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**International
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16 December 2016

TRIAL CHAMBER VIII

Before: Judge Raul C. Pangalangan, Presiding Judge
Judge Antoine Kesia-Mbe Mindua
Judge Bertram Schmitt

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

PUBLIC

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

**Public redacted version of "Prosecution Request for an order giving effect to
conditions in relation to the testimony of 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 Participation and Reparations
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Other

Introduction

1. By means of this Request, the Prosecution seeks 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 68 of the Rome Statute, to allow the requested conditions to the testimony of Witness P-0151, a UNESCO official (UNESCO Assistant Director-General for Culture and Director of the UNESCO World Heritage Centre), whom it intends to call to testify in the present case.

Confidentiality

2. This filing is classified as “confidential” due to the nature of the information addressed therein. Annex B is classified as “confidential, only available to the Prosecution and Defence” and contains one redaction to protect a person whose name was redacted in the material disclosed to Defence. Annex A is the unredacted version of Annex B and is therefore classified as “confidential, *ex parte*, only available to the Prosecution” so as to protect the person in question.

Background

3. In 2015, UNESCO was contacted in order to obtain the statement of one UNESCO official with a view to acquire information and clarification on

the procedures, legal framework, effects and consequences of the inscription of sites on the World Heritage List and more particularly with regard to the sites in the city of Timbuktu and the destructions thereof.

4. On 30 July 2015, UNESCO authorised and designated Witness P-0151 to give a statement and testify on the information and clarification sought. As a UNESCO official, Witness P-0151 is enjoying immunity from legal process. UNESCO waived his immunity from legal process as evidenced by the redacted correspondence attached as Annex B to this Request.
5. This waiver was, however, subject to certain conditions aimed *inter alia* at protecting confidential information of UNESCO, its employees, and innocent third parties.
6. Upon reception of this response, the Prosecution interviewed P-0151 and took a statement from him. UNESCO then requested that certain parts of the statement be redacted so as to protect confidential information and the security of P-0151 and other persons. Those redactions were almost entirely applied *proprio motu* by the Prosecution pursuant to the decision of the Pre-Trial Chamber permitting redactions generally.¹ A further

¹ ICC-01/12-01/15-9
ICC-01/12-01/15

redaction to protect the security of Witness P-0151 was specifically requested by the Prosecution and authorised by the Pre-Trial Chamber.²

7. Consequently, a redacted statement³ was disclosed to the Defence as incriminatory evidence on 17 December 2015 and listed on the *“Inventaire des preuves que l’Accusation entend produire à l’audience de confirmation des charges.”*⁴

Prosecution’s submissions

8. By way of this Request, the Prosecution seeks an order from the Chamber giving effect to the conditions of UNESCO regarding the anticipated testimony of Witness P-0151.

The requested conditions

9. In view of his former positions at UNESCO and his current roles as Assistant Director-General for Culture at UNESCO and Director of the UNESCO World Heritage Centre, P-0151 enjoyed and continues to enjoy the privileges and immunities set out in article VI of the Convention on the Privileges and Immunities of the Specialized Agencies of the United

² ICC-01/12-01/15-53-Red

³ MLI-OTP-0029-0843

⁴ ICC-01/12-01/15-67-Conf-AnxA, (MLI-OTP-0029-0843-R01).

Nations⁵ (“Convention”). Pursuant to article VI, section 19(a) of the Convention, these privileges and immunities include immunity from legal process of every kind in respect of words spoken or written and acts performed by P-0151 in his aforementioned capacities.

10. Article VI, section 22 of the Convention provides for the waiver of the immunity in order not to impede the course of justice and where it would not prejudice the interests of a specialised agency. Consequently, UNESCO has waived the immunity from legal process that is enjoyed by P-0151 so as to allow him to provide expert testimony at the Court (see Annex B).

11. The waiver of UNESCO is conditional upon P-0151 testifying regarding solely the following topics:

- the procedures, legal framework, effects and consequences of the inscription of sites on the UNESCO World Heritage List; and
- the implementation of such procedures and legal framework to UNESCO World Heritage Sites in the city of Timbuktu (see Annex B).

⁵ The Convention was adopted by the General Assembly of the United Nations on 21 November 1947 and accepted together with Annex IV by the General Conference of UNESCO effective 7 February 1947 (See Annex B).

12. The waiver also specifically prevents P-0151 from testifying regarding the following matters:

- statement, qualification of or information relating to the specific facts or any alleged crimes in this context;
- identification of suspects or accused persons or their involvement in such alleged crimes;
- 
- information that would breach an obligation of confidentiality which it is incumbent upon UNESCO and P-0151, in his aforementioned capacity, to respect; and
- release of confidential documents or any other confidential or sensitive information of UNESCO which is subject to a separate authorisation by UNESCO (see Annex B).

The necessity of these conditions and lack of prejudice for Defence

13. The requested conditions are reasonable and necessary. They aim at limiting the exposure of UNESCO and in particular protect confidential information , the witness, other UNESCO

employees, and innocent third parties who might be placed at risk as a result of testimony by a UNESCO official in this case.

14. [Redacted text block]

- [Redacted text block]
- [Redacted text block]
- [Redacted text block]
- [Redacted text block]

⁶ [Redacted footnote text]

[Redacted footnote text]

- [REDACTED]
- [REDACTED]⁹
- [REDACTED]¹⁰ [REDACTED]
- [REDACTED]
- [REDACTED]¹¹
- [REDACTED]
- [REDACTED]¹²

15. The Prosecution further submits that the aforementioned conditions will not affect the substance of the evidence of Witness P-0151 or have any negative impact on the defence preparation. As can be seen from the statement of P-0151,¹³ the witness gave essentially information on international legal instruments protecting cultural sites, the process of listing a property on the World Heritage List, consequences and effects of enlisting a property as World Heritage, conditions for enlisting a property on the World Heritage in Danger List and on the World Heritage status of the sites in Timbuktu.

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¹

16. As can be also seen from Witness P-0151's statement, P-0151 has no direct knowledge of the circumstances in which the attack occurred:

- He was not present in Timbuktu when the town was occupied or when the cultural sites in Timbuktu were being destroyed;
- As such, his evidence on the manner the sites were destroyed and the persons responsible would, at best, be hearsay if not irrelevant.

17. As a matter of fact, Witness P-0151's evidence is that of an institutional expert and goes to the relevance of the cultural and World Heritage significance of the sites of Timbuktu. His evidence is therefore essentially relevant for sentencing. In that regard, bearing in mind that the historical and religious nature of the attacked buildings/monuments is not in dispute, the imposition of the aforementioned conditions will not prevent the Defence from cross-examining P-0151 on issues that are relevant, probative and necessary for a fair evaluation of his testimony in accordance with article 69(4) of the Rome Statute.

18. Last, the Defence will also have the opportunity to put questions on the attacked mausoleums to the other two witnesses (Witnesses P-0182 and P-

0431¹⁴), and rely for its submissions on all the evidence submitted to the Chamber, including the interview of the Accused (P-0150).¹⁵

Relief requested

19. The Prosecution requests an order giving effect to the aforementioned conditions attached by UNESCO to its waiver of immunity for P-0151, as listed above and referenced in Annex B.

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



Fatou Bensouda, Prosecutor

Dated this 1st day of June 2016

At The Hague, The Netherlands

¹⁴ [REDACTED]

¹⁵ See for instance, the interview of the Accused, MLI-OTP-0033-4645, pp. 4660-4661, 1.519-537.