

**Cour
Pénale
Internationale**



**International
Criminal
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Date: **7 December 2018**

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21 January 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’s Request for authorisation to
continue withholding the identity of Witness MLI-OTP-P-0146 upon whose
evidence the Prosecution will not rely at the confirmation hearing”**

7 December 2018, ICC-01/12-01/18-201-Conf-Exp

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

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Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

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Introduction

1. Witness P-0146 is [REDACTED]
[REDACTED] He is a Prosecution witness, upon whose evidence the Office of the Prosecutor (“Prosecution”) does not intend to rely at the confirmation hearing in the present case against Mr Al Hassan.
2. On 11 December 2015, in the *Al Mahdi* case, the Prosecution sought authorisation to withhold P-0146’s identity and to disclose an anonymous summary of the latter’s statement and a screening note.¹ Additionally, the Prosecution requested the disclosure of [REDACTED]
[REDACTED] (“First Prosecution Request”).² The Prosecution also sought the non-disclosure of a number of items related to Witness P-0146.³
3. On 16 December 2015, the Single Judge of Pre-Trial Chamber I granted the Prosecution Request.⁴
4. However, the 11 December 2015 Prosecution Request and the 16 December 2015 Decision do not cover an investigation note (“Investigation Note”) regarding Witness P-0146 that was registered only on [REDACTED].
5. Pursuant to regulation 42 of the Regulations of the Court (“Regulations”), the evidence of P-0146 has been disclosed in the present case under rule 77⁵ of the Rules of Procedure and Evidence (“the Rules”), applying the 16 December 2015 Decision referred to above.

¹ [REDACTED]

² [REDACTED]
³ [REDACTED]

⁴ ICC-01/12-01/15-61-Conf, p. 8.

⁵ Pre-Confirmation Rule 77 package 09, 31 August 2018.

6. The Prosecution now needs to disclose to the Defence the [REDACTED] Investigation Note pursuant to rule 77: it contains information material to the preparation of the Defence.
7. Consequently, the Prosecution seeks to redact the identity of Witness P-0146 in the metadata of the said Investigation Note.⁶ This is because the security situation of P-0146 is unchanged: [REDACTED] there are risks of harm and to the well-being of Witness P-0146 and his family [REDACTED] [REDACTED] and the capacity of the armed groups to harm him, [REDACTED] [REDACTED]

Confidentiality

8. Pursuant to regulation 23bis(2) of the Regulations, this motion and Annexes A and B are filed confidential, *ex parte*, only available to the Prosecution and Victims and Witnesses Unit ("VWU"). Indeed, the motion discusses security concerns specific to this witness, including his occupation and place of residence.
9. Annex A contains the [REDACTED] Investigation Note, the metadata of which contains the identity of Witness P-0146⁷. Annex B contains, for the Single Judge's information, an investigation note⁸ with recent information on P-0146.⁹
10. The Prosecution will simultaneously file a confidential redacted version of the present motion.

⁶ Standard redactions will also be applied, *cf.* ICC-01/12-01/18-31.

⁷ [REDACTED]

⁸ [REDACTED]

⁹ [REDACTED]

Background

Applicable law

11. 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.¹⁰
12. The Single Judge authorised the disclosure of P-0113's updated anonymous summary¹¹ and stated that, pursuant to regulation 42(1) of the Regulations, authorisation in the *Al Mahdi* case to file 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.*"¹²
13. The Single Judge added 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*"¹³ so that "*le dépôt d'un résumé modifié est possible en l'espèce*".¹⁴

Submissions

14. Similarly, with regard to P-0146, the submission of summarised material (along with the disclosure of material with redactions to their metadata and the non-

¹⁰ ICC-01/12-01/18-86-Conf-Exp, para. 1-7 and 60.

¹¹ ICC-01/12-01/18-122-Conf-Exp, p. 16.

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

¹³ ICC-01/12-01/18-122-Conf-Exp, para. 42.

¹⁴ ICC-01/12-01/18-122-Conf-Exp, para. 43.

disclosure of associated documents) continues to apply under regulation 42(1) of the Regulations “*car la situation sécuritaire*” “*continue à être précaire*” and these protective measures for this witness must continue to apply.¹⁵

15. In this context, the application of one redaction to the metadata of the [REDACTED] Investigation Note is possible and justified under regulation 42(1) and (2) of the Regulations and rule 81(4) and (2) of the Rules.

A. Information on Prosecution Witness P-0146

16. [REDACTED]
[REDACTED]
[REDACTED].

17. [REDACTED].¹⁶
[REDACTED]

18. [REDACTED]
[REDACTED].¹⁷

19. Witness P-0146 provided the Prosecution with information on the occupation of Timbuktu by Ansar Dine and AQIM, the control of Ansar Dine [REDACTED] the application of Sharia law in the city of Timbuktu, his understanding of Ansar Dine structure and who the rulers of the city were [REDACTED] and the flogging of a woman and a man.¹⁸

¹⁵ ICC-01/12-01/18-122-Conf-Exp, para. 27.

¹⁶ Annex B.

¹⁷ [REDACTED].

¹⁸ [REDACTED].

B. There still exists an objective risk of danger to Witness P-0146

There still exists an objective justifiable risk of danger

20. Witness P-0146 [REDACTED]
[REDACTED]

21. [REDACTED]
[REDACTED]
[REDACTED]

22. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

23. [REDACTED]
[REDACTED]¹⁹ [REDACTED]
[REDACTED]:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁰

¹⁹ [REDACTED] (see Annex B).
²⁰ [REDACTED].

- [REDACTED]²¹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

24. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

25. In conclusion, there is still a risk to the well-being of P-0146 and that of his family if his cooperation with the OTP were to become known, and there is a risk of harm to him, [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

26. The use of a pseudonym in the Investigation Note is also independently warranted under rule 81(2) to protect the Prosecution's investigations in Mali and neighbouring countries.

The use of a pseudonym is the least restrictive means available

27. Given the risks discussed above, and the human and financial costs associated with the implementation of highly intrusive protection measures, the use of a

²¹ [REDACTED].

pseudonym in the metadata of the Investigation Note is the least restrictive means available to effectively protect the safety of this witness, particularly at this stage of the proceedings.

The use of the pseudonym will not prejudice the Defence

28. The Prosecution submits that withholding the witness's identity will not result in any prejudice to the Defence nor undermine the fairness and impartiality of the confirmation proceedings.

29. The information provided by P-0146 in the Investigation Note relates to one of the co-perpetrators ([REDACTED]) in this case and is very limited.

30. At this stage of the proceedings, the risk connected to the witness's exposure, should his cooperation with the Court be exposed, largely outweighs any potential prejudice connected to the non-disclosure of his identity.

Relief sought

31. In conclusion, the Prosecution seeks from the Single Judge an order, under regulations 42 of the Regulations and rule 81(4) and (2) of the Rules, authorising the Prosecution to redact Witness P-0146's identity in the metadata of the [REDACTED] Investigation Note before it is disclosed to the Defence.

32. 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-0146 [REDACTED]
[REDACTED]



Fatou Bensouda, Prosecutor

Dated this 7th day of December 2018
At The Hague, The Netherlands