

**Cour
Pénale
Internationale**
**International
Criminal
Court**



Original: English

No.: ICC-01/12-01/18
Date: 14 March 2019
Date of submission:
13 May 2019

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 secret, *EX PARTE*, Annex 1 and secret, *EX PARTE*, Annexes A to J,
only available to the Prosecution and the Victims and Witnesses Unit**

**Public redacted version of the “Prosecution’s motion for authorisation to
withhold the identity of Prosecution witness MLI-OTP-P-0654 upon whose
evidence the Prosecution will rely at the confirmation hearing”,
14 March 2019, ICC-01/12-01/18-274-Secret-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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Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Office of the Prosecutor (“Prosecution”) hereby seeks authorisation to withhold the identity of Prosecution Witness MLI-OTP-P-0654 (“P-0654”).

2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

3. [REDACTED]
[REDACTED]² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

4. [REDACTED]
[REDACTED]
[REDACTED]³.

5. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED].
2 [REDACTED].
3 [REDACTED].
4 [REDACTED].

[REDACTED]

[REDACTED]⁵

6. [REDACTED]

[REDACTED]

[REDACTED]⁶

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁷

8. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸

9. Considering [REDACTED], the limited scope of the confirmation hearing, the security situation in Mali, and the threat posed by armed groups at

5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

issue in this case, the Prosecution requests to only disclose to the Defence redacted versions of P-0654's [REDACTED] to anonymise the related evidence

[REDACTED]
[REDACTED]
[REDACTED].

Confidentiality

10. Pursuant to regulation 23bis(2) of the Regulations of the Court, this motion and its Annexes A to J are filed as secret, *ex parte*, available only to the Prosecution and VWU. Indeed, the motion refers to secret filings. It also discusses security concerns specific to this witness. In addition, the annexes contain personal identifying information the disclosure of which would place the witness at risk and render the motion moot.

11. These annexes are divided as follows:

- Annex A [REDACTED], [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The non-disclosure [REDACTED] is requested. Annex A also contains [REDACTED]
non-disclosure of which is also requested;¹⁰
- Annex B contains [REDACTED] of P-0654¹¹ and [REDACTED]² for which redactions are being proposed to their content and to any identifying information in their metadata [REDACTED]

⁹ [REDACTED].

¹ [REDACTED].

¹² [REDACTED].

- [REDACTED]
- [REDACTED];
- Annex C contains [REDACTED] of P-0654¹³ and [REDACTED]
[REDACTED]¹⁴ for which redactions are being proposed to their content and to
any identifying information in their metadata;
 - Annex D contains [REDACTED]
[REDACTED]⁵ [REDACTED] for which non-disclosure is being
requested;
 - Annex E(I) contains [REDACTED]
[REDACTED]
[REDACTED]⁶ [REDACTED]
[REDACTED]¹⁷
 - Annex E(II) contains [REDACTED]
[REDACTED] for which non-disclosure is generally requested;
 - Annex E(III) contains [REDACTED]
[REDACTED]
[REDACTED]¹⁸
 - Annex F(I) contains [REDACTED]
[REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]¹⁹
- [REDACTED]²⁰
- Annex F(II) contains [REDACTED]
[REDACTED] for which non-disclosure is being requested [REDACTED]
[REDACTED]
[REDACTED]²¹
 - Annex G contains [REDACTED]²² [REDACTED]
[REDACTED]²³ [REDACTED]²⁴ [REDACTED]
[REDACTED]²⁵ for which non-disclosure is equally requested;
 - Annex H contains highly identifying investigation notes mainly relating to security and logistic and a screening note concerning P-0654, the non-disclosure of which is also requested;²⁶
 - Annex I contains [REDACTED]²⁷ [REDACTED]
[REDACTED]
[REDACTED]²⁸ [REDACTED]
[REDACTED]
[REDACTED] and
 - [REDACTED].

12. The Prosecution will simultaneously file a secret redacted version of the present filing.

¹⁹ [REDACTED]
²⁰ [REDACTED]
²¹ [REDACTED]
²² [REDACTED]
[REDACTED]
²⁴ [REDACTED]
²⁵ [REDACTED]
²⁶ [REDACTED]
²⁷ [REDACTED]
²⁸ [REDACTED]

Applicable law

13. The Prosecution refers to its prior submissions on the applicable law in motion ICC-01/12-01/18-48 [REDACTED] and the Single Judge's decision ICC-01/12-01/18-88-[REDACTED] resolving the motion.²⁹

Submissions

A. Security risks

14. [REDACTED]
[REDACTED]
[REDACTED]³⁰

15. Given the limited scope of the confirmation hearing, the security risk posed by P-0654's [REDACTED]³¹ [REDACTED]
[REDACTED]³² [REDACTED]
[REDACTED].

B. Documents to be redacted or withheld

16. The Prosecution seeks the non-disclosure of material in Annex A. [REDACTED]
[REDACTED]
[REDACTED]³³

17. The Prosecution seeks to disclose redacted versions of [REDACTED] of P-0654 and [REDACTED] in Annexes B and

²⁹ [REDACTED]
³⁰ [REDACTED]
³¹ [REDACTED]
³² [REDACTED]
³³ [REDACTED]

C. [REDACTED]

[REDACTED]

[REDACTED] Additionally, the Prosecution requests the Chamber's approval to redact any identifying information from the metadata of these documents. [REDACTED]

[REDACTED]

[REDACTED]⁴ [REDACTED]

[REDACTED]

[REDACTED]

18. Annex D contains [REDACTED]

[REDACTED]³⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁶

19. [REDACTED] in Annex E(I [REDACTED]

[REDACTED]

[REDACTED]³⁷ [REDACTED]

34

35

36

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁸

20. Annex E (III) is submitted for the Single Judge's information. [REDACTED]

[REDACTED]

[REDACTED]

21. Annex E (III) contains [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

23. [REDACTED]
[REDACTED] in Annex F(I). [REDACTED]⁴⁰
[REDACTED]
[REDACTED]
[REDACTED].

24. [REDACTED]
[REDACTED] Annex F(II)
[REDACTED]

25. Annex G contains [REDACTED] P-0654⁴¹ and other identifying documents such as [REDACTED]⁴², [REDACTED]⁴³, [REDACTED]⁴⁴
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

40 [REDACTED]
41 [REDACTED]
42 [REDACTED]
43 [REDACTED]
44 [REDACTED].

26. Annex H contains investigation notes and a screening note concerning P-0654.⁴⁵

These deal mainly with logistical and security issues related [REDACTED]

[REDACTED] They do not contain information that the Prosecution intends to rely on, nor information otherwise directly relevant for the Defence, at least not at this stage.

In any case, the information in these notes is also highly identifying and, if disclosed, would reveal who P-0654 is. The content of the screening note is also highly identifying [REDACTED]

[REDACTED] As such, the information should not be disclosed to the Defence at this stage of proceedings.

27. Annex I contains [REDACTED]⁶

[REDACTED]⁴⁷

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁴⁸ [REDACTED]

[REDACTED]

[REDACTED].

⁴⁵ [REDACTED]

⁴⁸ [REDACTED]

28. All the documents referred to above, containing proposed redactions, may or may not also contain *proprio motu* redactions.

29. Translations [REDACTED] of documents [REDACTED] [REDACTED] will be disclosed after mirroring redactions from their originals, if authorised by the Chamber.

C. Lack of prejudice to Defence

30. [REDACTED] contain ample and key incriminatory and rule 77 material for the Defence as well as potentially exonerating information in the context of the confirmation hearing.

31. The disclosure of redacted documents and the non-disclosure of the related evidence will not prejudice the rights of the Defence nor impede fair and impartial confirmation of charges proceedings.

Relief sought

32. For the aforementioned reasons, the Prosecution seeks from the Single Judge an order authorising:

- to not disclose the identity and identifying information of P-0654;
- [REDACTED];
- to disclose [REDACTED] of P-0654 (*see* Annex B and C) with the proposed redactions to their content, and with redactions to any identifying information in their metadata, [REDACTED]

[REDACTED]

[REDACTED];

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

- to apply the same redactions to the content and metadata of the translations [REDACTED]; and

- to not disclose [REDACTED]
[REDACTED]
[REDACTED]

33. [REDACTED]
[REDACTED]
[REDACTED]⁴⁹
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

⁴⁹ [REDACTED]



Fatou Bensouda, Prosecutor

Dated this 14th March 2019
At The Hague, The Netherlands