

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-01/12-01/15  
Date: 2 December 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**

**Public Redacted Version of 'Decision on Prosecution Requests for In-Court  
Protective Measures for P-182 and P-431'**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

**The Office of the Prosecutor**

Fatou Bensouda

James Stewart

Gilles Dutertre

**Counsel for the Defence**

Mohamed Aouini

Jean-Louis Gilissen

**Legal Representative of Victims**

Mayombo Kassongo

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

**The Office of Public Counsel for the  
Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verrill

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Raul C. Pangalangan**, acting as Single Judge on behalf of Trial Chamber VIII ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court') issues the following 'Decision on Prosecution Requests for In-Court Protective Measures for P-182 and P-431', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 64(2) and (6)(e) and 68(1) and (2) of the Rome Statute ('Statute'), Rule 87 of the Rules of Procedure and Evidence ('Rules') and Regulation 20 of the Regulations of the Court ('Regulations').

### **I. Procedural History**

1. On 15 and 17 June 2016, the Office of the Prosecutor ('Prosecution') filed requests for in-court protective measures for witnesses P-182<sup>1</sup> ('First Request') and P-431<sup>2</sup> ('Second Request', together with the First Request 'Requests').
2. On 27 and 29 June 2016, in accordance with the Chamber's orders to this effect,<sup>3</sup> the Victims and Witnesses Section ('VWS') submitted its assessments on the need for in-court protective measures for P-182<sup>4</sup> and P-431,<sup>5</sup> supporting the Requests.
3. On 29 June 2016, the defence team for Mr Al Mahdi ('Defence') responded to the Second Request, confirming the Prosecution's submission that it does not oppose it.<sup>6</sup> The Defence did not respond to the First Request.
4. The Legal Representative of Victims did not file any response.

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<sup>1</sup> Prosecution's request for in-court protective measures for witness MLI-OTP-P-0182, ICC-01/12-01/15-103-Conf-Exp. A Confidential redacted version was filed on 16 June 2016.

<sup>2</sup> Prosecution's request for in-court protective measures for witness MLI-OTP-P-0431, ICC-01/12-01/15-105-Conf-Exp. A Confidential redacted version was filed on 21 June 2016.

<sup>3</sup> Email from Chamber to parties, participants and VWS on 17 June 2016 at 15:49; Email from Chamber to parties, participants and VWS on 20 June 2016 at 16:48.

<sup>4</sup> Email from VWS to Chamber on 27 June 2016 at 17:29 ('VWS First Report').

<sup>5</sup> Email from VWS to Chamber on 29 June 2016 at 14:42 ('VWS Second Report').

<sup>6</sup> *Observations de la Défense sur la requête 105-Conf-Red du Bureau du Procureur, conformément à l'ordre de la Chambre en date du 20 juin 2016*, ICC-02/11-01/15-115-Conf ('Defence Observations').

## II. Submissions and Analysis

5. In respect of P-182, the Prosecution requests the use of a pseudonym and face distortion. The Prosecution indicates that P-182 [REDACTED] and that as such, his identification by the public may place him and others with whom he interacts [REDACTED] at risk.<sup>7</sup> The Prosecution further argues that disclosure of his identity would preserve the [REDACTED].<sup>8</sup> Noting that his voice is unlikely to lead to his identification, the Prosecution does not request the protective measure of voice distortion.<sup>9</sup>
6. With regard to P-431, the Prosecution seeks the in-court protective measures of use of a pseudonym and face and voice distortion. The witness himself has requested protective measures.<sup>10</sup> The Prosecution indicates that P-431 is currently the [REDACTED] and that as such, [REDACTED]. Further, [REDACTED].<sup>11</sup> The Prosecution argues that due to this position, disclosure of his name to the public would make him easily traceable and at risk, [REDACTED].<sup>12</sup> [REDACTED].<sup>13</sup>
7. Finally, the Prosecution points out to the general security situation of the region and submits that anyone interacting with the Court would be placed at risk not only of interference and intimidation but also of violence and possible killing.<sup>14</sup>
8. Pursuant to Article 67(1) of the Statute, accused persons are entitled to a public hearing. This is also emphasised in Regulation 20 of the Regulations, which provides that '[a]ll hearings shall be held in public, unless otherwise provided in the Statute, Rules, these Regulations or ordered by the Chamber'. Exceptions to

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<sup>7</sup> First Request, ICC-01/12-01/15-103-Conf-Red, paras 2 and 8-11.

<sup>8</sup> First Request, ICC-01/12-01/15-103-Conf-Red, paras 2 and 16.

<sup>9</sup> First Request, ICC-01/12-01/15-103-Conf-Red, footnote 5.

<sup>10</sup> Second Request, ICC-01/12-01/15-105-Conf-Red, para. 12.

<sup>11</sup> Second Request, ICC-01/12-01/15-105-Conf-Red, paras 9 and 11.

<sup>12</sup> Second Request, ICC-01/12-01/15-105-Conf-Red, para. 10.

<sup>13</sup> Second Request, ICC-01/12-01/15-105-Conf-Exp, para. 11.

<sup>14</sup> First Request, ICC-01/12-01/15-103-Conf-Red, paras 12-13; Second Request, ICC-01/12-01/15-105-Conf-Red, paras 10 and 14-15.

the principle of publicity are provided for in Article 68(1) and (2) of the Statute, which, read in conjunction with Article 64, (2) and (6)(e) of the Statute and Rule 87 of the Rules, give power to a chamber to order protective measures ‘to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses’ and to hold ‘any part of the proceedings in camera’. However, protective measures must not be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.<sup>15</sup>

9. In respect of the Requests, the Chamber first notes the Prosecution’s submission – supported by the VWS – <sup>16</sup> that the general security situation of the region is very difficult and that Prosecution investigations in Mali are ongoing.<sup>17</sup> The Chamber further notes that the Defence does not oppose the Requests.<sup>18</sup>
10. Accordingly, in light of these factors and of the VWS’s reports, and while conscious of the fair trial-related concerns which generally lie in favour of the identity of witnesses being made known to the public, the Chamber grants the Requests. With regard to P-182, the Chamber has noted that the VWS recommends the additional protective measure of voice distortion.<sup>19</sup> However, the Chamber is persuaded by the Prosecution’s argument that his voice is not likely to lead to his identification<sup>20</sup> and therefore does not find it necessary to order voice distortion.

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<sup>15</sup> *The Prosecutor v. Bosco Ntaganda*, Trial Chamber VI, Decision on request for in-court protective measures relating to the first Prosecution witness, 15 September 2015, ICC-01/04-02/06-824-Red, para. 5 and footnotes contained therein.

<sup>16</sup> In relation to P-182, the Chamber also notes the VWS’ submission that all expatriates in Mali and the region are considered a legitimate target by the groups operating in the region (VWS First Report; VWS Second Report). Similarly, in relation to P-431, the Chamber notes that the VWS indicates that individuals collaborating with foreigners are threatened by Jihadi groups (VWS Second Report).

<sup>17</sup> First Request, ICC-01/12-01/15-103-Conf-Red, paras 12-13; Second Request, ICC-01/12-01/15-105-Conf-Red, paras 10 and 14-15.

<sup>18</sup> First Request, ICC-01/12-01/15-103-Conf-Red, paras 4 and 17; Defence Observations, ICC-02/11-01/15-115-Conf.

<sup>19</sup> VWS First Report.

<sup>20</sup> First Request, ICC-01/12-01/15-103-Conf-Red, footnote 5.

11. Noting that the Defence has been provided with the name and identifying information of the witnesses, the Chamber does not consider this measure disproportionate to the rights of the accused. To this end, the Chamber also notes that the accused and the Defence will be able to see the witnesses give evidence at trial and hear their voices without distortion. The Chamber will determine on a case-by-case basis, at the relevant time, whether private or closed sessions or redactions to public records are necessary in order to protect the identity of the witnesses from being disclosed to the public.

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY**

**GRANTS** the First Request, specifically for use of a pseudonym and face distortion during testimony;

**GRANTS** the Second Request, specifically for use of a pseudonym and face and voice distortion during testimony; and

**ORDERS** the LRV to not discuss any specific confidential information contained in the present decision with his clients prior to seeking leave of the Chamber.

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



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

Dated 2 December 2016

At The Hague, The Netherlands