

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

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

Date: 8 October 2021

**THREE JUDGES OF THE APPEALS CHAMBER APPOINTED FOR THE  
REVIEW CONCERNING REDUCTION OF SENTENCE**

**Before:** Judge Solomy Balungi Bossa, Presiding  
Judge Marc Perrin de Brichambaut  
Judge Gocha Lordkipanidze

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF  
*THE PROSECUTOR v. AHMAD AL FAQI AL MAHDI***

**Public**

**Public redacted version of "Observations on the criteria set out in rule 223 (a) to  
(e) of the Rules of Procedure and Evidence", 30 August 2021,  
ICC-01/12-01/15-411-Conf-Exp**

**Source:** Registry

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

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Victims****The Office of Public Counsel for the  
Defence****States' Representatives**

The Republic of Mali

The United Kingdom of Great Britain  
and Northern Ireland**Amicus Curiae****REGISTRY**

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**Registrar**

Mr Peter Lewis

**Counsel Support Section**

Mr Esteban Peralta Losilla

**Victims and Witnesses Unit**

Mr Nigel Verrill

**Detention Section**

Mr Harry Tjonk

**Victims Participation and Reparations  
Section**

Mr Philipp Ambach

**Other**

The Presidency

## I. Introduction

1. Following its “Scheduling order for the review concerning reduction of sentence of Mr Ahmad Al Faqi Al Mahdi”<sup>1</sup> (“Order” and “Mr Al Mahdi”, respectively), the three judges of the Appeals Chamber appointed for this review (“Panel”) invited the Registrar to file observations on the criteria set out in rule 223(a) to (e) of the Rules of Procedure and Evidence (“Rules”), by 30 August 2021.<sup>2</sup> In addition, the Panel instructed the Registrar to “consult as necessary with any states considered to have potentially relevant information in relation to these criteria.”<sup>3</sup>

## II. Classification

2. In accordance with regulation 23bis(1) of the Regulations of the Court, the present observations are filed Confidential *ex parte* Defence, Registry and Presidency only, as they contain both information on internal operations of the Registry, and personal information about Mr Al Mahdi.

## III. Submissions

3. The following observations follow the sequence of criteria listed in rule 223(a) through (e) of the Rules, and relate to each one in turn.

*Rule 223(a) of the Rules: Whether the conduct of Mr Al Mahdi while in detention shows a genuine dissociation from his crime*

4. Mr Al Mahdi was detained at the ICC Detention Centre (“ICC DC”) from 29 September 2015 until his transfer to Scotland, the state of enforcement, on 29 August 2018. [REDACTED].

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<sup>1</sup> ICC-01/12-01/15-392.

<sup>2</sup> ICC-01/12-01/15-392, para. 4.

<sup>3</sup> *Ibid.*

5. On several occasions throughout [REDACTED] detention at the ICC DC, Mr Al Mahdi expressed remorse about his crime to the Acting Chief Custody Officer.

*Rule 223(b) of the Rules: Whether Mr Al Mahdi shows good prospects of resocialization and successful resettlement*

6. During [REDACTED] of detention at the ICC DC, Mr Al Mahdi has been polite [REDACTED] his fellow detainees. [REDACTED]. Whilst Mr Al Mahdi gets well along with the other detained persons, he is also comfortable spending time on his own.
7. The ICC DC does not have a formal rehabilitation programme. The ICC DC does provide an education program, in which Mr Al Mahdi participates actively. He also participates daily in outdoor exercise and sports as well as creativity and other classes offered by the ICC DC.

*Rule 223(c) of the Rules: Whether an early release of Mr Al Mahdi would give rise to significant social instability*

8. The political and security context in Mali and the broader region faces significant challenges across many fronts; for example, a series of mass protests and two *coups d'états* have taken place in the country over the past year. There is, however, to date no information available to the Registry suggesting that the *Al Mahdi* case has created unrest in Mali. There is likewise no information 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.
9. On 27 September 2016, during the verdict and sentencing of Mr Al Mahdi, Trial Chamber VIII ("Trial Chamber") found he was head of one of the primary institutions established by Ansar Dine and Al Qaeda in the Islamic Maghreb (AQIM).<sup>4</sup> During the public sentencing of Mr Al Mahdi, the Trial

Chamber considered five mitigating circumstances [REDACTED].<sup>5</sup> [REDACTED].<sup>6</sup> The Registry, however, does not possess information suggesting significant social instability on this account.

*Rule 223(d) of the Rules: Whether Mr Al Mahdi has taken any significant action for the benefit of the victims, and whether his early release could have any impact on the victims and their families*

10. The Registry has been in contact with [REDACTED] in Mali and [REDACTED], as well as victims in both [REDACTED], in order to gather their observations on the issue of early release. These groups have provided the Registry with the following information. Some victims believe that Mr Al Mahdi should fully serve his sentence. These victims express fear for their safety even if the full sentence is served because, according to them, [REDACTED] and AQIM. Victims express fear that Mr Al Mahdi [REDACTED]. The victims are also unsure whether they [REDACTED].
11. [REDACTED] have advised the Registry that if Mr Al Mahdi's sentence is reduced, it is important that actions be taken to prevent him from resuming his activities with various terrorist groups. [REDACTED] advise that certain guarantees be obtained from Mr Al Mahdi. One of these is that once he returns to Mali, he should not make contact with AQIM, and his presence should not be a source of threat for [REDACTED] and the communities of victims.
12. Certain [REDACTED] further suggest that if the sentence is reduced, the Court conduct a major awareness-raising campaign amongst the communities of victims to explain any such decision, and ensure it does not negatively impact the Court's image.

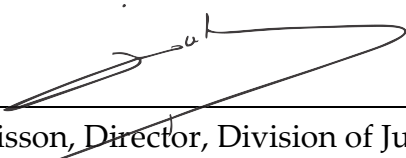
*Rule 223(e) of the Rules: Mr Al Mahdi's individual circumstances*

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<sup>5</sup> ICC Press Release, "Trial Chamber VIII declares Mr Al Mahdi guilty of the war crime of attacking historic and religious buildings in Timbuktu and sentences him to nine years' imprisonment", 27 September 2016, accessed on line on 25 July at <https://www.icc-cpi.int/pages/item.aspx?name=pr1242>

<sup>6</sup> [REDACTED].

13. [REDACTED]



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Marc Dubuisson, Director, Division of Judicial Services  
*per* delegation of  
Peter Lewis, Registrar

Dated this 8 October 2021

At The Hague, the Netherlands