

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original : **English**

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

Date: **6 July 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***

**CONFIDENTIAL**

**with Annex A confidential, *EX PARTE*, only available to the Prosecution  
and  
Annex B confidential**

**Addendum to "Prosecution's Request for an order giving effect to conditions  
in relation to the testimony of Prosecution Witness MLI-OTP-P-0151",  
1 June 2016, ICC-01/12-01/15-95-Conf**

**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**

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Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Victims and Witnesses Section**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. By means of the Request dated 1 June 2016,<sup>1</sup> the Prosecution sought an order from Trial Chamber VIII (“the Chamber”), pursuant to its powers under articles 64(6)(c), 64(6)(e) and 64(6)(f) and article 68 of the Rome Statute (“Statute”), to give effect to conditions for the testimony of Prosecution Witness MLI-OTP-P-0151 (“P-0151”), a UNESCO official whom it intends to call at trial. The conditions were requested on the basis of a letter from UNESCO dated 30 July 2015.<sup>2</sup>
2. On 16 June 2016, UNESCO’s representatives indicated that they wanted to consider the matter further, given that P-0151 status with the Organisation has changed subsequent to the letter of 30 July 2015. UNESCO indicated that it would revert to the Prosecution.
3. On 17 June 2016, the Chamber directed the Defence to respond to the request within the 21 days deadline and further ordered that, should the UNESCO request that the conditions be modified, the Prosecution shall file an addendum to its Request.

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<sup>1</sup> ICC-01/12-01/15-95-Conf

<sup>2</sup> ICC-01/12-01/15-95-Conf-AnxB

4. On 30 June 2016, the Prosecution received another letter from UNESCO<sup>3</sup> asking in effect for the imposition of one additional condition, *i.e.* permit a representative of UNESCO to attend the oral testimony of P-0151.
5. Pursuant to articles 64(6)(c), 64(6)(e), 64(6)(f) and 68 of the Statute, the Prosecution now seeks an order granting this additional condition together with the conditions in the initial Request.

### **Confidentiality**

6. This filing and its annexes are classified as “confidential” because they contain confidential information and correspondence between the UNESCO and the Prosecution.
7. Moreover, Annex A is classified as “confidential, *ex parte*” so as to protect the identity of the author of the UNESCO letter contained therein, and whose name has been redacted in the course of the disclosure. Annex B is the confidential redacted version of the said letter.

### **Prosecution’s submissions**

8. The Prosecution now seeks an order from the Chamber giving effect to the conditions of UNESCO regarding the anticipated testimony of Prosecution

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<sup>3</sup> See Annex B

Witness P-0151 as detailed in its initial Request<sup>4</sup> and the supplementary condition concerning the attendance of a legal representative of UNESCO.

9. In effect, UNESCO requires a supplementary condition broken down into the following features:

- a. the attendance of a representative of UNESCO Legal Adviser at the trial when P-0151 will provide oral testimony;
- b. the said representative be permitted, with leave of the Chamber, to consult with or be consulted by P-0151 during the course of his testimony; and
- c. the said representative, with leave of the Chamber, be allowed to make submissions to the Chamber that P-0151 not be required to answer a question or to supply certain information that would:
  - i. endanger the safety or security of current or former UNESCO personnel or of other persons,
  - ii. prejudice the security or proper conduct of any current or future operation or activity of UNESCO in Mali or elsewhere,  
or
  - iii. breach an obligation of confidentiality which is incumbent upon UNESCO and P-0151, as an official of UNESCO.

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<sup>4</sup> ICC-01/12-01/15-95-Conf

10. The above supplementary condition is consistent with articles 64(6)(c), 64(6)(e), 64(6)(f) and 68 of the Statute, which empower the Chamber to provide for the protection of confidential information and the protection of witnesses.
11. The supplementary condition is linked to the security and confidentiality concerns of UNESCO as reflected in the initial Request of 1 June 2016.<sup>5</sup> In that regard, the Prosecution refers to his prior submissions.<sup>6</sup>
12. Such condition is consistent with article 16(2) of the ICC-UN Relationship Agreement,<sup>7</sup> according to which “the Secretary-General shall be authorized by the Court to appoint a representative of the United Nations to assist any official of the United Nations who appears as a witness before the Court”.
13. Although UNESCO is not *stricto sensu* covered by this agreement, it is a UN specialised agency with strong and direct links with the UN and it only makes sense that it would require and want to be granted similar conditions as other UN bodies and offices, such as the presence of a legal adviser, given that it is faced with similar challenges and risks.

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<sup>5</sup> ICC-01/12-01/15-95-Conf

<sup>6</sup> ICC-01/12-01/15-95-Conf, para. 14.

<sup>7</sup> ASP/3/Res.1, art.16(2).

14. As a matter of fact, the requested conditions are similar to those requested by the United Nations with respect to the appearance of other UN staff as witnesses before the Court.<sup>8</sup>

15. Last, in the present case, the rights of the Accused and the fairness of the proceedings are safeguarded by the fact that any intervention or submissions of the UNESCO representative will be subject to the authorisation of the Chamber. For each intervention or submission, the Chamber will act as the guarantor of the fair conduct of the proceedings and the witness's testimony.

### **Relief requested**

16. The Prosecution requests an order giving effect to the conditions of UNESCO to its waiver of immunity for P-0151 as reflected in the letters dated 30 July 2015<sup>9</sup> and 30 June 2016.<sup>10</sup>

17. The Prosecution consequently prays for the order as per its Request of 1 June 2016<sup>11</sup> and as supplemented by the present Addendum.

18. The Prosecution further seeks authorisation from the Chamber to submit to UNESCO, if needs be, a copy of the Chamber's decision.

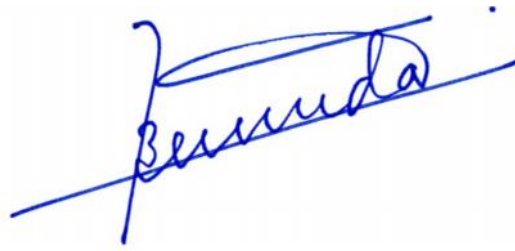
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<sup>8</sup> ICC-01/04-02/06-713-Red.

<sup>9</sup> ICC-01/12-01/15-95-Conf-AnxB

<sup>10</sup> See Annex B

<sup>11</sup> ICC-01/12-01/15-95



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Fatou Bensouda, Prosecutor

Dated this 6<sup>th</sup> day of July 2016

At The Hague, The Netherlands