



Original: English

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

Date of the original: **2 December 2015**

Date of the public redacted version:

**8 December 2015**

**PRE-TRIAL CHAMBER I**

**Before: Judge Cuno Tarfusser, Single Judge**

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

**Public redacted version**

**Decision on the Prosecutor's requests for redactions**

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

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart

**Counsel for the Defence**

Mohamed Aouini

**Legal Representatives of the Victims**

**Legal Representatives of the 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**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Judge Cuno Tarfusser**, Single Judge exercising the functions of the Chamber, issues this decision on the Prosecutor's "*Demande d'expurgation de certains passages dans la déclaration du témoin à charge P-0151*" ("Prosecutor's First Application")<sup>1</sup> and on the Prosecutor's "*Demande d'expurgation de l'identité du témoin à charge P-0114*" ("Prosecutor's Second Application")<sup>2</sup>, both dated 18 November 2015 and both requesting authorisation to redact information from certain material prior to its disclosure to the defence. On 30 November 2015, following the filing of confidential redacted versions of both the First<sup>3</sup> and the Second<sup>4</sup> Applications, the Defence filed its "*Observations de la Défense concernant la 'Demande d'expurgation de l'identité du témoin à charge P-0114' présentée par le Bureau du Procureur le 20 novembre 2015*" ("Defence Observations")<sup>5</sup>.

### **Single Judge's determinations**

1. The Single Judge notes articles 54, 57(3)(c), 61, 67 and 68 of the Statute, rules 15, 76, 77, 81(2), 81(4) and 121 of the Rules of Procedure and Evidence ("Rules") and recalls that: (i) in accordance with the well-established case-law of the Court, the authorisation of non-disclosure of information shall be viewed as an exception, the overriding principle being that of full disclosure; (ii) the Court has also an obligation not to jeopardise the security of witnesses and other persons at risk ; (iii) accordingly, decisions on non-disclosure shall be taken on a case-by-case basis, in accordance with the principles established by the Appeals Chamber.

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<sup>1</sup> ICC-01/12-01/15-44-Conf-Exp and Conf-Exp Annexes A and B; a confidential redacted and a public redacted version of the application have also been filed in the record.

<sup>2</sup> ICC-01/12-01/15-45-Conf-Exp and Conf-Exp Annexes A, B and C and confidential annex D; a confidential redacted and a public redacted version of the application have also been filed in the record.

<sup>3</sup> ICC-01/12-01/15-44-Conf-Red.

<sup>4</sup> ICC-01/12-01/15-45-Conf-Red.

<sup>5</sup> ICC-01/12-01/15-49-Conf.

### **The Prosecutor's First Application**

2. In her First Application, the Prosecutor seeks authorisation to redact some passages from Witness P-0151's statement before disclosing it to the Defence.

3. The Single Judge notes that – as acknowledged by the Prosecutor - the reasons underlying all but one of the requests for authorisation of redaction are similar in nature to those underlying the categories of information the redaction of which was authorised at the outset of the proceedings in a general way. As such, the Prosecutor is entitled to apply those redactions without the need for specific authorisation from the Chamber.

4. The one request for redaction which, in the view of the Prosecutor, would require a specific authorisation is premised on the submission that disclosure of the information would result in the security of the Witness being put at risk. The Single Judge notes that, in light of the relevant circumstances (including, most significantly, the current security situation in the field as well as information provided to the Chamber on an *ex parte* basis), the redaction appears necessary and justified pursuant to rule 81(4) of the Rules. While required to avoid that the witness be endangered by the disclosure of the redacted information, the protective measure is so limited in scope and content as not to be prejudicial to or inconsistent with the suspect's right to a fair and impartial trial.

### **The Prosecutor's Second Application**

5. In her Second Application, the Prosecutor requests authorisation to redact "*toute information identifiante et l'identité du témoin P-0114*", a witness she intends to rely on for the purposes of the confirmation of the charges, as

well as not to disclose at this stage some additional material related to P-0114's statement.

6. The Single Judge notes that, as indicated by the Appeals Chamber, non-disclosure of the identity of a witness is a protective measure which might be warranted at the pre-trial stage of the proceedings, provided that all relevant factors are weighted. Among those factors, specific attention should be given to the following: the personal situation of the witness; the extent to which alternative protective measures might be available to him or her; the security conditions of the area where the witness or his or her family reside; the actual existence of threats to the witness because of the involvement in the activities of the Court; the fact that the witness has consented or not to the disclosure of his or her identity.

7. The Single Judge is satisfied that the requested measure is necessary and justified. As submitted by the Prosecutor, the personal, social and professional circumstances of P-0114 (as detailed in the Prosecutor's Second Application and in the relevant supporting material), assessed in light of the increasingly deteriorating security situation overall in Mali, including in the area where the Witness and the Witness's family reside, are such as to create an appreciable risk that either the Witness and/or the Witness's family might become the target of acts of retaliation, were P-0114's involvement in the activities of the Court be known. Recent events in the area show that individuals perceived as having cooperated with Western States or international organisations have indeed become targets of attacks, including of a murderous nature.

8. The Single Judge notes that no less intrusive measure apt to neutralise that risk can be feasibly envisaged at this stage. Far from neutralising the risk outlined above, the adoption of local security measures *ad personam* would

rather result in drawing attention to the Witness and hence in heightening such risk. Furthermore [REDACTED].

9. The Single Judge is not persuaded that the nature and extent of the risks which might concretely materialise, were P-0114's identity to be disclosed, are such that they are suitable to be countered by exclusively relying on the confidentiality obligations of the members of the Defence team, as vital as those obligations are.

10. The Single Judge is also satisfied that the prejudice caused to the Defence by the redaction of the identity of P-0114 is limited, particularly in light of the following factors: (i) the [REDACTED] nature of the information provided to the Prosecutor by this Witness [REDACTED]; (ii) all the information provided to the Prosecutor by this Witness (and hence the entire substance of the statement) will be accessible to the Defence; (iii) a sizable amount of this information is also to be found in the statements provided to the Prosecutor by other witnesses, whose identity has been or will be disclosed to the Defence. Accordingly, the Single Judge is satisfied that the requested protected measure does not adversely affect the Defence's ability to make use of P-0114's statement for the purposes of the confirmation hearing and is therefore is not prejudicial to or inconsistent with the rights of the suspect to a fair trial.

11. Finally, the Single Judge is also satisfied that the disclosure of the documents included in Annex B to the Prosecutor's Second Application, in light of their nature and content, would make it possible for the Defence to establish the identity of Witness P-0114, thereby defeating the purpose of the requested protective measure. Accordingly, the Prosecutor is authorised not to disclose any of those documents.

**FOR THESE REASONS, THE SINGLE JUDGE**

**GRANTS** the Prosecutor's First Application;

**GRANTS** the Prosecutor's Second Application.

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

\_\_\_\_\_ [signed] \_\_\_\_\_

**Judge Cuno Tarfusser**  
**Single Judge**

Dated this Wednesday 2 December 2015

At The Hague, The Netherlands