

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/12-01/18**

Date: **14 September 2018**

Date of submission:  
**16 November 2018**

**PRE-TRIAL CHAMBER I**

**Before: Judge Péter Kovács, Single Judge**

**SITUATION IN THE REPUBLIC OF MALI**

**IN THE CASE OF**

***THE PROSECUTOR v. AL HASSAN AG ABDOUL AZIZ AG MOHAMED  
AG MAHMOUD***

**Public**

**With confidential, *EX PARTE*, Annexes A and B  
only available to the Prosecution and the Victims and Witnesses Unit**

**Public redacted version of the “Prosecution motion for authorisation to  
disclose a redacted statement of Witness MLI-OTP-P-0100, whose  
evidence will not be relied upon at the confirmation hearing”,  
14 September 2018, ICC-01/12-01/18-124-Conf-Exp**

**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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**Legal Representatives of Victims**

**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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Mr Peter Lewis

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**Victims and Witnesses Unit**

Mr Nigel Verrill

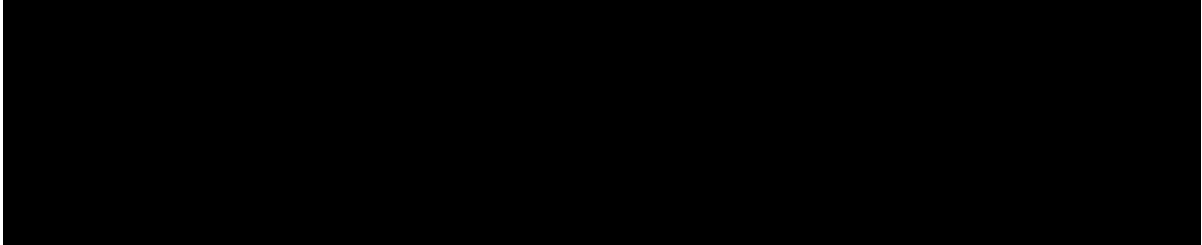
**Detention Section**

**Victims Participation and Reparations Other  
Section**

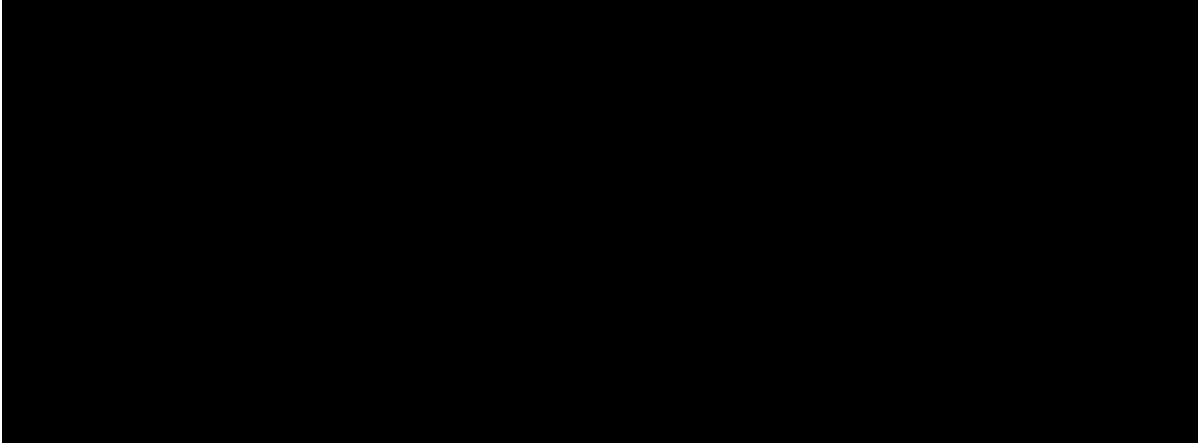
## Introduction

1. The Prosecution seeks authorisation of the Single Judge to redact identifying information from the statement of Prosecution Witness MLI-OTP-P-0100.

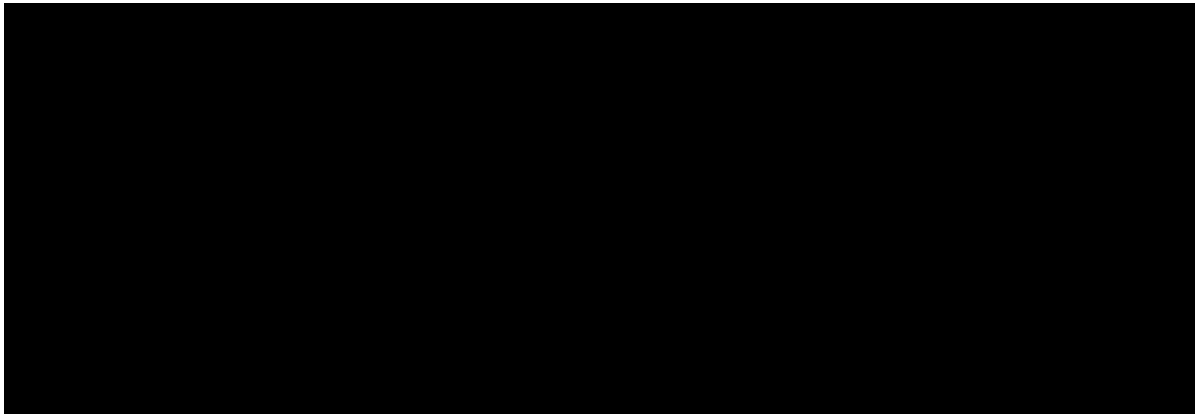
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<sup>1</sup>

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5. [REDACTED]  
[REDACTED] P-0100 has also been interviewed by ICC investigators in the presence of the [REDACTED] [REDACTED]
6. The Prosecution will not rely on P-0100's evidence at the article 61 confirmation hearing. P-0100's statement will however be disclosed to the Defence under rule 77 of the Rules of Procedure and Evidence ("Rules").
7. In that context, the Prosecution wishes to minimise any security threats to P-0100 [REDACTED] that could arise should her identity be disclosed to the Defence.
8. [REDACTED]
9. [REDACTED]
10. Overall, considering that P-0100's evidence will not be relied upon at this stage, the limited scope of the confirmation hearing, the increased risk to her in case she [REDACTED] should something happen to her, the redaction of identifying information from her statement is the most appropriate way to protect her safety under the circumstances.

### Confidentiality

11. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this motion and Annexes A to B are filed *ex parte*, available only to the Prosecution and Victims and Witnesses Unit (“VWU”). The motion discusses security concerns specific to P-0100. The annexes contain identifying information.

12. Annex A contains [REDACTED] interview with proposed redactions.<sup>3</sup>

13. Annex B contains [REDACTED]  
[REDACTED].<sup>4</sup>

14. The Prosecution will simultaneously file a confidential redacted version of the present motion.

### Background

15. On 4 April 2018, AL Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“AL HASSAN”) made his initial appearance before the Court.

16. The Prosecution has since been reviewing the evidence in its possession for possible disclosure to the Defence. During this review the Prosecution has identified a number of witnesses, including P-0100, whose evidence it is obligated to disclose under rule 77 of the Rules.

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<sup>3</sup> [REDACTED]

<sup>4</sup> [REDACTED]

### Applicable Law

17. The Prosecution recalls and reproduces by reference its submissions on the applicable law in a prior motion and this Chamber's decision resolving the said motion.<sup>5</sup>

### Submissions

18. The Prosecution submits that withholding P-0100's identity and other identifying information from her [REDACTED] statement to the Prosecution [REDACTED] [REDACTED] is necessary and appropriate under rules 81(4) and 81(2) of the Rules.

#### *A. Information on Prosecution Witness P-0100*

19. [REDACTED]

[REDACTED]<sup>6</sup> [REDACTED]

[REDACTED]

[REDACTED]<sup>7</sup> [REDACTED]

[REDACTED]<sup>8</sup> [REDACTED]<sup>9</sup>

[REDACTED]

[REDACTED]<sup>10</sup> [REDACTED]

[REDACTED]

<sup>5</sup> ICC-01/12-01/15-48-Conf-Exp, para. 12-26, 55; ICC-01/12-01/18-88-Conf-Exp, particularly para. 15-17.

<sup>6</sup> [REDACTED]

[REDACTED]

<sup>8</sup> [REDACTED]

<sup>9</sup> [REDACTED]

<sup>1</sup> [REDACTED]; P-0100 statement, [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]<sup>11</sup>
20. [REDACTED]
- [REDACTED]
- [REDACTED]<sup>12</sup> [REDACTED]
- [REDACTED]<sup>13</sup>
21. [REDACTED]
- [REDACTED]<sup>14</sup> [REDACTED]
- [REDACTED]
- [REDACTED]<sup>15</sup> [REDACTED]
- [REDACTED] the armed groups seized Timbuktu city.<sup>16</sup> P-0100 heard that MNLA members were the first to enter the city and engaged in looting, rape, or killings leading to the population leaving the area.<sup>17</sup> In contrast, the jihadists who subsequently arrived, did not torture or rape anyone to P-0100's knowledge. They attempted to bring security and subsequently applied Islamist laws.<sup>18</sup>
22. [REDACTED]
- [REDACTED]<sup>9</sup> [REDACTED]

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<sup>11</sup> [REDACTED]; P-0100 statement, [REDACTED]

<sup>12</sup> [REDACTED]

<sup>13</sup> [REDACTED]

[REDACTED] See P-0100 statement, [REDACTED]

<sup>15</sup> [REDACTED]

<sup>16</sup> [REDACTED]

<sup>17</sup> [REDACTED]

<sup>18</sup> [REDACTED]

<sup>19</sup> [REDACTED]

[REDACTED]<sup>20</sup> [REDACTED]

[REDACTED]<sup>21</sup>

23. P-0100 recalled how the jihadists thereafter imposed their Islamic rules. The Islamic police's principal objective was to implement Sharia law.<sup>22</sup> They would strike anyone found smoking or women who were not completely veiled, while also collecting taxes and other fees,<sup>23</sup> prohibit women from speaking to men who were not their husband or brother and ensure they stay home.<sup>24</sup> P-0100 herself had no choice but to be completely veiled, noting that everyone knew how Mohamed Moussa was ruthless in enforcing their rules, even resorting to torture and killing.<sup>25</sup> The situation was such that women in Timbuktu disrobed to protest against the veil requirement, pointing out that they could not even eat.<sup>26</sup>

24. P-0100 also heard about the amputation of a thief, and how two couples were stoned to death in a hole in the desert outside Timbuktu.<sup>27</sup>

25. [REDACTED]

[REDACTED]<sup>28</sup> There was a prison for women. [REDACTED]

[REDACTED]<sup>29</sup> [REDACTED]<sup>30</sup> [REDACTED]

[REDACTED]

[REDACTED]<sup>31</sup>

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20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]  
 29 [REDACTED]  
 30 [REDACTED]  
 31 [REDACTED]

26. P-0100 states that [REDACTED]  
 [REDACTED]  
 [REDACTED]<sup>32</sup> [REDACTED]<sup>33</sup>

*B. Disclosure of redacted [REDACTED] P-0100's statement  
 is necessary under rule 81(4) of the Rules to protect her [REDACTED]*

*Redaction is necessary*

27. Redacting P-0100's statement of any identifying information will minimise the risk that any members of the armed groups learn, inadvertently or otherwise, of P-0100's cooperation with the Prosecution.

28. First, the risk to P-0100 [REDACTED] cannot be totally excluded. [REDACTED]  
 [REDACTED]  
 [REDACTED] In other words, while P-0100 resides [REDACTED], her cooperation with the Prosecution should be concealed to the extent possible, when considering the fact that her evidence will not be relied upon by the Prosecution at the confirmation hearing against the potential security risks for her [REDACTED]

29. Second, the Prosecution is concerned that [REDACTED]  
 [REDACTED]  
 [REDACTED], by targeting her [REDACTED]. This could happen even if her identity is concealed, but the disclosure of her identity magnifies this risk. [REDACTED]  
 [REDACTED]  
 [REDACTED]

<sup>32</sup> [REDACTED].  
<sup>33</sup> [REDACTED].

30. Third, and most importantly, the Prosecution envisages the greatest increase in the risk to P-0100's safety should [REDACTED]

[REDACTED]

[REDACTED]:

- [REDACTED];
- [REDACTED]  
[REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]
- [REDACTED]<sup>34</sup> [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]<sup>35</sup> [REDACTED].

31. In this context, the Prosecution submits that redaction of her statement (and metadata thereof) is necessary, bearing in mind that despite regular attempts to

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>34</sup> [REDACTED]

[REDACTED]

<sup>36</sup> [REDACTED]

[REDACTED]

[REDACTED]:

- [REDACTED]

32.

[REDACTED]

33.

[REDACTED]

34.

[REDACTED]

35.

[REDACTED]

- 
- - 
  -

[REDACTED]

[REDACTED]

36.

[REDACTED]

*There will be no prejudice to the Defence*

37. The Prosecution will not be relying upon P-0100's evidence during the confirmation hearing.

38. P-0100 does not mention the Suspect. [REDACTED]

[REDACTED]

39. In this context, disclosure of P-0100's redacted [REDACTED] statement [REDACTED] [REDACTED] will not prejudice the Defence.

*C. Disclosure of redacted [REDACTED] P-0100's statement is necessary under rule 81(2) of the Rules to protect the Prosecution investigation*

40. As recalled in the applicable law section, the Appeals Chamber has accepted that "further or ongoing investigations may be prejudiced if potential prosecution witnesses are interfered with in a manner that could lead to them being unable to cooperate further with the Prosecutor."<sup>37</sup>

41. As mentioned above, the Prosecution is concerned that [REDACTED]

[REDACTED]

[REDACTED], by targeting her [REDACTED]

<sup>37</sup> ICC-01/12-01/18-48-Conf-Exp, para. 55, citing *Prosecutor v. Katanga*, Judgment on Katanga's Appeal against the First Redaction Decision, ICC-01/04-01/07-476, 13 May 2008, para. 49.

[REDACTED]

42. Moreover, current or potential witnesses [REDACTED] who learn of such acts of intimidation may cease cooperating with the Prosecution out of fear that they will be subject to similar threats.

### **Relief requested**

43. The Prosecution seeks the Chamber's authorisation:

- to disclose P-0100's [REDACTED] statement in Annex A<sup>38</sup> (and metadata thereof) to the Defence with redactions of her name and other identifying information;

- [REDACTED]

44. In the event that the Single Judge were to deny this motion in whole or in part, the Prosecution requests an order [REDACTED]

[REDACTED]




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Fatou Bensouda, Prosecutor

Dated this 14<sup>th</sup> day of September 2018  
At The Hague, The Netherlands

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<sup>38</sup> [REDACTED]