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11 December 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 to F,
only available to the Prosecution and the Victims and Witnesses Unit**

**Public redacted version of the “Prosecution motion for authorisation to disclose an updated anonymous summary of information obtained from Witness MLI-OTP-P-0147, whose evidence the Prosecution will rely upon at the confirmation hearing”,
25 September 2018, ICC-01/12-01/18-134-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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Section**

Introduction

1. The Prosecution seeks authorisation to disclose an updated anonymous summary of Prosecution Witness P-0147's statement, pursuant to regulation 42(1) of the Regulations of the Court ("the Regulations").

2. [REDACTED]
[REDACTED] Pre-Trial Chamber I in the *Al Mahdi* case authorised the disclosure of an anonymous summary of P-0147's statement under rule 77 of the Rules of Procedure and Evidence ("Rules").¹ Regulation 42(1) of the Regulations therefore applies to P-0147's evidence.

3. That being said:
 - the Prosecution intends to rely on P-0147's evidence at the article 61 confirmation of charges hearing;
 - the summary of P-0147's statement submitted in the *Al Mahdi* case lacks certain facts relevant to the present case;
 - after the Prosecution obtained P-0147's statement [REDACTED], he provided additional information (recorded in three investigation notes² and one document),³ which should now be included in any summary of relevant information disclosed to the Defence.

4. [REDACTED]

5. The Prosecution therefore seeks the Single Judge's authorisation to disclose an updated anonymous summary of his evidence and to not disclose the said

¹ ICC-01/12-01/15-61, para. 2, 5-10, 12-13, granting ICC-01/12-01/15-55-Conf-Exp. [REDACTED]

² [REDACTED]

³ [REDACTED]

investigation notes and the aforementioned document, the relevant portions of which have been incorporated into the updated summary to the extent that they do not identify P-0147.

Confidentiality

6. Pursuant to regulation 23*bis*(1) of the Regulations, this motion and Annexes A to F are filed *ex parte*, available only to the Prosecution and the Victims and Witnesses Unit (“VWU”). The motion discusses security concerns specific to P-0147, [REDACTED]. In addition, most of the annexes contain identifying information.

7. More precisely:

- Annex A contains the updated anonymous summary of Witness P-0147’s evidence;⁴
- Annex B consists of the anonymous summary of Witness P-0147’s statement disclosed in the *Al Mahdi* case;⁵
- Annex C contains Witness P-0147’s witness statement;⁶
- Annex D contains [REDACTED]
[REDACTED]
[REDACTED]
- Annex E contains three investigation notes;⁷ and
- Annex F contains documents provided by Witness P-0147 in 2018.⁸

⁴ For the convenience of the Single Judge, two versions are contained in Annex A: one version with tracked changes, and a clean copy.

⁵ [REDACTED]

⁶ [REDACTED]

⁷ [REDACTED]

⁸ [REDACTED]

8. The relevant parts of two of the investigation notes in Annex E⁹ and the documents in Annex F have been incorporated into the updated summary to the extent that they do not identify P-0147. The third investigation note in Annex E¹⁰ needs to be disclosed with redactions to P-0147's name in the metadata.
9. The Prosecution will simultaneously file a confidential redacted version of the present motion.

Background

10. On 4 April 2018, Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ("AL HASSAN") made his initial appearance before the Court.
11. 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-0147, whose incriminating evidence it intends to disclose under article 61(3)(b) of the Statute and rule 76 of the Rules.

Applicable law

12. In its prior motion in the present case relating to Prosecution Witness P-0113, the Prosecution had sought authorisation to disclose an updated anonymous summary of Prosecution Witness P-0113, for whom a summary had been disclosed under rule 77 of the Rules in the *Al Mahdi* case.¹¹
13. The Single Judge authorised the disclosure of P-0113's updated anonymous summary, recalling the Appeals Chamber's finding in *Lubanga* that "*l'utilisation de résumés de déclarations de témoins et d'autres documents lors de l'audience de confirmation des charges s'agissant de témoins à charge dont l'identité n'a pas été révélée*

⁹ [REDACTED]

¹ [REDACTED].

¹¹ ICC-01/12-01/18-86-Conf-Exp, para. 16-26, 50.

à la Défense avant ladite audience est, en principe, permise par le Statut et le Règlement” and “n’est pas en soi préjudiciable ou contraire aux droits de la Défense et aux exigences d’un procès équitable et impartial”.¹²

14. Further, pursuant to regulation 42(1) of the Regulations, the Single Judge found that authorisation in the *Al Mahdi* case of the submission of an anonymous summary of P-0113’s evidence, along with the non-disclosure of associated documents, continued to apply *mutatis mutandis* in the present case “*car la situation sécuritaire au Mali continue à être précaire et le témoin doit continuer à bénéficier des mêmes mesures de protection*”.¹³

15. Lastly, the Single Judge stated that “*les modifications apportées au résumé ne constituent pas une modification de mesures de protection au sens de la norme 42-3 du Règlement de la Cour. En effet, il ne s’agit pas en l’espèce de modifier la mesure de protection en soi*” as it merely entailed “*de modifier le résumé lui-même en y ajoutant des éléments contenus dans d’autres documents*”¹⁴ so that “*le dépôt d’un résumé modifié est possible en l’espèce*”.¹⁵

Submissions

16. Similarly, with regards to P-0147, the submission of an anonymous summary of his evidence (along with the non-disclosure of associated documents) continues to apply under regulation 42(1) of the Regulations “*car la situation sécuritaire au Mali continue à être précaire*” and these protective measures for this witness must

¹² ICC-01/12-01/18-122-Conf-Exp, particularly para. 26-43. The Chamber quotes the Lubanga Appeals Judgment in para. 33, citing *Affaire Le Procureur c. Thomas Lubanga Dyilo*, “Arrêt relatif à l’appel interjeté par Thomas Lubanga Dyilo contre la décision de la Chambre préliminaire I intitulée ‘Première décision relative aux requêtes et aux requêtes modifiées aux fins d’expurgations introduites par l’Accusation en vertu de la règle 81 du Règlement de procédure et de preuve’, dated 14 December 2006, French version registered on 20 February 2007, ICC-01/04-01/06-773-Tfr (“*Lubanga Appeals Judgment*”), para. 40.

¹³ ICC-01/12-01/18-122-Conf-Exp, para. 27.

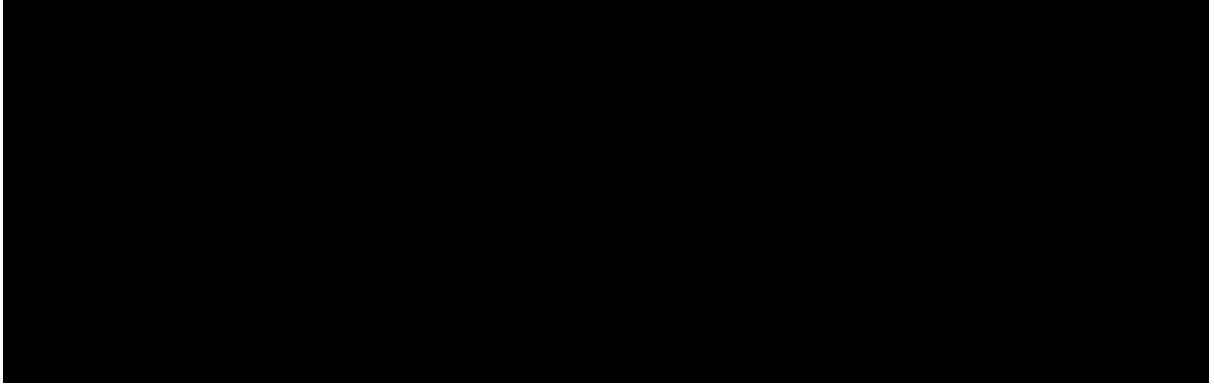
¹⁴ ICC-01/12-01/18-122-Conf-Exp, para. 42.

¹⁵ ICC-01/12-01/18-122-Conf-Exp, para. 43

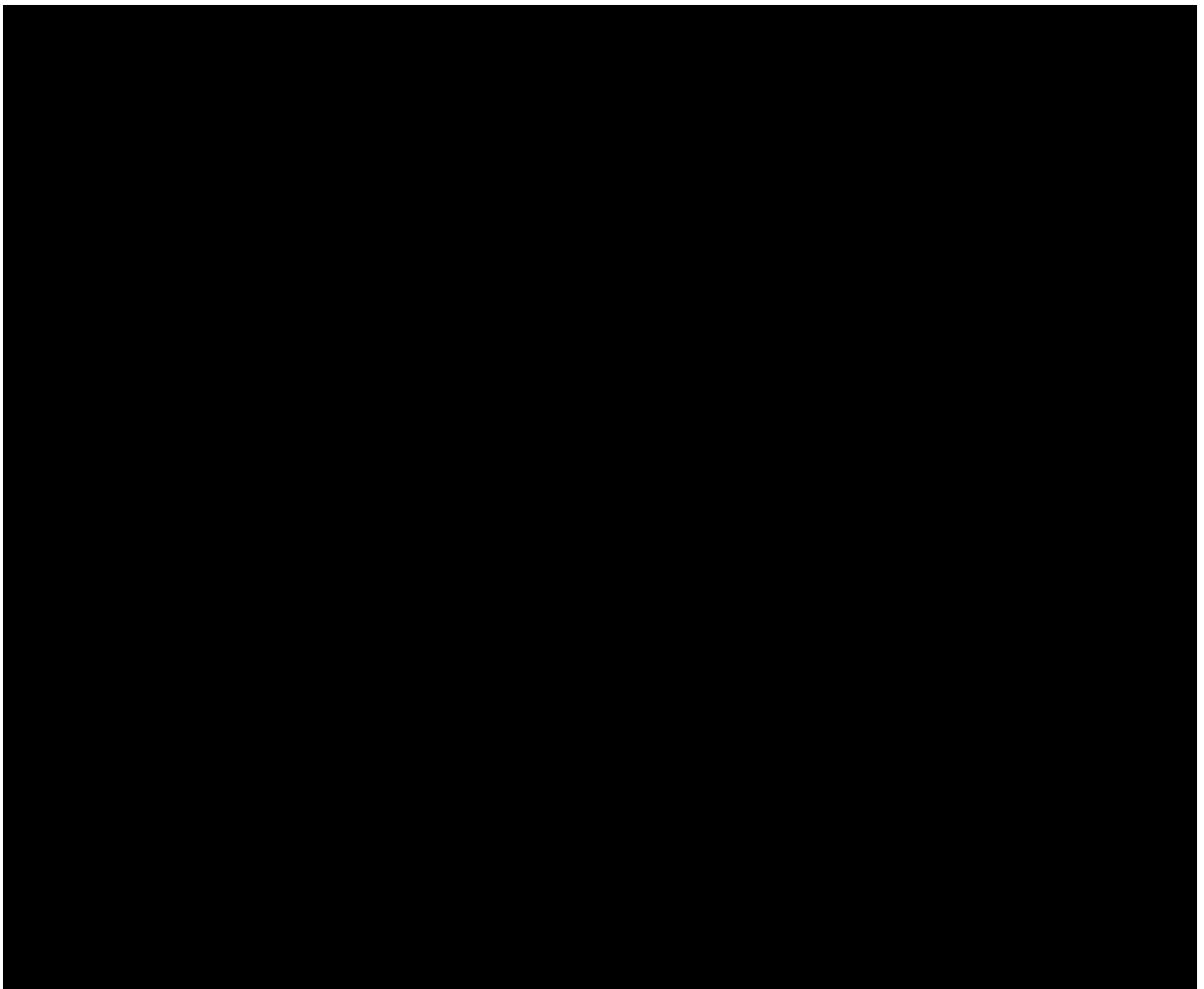
continue to apply;¹⁶ in this context, the submission of an updated anonymous summary and the non-disclosure of related documents is possible and justified.

A. Information on Prosecution Witness P-0147

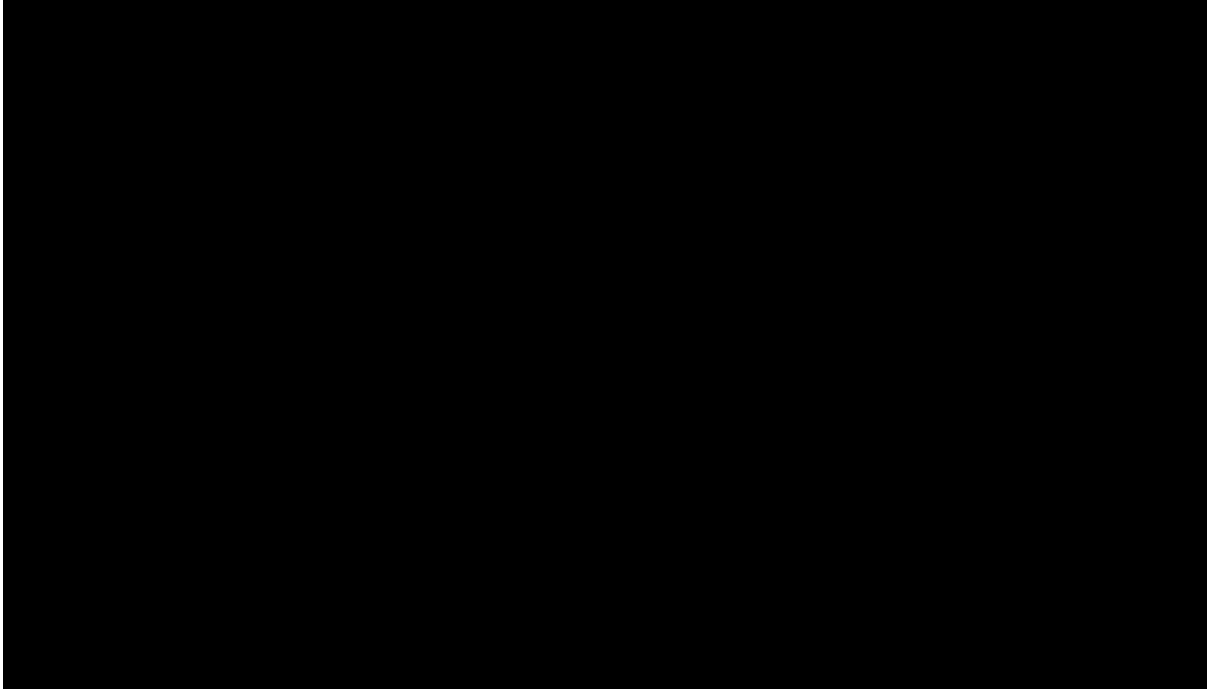
17.



18.



19.



¹⁶ Cf. ICC-01/12-01/18-122-Conf-Exp, para. 27.

- [REDACTED]
- [REDACTED]

20. P-0147 provided to the Prosecution detailed descriptions of the leaders of the armed groups and explained the role they played in town during the occupation. His statement details [REDACTED] and highlights the involvement of the armed groups [REDACTED]. He also provided information on violence against, and harassment of, women by members of the armed groups.

21. [REDACTED]

B. The summary disclosed in the Al Mahdi case needs to be updated in the present case

22. In light of the charges against AL HASSAN, the Prosecution wishes to add emphasis on additional information concerning AL HASSAN and crimes alleged in this case and therefore update the summary of P-0147's statement disclosed in the *Al Mahdi* case.

23. In addition, after the Prosecution obtained P-0147's statement [REDACTED] he provided additional evidence relevant to the present case, as contained in two of

the investigation notes in Annex E,¹⁷ and documents in Annex F.¹⁸ This additional evidence needs to be incorporated into the summary of relevant information obtained from P-0147 that is to be disclosed to the Defence.

24. The Prosecution therefore seeks the Single Judge's authorisation to submit an updated anonymous summary incorporating this information. It also requests leave to not disclose the prior summary as well as the two investigation notes (Annex E) and the documents (Annex F) mentioned above, which still contain some disclosable identifying information. The third investigation note in Annex E¹⁹ can be disclosed with redactions to P-0147's name in the metadata, subject to the Single Judge's approval.

25. The updated summary in Annex A expands upon the previous version.²⁰ It was prepared in such a way as to conceal P-0147's identity to the extent possible while allowing the added evidence to remain meaningful. Annex A contains two versions of the summary: the version with tracked changes will assist the Single Judge in identifying the changes made to the summary disclosed in the *Al Mahdi* case.

26. The Prosecution notes that the evidence P-0147 furnished is also available from other sources that have or will be disclosed to the Defence as incriminatory evidence such as:

¹⁷ [REDACTED]

¹⁸ [REDACTED]

¹⁹ [REDACTED]

²⁰ See Annex A. The modification of the prior summary is highlighted in tracked changes. [REDACTED]

- statements of other witnesses, [REDACTED]
[REDACTED] and more than 2000 pages of [REDACTED]
[REDACTED].²¹
- documents emanating from the armed groups themselves;²²
- [REDACTED].²³
- open source materials;²⁴
- [REDACTED]²⁵ [REDACTED]
[REDACTED] and
- [REDACTED]
[REDACTED].²⁶

C. There still exists an objectively risk of danger to Witness P-0147

27.

[REDACTED]

21

[REDACTED]
[REDACTED]
[REDACTED]

Such as the judgments by the Islamic Tribunal and the reports by the Islamic police [REDACTED]

[REDACTED] and many other similar documents).

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

26

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]²⁷

28. Second, the security situation in North Mali [REDACTED] remains precarious. The Prosecution refers to prior submissions for redaction²⁸ as well as [REDACTED]²⁹

[REDACTED]³⁰

29. Third, there are specific security concerns regarding Witness P-0147 [REDACTED]

[REDACTED]

[REDACTED]. *Inter alia:*

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²⁷ [REDACTED].

²⁸ ICC-01/12-01/15-48-Conf-Exp, para. 12-26; ICC-01/12-01/18-88-Conf-Exp, particularly para. 15-17.

²⁹ [REDACTED]

³⁰ [REDACTED]

30. [REDACTED]

31. Overall, the Prosecution recalls its submissions concerning P-0113³¹ and relies on the Single Judge's findings with regard to the latter. These findings similarly apply to Witness P-0147, "*car la situation sécuritaire au Mali continue à être précaire et le témoin doit continuer à bénéficier des mêmes mesures de protection*".³²

Relief requested

32. The Prosecution seeks the Single Judge's authorisation to perform the following actions at this stage of the proceedings:

- to disclose an updated anonymous summary of Witness P-0147's evidence as contained in Annex A;
- to not disclose the anonymous summary of Witness P-0147's statement previously disclosed in the *Al Mahdi* case;
- to not disclose two of the investigation notes in Annex E³³ and the documents in Annex F;³⁴ and
- to redact any identifying information from the metadata of the third investigation note in Annex E.³⁵

³¹ ICC-01/12-01/18-86-Conf-Exp, para. 41-44.

³² ICC-01/12-01/18-122-Conf-Exp, para. 27.

³³ [REDACTED]

³⁴ [REDACTED]

³⁵ [REDACTED], with any necessary *proprio motu* redactions.

33. In the event that the Single Judge were to deny this motion in whole or in part, the Prosecution requests an order permitting the Prosecution to make any necessary disclosures regarding Witness P-0147 [REDACTED]



Fatou Bensouda, Prosecutor

Dated this 25th day of September 2018
At The Hague, The Netherlands