

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 26 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*

Public

**Decision on Prosecution request for an order giving effect to conditions to
testimony of P-151**

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

Registrar

Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Others
UNESCO

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 request for an order giving effect to conditions to testimony of P-151', in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, having regard to Articles 64(6)(c) and 64(7) of the Rome Statute ('Statute') and Rule 88 of the Rules of Procedure and Evidence.

1. On 1 June 2016, the Office of the Prosecutor ('Prosecution') filed a request seeking an order giving effect to conditions to the testimony of P-151, a UNESCO staff member ('Initial Request').¹ Specifically, the Prosecution requests that P-151's testimony be limited to certain topics, namely the procedures, legal frameworks, effects and consequences of the inscription of sites on the UNESCO World Heritage List and their implementation.² The Prosecution submits that these conditions will not affect the substance of P-151's testimony, as he is not in a position to testify on any other topics.³ The Prosecution further avers that these measures are reasonable and necessary to limit the exposure of UNESCO and to protect the witness and any other innocent third parties.⁴
2. On 6 July 2016, upon receipt of a letter from UNESCO seeking the imposition of an additional condition, the Prosecution filed an addendum to the Request, seeking an order granting an additional condition ('Addendum', together with the Initial Request 'Request').⁵ The Prosecution requests that a representative of UNESCO be allowed to (i) attend the hearing; (ii) consult with/be consulted by the

¹ Prosecution Request for an order giving effect to conditions in relation to the testimony of Witness MLI-OTP-P-0151, ICC-01/12-01/15-95-Conf, with two confidential annexes.

² Initial Request, ICC-01/12-01/15-95-Conf, paras 11-12.

³ Initial Request, ICC-01/12-01/15-95-Conf, paras 15-16.

⁴ Initial Request, ICC-01/12-01/15-95-Conf, paras 13-14.

⁵ 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, ICC-01/12-01/15-125-Conf with confidential annex A, ICC-01/12-01/15-125-Conf, para. 9.

witness, with leave of the Chamber; and (iii) make submissions, with leave of the Chamber.⁶

3. Neither the Legal Representative of Victims nor the defence team for Mr Al Mahdi opposed the Request.⁷
4. The Single Judge notes that the conditions sought in the Request are unopposed and therefore grants them. Accordingly, the Chamber decides that the testimony of P-151 shall be limited to the procedures, legal frameworks, effects and consequences of the inscription of sites on the UNESCO World Heritage List and their implementation.⁸ Further, a representative of UNESCO is authorised to attend the hearing and to consult with/be consulted by the witness and make submissions, with leave of the Chamber. The Single Judge considers that this leave requirement is particularly important in order to safeguard against the same risks which militate against witness preparation in the present case.⁹ In this regard, the Single Judge stresses that any intervention of the UNESCO representative will be subject to the authorisation of the Chamber at each point he/she seeks to intervene. The Chamber will therefore not allow the representative to interrupt the witness or to communicate directly with him in the courtroom, without prior leave of the Chamber.

⁶ Addendum, ICC-01/12-01/15-125-Conf, para. 9.

⁷ It is noted in this regard that the Chamber had shortened the deadline for response to 13 July 2016 (Email from Chamber to parties and participants on 7 July 2016 at 11:14).

⁸ None of the topics referred to in paragraph 12 of the Initial Request shall be touched upon during P-151's testimony.

⁹ See Directions on the Conduct of the Proceedings, 22 July 2016, ICC-01/12-01/15-136, para. 5.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

GRANTS the Request.

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

A handwritten signature in cursive script, reading "Raul C. Pangalangan", is written over a solid horizontal line.

Judge Raul C. Pangalangan, Single Judge

Dated 26 July 2016

At The Hague, The Netherlands