

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

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Date: **16 June 2016**

Date of submission: **25 October 2016**

**TRIAL CHAMBER VIII**

**Before: Judge Raul C. Pangalangan, Single Judge**

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

**Public**

**With confidential *EX PARTE* Annexes A and B,  
only available to the Prosecution and the Victims and Witnesses Section**

**Public redacted version of  
Prosecution's request for in-court protective measures for witness  
MLI-OTP-P-0182, 15 June 2016, ICC-01/12-01/15-103-Conf-Exp**

**Source: Office of the Prosecutor**

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

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**Victims Participation and Reparations  
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## I. Introduction

1. The Office of the Prosecutor ("Prosecution") requests in-court protective measures, in the form of image distortion and the use of a pseudonym, for Prosecution Witness MLI-OTP-P-0182 ("P-0182"), the OTP [REDACTED] in the Mali situation. This application is made pursuant to articles 64(2) and 68(1) and (2) of the Rome Statute ("Statute") and rule 87 of the Rules of Procedure and Evidence.
2. The requested measures are sought a) to protect P-0182's personal security, particularly while on mission in Mali and surrounding countries, and b) to protect witnesses, other [REDACTED] and other third parties with whom P-0182 has contact, particularly while on mission. The requested measures would also preserve the Prosecution's critical ability to effectively investigate crimes in Mali and elsewhere, now and in the future.
3. The requested measures appropriately balance the Accused's right to a fair and public hearing against the need to protect witnesses and others who may be placed at risk as a result of the activities of the Court.
4. The Prosecution has discussed this application with Counsel for the Accused, who have indicated that the Defence does not oppose the requested measures.

5. The Prosecution has also consulted with the Victims and Witnesses Section (VWS), which has indicated its agreement with the requested measures.

## **II. Confidentiality**

6. The present Request and the attached annexes are filed confidentially and *ex parte* pursuant to regulation 23*bis* of the Regulations of the Court, because they concern protective measures and witness security. In particular, Annex B contains [REDACTED].
7. The Prosecution will file a confidential redacted version as soon as practicable.

## **III. Submissions**

8. The Prosecution requests image distortion and the use of a pseudonym during the testimony of P-0182. The requested conditions are sought to protect both Witness P-0182 and others.
9. Witness P-0182 is the OTP [REDACTED] in the Mali Situation. At trial, he is expected to testify on the OTP investigation of the attack against historic monuments and buildings dedicated to religion in Timbuktu during 2012,<sup>1</sup>

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<sup>1</sup> As part of the OTP's investigation in the Mali situation.

including the findings on the role of the Accused in that attack. P-0182 will in particular testify regarding an interview conducted with the Accused in September 2015.

10. In his capacity as an OTP [REDACTED], P-0182 travels frequently to the field, including to Mali and neighbouring countries. During such missions, P-0182 necessarily has direct contact with witnesses, potential witnesses, representatives of governments and international and non-governmental organisations, and other third persons.

11. Due to the security situation in Mali, described below, the Prosecution submits that there is serious risk that identification of P-0182 while on mission might place him and those with whom he has contact at risk.

12. As set forth in earlier Prosecution filings in this case,<sup>2</sup> the security situation in Mali is very difficult. Armed groups active in the region (including AQIM and Ansar Dine, the same armed groups implicated in this case) have publicly targeted members of the international community as well as local inhabitants suspected of cooperating with international institutions. There are numerous examples of deadly attacks against persons perpetrated by the armed groups in Mali and surroundings countries. Lists of major terror incidents in Mali during

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<sup>2</sup> [REDACTED].

2014, 2015 and 2016, attached hereto as Annex A, show that armed groups including AQIM and Ansar Dine continue to conduct attacks. In particular, in the last six months to a year, armed groups have been responsible for attacks against several hotels and other businesses frequented by foreigners in Bamako, the capital of Mali, and other cities in the region,<sup>3</sup> [REDACTED]. The Prosecution also recalls that several ICRC staff members were recently kidnapped by Ansar Dine.<sup>4</sup> Even in the last weeks, members of MINUSMA and other international organisations have been killed by the armed groups, including one affiliated with AQIM (*see* Annex A, list of incidents in 2016).

13. The Prosecution's assessment is that persons associated with the Court's activities are not just facing risks of interference or intimidation, but that they are exposed to a clear risk of violence and possible killing.

14. Under these circumstances, the Prosecution submits that image distortion and a pseudonym are essential to ensure the safety of P-0182 and those with whom he has contact with while on mission. A pseudonym is necessary because P-0182's

<sup>3</sup> See for example the press articles cited in ICC-01/12-01/15-89-Conf, para. 30, n.14. The Prosecution also recalls the beheading in September 2014 of a Tuareg man accused of working with MINUSMA. *See* MLI-OTP-0020-0008 (press article published by *Sahara Media*, in the Arabic language, on 25 September 2014).

<sup>4</sup> *See* Africanews, '3 Red Cross staff still missing days after their abduction in Mali', 20 April 2016, at <http://www.africanews.com/2016/04/20/3-red-cross-staff-still-missing-days-after-their-abduction-in-mali/> ; Le Point, 'Mali: trois humanitaires de la Croix-Rouge enlevés par des djihadistes', 21 April 2016, at [http://www.lepoint.fr/monde/mali-trois-humanitaires-de-la-croix-rouge-enlevés-par-des-djihadistes-21-04-2016-2033903\\_24.php](http://www.lepoint.fr/monde/mali-trois-humanitaires-de-la-croix-rouge-enlevés-par-des-djihadistes-21-04-2016-2033903_24.php). Ansar Dine is the group to which AL MAHDI belonged to at the time of his arrest, the same group that publicly announced in early 2015 its intention to target internationals: *See* Sahelien.com, 'Mali: Le groupe Ansar Eddine envoie des tracts aux populations locales', 7 janvier 2015, MLI-OTP-0022-0404

identity necessarily becomes known to a range of parties and individuals in the course of OTP activities. For example, [REDACTED] [REDACTED] [REDACTED]. If P-0182's name is mentioned publicly during his testimony, the fact of his testimony will be reflected on the Internet in one form or another. Thereafter, a simple Internet search based [REDACTED] [REDACTED] could instantly reveal his connection to the Court and to this case and would put him, and potentially anyone with him, at risk. Similarly, image distortion will significantly reduce the possibility that P-0182 might be recognised while on mission.<sup>5</sup>

15. The Prosecution has consulted with the Victims and Witnesses Section, which has indicated its agreement with the requested measures.

16. The Prosecution notes that other OTP staff members have previously testified before this Court with image distortion and a pseudonym.<sup>6</sup> This also generally preserves the Prosecution's ability to effectively investigate crimes elsewhere, now and in the future.

17. Finally, the Prosecution stresses that there is no prejudice to the Defence, who know the identity of the witness and whose ability to cross-examine the witness

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<sup>5</sup> On the other hand, the Prosecution does not request voice distortion because it considers it unlikely that the witness' voice could lead to his identification by the public and/or members of armed groups.

<sup>6</sup> See, e.g., ICC-01/04-01/07-1667-Red, para. 19.

will be affected. As a matter of fact, the Defence was consulted regarding the present Request and had no objection to the requested measures.

#### IV. Relief requested

18. For the foregoing reasons, the Prosecution requests that the Chamber grants the current application and order image distortion and the use of a pseudonym for Prosecution Witness P-0182.



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Fatou Bensouda, Prosecutor

Dated this 16<sup>th</sup> day of June, 2016

At The Hague, The Netherlands