICC-01/12-01/15-413-Conf-Anx-Red, p. 3.

²² [REDACTED].

²³ [REDACTED].

B - Mr Al Mahdi's conditions of detention

21. Mr Al Mahdi's time in detention was marked by a number of long and extremely difficult episodes. Mr Al Mahdi has had to endure long spells in isolation on account of circumstances and events which were not at all of his doing:

[REDACTED]

22. Moreover, the COVID pandemic has made it impossible for Mr Al Mahdi to receive visits from his family for years – at the time of writing, Mr Al Mahdi has been unable to see his family [REDACTED]. This time in detention in harsher conditions is, by now, tantamount to a much longer term.

23. Generally speaking, Mr Al Mahdi has served much of his sentence in extremely complicated and harsh conditions (assaults, spells of isolation, [REDACTED]) which, in any event, have been much harder than the norm. And yet his commitment to contributing to establishing the truth and to repairing the wrong to which he has admitted remains undiminished. The Defence calls on the judges to count this towards a reduction of Mr Al Mahdi's overall sentence.

C - Mr Al Mahdi's exemplary conduct

24. Aside the legal provisions of the Court's instruments, the grounds for requesting a reduction of Mr Al Mahdi's sentence rest mainly on Mr Al Mahdi's character, his exemplary and unfaltering conduct from the time of his arrest and throughout his detention at different sites, and his proven ability to reintegrate into society. Mr Al Mahdi's attitude and actions from the time of his arrest through to the end of his trial – his guilty plea, his repentance, his cooperation with the Court and his

offer to participate in reparations – all lend support to the reasons for his request for a reduction of sentence.

25. Upon arrest, Mr Al Mahdi confessed and wished to cooperate fully with the Court. At his trial, he pleaded guilty. He cooperated in the proceedings from the very outset through to the very end. He did nothing to protract the proceedings or to cast any doubt. He was transparent and consistent from beginning to end. Furthermore, as will be explained, the Trial Chamber took note of and officially acknowledged these facts in the judgment of 27 September 2016.²⁴
26. Mr Al Mahdi cooperated with [REDACTED] Office of the Prosecutor; he did so unconditionally and unequivocally, thus making an invaluable contribution to the pursuit of the truth and to establishing the facts of what happened in Timbuktu.
27. Mr Al Mahdi's stance and his commitment to justice and to establishing the truth have not wavered in the face of the threats and physical assaults to which he was subjected and the security threat to his immediate and extended family.
28. Moreover, Mr Al Mahdi has shown deep regret and repentance about his past deeds, throughout the proceedings concerning him and throughout the proceedings to which he has contributed. Below the Defence sets out for the Chamber instances in which Mr Al Mahdi made statements taking the form of expressions of regret, apologies addressed to his community and the international community, and appeals to young people to avoid the ills of extremism:

²⁴ ICC-01/12-01/15-171, paras. 94-105.

(a) At his own trial: in the statement he gave in court, Mr Al Mahdi made clear his remorse and regret and issued a heartfelt plea to the young people of Mali not to fall under malign influences as he did.²⁵

(b) Furthermore, with the victims and the wider Malian society in mind, Mr Al Mahdi offered, through the Trust Fund for Victims (hereinafter TFV), to contribute to the reparations process in Mali. [REDACTED].²⁶

(c) Lastly, the Court's prison authorities confirm that Mr Al Mahdi has repeatedly expressed remorse.²⁷

29. Mr Al Mahdi's conduct throughout his detention has been exemplary, be it at trial or during the enforcement of his sentence. The prison authorities involved have so attested on a number of occasions in reports²⁸ addressing his conduct and showing the extent of his integration and rehabilitation and that he has made a break with his past criminal conduct, and in observations officially submitted to the present Chamber by the United Kingdom of Great Britain and Scotland²⁹ and the Scheveningen Detention Centre.³⁰

D - The Trial Chamber's assessment of Mr Al Mahdi's conduct

30. The Trial Chamber made the following overall assessment of Mr Al Mahdi's conduct:

²⁵ Transcripts of hearing ICC-01/12-01/15-T-4-CONF-FRA, pp. 7-9; ICC-01/12-01/15-T-4-Red-FRA, p. 6, line 3, to p. 9, line 20; ICC-01/12-01/15-T-4-CONF-ENG; ICC-01/12-01/15-T-4-Red-ENG.

²⁶ [REDACTED].

²⁷ ICC-01/12-01/15-411-Conf-Red, para. 5.

²⁸ Secret reports produced by the Registry...

²⁹ ICC-01/12-01/15-413-Conf-Anx-Red.

³⁰ ICC-01/12-01/15-411-Conf-Red.

31. First, the Bench looked at Mr Al Mahdi's decision to plead guilty:

Such admissions, when accepted by the Chamber, can have a multitude of benefits to the Court and the interests of justice more generally. An admission of guilt can lead to a swifter resolution of a case, giving much needed finality in an otherwise unmatched timeframe. While there may be victims who prefer to testify, others may wish to be spared the stress of having to testify to their personal tragedies and being exposed to cross-examination. Accused admitting guilt pursuant to an agreement to testify in subsequent trials can contribute to the search for the truth as insider witnesses in cases against others. Perhaps most importantly, the speed at which cases can be resolved following admissions of guilt saves the Court both time and resources, which can be otherwise spent advancing the course of international justice on other fronts.³¹

32. The Bench went on also to consider the *extent of the rights which Mr Al Mahdi waived*:

The Chamber notes at the outset that Mr Al Mahdi has confirmed, both orally and in writing, that he: (i) Understands the nature of the charge against him, and the consequences of an admission of guilt;³² (ii) Makes an admission of guilt voluntarily, after sufficient consultation with Defence counsel;³³ (iii) Waives his rights to: (a) plead not guilty and require the Prosecution to prove the charges beyond reasonable doubt at a full trial; (b) not confess guilt and to remain silent; (c) raise defences and grounds for excluding criminal responsibility, and to present admissible evidence at a full trial; (d) examine the witnesses against him and to obtain the examination of witnesses on his behalf at a full trial; and (e) appeal a conviction or sentence, provided the sentence is not in excess of the recommended sentencing range;³⁴ and (iv) Accepts his individual criminal responsibility for the charge, including all modes of liability alleged;³⁵ it is noted that the Agreement does not envisage the modification of the charge.³⁶

33. The Defence sees fit to recall here the Trial Chamber's analysis of Ahmad Al Mahdi's individual circumstances – specifically, his conduct at the material time and later during detention, his unreserved and unaltered admission of guilt at an early stage and his clear cooperation with the Court (the Prosecutor) – to identify

³¹ ICC-01/12-01/15-171, para. 28.

³² Judgment ICC-1/12-01/15-171, footnote 52: Agreement, ICC-01/12-01/15-78-Anx1-Red, para. 28; Transcript of hearing, ICC-01/12-01/15-T-4-Red-tENG, p. 11, lines 10-20.

³³ Judgment ICC-1/12-01/15-171, footnote 53: Agreement, ICC-01/12-01/15-78-Anx1-Red, paras. 6, 23 and 28; Transcript of hearing, ICC-01/12-01/15-T-4-Red-ENG, p. 10, lines 7-11 and 18-21.

³⁴ Judgment ICC-1/12-01/15-171, footnote 54: Agreement, ICC-01/12-01/15-78-Anx1-Red, para. 21; Transcript of hearing, ICC-01/12-01/15-T-4-RedENG, p. 11, lines 3-7.

³⁵ Judgment ICC-1/12-01/15-171, footnote 55: Agreement, ICC-01/12-01/15-78-Anx1-Red, para. 4; Transcript of hearing, ICC-01/12-01/15-T-4-RedENG, p. 6, line 18, to p. 7, line 19.

³⁶ ICC-01/12-01/15-171, para. 30.

circumstances which may be considered in mitigation. For example, at paragraphs 94-105 of the Judgment:

The Chamber has noted the statements of the two defence witnesses – both of whom have known Mr Al Mahdi for much of his life – who indicated that Mr Al Mahdi is an intelligent and very knowledgeable man³⁷ and that he assisted many of the poor communities of Timbuktu, including the community of the black Tuaregs, to which he did not belong.^{38 39}

Despite serious security concerns for his family, whom he has not seen since his transfer to the Court,⁴⁰ Mr Al Mahdi has been behaving in an irreproachable manner in detention and made a statement stating his appreciation of the manner in which he had been treated by the Court as a whole.⁴¹ The Chamber considers that this factor is relevant, despite it being a legitimate expectation of any detainee, and attributes limited weight to it. Similarly, the Chamber accepts the Defence's arguments⁴² that Mr Al Mahdi's admission of guilt and cooperation with the Prosecution, as discussed further below, show that he is likely to successfully reintegrate into society and accords a limited weight to them.⁴³

ii. Admission of guilt

The Chamber notes that Mr Al Mahdi admitted his guilt. The Chamber further observes that Mr Al Mahdi took responsibility for his actions as early as the first day of his interviews with the Prosecution.⁴⁴ Subsequently, the parties reached an agreement sufficiently early in the proceedings, namely before the confirmation of charges,⁴⁵ to help substantially speed up the proceedings.⁴⁶

Additionally, not only did Mr Al Mahdi accept his responsibility but he also provided a detailed account of his actions,⁴⁷ facilitating the Chamber's establishment of the facts of the case.⁴⁸

³⁷ Judgment ICC-1/12-01/15-171, footnote 156: MLI-DEF-0001-0001, p. 0001; MLI-DEF-0002-0001, p. 0001. See also para. 9 of the present judgment.

³⁸ ICC-01/12-01/15-171, footnote 157: MLI-DEF-0001-0001, p. 0003; MLI-DEF-0002-0001, p. 0003.

³⁹ ICC-01/12-01/15-171, para. 95.

⁴⁰ Judgment ICC-1/12-01/15-171, footnote 160: "Prosecution's submissions on sentencing", ICC-01/12-01/15-139-Red, para. 49; Defence observations on the determination of the sentence, ICC-01/12-01/15-141-Corr-Red, paras. 192-195.

⁴¹ Judgment ICC-1/12-01/15-171, footnote 161: Annex II to the Registry's Observations, ICC-01/12-01/15-134-Conf-AnxII; ICC-01/12-01/15-T-4-Red-ENG, p. 9, lines 19-23. 162 Defence observations on the determination of the sentence, ICC-01/12-01/15-141-Corr-Red, paras. 196-201.

⁴² Judgment ICC-1/12-01/15-171, footnote 162: Defence observations on the determination of the sentence, ICC-01/12-01/15-141-Corr-Red, paras. 196-201.

⁴³ Judgment ICC-1/12-01/15-171, para. 97.

⁴⁴ Judgment ICC-1/12-01/15-171, footnote 163: P-182's testimony in court, ICC-01/12-01/15-T-4-Red-ENG, p. 118, line 19, to p. 119, line 4.

⁴⁵ Judgment ICC-1/12-01/15-171, footnote 164: Agreement ICC-01/12-01/15-78-Anx1-Red, filed on 18 February 2016.

⁴⁶ Judgment ICC-1/12-01/15-171, para. 98.

⁴⁷ Judgment ICC-1/12-01/15-171, footnote 165: Agreement ICC-01/12-01/15-78-Anx1-Red, pp. 10-34.

⁴⁸ Judgment ICC-1/12-01/15-171, para. 99.

The Chamber considers that an admission of guilt is undoubtedly a mitigating circumstance⁴⁹ and gives it substantial weight. In this regard, the Chamber notes that the admission was made early, fully and appears to be genuine, led by the real desire to take responsibility for the acts he committed and showing honest repentance. This admission of guilt undoubtedly contributed to the rapid resolution of this case, thus saving the Court's time and resources and relieving witnesses and victims of what can be a stressful burden of giving evidence in Court.⁵⁰ Moreover, this admission may also further peace and reconciliation in Northern Mali by alleviating the victims' moral suffering through acknowledgement of the significance of the destruction. Lastly, such an admission may have a deterrent effect on others tempted to commit similar acts in Mali and elsewhere...⁵¹

iii. Cooperation

In addition to admitting his guilt in full, Mr Al Mahdi has been cooperating with the Prosecution substantially, as detailed at length by witness P-182. The Chamber notes that this cooperation has been spontaneous and started as early as the first day of his interviews.⁵² Mr Al Mahdi responded in an honest manner and his cooperation enabled the Prosecution to corroborate, clarify and specify information it already had in its possession.⁵³ During his interviews with the Prosecution, Mr Al Mahdi did not show any reluctance in touching upon his own acts.⁵⁴

The Chamber is also mindful of the fact that Mr Al Mahdi has cooperated despite being fully aware that his cooperation with the Prosecution increased the security profile of his family. Accordingly, the Chamber considers that Mr Al Mahdi's substantial cooperation with the Prosecution is an important factor going to the mitigation of the sentence to be imposed.⁵⁵

iv. Expression of remorse and empathy for victims

The Chamber notes that, as early as the first day of trial, Mr Al Mahdi has expressed genuine remorse for his acts.⁵⁶ The Chamber notes that Mr Al Mahdi has expressed his

⁴⁹ Footnote 166: See "Prosecution's submissions on sentencing", ICC-01/12-01/15-139-Red, paras. 51 and 52; Defence observations on the determination of the sentence, ICC-01/12-01/15-141-Corr-Red, paras. 180-184. The other international jurisdictions have held an admission of guilt to be a mitigating circumstance: see for example ICTY, Trial Chamber I, *Prosecutor v. Miodrag Jokić*, "Sentencing Judgement", 18 March 2004, IT-01/42/1-S, para. 96 ("Jokić Judgment"); ICTY, Trial Chamber I, *Prosecutor v. Milan Babić*, "Sentencing Judgement", 29 June 2004, IT-03-72-S, paras. 73-75, 88 and 89.

⁵⁰ Judgment ICC-1/12-01/15-171, footnote 167: See also para. 28 of the present judgment.

⁵¹ Judgment ICC-1/12-01/15-171, para. 100.

⁵² Judgment ICC-1/12-01/15-171, footnote 168: P-182's testimony in court, ICC-01/12-01/15-T-4-Red-ENG, p. 118, line 16, to p. 119, line 4.

⁵³ Judgment ICC-1/12-01/15-171, footnote 169: P-182's testimony in court, ICC-01/12-01/15-T-4-CONF-ENG, p. 96, line 23, to p. 98, line 3; ICC-01/12-01/15-T-5-Red-ENG, p. 16, line 15, to p. 17, line 16; see also ICC-01/12-01/15-119-Conf, para. 3. ICC-01/12-01/15-171-27-09-2016 50/55 EO T No. ICC-01/12-01/15.

⁵⁴ Judgment ICC-1/12-01/15-171, para.101.

⁵⁵ Judgment ICC-1/12-01/15-171, footnote 170: See "Prosecution's submissions on sentencing", ICC-01/12-01/15-139-Red, paras. 53-55 and 67; Defence observations on the determination of the sentence, ICC-01/12-01/15-141-Corr-Red, paras. 185-191. Judgment ICC-1/12-01/15-171, para. 102.

⁵⁶ Judgment ICC-1/12-01/15-171, footnote 171: 171 ICC-01/12-01/15-T-4-Red-ENG, p. 8, line 3, to p. 9, line 23, p. 43, line 19, to p. 44, line 2.

'deep regret and great pain'.⁵⁷ He insisted that the remorse he was feeling was for the damage caused to his family, his community in Timbuktu, his country and the international community. Not only did Mr Al Mahdi categorically express his remorse, he made the solemn promise that 'this was the first and the last wrongful act [he] will ever commit'.⁵⁸ Mr Al Mahdi also indicated that he was willing to 'accept the judgment of the Chamber'.⁵⁹ Lastly, Mr Al Mahdi called on people not to become involved in the same acts that he was involved in 'because they are not going to lead to any good'⁶⁰ for humanity.⁶¹ In addition to expressing remorse, and contrary to the submission of the LRV,⁶² the Chamber does note that Mr Al Mahdi has expressed sentiments of empathy towards the victims of the crime he committed. The Chamber refers to the example of actions showing this empathy cited by the Defence, such as Mr Al Mahdi's offer to the imam of the Sidi Yahia Mosque to reimburse the cost of the door.⁶³ ⁶⁴ The Chamber considers that such expression of remorse and empathy to the victims is a substantial factor going to the mitigation of the sentence.⁶⁵

E - Mr Al Mahdi's ability to reintegrate into society

34. Mr Al Mahdi has consistently shown himself to be repentant about the acts for which the Court sentenced him. The Trial Chamber expressly so acknowledged and factored it into its verdict and sentence, as recalled above.
35. The Court's prison authorities paint a rather favourable picture of Mr Al Mahdi in terms of his social conduct during his two episodes of detention in Scheveningen, as their observations of 30 August 2021 make clear.⁶⁶ It appears that Mr Al Mahdi has shown himself to be very courteous and sociable (he is on good terms with both the prison authorities and the other detainees) and engaged in educational pursuits, creative activities included, and sport, while being equally capable of

⁵⁷ Judgment ICC-1/12-01/15-171, footnote 172: ICC-01/12-01/15-T-4-Red-ENG, p. 8, line 11.

⁵⁸ Judgment ICC-1/12-01/15-171, footnote 173: ICC-01/12-01/15-T-4-Red-ENG, p. 8, lines 20 and 21.

⁵⁹ Judgment ICC-1/12-01/15-171, footnote 174: ICC-01/12-01/15-T-4-Red-ENG, p. 9, lines 7 and 8.

⁶⁰ Judgment ICC-1/12-01/15-171, footnote 175: 175 ICC-01/12-01/15-T-4-Red-ENG, p. 9, lines 16-18.

⁶¹ Judgment ICC-1/12-01/15-171, para. 103.

⁶² Judgment ICC-1/12-01/15-171, footnote 176: Victims' observations on the determination of the sentence, ICC-01/12-01/15-135-Conf, para. 39; ICC-01/12-01/15-T-6-ENG, p. 29, line 20, to p. 31, line 22. ICC-01/12-01/15-171 27-09-2016 51/55 EO T No. ICC-01/12-01/15.

⁶³ Judgment ICC-1/12-01/15-171, footnote 177:

⁶⁴ Judgment ICC-1/12-01/15-171, para. 104.

⁶⁵ Judgment ICC-1/12-01/15-171, para. 105.

⁶⁶ ICC-01/12-01/15-411-Conf-Red, paras. 6 and 7.

spending time on his own. These authorities have thus concluded that he has good prospects of social reintegration.⁶⁷

36. Even though the United Kingdom prison authorities have taken the neutral stance expected of them, the developments they report indicate that Mr Al Mahdi is equipped to reintegrate swiftly into society:⁶⁸

For example, Mr Al Mahdi was committed to attending classes in various subjects, acquiring knowledge which, in the opinion of Defence, will probably boost his chances of finding employment on release.

Further still, there have been no reports of any wrongdoing concerning Mr Al Mahdi. He does not indulge in drugs or any other illicit substance.

37. An analysis of the SPS's above-mentioned report suggests that Mr Al Mahdi has also proven himself able to blend in without causing a disturbance, if only in a prison environment. He has been able to make the most of the time and every opportunity to acquire new knowledge which may be conducive to his reintegration into the workplace. He has even, to all intents and purposes, returned to the workplace, by taking the opportunities on offer in the SPS. All of these developments are a clear sign of his ability, already proven, to reintegrate into society.

38. It is conceivable that, once he leaves prison, Mr Al Mahdi will be able to make a complete change of career and embark on a new life, without causing the slightest disturbance to society, especially were he to be received by a country other than

⁶⁷ *Idem.*

⁶⁸ ICC-01/12-01/15-413-Conf-Anx-Red, p. 3.

the Republic of Mali which, judging from its observations of 27 August 2021 transmitted by the Registry on 30 August 2021,⁶⁹ appears to be disinclined to accept him, at least for the time being.

39. Regarding that last point, the Registry's report informs the Chamber of the opinions and suggestions it has gathered in Mali on a possible reduction of Mr Al Mahdi's sentence. The impression which emerges is that the best way forward would probably be to release Mr Al Mahdi without him necessarily having to return to Mali in the immediate future [REDACTED].⁷⁰

40. [REDACTED].

41. In sum, Mr Al Mahdi's conduct shows that:

- (a) he genuinely dissociates himself from his crime (guilty plea, cooperation, [REDACTED], and detention free of any incidents of his doing);
- (b) he has achieved a remarkable degree of resocialization and resettlement [REDACTED];
- (c) he has made a complete break with the past conduct for which he was sentenced and has the firm intention to convey to young people a message which seeks to educate and raise public awareness in order to counter the ills of the abuse of religion and of extremism; and
- (d) he is willing to deliver, in a spirit of reparation, forgiveness [REDACTED], a message to his community [REDACTED].

42. Furthermore, in the course of his trial – the briefest in the history of the International Criminal Court – Mr Al Mahdi provided two written statements from

⁶⁹ ICC-01/12-01/15-410-Conf-Anx.

⁷⁰ [REDACTED].

character witnesses, which the Trial Chamber considered “exclusively for sentencing.”⁷¹ The Defence nonetheless wishes to draw attention to these two items of character evidence, which Mr Al Mahdi’s conduct, from the beginning of the proceedings to this day, has not contradicted.⁷²

43. In addition, the Defence respectfully submits to the judges that the favourable assessment at which the Trial Bench arrived and which is borne out by Mr Al Mahdi’s consistent conduct should weigh in his favour.

FOR THESE REASONS

May it please the judges to

- (a) note that, by 18 September 2021, Mr Al Mahdi will already have served two thirds of his sentence;
- (b) note that much of his detention has taken place in very difficult conditions which are tantamount to a prolongation of his sentence;
- (c) note that he has not seen his wife and children [REDACTED], putting great strain on his family;
- (d) find that Mr Al Mahdi meets all the conditions laid down by article 223 RPE which provides for reduction of the sentence;

⁷¹ ICC-01/12-01/15-171, para. 5.

⁷² Transcripts of hearing, 22 August 2016, ICC-01/12-01/15-T-4-Red-ENG, p. 3, line 20, to p. 4, line 15, and ICC-01/12-01/15-T-6-ENG, p. 44, lines 13-18; “*Requête urgente de la Défense aux fins de dépôt de déclarations écrites de deux témoins au dossier du procès, avec deux annexes confidentielles 1 et 2*”, 23 August 2016, ICC-01/12-01/15-162-Conf (with two annexes containing the statements of the witnesses in question MLI-DEF-0001-0001 and MLI-DEF-0002-0001).

- (e) find that, in addition to its legal provisions, the Court's previous decisions support a favourable assessment of the facts of Mr Al Mahdi's case;
- (f) find that Mr Al Mahdi has at all times cooperated with the Court and never wavered and that he has honoured all his undertakings;
- (g) find that he displays a definite ability to reintegrate into society;
- (h) grant the request for a reduction of Mr Al Mahdi's sentence and accordingly order his release at the earliest opportunity; and
- (i) [REDACTED].

WITHOUT PREJUDICE,

AND JUSTICE WILL BE DONE.

Dated this 6 October 2021,

At The Hague

[signed]

Mohamed Aouini

Lead Counsel