



**Original: English**

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

**Date: 25 November 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 Redacted Version of the  
Decision on the review concerning reduction of sentence of Mr Ahmad Al Faqi  
Al Mahdi**

**Decision 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, Prosecutor  
Mr Gilles Dutertre

**Counsel for Mr Ahmad Al Faqi Al Mahdi**  
Mr Mohamed Aouini

**Legal Representatives of Victims**  
Mr Mayombo Kassongo

**State Representatives**  
The Republic of Mali  
The United Kingdom of Great Britain and  
Northern Ireland

**REGISTRY**

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**Registrar**  
Mr Peter Lewis

**Other**  
The Presidency

The three judges of the Appeals Chamber of the International Criminal Court,

In the review by the Court concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi (hereinafter: “Mr Al Mahdi”) pursuant to article 110(3) of the Statute,

*Render* unanimously the following

## DECISION

1. Pursuant to the review conducted under article 110(3) of the Statute, Mr Al Mahdi’s original sentence is reduced by two years.
2. The date of completion of Mr Al Mahdi’s sentence is set to 18 September 2022.

## REASONS

### I. PROCEDURAL HISTORY

1. On 27 September 2016, Trial Chamber VIII (hereinafter: “Trial Chamber”) convicted Mr Al Mahdi as a co-perpetrator under article 25(3)(a) of the Statute for the war crime under article 8(2)(e)(iv) of the Statute of intentionally directing attacks against 10 buildings of a religious and historical character in Timbuktu, the Republic of Mali on or about 30 June 2012 and 11 July 2012.<sup>1</sup> The Trial Chamber sentenced Mr Al Mahdi to a period of nine years of imprisonment.<sup>2</sup> The Trial Chamber considered that Mr Al Mahdi was entitled, pursuant to article 78(2) of the Statute, “to have deducted from his sentence the time he has spent in detention in accordance with an order of this Court, namely since his arrest pursuant to a warrant of arrest issued on 18 September 2015”.<sup>3</sup>

2. On 28 June 2021, the Appeals Chamber, noting that on 18 September 2021, Mr Al Mahdi will have served two thirds of the sentence imposed on him, appointed

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<sup>1</sup> [Judgment and Sentence](#), ICC-01/12-01/15-171 (hereinafter: “Judgment and Sentence Decision”), para. 63.

<sup>2</sup> [Judgment and Sentence](#), para. 109.

<sup>3</sup> [Judgment and Sentence](#), para. 111.

Judges Solomy Balungi Bossa, Marc Perrin de Brichambaut and Gocha Lordkipanidze (hereinafter: “Panel”), for the purpose of conducting the review concerning the reduction of Mr Al Mahdi’s sentence.<sup>4</sup>

3. On 7 July 2021, following the appointment of Judge Solomy Balungi Bossa as presiding judge,<sup>5</sup> the Panel pursuant to rule 224(1) of the Rules of Procedure and Evidence (hereinafter: “Rules”) scheduled a hearing for 21 and 22 September 2021 and invited Mr Al Mahdi, the Prosecutor, the Republic of Mali, the United Kingdom of Great Britain and Northern Ireland, the Legal Representative of Victims and the Registrar to participate at the hearing (hereinafter: “Sentence Review Hearing”).<sup>6</sup> Furthermore, the Panel requested the Republic of Mali, the United Kingdom of Great Britain and Northern Ireland and the Registrar to file written observations, by 30 August 2021, on the criteria set out in rule 223(a) to (e) of the Rules and Mr Al Mahdi, the Prosecutor and the Legal Representative of Victims to file their written submissions, by 6 September 2021, addressing: (i) the criteria set out in article 110(4)(a) to (c) of the Statute and rule 223(a) to (e) of the Rules and (ii) the observations of the Registrar, the Republic of Mali and the United Kingdom of Great Britain and Northern Ireland as appropriate.<sup>7</sup>

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<sup>4</sup> [Decision appointing three judges of the Appeals Chamber for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi](#), ICC-01/12-01/15-388.

<sup>5</sup> [Decision on the Presiding Judge of the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi](#), ICC-01/12-01/15-391.

<sup>6</sup> [Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi](#), ICC-01/12-01/15-392 (hereinafter: “Scheduling Order”), paras 1 and 3.

<sup>7</sup> [Scheduling Order](#), para. 4(a)-(c).

4. On 29 July 2021, following a request of the Prosecutor which was unopposed, the Panel rescheduled the Sentence Review Hearing to 12 and 13 October 2021.<sup>8</sup>
5. On 30 August 2021, the Republic of Mali<sup>9</sup> and the Registrar<sup>10</sup> filed their respective observations. On 31 August 2021, the United Kingdom of Great Britain and Northern Ireland filed its observations.<sup>11</sup>
6. On 31 August 2021, following a request of the Prosecutor<sup>12</sup> and responses from Mr Al Mahdi and the Legal Representative of Victims,<sup>13</sup> the Panel granted a seven day extension for the filing of the Prosecutor's submissions and afforded the same extension

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<sup>8</sup> [Decision re-scheduling the hearing before the three judges of the Appeals Chamber](#), ICC-01/12-01/15-403. *See also* [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; [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; [Réponse du Représentant legal aux "Prosecution observations to the 'Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi', ICC-01/21-01/15-392" \(ICC-01/12-01/15-396\)](#), 26 July 2021, ICC-01/12-01/15-401; [Responses of the Authorities of the Republic of Mali and of the United Kingdom of Great Britain and Northern Ireland 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-01/12-01/15-398](#), 27 July 2021, ICC-01/12-01/15-402 (hereinafter: "Registry Report"). *See also* Registry Report, confidential annex V, ICC-01/12-01/15-402-Conf-AnxV (Note verbale from the Republic of Mali).

<sup>9</sup> 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, ICC-01/12-01/15-410-Conf-Anx-tENG (hereinafter: "Observations of the Republic of Mali"). A public redacted version ICC-01/12-01/15-410-Anx-Red was registered on 8 October 2021.

<sup>10</sup> 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 (only available to the Defence, Registry and Presidency). A confidential redacted version ICC-01/12-01/15-411-Conf-Red was registered on 6 September 2021 (hereinafter: "Observations of the Registrar"). A public redacted version ICC-01/12-01/15-411-Red2 was registered on 8 October 2021.

<sup>11</sup> 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, ICC-01/12-01/15-413-Conf-Exp-Anx (only available to the United Kingdom of Great Britain and Northern Ireland, the Presidency, Defence and Registry) (hereinafter: "Observations of the United Kingdom"). A confidential redacted version ICC-01/12-01/15-413-Conf-Anx-Red was registered on 6 September 2021. A public redacted version ICC-01/12-01/15-413-Anx-Red2 was registered on 8 October 2021.

<sup>12</sup> [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.

<sup>13</sup> [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, para. 11; [Réponse du Représentant legal à la « Order on the filing of 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 » \(ICC-01/12-01/15-406\)](#), 30 August 2021, ICC-01/12-01/15-409, para. 8.

of time to Mr Al Mahdi and the Legal Representative of Victims for the filing of their respective submissions.<sup>14</sup>

7. On 13 September 2021, the Prosecutor,<sup>15</sup> Mr Al Mahdi and the Legal Representative of Victims filed their submissions.<sup>16</sup>

8. On 30 September 2021, the Panel issued an order setting, *inter alia*, the timetable for the Sentence Review Hearing.<sup>17</sup> Furthermore, while noting that the United Kingdom of Great Britain and Northern Ireland did not intend to participate at the hearing,<sup>18</sup> the Panel proceeded to invite the Prosecutor, Mr Al Mahdi, the Republic of Mali and the Legal Representative of Victims to address specific issues in their oral submissions.<sup>19</sup>

9. On 12 October 2021, the Sentence Review Hearing was held.<sup>20</sup> The Republic of Mali did not participate at the hearing.<sup>21</sup>

10. On 15 October 2021, [REDACTED].<sup>22</sup>

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<sup>14</sup> [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](#), ICC-01/12-01/15-412.

<sup>15</sup> Prosecution’s submissions on Mr Al Mahdi’s sentence review, ICC-01/12-01/15-419-Conf-Exp (only available to the Prosecution, Defence, and the Victims and Witnesses Unit). A confidential redacted *ex parte* version (only available to the Prosecution, Defence and the Legal Representative of Victims and his legal team), ICC-01/12-01/15-419-Conf-Exp-Red was registered on 22 September 2021 (hereinafter: “Prosecutor’s Submissions”). A further confidential redacted version (available to the Prosecution, Defence, the Legal Representative of Victims and his legal team, the Republic of Mali and the United Kingdom of Great Britain and Northern Ireland), ICC-01/12-01/15-419-Conf-Red2 was registered on 24 September 2021. A public redacted version ICC-01/12-01/15-419-Red3 was registered on 6 October 2021.

<sup>16</sup> Observations of the Legal Representative on the Reduction of Mr Ahmad al Faqi al Mahdi’s Sentence, ICC-01/12-01/15-418-Conf. An English translation was registered on 4 October 2021 (hereinafter: “Victims’ Submissions”); Defence Request for the Reduction of Mr Al Mahdi’s Sentence, ICC-01/12-01/15-420-Conf-Exp. A corrigendum, ICC-01/12-01/15-420-Conf-Exp-Corr was filed on 14 September 2021 and an English translation of same was registered on 4 October 2021 (hereinafter: “Mr Al Mahdi’s Submissions”). A further confidential redacted version ICC-01/12-01/15-420-Conf-Corr-Red was filed on 24 September 2021. A public redacted version ICC-01/12-01/15-420-Corr-Red2 was registered on 6 October 2021.

<sup>17</sup> [Order setting the timetable regarding the hearing for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi and other matters](#), 30 September 2021, ICC-01/12-01/15-422 (hereinafter: “Order of 30 September 2021”).

<sup>18</sup> [Order of 30 September 2021](#), p.3 referring to Registry Report, para. 4.

<sup>19</sup> [Order of 30 September 2021](#), para. 4.

<sup>20</sup> Transcript of Sentence Review Hearing, ICC-01/12-01/15-T-010-CONF-ENG.

<sup>21</sup> Transcript of Sentence Review Hearing, p. 5, lines 2-6. *See also* “Transmission of Information in Relation to the Participation of the Malian Authorities in the Hearing Pursuant to the Order of ICC-01/12-01/15-422”, 7 October 2021, ICC-01/12-01/15-423, para. 4.

<sup>22</sup> [REDACTED].

## II. MERITS

### A. Applicable law

11. 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”.

12. Article 110(4) of the Statute provides:

In its review under paragraph 3, the Court may reduce the sentence if it finds that one or more of the following factors are present:

(a) The early and continuous willingness of the person to cooperate with the Court in its investigations and prosecutions;

(b) The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims; or

(c) Other factors establishing a clear and significant change of circumstances sufficient to justify the reduction of sentence, as provided in the Rules of Procedure and Evidence [...].

13. Article 110(5) of the Statute provides in relevant part that

[i]f the Court determines in its initial review under paragraph 3 that it is not appropriate to reduce the sentence, it shall thereafter review the question of reduction of sentence at such intervals and applying such criteria as provided for in the Rules of Procedure and Evidence.

14. Rule 223 of the Rules provides:

In reviewing the question of reduction of sentence pursuant to article 110, paragraphs 3 and 5, the [Panel] shall take into account the criteria listed in article 110, paragraph 4 (a) and (b), and the following criteria:

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

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

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

(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;

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

15. Read together, these provisions provide a comprehensive framework for the purposes of sentence review.<sup>23</sup> In this section, the Panel will set out in more detail various aspects of the Court’s sentence review framework. By the terms of article 110(4) of the Statute (“the Court may reduce”) a decision on whether to reduce a sentence is discretionary in nature. In determining whether it is appropriate to reduce a sentence, the Panel is required to assess each of the factors under article 110(4) of the Statute and rule 223 of the Rules to determine whether each of the factors are in fact present. Factors found to be present militating either for or against a reduction of sentence must be weighed against each other to determine whether a reduction of sentence is appropriate.<sup>24</sup>

16. Furthermore, article 110(4)(c) of the Statute allows for the reduction of sentence if a Panel finds “*other factors* establishing a clear and significant *change of circumstances* sufficient to justify the reduction of sentence” (emphasis added). As previously determined, the “*other factors*” of article 110(4)(c) of the Statute refers to those factors listed in rule 223(a) to (e) of the Rules.<sup>25</sup> Therefore, the factors set out in article 110(4)(a) and (b) of the Statute and the factors listed in rule 223(a) to (e) of the Rules, are those that can, in principle, be taken into account for purposes of considering whether to reduce a sentence.<sup>26</sup> The Panel observes that the factors under rule 223(b) of the Rules (the prospect of resocialization and successful resettlement) and rule 223(c) of the Rules (whether early release would give rise to significant social instability) are factors that would not have been considered by a trial chamber when imposing an appropriate sentence pursuant to article 78(1) of the Statute and rule 145 of the Rules.

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<sup>23</sup> [Decision on the review concerning reduction of sentence of Mr Thomas Lubanga Dyilo](#), 22 September 2015, ICC-01/04-01/06-3173 (hereinafter: “*Lubanga* First Sentence Review Decision”), para. 19. See also [Decision on the review concerning reduction of sentence of Mr Germain Katanga](#), 13 November 2015, ICC-01/04-01/07-3615 (hereinafter: “*Katanga* Sentence Review Decision”), para. 19.

<sup>24</sup> [Lubanga First Sentence Review Decision](#), para. 22. See also [Katanga Sentence Review Decision](#), para. 20.

<sup>25</sup> [Lubanga First Sentence Review Decision](#), para. 25. See also [Katanga Sentence Review Decision](#), para. 19.

<sup>26</sup> [Lubanga First Sentence Review Decision](#), para. 25. See also [Katanga Sentence Review Decision](#), para. 19.



Thus, in considering whether to reduce a sentence these factors will be considered for the first time. However, in so far as the factors listed in rule 223(a), (d) and (e) of the Rules were considered by a trial chamber when imposing an appropriate sentence, it is necessary to find that there is a “clear and significant change of circumstances” in relation to these factors from the time that the sentence was imposed. In this regard, the Panel recalls that “clear” is defined as “free from doubt”, “unambiguous” and “very obvious” while “significant” is defined as “large enough to be noticed or have an effect” or “of a measurable large amount”.<sup>27</sup>

17. The Panel recalls that sentence review proceedings at the Court is not triggered by a request from the sentenced person, but is rather a mandatory *proprio motu* review which a panel of judges appointed by the Appeals Chamber is obliged to conduct pursuant to article 110(3) of the Statute. Consequently, the Panel considers that all participants in the sentence review proceedings, not only the sentenced person, are required to provide any information in their possession, whether weighing for or against a reduction of sentence, relevant to the factors of article 110(4) of the Statute and rule 223 of the Rules.<sup>28</sup> On the basis of all of the relevant information provided, the Panel will determine if any of the factors set out in the Court’s legal framework are present and, if so, whether they justify a reduction of sentence.<sup>29</sup>

## **B. Review of Mr Al Mahdi’s sentence**

18. The Panel will first assess each of the factors under article 110(4) of the Statute and rule 223 of the Rules to determine whether any of them are present. In reaching its determination, the Panel has taken into account all of the information submitted in writing and orally from the parties and participants of the sentence review proceedings that is of relevance to each factor even if they are not exhaustively summarised in the sections below.

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<sup>27</sup> [Katanga Sentence Review Decision](#), para. 47 referring to “Clear”, Black’s Law Dictionary, (West, 9<sup>th</sup> ed., 2011). See also “Clear”, Merriam-Webster Dictionary, 2015, accessed at <http://www.merriam-webster.com/dictionary/clear> and “Significant”, Oxford English Dictionary, 2015, accessed at <http://www.oxforddictionaries.com/definition/learner/significant>.

<sup>28</sup> [Lubanga Sentence Review Decision](#), para. 32. See also [Katanga Sentence Review Decision](#), para. 21.

<sup>29</sup> [Lubanga Sentence Review Decision](#), para. 32. See also [Katanga Sentence Review Decision](#), para. 21.

*1. Article 110(4)(a) of the Statute: The early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions*

**(a) Submissions of the participants**

19. Mr Al Mahdi submits that from the time of his arrest he “confessed and wished to cooperate fully with the Court”.<sup>30</sup> He further submits that during his trial he pleaded guilty and cooperated throughout the proceedings and “did nothing to protract the proceedings or cast any doubt”.<sup>31</sup> Moreover, he submits that his [REDACTED] was unconditional and unequivocal and resulted in “an invaluable contribution to the pursuit of the truth and to establishing the facts of what happened in Timbuktu”.<sup>32</sup>

20. At the Sentence Review Hearing, the Defence elaborated [REDACTED].<sup>33</sup> In Mr Al Mahdi’s view, his collective actions demonstrate his early and continuing willingness to cooperate with the Court’s investigations and prosecutions. He thus considers that the criterion under article 110(4)(a) of the Statute is satisfied.

21. The Prosecutor largely concurs with Mr Al Mahdi’s submissions and argues that Mr Al Mahdi “has demonstrated an early and continuing willingness to cooperate with the Court”.<sup>34</sup> He submits that [REDACTED].<sup>35</sup> This he argues is evidenced by Mr Al Mahdi’s [REDACTED].<sup>36</sup>

22. In addition, the Prosecutor submits that by the terms of the agreement reached between the parties regarding the said admission of guilt (hereinafter: “Agreement”),<sup>37</sup> Mr Al Mahdi [REDACTED].<sup>38</sup> The Prosecutor avers that Mr Al Mahdi’s cooperation

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<sup>30</sup> Mr Al Mahdi’s Submissions, para. 25.

<sup>31</sup> Mr Al Mahdi’s Submissions, para. 25.

<sup>32</sup> Mr Al Mahdi’s Submissions, para. 26.

<sup>33</sup> Transcript of Sentence Review Hearing, p. 11, line 3 to p. 12, line 22.

<sup>34</sup> Prosecutor’s Submissions, para. 12.

<sup>35</sup> Prosecutor’s Submissions, para. 14.

<sup>36</sup> Prosecutor’s Submissions, para. 16.

<sup>37</sup> See ICC-01/12-01/15-78-Anx 1-tEng-Red registered on 9 September 2016.

<sup>38</sup> Prosecutor’s Submissions, para. 17.

[REDACTED].<sup>39</sup> In particular, he submits that [REDACTED];<sup>40</sup> [REDACTED];<sup>41</sup> [REDACTED].<sup>42</sup>

23. Finally, the Prosecutor argues that [REDACTED].<sup>43</sup> According to the Prosecutor, Mr Al Mahdi's [REDACTED].<sup>44</sup> [REDACTED].<sup>45</sup>

**(b) Determination of the Panel**

24. Article 110(4)(a) of the Statute requires the Panel to assess whether there has been an early and continuing willingness of the person to cooperate with the Court in its investigations and prosecutions. As previously determined, "cooperation" pursuant to this provision must be shown to contribute to the efficient administration of justice at the Court.<sup>46</sup>

25. The Panel notes that "cooperation with the Court" is a potential mitigating circumstance in sentencing proceedings pursuant to rule 145(2)(a)(ii) of the Rules and is generally understood to have the same meaning under article 110(4)(a) of the Statute.<sup>47</sup> To the extent that a trial chamber determines that a convicted person's conduct qualifies as "cooperation with the Court" and assigns weight to that factor in mitigation of sentence, "a panel conducting a sentence review will not generally revisit this initial determination".<sup>48</sup> However, the question of whether conduct prior to the imposition of sentence qualifies as an indicator of "early" cooperation within the meaning of article 110(4)(a) of the Statute will be determined on a case by case basis, taking into account a trial chamber's findings, if any, in this regard in the context of sentencing.<sup>49</sup>

26. In this respect, the Panel notes that in the Judgment and Sentence Decision the Trial Chamber found that Mr Al Mahdi admitted his guilt and "took responsibility for

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<sup>39</sup> Prosecutor's Submissions, para. 20.

<sup>40</sup> Prosecutor's Submissions, para. 22; Transcript of Sentence Review Hearing, p. 25, lines 3-12.

<sup>41</sup> Prosecutor's Submissions, paras 23-24; Transcript of Sentence Review Hearing, p. 26, lines 1-14.

<sup>42</sup> Prosecutor's Submissions, para. 25.

<sup>43</sup> Prosecutor's Submissions, para. 27.

<sup>44</sup> Prosecutor's Submissions, paras 28-34.

<sup>45</sup> Prosecutor's Submissions, para. 35.

<sup>46</sup> [Katanga Sentence Review Decision](#), para. 34.

<sup>47</sup> [Katanga Sentence Review Decision](#), para. 28.

<sup>48</sup> [Katanga Sentence Review Decision](#), para. 28.

<sup>49</sup> [Katanga Sentence Review Decision](#), para. 28.

his actions as early as the first day of his interviews with the Prosecution”.<sup>50</sup> In addition, the Trial Chamber noted that Mr Al Mahdi’s admission of guilt “undoubtedly contributed to the rapid resolution of this case, thus saving the Court’s time and resources”.<sup>51</sup> The Trial Chamber considered that “an admission of guilt is undoubtedly a mitigating circumstance” and gave it substantial weight when imposing the sentence.<sup>52</sup> In addition, the Trial Chamber found that

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. 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. During his interviews with the Prosecution, Mr Al Mahdi did not show any reluctance in touching upon his own acts.

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.<sup>53</sup>

27. The Panel notes further the Prosecutor’s submission that prior to Mr Al Mahdi’s conviction and sentence he was interviewed by the prosecution before [REDACTED] his arrest and transfer to the Court.<sup>54</sup> The Prosecutor submits that during these interviews Mr Al Mahdi “cooperated in good faith with the Prosecution’s investigations into crimes in the Mali situation”.<sup>55</sup> In light of the Trial Chamber’s findings and the submissions of the Prosecutor, the Panel considers that it has been established that Mr Al Mahdi’s conduct prior to the imposition of sentence qualifies as an indicator of cooperation at an early stage within the meaning of article 110(4)(a) of the Statute. Accordingly, the Panel will now turn to whether there are any other indicators of cooperation on the part of Mr Al Mahdi that either began or continued past the imposition of sentence.

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<sup>50</sup> [Judgment and Sentence Decision](#), para. 98.

<sup>51</sup> [Judgment and Sentence Decision](#), para. 100.

<sup>52</sup> [Judgment and Sentence Decision](#), para. 100.

<sup>53</sup> [Judgment and Sentence Decision](#), paras 101-102.

<sup>54</sup> Prosecutor’s Submissions, para. 19.

<sup>55</sup> Prosecutor’s Submissions, para. 19.

28. In this regard, the Panel notes the submissions of the Prosecutor, that [REDACTED].<sup>56</sup> In support of this contention, the Prosecutor [REDACTED].<sup>57</sup> [REDACTED].<sup>58</sup>

29. The Panel concurs with the Prosecutor's submissions and considers that Mr Al Mahdi's [REDACTED] demonstrates Mr Al Mahdi's continued compliance with his obligations under the Agreement. In the Panel's view, these acts qualify as cooperation within the meaning of article 110(4)(a) of the Statute.

30. Furthermore, the Panel notes the Prosecutor's submission that [REDACTED].<sup>59</sup> In this regard, the Prosecutor points to [REDACTED].<sup>60</sup> In addition, he argues that a further indicator of Mr Al Mahdi's [REDACTED] cooperation, [REDACTED].<sup>61</sup> The Panel agrees that in the circumstances, Mr Al Mahdi's [REDACTED] qualifies as cooperation within the meaning of article 110(4)(a) of the Statute. The Panel is also mindful of the fact that in cooperating with [REDACTED].<sup>62</sup>

31. The Panel finds that Mr Al Mahdi's continued adherence to his admission of guilt, his continued compliance with the terms of the Agreement and his cooperation [REDACTED], post sentence, are indications of an *early and continuing willingness to cooperate* with the Court's investigations and prosecutions. The Panel therefore considers that the factor set out in article 110(4)(a) of the Statute is present.

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<sup>56</sup> Prosecutor's Submissions, para. 14.

<sup>57</sup> Prosecutor's Submissions, para. 16.

<sup>58</sup> Prosecutor's Submissions, para. 16.

<sup>59</sup> Prosecutor's Submissions, para. 21.

<sup>60</sup> Prosecutor's Submissions, para. 24-25.

<sup>61</sup> Prosecutor's Submissions, para. 24.

<sup>62</sup> Prosecutor's Submissions, paras 27-35. *See also* Observations of the Registry, paras 9, 13.

2. *Article 110(4)(b) of the Statute: The voluntary assistance of the person in enabling the enforcement of the judgements and orders of the Court in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims*

**(a) Submissions of the participants**

32. At the Sentence Review Hearing the Defence submitted that this factor does not apply to Mr Al Mahdi as the latter is “an indigent person”.<sup>63</sup>

33. On the other hand, the Prosecutor submits, by incorporation of his arguments in relation to the factor under article 110(4)(a) of the Statute, that Mr Al Mahdi has demonstrated voluntary assistance [REDACTED] through [REDACTED].<sup>64</sup> Thus, the Prosecutor contends that the factor under article 110(4)(b) is present.<sup>65</sup>

**(b) Determination of the Panel**

34. Article 110(4)(b) of the Statute requires the Panel to assess whether there is any information supporting a finding of the presence of “the *voluntary assistance* of [Mr Al Mahdi] in enabling the enforcement of the Court’s judgments and orders in other cases, and in particular providing assistance in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims” (emphasis added).

35. At the outset, the Panel is not persuaded by the arguments of the Prosecutor that this factor is indeed present. The Panel recognises that [REDACTED] by the terms of the Agreement. While Mr Al Mahdi’s [REDACTED] support a finding that the factor under article 110(4)(a) is present, they do not demonstrate “*voluntary assistance* of [Mr Al Mahdi] in *enabling the enforcement of the judgements and orders of the Court in other cases*” (emphasis added). Furthermore, the Panel has not been furnished with any information demonstrating voluntary assistance rendered by Mr Al Mahdi in locating assets subject to orders of fine, forfeiture or reparation which may be used for the benefit of victims.

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<sup>63</sup> Transcript of Sentence Review Hearing, p. 13, lines 2-4.

<sup>64</sup> Prosecutor’s Submissions, paras 12-13.

<sup>65</sup> Prosecutor’s Submissions, para. 13.

36. Accordingly, on the basis of information received, the Panel finds that the factor under article 110(4)(b) of the Statute is not present for purposes of determining whether it is appropriate to reduce Mr Al Mahdi's sentence.

3. *Rule 223(a): The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime*

**(a) Submissions of the participants**

37. The Registrar submits that on several occasions when Mr Al Mahdi was detained at the ICC Detention Centre he "expressed remorse about his crime to the Acting Chief Custody Officer".<sup>66</sup>

38. The United Kingdom of Great Britain and Northern Ireland observe that during his time in its custody Mr Al Mahdi's general behaviour warranted "no Misconduct Reports and caused staff no issues".<sup>67</sup>

39. Mr Al Mahdi submits that throughout his trial and [REDACTED], he has "shown deep regret and repentance about his past deeds".<sup>68</sup> By way of illustration, he points to various occasions in which he made statements that expressed "regret, apologies addressed to his community and the international community" as well as "appeals to young people to avoid the ills of extremism".<sup>69</sup>

40. The Prosecutor submits that Mr Al Mahdi's expression of remorse from the time that he pleaded guilty [REDACTED] shows genuine dissociation from his crime.<sup>70</sup> In particular, [REDACTED].<sup>71</sup> [REDACTED].<sup>72</sup>

**(b) Determination of the Panel**

41. Rule 223(a) of the Rules requires the Panel to assess whether the conduct of a sentenced person while in detention shows a *genuine* dissociation from his or her crime. The Panel recalls that good conduct while in detention generally or *vis-à-vis* other detainees, is insufficient on its own, to establish the necessary connection between this

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<sup>66</sup> Observations of the Registrar, para. 5.

<sup>67</sup> Observations of the United Kingdom of Great Britain and Northern Ireland, p.3.

<sup>68</sup> Mr Al Mahdi's Submissions, para. 28.

<sup>69</sup> Mr Al Mahdi's Submissions, paras. 28.

<sup>70</sup> Prosecutor's Submissions, para. 42.

<sup>71</sup> Prosecutor's Submissions, para. 44. [REDACTED].

<sup>72</sup> Prosecutor's Submissions, para. 45. [REDACTED].

conduct and a genuine dissociation of the sentenced person from his or her crime.<sup>73</sup> Furthermore, as discussed above, in relation to the factor listed in rule 223(a) of the Rules, it is necessary to find that there is a “clear and significant change of circumstances” from the time that the sentence was imposed.<sup>74</sup>

42. The Panel notes that when imposing a sentence on Mr Al Mahdi, the Trial Chamber took into account his expression of remorse and empathy for the victims as a substantial factor in mitigation.<sup>75</sup> However, “what is determinative for these proceedings is not what was found at the time of sentencing but rather whether ‘there are changed circumstances in relation to this factor from the time that the sentence was imposed’”.<sup>76</sup>

43. First, the Panel takes note of Mr Al Mahdi’s continuing expression of remorse post-sentence, to the Acting Chief Custody Officer of the ICC Detention Centre, during [REDACTED] and as recently as in his personal address at the Sentence Review Hearing where he stated as follows:

[REDACTED].<sup>77</sup>

[REDACTED].<sup>78</sup>

44. Second, the Panel takes note of Mr Al Mahdi’s statement that he read out during the Sentence Review Hearing that was addressed to the victims and the wider Malian society.<sup>79</sup> [REDACTED].<sup>80</sup> In particular, the Panel notes that in this statement Mr Al Mahdi once again expressed his remorse for the crimes that he was convicted of and asked for forgiveness.<sup>81</sup>

45. As noted above, the Trial Chamber took into account Mr Al Mahdi’s expressions of remorse for the purposes of sentencing and assigned considerable weight to this

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<sup>73</sup> [Lubanga First Sentence Review Decision](#), para. 45. *See also* [Katanga Sentence Review Decision](#), para. 47.

<sup>74</sup> *See* paragraph 16 above.

<sup>75</sup> [Judgment and Sentence Decision](#), para. 105.

<sup>76</sup> [Katanga Sentence Review Decision](#), para. 49.

<sup>77</sup> Transcript of Sentence Review Hearing, p. 46, line 16 to p. 47, line 3.

<sup>78</sup> Transcript of Sentence Review Hearing, p. 47, lines 16-25 to p. 48, lines 1-2.

<sup>79</sup> Transcript of Sentence Review Hearing, p. 49, line 23 to p.51, line 18.

<sup>80</sup> Mr Al Mahdi’s Submissions, para. 28(b). *See also* Transcript of Sentence Review Hearing, p. 13, lines 5-11.

<sup>81</sup> Transcript of Sentence Review Hearing, p. 50, line 22, p. 51, line 16.



factor in mitigation of his sentence.<sup>82</sup> While Mr Al Mahdi's further expressions of remorse post-sentence are no doubt welcome, the Panel considers that they do not establish a clear and significant change of circumstances that would justify a reduction of sentence pursuant to article 110(4)(c) of the Statute read with rule 223(a) of the Rules. Accordingly, the Panel considers that the factor under rule 223(a) of the Rules is not present.

4. *Rule 223(b): The prospect of the resocialization and successful resettlement of the sentenced person*

**(a) Submissions of the participants**

46. The United Kingdom of Great Britain and Northern Ireland observe that during Mr Al Mahdi's incarceration [REDACTED].<sup>83</sup>

47. The Prosecutor submits that Mr Al Mahdi's continued adherence to his admission of guilt, his [REDACTED] cooperation with the prosecution and his expression of remorse support the favourable prospects of resocialization and successful resettlement.<sup>84</sup> Additionally, the Prosecutor submits that given [REDACTED].<sup>85</sup> [REDACTED].<sup>86</sup> [REDACTED].<sup>87</sup>

48. Mr Al Mahdi submits that he has good prospects of resocialization and successful resettlement into society.<sup>88</sup> He submits that during his incarceration he has acquired "new knowledge which may be conducive to his reintegration into the workplace".<sup>89</sup> In his view, should he be released he would be able to "embark on a new life" without causing any "disturbance to society" especially if he were to be received by a country other than the Republic of Mali.<sup>90</sup>

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<sup>82</sup> See paragraph 42 above.

<sup>83</sup> Observations of the United Kingdom of Great Britain and Northern Ireland, p.3.

<sup>84</sup> Prosecutor's Submissions, para. 50.

<sup>85</sup> Prosecutor's Submissions, para. 52.

<sup>86</sup> Prosecutor's Submissions, para. 52.

<sup>87</sup> Prosecutor's Submissions, para. 52.

<sup>88</sup> Mr Al Mahdi's Submissions, paras 34-40.

<sup>89</sup> Mr Al Mahdi's Submissions, para. 37.

<sup>90</sup> Mr Al Mahdi's Submissions, para. 38.

**(b) Determination of the Panel**

49. Rule 223(b) of the Rules requires the Panel to assess whether there is a prospect of the resocialization and successful resettlement of the sentenced person. The Panel recalls that as this factor was not considered for the purposes of sentencing it is being considered for the first time in the context of sentence review proceedings.<sup>91</sup>

50. The Panel takes note of Mr Al Mahdi's submissions and the Observations of the United Kingdom of Great Britain and Northern Ireland, in relation to [REDACTED].<sup>92</sup> The Panel further notes Mr Al Mahdi's "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".<sup>93</sup> At the Sentence Review Hearing, the Defence elaborated further as follows:

[REDACTED].<sup>94</sup>

51. [REDACTED].<sup>95</sup>

52. In light of the above, the Panel considers that Mr Al Mahdi's envisaged plans and aspirations, the [REDACTED] and [REDACTED] are circumstances which may facilitate a prospect for his resocialization and successful resettlement should he be granted early release.

53. Accordingly, on the basis of the information received, the Panel finds that there is a prospect for the resocialization and successful resettlement of Mr Al Mahdi [REDACTED]. The Panel therefore considers that the factor under rule 223(b) of the Rules is present.

5. *Rule 223(c): Whether the early release of the sentenced person would give rise to significant social instability*

**(a) Submissions of the participants**

54. The Registrar submits that the political and security situation in the Republic of Mali poses many challenges, however, no information is available to suggest that "the

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<sup>91</sup> See paragraph 16 above.

<sup>92</sup> See paragraphs 46 and 48 above.

<sup>93</sup> Mr Al Mahdi's Submissions, para. 41(c).

<sup>94</sup> Transcript of Sentence Review Hearing, p. 45, lines 1-16.

<sup>95</sup> [REDACTED].

*Al Mahdi* case has created unrest in Mali”.<sup>96</sup> Similarly, the Registrar submits that no information is available to the Registry “to the effect that the release of Mr Al Mahdi would give rise to significant social instability in Mali or elsewhere”.<sup>97</sup> [REDACTED].<sup>98</sup> However, the Registrar does not possess information suggesting significant social instability on this account.<sup>99</sup>

55. The Republic of Mali is opposed to any reduction of Mr Al Mahdi’s sentence on the basis that “the people of Mali as a whole and the people of Timbuktu have not fully healed from the wounds caused by the misdeeds of [Mr Al Mahdi]”.<sup>100</sup>

56. The Legal Representative of Victims submits that [REDACTED] the victims consulted associate the possibility of Mr Al Mahdi’s return to the region of Timbuktu with a “renewal of ties with the armed group(s) plaguing the region”.<sup>101</sup> However, the victims were unable to discern whether that would result in significant instability within the meaning of rule 223(c) of the Rules.<sup>102</sup> Additionally, the Legal Representative of Victims underscored that the implementation of collective reparations under the supervision of the Trust Fund for Victims is currently under way.<sup>103</sup> In the event that Mr Al Mahdi is released and returns to the region of Timbuktu, the Legal Representative requests “that, where possible, monitoring measures be granted so as to ensure that the process of individual and collective reparations for victims proceeds smoothly”.<sup>104</sup>

57. Mr Al Mahdi does not make any direct submissions on this particular factor. However, in relation to the observations of the Registrar and the Republic of Mali, he submits that his early release is likely to cause the least amount of disturbance to society if he were to be received by a country other than the Republic of Mali which “appears to be disinclined to accept him, at least for the time being”.<sup>105</sup>

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<sup>96</sup> Observations of the Registrar, para. 8.

<sup>97</sup> Observations of the Registrar, para. 8.

<sup>98</sup> Observations of the Registrar, paras 8, 9.

<sup>99</sup> Observations of the Registrar, para. 9.

<sup>100</sup> Observations of the Republic of Mali, p. 4.

<sup>101</sup> Victims’ Submissions, para. 17.

<sup>102</sup> Victims’ Submissions, para. 17.

<sup>103</sup> Victims’ Submissions, para. 18.

<sup>104</sup> Victims’ Submissions, para. 19.

<sup>105</sup> Mr Al Mahdi’s Submissions, paras 38-39.

**(b) Determination of the Panel**

58. Rule 223(c) of the Rules requires the Panel to assess whether the early release of a sentenced person would give rise to significant social instability. The Panel observes that this is a negative factor and if found to be present may weigh against a reduction of sentence. The Panel recalls that “[s]ignificant social instability may be demonstrated by information indicating that the sentenced person’s return to the State at issue could, *inter alia*, undermine public safety, cause social unrest such as riots or acts of ethnic-based violence, lead to the commission of new international crimes by the sentenced person or by his or her supporters, or undermine public confidence in the domestic legal system”.<sup>106</sup>

59. The Panel notes the submission of the Legal Representative of Victims concerning the current stage of the reparation process in the Republic of Mali and observes that there could be an effect on the implementation of individual and collective reparations if Mr Al Mahdi is released early. In particular, the Panel notes the concerns raised by the victims about the possibility of Mr Al Mahdi renewing ties with the armed groups operating in the region of Timbuktu should he be released early and returned to the Republic of Mali. The Panel finds that, although it is not possible to provide a definitive assessment in this regard, the statement by the Republic of Mali and the views expressed by a significant number of victims indicate that there could be a risk of significant social instability should Mr Al Mahdi be granted early release. Accordingly, on the basis of the information received, the Panel finds that under the current circumstances (i.e. while the reparation phase is still underway) the factor under rule 223(c) of the Rules is present and at this stage weighs against a reduction of sentence.

6. *Rule 223(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*

**(a) Submissions of the participants**

60. The Registrar submits that, on the basis of information gathered from [REDACTED] in the Republic of Mali and [REDACTED] including victims in both

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<sup>106</sup> [Katanga Sentence Review Decision](#), para. 74 referring to A. Oehmichen, “[Commentary Rules of Procedure and Evidence](#)”, in *Commentary on the Law of the International Criminal Court*, Case Matrix Network, para. 403.

[REDACTED], some victims have expressed fear for their safety should Mr Al Mahdi be released.<sup>107</sup> In their view, he should be made to serve his full sentence.<sup>108</sup> Some [REDACTED] consulted by the Registrar advise that “actions be taken to prevent [Mr Al Mahdi] from resuming his activities with various terrorist groups”.<sup>109</sup>

61. At the Sentence Review Hearing, the Defence submitted in relation to this factor that [REDACTED].<sup>110</sup> As discussed elsewhere in this decision, Mr Al Mahdi [REDACTED].<sup>111</sup>

62. The Legal Representative of Victims submits that the [REDACTED] of the victims and [REDACTED] that he had consulted expressed “fear for their safety and that of their families were [Mr Al Mahdi] to return to the region of Timbuktu”.<sup>112</sup> A [REDACTED] of victims “voiced their hostility to the early release of [Mr Al Mahdi] and were of the opinion that he should serve the full sentence handed down”.<sup>113</sup> A third group of victims [REDACTED] that were consulted, stated “that they forgave Mr Al Mahdi and were in favour of his early release” because of his expressions of remorse during his trial and the apologies he gave to the victims.<sup>114</sup> These victims support Mr Al Mahdi’s early release on the condition that he does not pose a threat to them or their families and so long as Mr Al Mahdi “makes a break with his past activities”.<sup>115</sup>

#### **(b) Determination of the Panel**

63. Rule 223(d) of the Rules requires the Panel to determine whether the sentenced person has taken any significant action for the benefit of the victims as well as any impact on the victims and their families as a result of the early release. It follows, that the Panel must first establish whether there is any evidence to support a finding that Mr Al Mahdi has indeed taken “significant action” for the benefit of the victims of the

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<sup>107</sup> Observations of the Registrar, para. 10.

<sup>108</sup> Observations of the Registrar, para. 10.

<sup>109</sup> Observations of the Registrar, para. 11.

<sup>110</sup> Transcript of Sentence Review Hearing, p. 15, lines 11-14.

<sup>111</sup> Mr Al Mahdi’s Submissions, para. 28 (b).

<sup>112</sup> Victims’ Submissions, para. 21.

<sup>113</sup> Victims’ Submissions, para. 22.

<sup>114</sup> Victims’ Submissions, para. 23.

<sup>115</sup> Victims’ Submissions, para. 23.

crimes for which he was convicted since the imposition of his sentence.<sup>116</sup> Second, the Panel must consider the impact of early release on the victims and their families.

64. The Panel recalls that the factor under rule 233(d) of the Rules needs to be considered in conjunction with the factor under rule 223(a) of the Rules given that they are considering generally the same information or actions under these two factors.<sup>117</sup> That said, the Panel notes that rule 223(a) of the Rules requires them to consider actions of the sentenced person from the perspective of, or impact on, him or her, i.e. whether certain actions indicate a genuine dissociation from his or her crime. On the other hand, rule 223(d) of the Rules, requires the Panel to consider actions taken by the sentenced person, as well as the perspective of the victims regarding those actions, i.e. whether the victims consider that the actions taken by the sentenced person have benefited them and whether they consider those actions to have been significant.<sup>118</sup> However, while the perspective of victims should be considered under this factor, an assessment can only be done on a case by case basis, taking into account an objective evaluation of the actions taken by the sentenced person balanced against the reasonableness of the victims' objections in relation to whether they have not benefited from those actions.<sup>119</sup>

65. In relation to the factor under rule 223(a) of the Rules the Panel found that, while Mr Al Mahdi's further expressions of remorse post-sentence were welcome, they did not establish a clear and significant change of circumstances that would justify a reduction of sentence pursuant to article 110(4)(c) of the Statute read with rule 223(a) of the Rules.<sup>120</sup> The Panel recalls that expressions of regret could be acts considered to be relevant to the factor under rule 223(d) of the Rules.<sup>121</sup> In this regard, the Panel notes that with the exception of his most recent expression of remorse which took place in open session during the Sentence Review Hearing, the other two instances took place in a non-public setting (i.e. during his interaction with the Acting Chief Custody Officer at the ICC Detention Centre and [REDACTED]). The Panel therefore considers such

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<sup>116</sup> See paragraph 16 above.

<sup>117</sup> [Katanga Sentence Review Decision](#), para. 90.

<sup>118</sup> [Katanga Sentence Review Decision](#), para. 90.

<sup>119</sup> [Katanga Sentence Review Decision](#), para. 91.

<sup>120</sup> See paragraph 45 above.

<sup>121</sup> [Katanga Sentence Review Decision](#), para. 87.

expressions of regret, post sentence, to be of minimal, if any, benefit to the victims and does not on its own qualify as a significant action taken by Mr Al Mahdi.

66. The Panel notes further Mr Al Mahdi's offer [REDACTED] expressing, once again, his remorse for the crimes for which he was convicted. The Panel observes that through no fault of his own, Mr Al Mahdi [REDACTED]. The Panel considers that such attempts to ensure the broadest degree of acceptance and positive impact of that apology may be relevant to determining whether it amounts to a "significant action" that benefits the victims. However, in the present case, the Panel finds Mr Al Mahdi's [REDACTED] to be of minimal, if any, benefit to the victims and does not qualify as a significant action taken by Mr Al Mahdi.

67. Finally, the Panel must consider "any impact on the victims and their families as a result of the early release". In this respect, the Panel considers the submissions regarding the potential traumatizing effect that Mr Al Mahdi's early release could have on the victims and their families to be relevant to its evaluation of this factor. However, the Panel notes that not all of the victims consulted expressed the same fears and concerns. Indeed, some victims expressed forgiveness towards Mr Al Mahdi. Given the divergent views of the victims the Panel assigns a neutral value to the impact on the victims of any early release of Mr Al Mahdi. This factor will therefore weigh neither for nor against a reduction in sentence.

68. Accordingly, on the basis of the information received, the Panel considers that, since there has been no significant action taken by Mr Al Mahdi for the benefit of the victims and the impact on the victims of any early release of Mr Al Mahdi has been assessed as neutral, the factor under rule 223(d) of the Rules is not present for purposes of determining whether it is appropriate to reduce Mr Al Mahdi's sentence.

7. *Rule 223(e): Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age*

**(a) Submissions of the participants**

69. The Defence submits that Mr Al Mahdi's time in detention has been filled with harsh conditions such as assaults, spells of isolation, [REDACTED], and the inability

to see his family [REDACTED].<sup>122</sup> The Defence states that due to the harsher conditions, Mr Al Mahdi's time in detention is "tantamount to a much longer term".<sup>123</sup>

70. The United Kingdom of Great Britain and Northern Ireland submit that it is unaware of Mr Al Mahdi having any physical or mental health issues and note that Mr Al Mahdi has not had any contact with the Mental Health Services while in its custody.<sup>124</sup>

### **(b) Determination of the Panel**

71. The Panel understands the Defence to be arguing that a reduction of sentence should serve as a remedy for the harsh conditions that Mr Al Mahdi has faced during his incarceration. The Panel considers these arguments to be irrelevant to its assessment under this factor as they do not justify a reduction of sentence. Notwithstanding, the Panel notes that despite the difficult conditions that Mr Al Mahdi faced he nevertheless benefitted from [REDACTED] provided at the prison which has since helped him [REDACTED].

72. In light of the information submitted by all participants relevant to this factor, the Panel is of the view that there are no individual circumstances which should be taken into consideration within the meaning of rule 223(e) of the Rules in determining whether it is appropriate to reduce Mr Al Mahdi's sentence.

### **C. The Panel's determination on whether it is appropriate to reduce Mr Al Mahdi's sentence**

73. The Panel has determined that the following factors weighing in favour of a reduction of Mr Al Mahdi's sentence are present: (i) an early and continuing willingness by Mr Al Mahdi to cooperate with the Court in its investigations and prosecutions (article 110(4)(a) of the Statute) and (ii) the prospect of resocialization and successful resettlement of Mr Al Mahdi (rule 223(b) of the Rules).

74. Moreover, the Panel has determined that the following factors are not present and therefore will weigh against a reduction of sentence: (i) the voluntary assistance of the person in enabling the enforcement of the judgments and orders of the Court, [...] in

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<sup>122</sup> Mr Al Mahdi's Submissions, paras 22, 23.

<sup>123</sup> Mr Al Mahdi's Submissions, para. 22.

<sup>124</sup> Observations of the United Kingdom, p. 3.



locating assets subject to orders of fine [...] for the benefit of victims (article 110(4)(b) of the Statute); (ii) the conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime (rule 223(a) of the Rules); (iii) any significant action taken for the benefit of the victims as well as any impact on the victims [...] as a result of the early release (rule 223(d) of the Rules) and (iv) individual circumstances of the sentenced person (rule 223(e) of the Rules). In relation to the factor under rule 223(c) of the Rules the Panel has determined that this factor is present as there is a risk that early release could give rise to significant social instability. Consequently, this factor will weigh against a reduction of sentence.

75. The Panel recalls that “the presence of at least one factor in favour of reduction is a prerequisite to the Panel exercising its discretion to reduce a sentence”.<sup>125</sup> Given the discretionary nature of a decision on reduction of sentence, the presence of a factor(s) in favour of reduction does not mean that a sentence will be reduced. Similarly, the presence of a factor(s) weighing against a reduction of sentence does not mean that a panel is precluded from reducing a sentence.<sup>126</sup> With this in mind and in balancing all of the relevant factors, the Panel considers that Mr Al Mahdi’s early and continuing willingness to cooperate with the Court in its investigations and prosecutions and his prospects for resocialization and successful resettlement outweigh the factors militating against a reduction of sentence and are “sufficient to justify a reduction of sentence”.<sup>127</sup> Therefore, the Panel decides that it is appropriate to reduce Mr Al Mahdi’s sentence pursuant to article 110(3) of the Statute.

### III. DISPOSITION

76. Having decided that it is appropriate to reduce Mr Al Mahdi’s sentence, the Panel will now address the question of the extent of the reduction. In this respect, the Panel recalls that “[u]nder the Court’s legal framework, the two-third threshold serves as a trigger mechanism for the commencement of the sentence review”.<sup>128</sup> Consequently, any possible reduction can only be applied to the remaining one third of the sentence.

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<sup>125</sup> [Lubanga Sentence Review Decision](#), para. 22.

<sup>126</sup> [Lubanga Sentence Review Decision](#), para. 22.

<sup>127</sup> See article 110(4)(c) of the Statute.

<sup>128</sup> [Lubanga Sentence Review Decision](#), para. 27; [Katanga Sentence Review Decision](#), para. 113.

The information presented in the context of each specific sentence review proceeding will determine the appropriate extent of any reduction.

77. In the present sentence review, the Panel recalls that Mr Al Mahdi was sentenced to a term of nine years imprisonment and that 18 September 2021 marked the two thirds threshold of time served, i.e. six years served. Thus, in the absence of any reduction, Mr Al Mahdi would complete his sentence on 18 September 2024. Taking into account the specific circumstances of this sentence review, in particular, the views expressed by the Republic of Mali and a significant number of victims, the Panel considers that the extent of the reduction of sentence cannot be applied to the entirety of Mr Al Mahdi's remaining sentence. Consequently, the Panel considers that a reduction of two years is appropriate. Accordingly, the Panel reduces Mr Al Mahdi's sentence and sets the date for the completion of his sentence to 18 September 2022.

78. Finally, as noted elsewhere in this decision, upon Mr Al Mahdi's release on 18 September 2022, [REDACTED], the Panel nevertheless, invites the [REDACTED] to pay due regard to the views and concerns expressed by the Republic of Mali, the victims and Mr Al Mahdi when considering the country that he will eventually be released to.

Done in both English and French, the English version being authoritative.





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**Judge Solomy Balungi Bossa**  
Presiding Judge




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**Judge Marc Perrin de Brichambaut**




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**Judge Gocha Lordkipanidze**

Dated this 25<sup>th</sup> day of November 2021

At The Hague, The Netherlands