

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **French**

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

Date: **1 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 Observations of the Legal Representative on the
Reduction of Mr Ahmad al Faqi al Mahdi's Sentence
(ICC-01/12-01/15-418-Conf – 13 September 2021)**

Source: Legal Representative of Victims

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

Office of the Prosecutor
Mr Karim A. A. Khan QC

Counsel for the Defence
Mr Mohamed Aouini

Legal Representatives of Victims
Mr Mayombo Kassongo

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

Office of Public Counsel for Victims

**Office of Public Counsel for the
Defence**

States' Representatives

The Republic of Mali
The United Kingdom

REGISTRY

Registrar
Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other
The Presidency

I. PROCEDURAL HISTORY

1. On 11 July 2021, the three judges of the Appeals Chamber tasked with the review concerning reduction of Mr Ahmad al Faqi Mahdi's sentence ("panel of judges") scheduled the hearing for 21 and 22 September 2021¹ and directed the parties to file written submissions by 6 September 2021.² The panel of judges also directed the parties and participants attending the hearing to inform it of any difficulties that may prevent the hearing from being held on the dates scheduled.³
2. On 19 July 2021, the Office of the Prosecutor suggested that the hearing be postponed to the week of 27 September 2021.⁴
3. On 21 July 2021, the panel of judges ordered the parties and participants to file observations on the request of the Office of the Prosecutor.⁵
4. On 26 July 2021, the Defence for Mr Ahmad al Faqi al Mahdi and the Legal Representative filed their observations.⁶

¹ "Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi", 7 July 2021, ICC-01/12-01/15-392.

² "Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi", 7 July 2021, ICC-01/12-01/15-392, para. 4(c).

³ "Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi", 7 July 2021, ICC-01/12-01/15-392, para. 6.

⁴ "Prosecution observations to the 'Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi', ICC-01/12-01/15-392", 19 July 2021, ICC-01/12-01/15-396.

⁵ "Order on the filing of a response to the 'Prosecution observations to the "Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi", ICC-01/12-01/15-392"', 21 July 2021, ICC-01/12-01/15-398.

⁶ "*Réponse de la Défense aux observations ICC-01/12-01/15-396 du Procureur, conformément à l'ordonnance ICC-01/12-01/15-398*", 26 July 2021, ICC-01/12-01/15-400; and "*Réponse du Représentant légal aux 'Prosecution observations to the "Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi" ICC-01/12-01/15-392' (ICC-01/12-01/15-396)*", 26 July 2021, ICC-01/12-01/15-401.

5. On 29 July 2021, the judges postponed the date of the hearing to 21 and 22 September 2021.⁷
6. On 31 August 2021, at the request of the Office of the Prosecutor,⁸ to which the Legal Representative of Victims and the Defence for Mr Ahmad al Faqi al Mahdi did not raise any objection,⁹ the panel of judges deferred the date for filing written submissions to 13 September 2021.¹⁰
7. On 30 August 2021, the Republic of Mali provided its observations,¹¹ as did the United Kingdom¹² and the Registry on 6 September 2021.¹³

II. CONFIDENTIALITY

8. Pursuant to regulation 23 *bis* of the Regulations of the Court, these observations are filed as confidential, as they make reference to other confidential filings and

⁷ "Decision re-scheduling the hearing before the three judges of the Appeals Chamber", 29 July 2021, ICC-01/12-01/15-403.

⁸ "Prosecution's urgent request under regulation 35(2) to extend the time limit for the Prosecution's written submissions on the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi", 25 August 2021, ICC-01/12-01/15-404.

⁹ "*Réponse du Représentant légal à la 'Order on the filing for a response to the Prosecutor's urgent request to extend the time limit for the Prosecution's written submissions on the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi'*", 30 August 2021, ICC-01/12-01/15-409; and "*Réponse de la Défense à la requête urgente ICC-01/12-01/15-404 du Procureur, conformément à l'ordonnance ICC-01/12-01/15-406*", 27 August 2021, ICC-01/12-01/15-407.

¹⁰ "Decision on the Prosecutor's request to extend the time limit for the Prosecution's written submissions on the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi", 31 August 2021, ICC-01/12-01/15-412.

¹¹ "Annex to the Transmission of the Observations of the Republic of Mali in response to the Orders for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15-392 and ICC-01/12-01/15-403", 30 August 2021, ICC-01/12-01/15-410-Conf-Anx-tENG.

¹² "Confidential redacted version of the Annex to the transmission of the Observations of the United Kingdom of Great Britain and Northern Ireland on the criteria set out in rule 223 (a) to (e) of the Rules of procedure and evidence", 6 September 2021, ICC-01/12-01/15-413-Conf-Anx-Red.

¹³ "Confidential redacted version of 'Observations on the criteria set out in rule 223 (a) to (e) of the Rules of Procedure and Evidence', ICC-01/12-01/15-411-Conf-Exp, 30 August 2021", 6 September 2021, ICC-01/12-01/15-411-Conf-Red.

contain sensitive information concerning some of the victims. A public redacted version will be filed at the earliest opportunity.

III. SUBMISSIONS

9. The present observations are based on the views and concerns canvassed from a sample of victims [REDACTED]¹⁴ and [REDACTED].
10. The victims were consulted solely on matters of relevance and on which they were in a position and/or were willing to express their views.

I. The criteria for review concerning reduction of sentence

- i. The continuing willingness of Mr Ahmad al Faqi al Mahdi to cooperate with the Court in its investigations and prosecutions (article 110(4)(a) of the Statute)*
11. The Legal Representative has no observations to make, as the victims consulted were not in a position to comment on this matter.
 - i. The assistance of Mr Ahmad al Faqi al Mahdi in enabling the enforcement of the judgments and orders of the Court in other cases, and in particular in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims (article 110(4)(b) of the Statute)*
12. The Legal Representative has no observations to make, as the victims consulted were not in a position to comment on this matter.

¹⁴ [REDACTED].

i. Other factors, as provided in rule 223 of the Regulations of the Court, establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence (article 110(4)(c) of the Statute)

(a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime

13. The Legal Representative has no observations to make, as the victims consulted were not in a position to comment on this matter.

(b) The prospect of the resocialization and successful resettlement of the sentenced person

14. Most of the victims consulted were sceptical about Mr Ahmad al Faqi al Mahdi's resocialization and resettlement within the Timbuktu community. Specifically, many victims stated [REDACTED] and, to them, the return of Mr Ahmad al Faqi al Mahdi to their community is, at this time, inconceivable.¹⁵

15. A smaller group of victims, on the other hand, have committed themselves to forgiving Mr Ahmad al Faqi al Mahdi but nonetheless cannot countenance his return to the region of Timbuktu, primarily for reasons related to their safety.

16. As to the possibilities for Mr Ahmad al Faqi al Mahdi's relocation, the victims consulted were not in a position to give an opinion on the matter. The Legal Representative thus notes the observations of the Registry and of the United Kingdom¹⁶ on this matter and defers to the assessment of the panel of judges.

¹⁵ See, for this matter, the observations of the Republic of Mali: "Annex to the Transmission of the Observations of the Republic of Mali in response to the Orders for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi, ICC-01/12-01/15-392 and ICC-01/12-01/15-403", 30 August 2021, ICC-01/12-01/15-410-Conf-Anx-tENG.

¹⁶ "Confidential redacted version of 'Observations on the criteria set out in rule 223 (a) to (e) of the Rules of Procedure and Evidence', ICC-01/12-01/15-411-Conf-Exp, 30 August 2021", 6 September 2021, ICC-01/12-01/15-411-Conf-Red, paras. 6-7; and "Confidential redacted version of the Annex to the transmission of the Observations of the United Kingdom of Great Britain and Northern Ireland on the

(c) Whether the early release of the sentenced person would give rise to significant social instability

17. [REDACTED] of the victims consulted associated the possibility of Mr Ahmad al Faqi al Mahdi's return to the region of Timbuktu with a renewal of ties with the armed group(s) plaguing the region. For instance, some of these victims told the Legal Representative of the instability in the city and region of Timbuktu and of their fear of the armed groups active in the region. The Legal Representative is however not able to say, on the basis of the views of the victims, whether that would constitute *significant* instability according to the terms of rule 223(c).¹⁷
18. The Legal Representative nevertheless wishes to draw the attention of the panel of judges to the fact that the reparations process in the case is under way. Specifically, the implementation of collective reparations under the supervision of the Trust Fund for Victims was initially intended to last at least three years.¹⁸ In the circumstances, and to avoid the risk of impeding the proper implementation of the reparations, the Legal Representative concurs with the observations of the Registry which convey [REDACTED].¹⁹
19. In that event, and that of Mr Ahmad al Faqi al Mahdi's return to the region of Timbuktu, the Legal Representative therefore requests that, where possible,

criteria set out in rule 223 (a) to (e) of the Rules of procedure and evidence", 6 September 2021, ICC-01/12-01/15-413-Conf-Anx-Red.

¹⁷ See, for this matter, the Registry's analysis: "Confidential redacted version of 'Observations on the criteria set out in rule 223 (a) to (e) of the Rules of Procedure and Evidence', ICC-01/12-01/15-411-Conf-Exp, 30 August 2021", 6 September 2021, ICC-01/12-01/15-411-Conf-Red, paras. 8-9.

¹⁸ "Public redacted version of 'Updated Implementation Plan' submitted on 2 November 2018, ICC-01/12-01/15-291-Conf-Exp", 22 November 2018, ICC-01/12-01/15-291-Red2, para. 168.

¹⁹ "Confidential redacted version of 'Observations on the criteria set out in rule 223 (a) to (e) of the Rules of Procedure and Evidence', ICC-01/12-01/15-411-Conf-Exp, 30 August 2021", 6 September 2021, ICC-01/12-01/15-411-Conf-Red, para. 11.

monitoring measures be granted so as to ensure that the process of individual and collective reparations for victims proceeds smoothly.

(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release

20. The victims' views and concerns canvassed by the Legal Representative brought to the fore three main arguments:
21. First, [REDACTED] made known to the Legal Representative their general fear of the climate of insecurity in the city and region of Timbuktu and their specific dread of Mr Ahmad al Faqi al Mahdi's release. These victims fear for their safety and that of their families were Mr Ahmad al Faqi al Mahdi to return to the region of Timbuktu.
22. Second, [REDACTED]. Hence, they voiced their hostility to the early release of Mr Ahmad al Faqi al Mahdi and were of the opinion that he should serve the full sentence handed down.
23. Lastly a third group, [REDACTED], informed the Legal Representative that they forgave Mr Ahmad al Faqi al Mahdi and were therefore in favour of his early release. These victims explained their stance by citing the fact that Mr Ahmad al Faqi al Mahdi expressed remorse during his trial and offered his apologies to the victims. Notwithstanding, the victims made it clear that they supported early release solely on condition that Mr Ahmad al Faqi al Mahdi make a break with his past activities and that he not pose a threat to them or their families.
24. Although opinion about the potential early release of Mr Ahmad al Faqi al Mahdi is divided within the victim community, the Legal Representative

wishes to call the attention of the panel of judges to the fact that every single one of the victims expressed concern about the general security situation in Timbuktu and/or the possible repercussions of Mr Ahmad al Faqi al Mahdi's return to the region of Timbuktu.

25. Hence, in the event of early release and return to the region, the Legal Representative therefore again concurs with the observations [REDACTED] by the Registry which state their wish to see certain guarantees imposed so that the potential release of Mr Ahmad al Faqi al Mahdi presents no threat to the victim community.²⁰

(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age

26. The Legal Representative has no observations to make, as the victims consulted were not in a position to comment on this matter.

II. The observations submitted by the Registry, the United Kingdom and the Republic of Mali

27. For the observations submitted by the Registry, see paragraphs 14, 15, 16 and 23 above.
28. For the observations submitted by the United Kingdom, see paragraph 14 above.
29. For the observations submitted by the Republic of Mali, see paragraph 12 above.

²⁰ "Confidential redacted version of 'Observations on the criteria set out in rule 223 (a) to (e) of the Rules of Procedure and Evidence', ICC-01/12-01/15-411-Conf-Exp, 30 August 2021", 6 September 2021, ICC-01/12-01/15-411-Conf-Red, para. 11.

For these reasons, and without prejudice, the Legal Representative of Victims respectfully requests the panel of judges to entertain these observations.

Dated this 1 October 2021,

At The Hague

[signed]

Legal Representative of Victims

Mr Mayombo Kassongo