

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v. - :

SEALED INDICTMENT

MALAMINE OUEDRAOGO,

14 Cr. 770

Defendant. :

- - - - - x

COUNT ONE

(Wire Fraud)

The Grand Jury charges:

Relevant Entities

1. The United States Agency for International Development ("USAID") is an independent federal agency that receives foreign policy guidance from the Secretary of State of the United States. USAID provides loans, grants, and technical assistance in an effort to assist countries with global health issues, natural disasters, poverty, and good governance.

2. The Global Fund to Fight AIDS, Tuberculosis and Malaria (the "Global Fund") is an international financing organization based in Geneva, Switzerland that aims to attract and disburse resources to prevent and treat HIV and AIDS, tuberculosis and malaria. The Global Fund regularly receives substantial funding from USAID.

3. The World Health Organization ("WHO") is a specialized agency of the United Nations that is concerned with international public health. The World Health Organization Pesticide Evaluation Scheme ("WHOPES") is a program within the WHO which promotes and coordinates the testing and evaluation of pesticides for public health. WHOPES also conducts testing and review of long-lasting insecticidal mosquito nets ("LLINs") used for the prevention of malaria, and issues recommendations of particular LLINs that meet certain criteria and requirements set forth by the WHO.

4. The Programme D'Appui Au Développement Sanitaire ("PADS"), or Program for Health Development, is an entity within the Ministry of Health of Burkina Faso which receives and distributes funds contributed by donor countries and other organizations for health-related causes within the West African country of Burkina Faso. Among these health-related causes is the prevention and treatment of malaria, which is a leading cause of morbidity and mortality in Burkina Faso.

5. MALAMINE OUEDRAOGO, the defendant, is the sole partner and employee of a Burkina Faso-based corporation that purports to be in the business of telecommunications ("Entity-1"). Entity-2 is a corporation based in Burkina Faso, which was

created in 2005, and purports to be in the real estate business. OUEDRAOGO is also a partner in Entity-2.

Long-Lasting Insecticidal Mosquito Nets and
The Prevention of Malaria

6. Malaria is a mosquito-borne infectious disease. The risk of malaria can be reduced by preventing mosquito bites through, among other things, the use of mosquito nets. Mosquito nets are nets, constructed from polyester or other material, with mesh fine enough to exclude insects without unacceptably impeding visibility or the flow of air.

7. Mosquito nets are substantially more effective if treated with an appropriate insecticide. Nets can develop small holes over time and, absent treatment with insecticide, mosquitos can easily find their way through holes in a net and cause disease. Mosquito nets not treated with insecticide therefore lose much of their effectiveness once holes develop. Moreover, even without holes, nets not treated with insecticide are less effective because they fail to repel or kill mosquitos. Mosquito nets treated with insecticide, however, remain effective even if some holes develop because the insecticide on the net continues to kill or repel mosquitos despite the existence of some holes. Untreated nets therefore pose a higher risk of exposure to mosquitos, and an increased health risk for

people using them. Mosquito nets treated with insecticide, also known as long-lasting insecticidal mosquito nets, or LLINs, are substantially more costly to produce than untreated mosquito nets.

8. Because of the importance of LLINs in preventing the spread of malaria, WHOPES conducts and coordinates extensive evaluation and testing of mosquito nets to ensure that the nets are as effective as possible in preventing the spread of malaria. After evaluation and testing, WHOPES issues recommendations of particular mosquito nets found to be effective in preventing the spread of malaria. As a result, Global Fund and USAID will only fund the purchase of LLINs that are recommended by, and conform to the standards of, WHOPES.

Overview of OUEDRAOGO's Fraudulent Scheme

9. MALAMINE OUEDRAOGO, the defendant, obtained more than \$12 million in funding from the Global Fund (through PADS) to purchase, and provide to the people of Burkina Faso, more than 2 million WHOPES-certified mosquito nets made by a particular WHOPES-recommended manufacturer in Thailand (the "WHOPES-Recommended Manufacturer") and treated with long-term insecticides. Contrary to the express, written promises that OUEDRAOGO made in securing that funding, however, nearly all of the mosquito nets he purchased and provided to the people of

Burkina Faso were counterfeit, not manufactured by the WHOPES-Recommended Manufacturer, not certified by WHOPES, and not properly treated with insecticide.

10. Instead of purchasing WHOPES-recommended mosquito nets, as he had promised to do, MALAMINE OUEDRAOGO, the defendant, knowingly purchased counterfeit nets that were manufactured by a non WHOPES-recommended manufacturer in China and fraudulently labeled and packaged to look like the nets produced by the WHOPES-Recommended Manufacturer. In fact, however, the nets OUEDAROGO purchased and then distributed in Burkina Faso contained little or no insecticide at all.

11. MALAMINE OUEDRAOGO, the defendant, purchased the counterfeit mosquito nets from a manufacturer in China (the "Chinese Manufacturer") for a small fraction of the price he knew it would have cost to purchase properly treated nets that satisfied WHOPES standards. Thus, OUEDRAOGO fraudulently obtained millions of dollars in illegal profits by substituting the counterfeit nets for the WHOPES-recommended nets he was obligated to, and had promised to, provide.

The Bid Request and OUEDRAOGO's Offer to
Supply WHOPES-Recommended Nets

12. In or about October 2009, as part of an effort to prevent the spread of malaria, PADS solicited bids for

approximately 6,600,000 LLINs to be distributed throughout thirteen regions of Burkina Faso (the "Bid Request"). Funding for the LLINs was provided by the Global Fund which, in turn, received its funding from USAID, among other sources.

13. The Bid Request set forth a variety of requirements for bidders to satisfy. For example, a bidder that was not itself a manufacturer of LLINs was required to submit a letter of authorization from the manufacturer authorizing the bidder to offer its products and certifying that the LLINs conformed to the specifications set forth in the Bid Request. The Bid Request also required each offer to include a WHOPES certification, stating that the LLINs to be supplied had been tested and recommended by WHOPES. In addition, the bidder was required to submit a sample of the LLINs it was offering to provide.

14. In or about December 2009, MALAMINE OUEDRAOGO, the defendant, submitted to PADS an offer to provide the 6,600,000 LLINs sought in the Bid Request (the "Offer"). The Offer was made by OUEDRAOGO on behalf of a collaboration between Entity-1 and Entity-2 (the "Group"). As part of the Offer, OUEDRAOGO agreed to provide and deliver LLINs in accordance with the Bid Request. Among other things, OUEDRAOGO represented that the Group would provide a particular brand of LLINs, which was

manufactured exclusively by the WHOPES-Recommended Manufacturer and was one of the few brands of LLINs recommended by WHOPES at the time of the Bid Request (the "WHOPES-Recommended LLIN"). OUEDRAOGO further agreed that, consistent with the Bid Request, each of the LLINs provided would contain about 80 milligrams per square meter of the insecticide deltamethrin -- the precise insecticide and quantity contained in the WHOPES-Recommended LLIN.

15. Consistent with the requirements set forth in the Bid Request, MALAMINE OUEDRAOGO, the defendant, also included as part of the Offer various documents issued by the WHOPES-Recommended Manufacturer, including: a "certificate of commitment to supply," certifying the WHOPES-Recommended Manufacturer's commitment to manufacture and provide LLINs to the Group if the Offer was accepted; an "authorization of the manufacturer" stating that the WHOPES-Recommended Manufacturer authorized the Group to offer its products in connection with the Bid Request and confirming its full guarantee and warranty for the LLINs in accordance with the requirements set forth in the Bid Request; and a "certificate of origin" issued by the WHOPES-Recommended Manufacturer certifying that the LLINs proposed in the Offer were products of Thai origin and were manufactured at the company's factories in Thailand.

16. MALAMINE OUEDRAOGO, the defendant, also included as part of the Offer a letter issued by the WHO stating that the WHO had issued a recommendation for the use of the WHOPES-Recommended LLIN in the prevention and control of malaria.

17. Prior to submitting the Offer, MALAMINE OUEDRAOGO, the defendant, obtained three samples of the WHOPES-Recommended LLINs from the WHOPES-Recommended Manufacturer, and included those three samples with the Offer.

OUEDRAOGO's Purchase and Provision of Counterfeit Nets

18. In or about February 2010, PADS awarded the Group the right to supply a total of 2,023,100 LLINs to four regions of Burkina Faso. In or about April 2010, MALAMINE OUEDRAOGO, the defendant, signed, on behalf of the Group, four contracts with PADS, corresponding to the four regions of Burkina Faso for which the Group had been awarded the right to provide LLINs (the "Contracts"). Each of the Contracts stated, among other things, that the technical specifications and administrative clauses set forth in the Offer, which included the particular LLINs to be provided, were an integral part of the contract. Moreover, each of the Contracts expressly stated that the place of origin of the LLINs would be Thailand.

19. Contrary to the representations that MALAMINE OUEDRAOGO, the defendant, had made as part of the Offer and in

the Contracts, he in fact purchased only a small fraction of the LLINs from the WHOPEs-Recommended Manufacturer, and instead, purchased the vast majority of the LLINs from a counterfeit manufacturer in China. Although OUEDRAOGO was awarded contracts to supply more than two million LLINs, OUEDRAOGO ordered only about 50,000 LLINs - less than 2.5% of the total number OUEDRAOGO had promised to provide - from the WHOPEs-Recommended Manufacturer.

20. Instead, between in or about April 2010 and October 2010, MALAMINE OUEDRAOGO, the defendant, purchased almost two million LLINs from a manufacturer in China, knowing that they were counterfeit and not WHOPEs approved, and then delivered those nets to government health facilities in the four regions of Burkina Faso for which the Group had been awarded Contracts. The nets OUEDRAOGO purchased from China were packaged in bags designed to resemble the packaging used by the WHOPEs-Recommended Manufacturer, and bore the brand name and logo of the WHOPEs-Recommended LLINs. Each of the mosquito nets also contained a counterfeit label with the brand name of the WHOPEs-Recommended LLIN and the words "Made in Thailand."

21. In truth and in fact, and as OUEDRAOGO well knew, the nets he purchased were manufactured in, and shipped from, China, and neither the Chinese Manufacturer nor the nets it

produced were WHOPES certified. In fact, the nets contained little or no insecticide at all.

22. Nevertheless, between in or about August 2010 and November 2010, MALAMINE OUEDRAOGO, the defendant, signed and submitted to PADS final invoices corresponding to each of the four contracts awarded to the Group, requesting payment for provision of the LLINs specified in the Offer. OUEDRAOGO falsely certified in at least three of these invoices that the place of origin of the LLINs provided was Thailand. In total, OUEDRAOGO received more than \$12 million from PADS for supplying the LLINs.

23. MALAMINE OUEDRAOGO, the defendant, purchased the counterfeit LLINs from the Chinese Manufacturer for a fraction of the price it would have cost him to obtain the WHOPES-certified LLINs from the WHOPES-Recommended Manufacturer. As OUEDRAOGO well knew, the price of a legitimate, WHOPES-certified LLIN was in excess of \$5.00 per net; yet OUEDRAOGO was able to purchase the counterfeit nets from the Chinese Manufacturer for as little as \$0.50 per net.

STATUTORY ALLEGATION

24. From at least in or about 2009 up to and including in or about 2010, in Burkina Faso and elsewhere, and in an offense begun outside the jurisdiction of any particular

State or district of the United States, MALAMINE OUEDRAOGO, the defendant, who will be first brought to and arrested in the Southern District of New York and whose point of entry into the United States will be the Southern District of New York, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, OUEDRAOGO engaged in a fraudulent scheme to obtain payment for counterfeit mosquito nets.

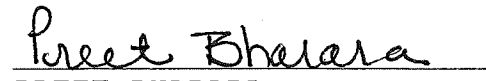
(Title 18, United States Code, Sections 1343 & 3238.)

FORFEITURE ALLEGATION

25. As a result of committing the wire fraud offense alleged in Count One of this Indictment, MALAMINE OUEDRAOGO, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, any property, real or personal, which constitutes or is derived from proceeds traceable to such offense, including, but not limited to at

least \$12,233,700 in United States currency, in that such sum in aggregate is property representing the amount of proceeds obtained by OUEDRAOGO and others as a result of the offenses.


FOREPERSON


PREET BHARARA
United States Attorney

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(Title 18, United States Code,
Sections 1343, 3238 & 2)

PREET BHARARA
United States Attorney.

A TRUE BILL

For person.