

**Cour
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**International
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Court**



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No.: **ICC-01/12-01/18**
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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*, Annexes A to F,
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-0582 upon whose evidence the Prosecution will rely at the confirmation hearing”,
15 March 2019, ICC-01/12-01/18-278-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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Introduction

1. The Office of the Prosecutor (“Prosecution”) hereby seeks authorisation to withhold the identity of Prosecution Witness MLI-OTP-P-0582 (“P-0582”).

2. [REDACTED]
[REDACTED]¹

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

4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁴

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

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

[REDACTED]⁵

[REDACTED]

[REDACTED]⁶

6. In this context, particularly considering the limited scope of the confirmation hearing, [REDACTED] the security situation in Mali, and the threat posed by armed groups at issue in this case, the Prosecution requests and submits that the witness's identity and identifying information should not be disclosed and that, instead, anonymous summaries should be used.

Confidentiality

7. Pursuant to regulation 23bis(2) of the Regulations of the Court, this motion and its Annexes A to F are filed as secret, *ex parte*, available only to the Prosecution and VWU. Indeed, the motion 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.
8. These annexes are divided as follows:

- Annex A contains the [REDACTED] of P-0582's interviews and related [REDACTED]⁷ the non-disclosure of which is requested;

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6

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[REDACTED]

- Annex B contains the proposed anonymous summary of the [REDACTED] and annexes thereto contained in Annex A (with sourcing for ease of reference⁸);
- Annex C contains [REDACTED] relating to Witness P-0582,⁹ the non-disclosure of which is requested;
- Annex D contains proposed two anonymous summaries of [REDACTED] [REDACTED] contained in Annex C;
- Annex E contains documents that cannot be meaningfully summarised or redacted and should therefore not be disclosed;¹⁰ and
- Annex F is [REDACTED]

9. The Prosecution will file a secret redacted version of the present motion as soon as practicable.

Applicable law

10. The Prosecution recalls and reproduces by reference its 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 said motion.¹¹

[REDACTED]

8. [REDACTED]

1 [REDACTED]

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

Submissions

A. Security risks

11.

[REDACTED]

[REDACTED]² The Prosecution submits that, in the present circumstances, the use of summaries and the non-disclosure of documents requested below are necessary at this stage and proportionate to the risks the witness is facing in case of disclosure of his identity.

B. Documents to be summarised or withheld

12. The Prosecution seeks to disclose an anonymous summary of the [REDACTED] of P-0582's interviews and anonymous summaries of [REDACTED]. Copies of the interview [REDACTED] [REDACTED] are enclosed at Annexes A and C. The proposed summaries are enclosed at Annexes B and D.

13. The anonymous summaries have been made with a view to including the relevant and disclosable information while protecting the security of the witness [REDACTED]. Hence, information that is identifying and not related to the substance has been omitted from the summaries. [REDACTED]

[REDACTED]
[REDACTED]¹³ [REDACTED]
[REDACTED].

14. The Prosecution considers that anonymous summaries best protect the identity of this witness. In particular, in case redacted versions of his interview [REDACTED] were disclosed, it could be possible to identify P-0582 by cross-referencing all the

¹²

¹³

[REDACTED]
[REDACTED].

non-redacted parts thereof unless heavy redactions are applied. In the latter scenario, there would be little difference with an anonymous summary. That being said, considering the weight to be given to summaries [REDACTED] [REDACTED] the Prosecution inserted selected excerpts of P-0582' [REDACTED] both in the core of the summary and the footnotes so as to specifically capture incriminatory as well as rule 77 and potentially exonerating information. The summary also contains footnotes with only [REDACTED] references (*i.e.* with no excerpts), for ease of reference for the Chamber, and that would be deleted before disclosure in case the Chamber grants the present request.

15. The summary and the selection of excerpts were made with the view to anonymising P-0582's evidence to the extent possible. [REDACTED]

[REDACTED]

[REDACTED]

16. The Prosecution is also in possession of certain documents that, given their form, nature or content even when redacted or summarised, could still directly or indirectly reveal the identity of P-0582. These documents are enclosed at Annex E and consist of the following:

- [REDACTED]
[REDACTED]
[REDACTED]¹⁴

¹⁴ [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]¹⁵ [REDACTED]
[REDACTED]¹⁶ [REDACTED]
[REDACTED]¹⁷ [REDACTED]
- [REDACTED]¹⁸ [REDACTED]
[REDACTED]¹⁹ I [REDACTED]
[REDACTED]
[REDACTED];
- [REDACTED]
[REDACTED]
[REDACTED]:
 - [REDACTED]
[REDACTED]²⁰
 - [REDACTED]²¹
 - [REDACTED]²²
 - [REDACTED]
[REDACTED]²³
 - [REDACTED]²⁴
 - [REDACTED]²⁵

and

15 [REDACTED]
[REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]
[REDACTED]
[REDACTED]

○ [REDACTED]

[REDACTED].²⁶

C. Lack of prejudice to Defence

17. For the reasons set forth above, the disclosure of summaries of the interviews [REDACTED] of P-0582 and the non-disclosure of some related evidence will not prejudice the rights of the Defence nor impede fair and impartial confirmation proceedings. Indeed:

- the sole purpose of the non-disclosure and the proposed summaries is to prevent the identification of the witness and ensure the best available protection in the circumstances; and
- the summary provides the substantive parts of P-0582's account, including facts on the Suspect's role and information material to the preparation of the Defence.

18. In sum, the Suspect will be in a position to understand the anticipated evidence of P-0582.

Relief sought

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

- a. to not disclose the identity and identifying information of P-0582;
- b. to not disclose the interview [REDACTED] and annexes thereto) and the [REDACTED] of P-0582 (Annexes A and C);
- c. to disclose to the Defence anonymous summaries of the interview [REDACTED] and [REDACTED] of Prosecution Witness P-0582 (Annexes B and D);²⁷

²⁵ [REDACTED]

²⁶ [REDACTED]

- d. to not disclose the documents in Annex E nor any translation thereof in the Arabic language;
- e. to use the pseudonym P-0582 instead of any identifying information of the witness in the metadata.



Fatou Bensouda, Prosecutor

Dated this 15th day of March 2019
At The Hague, The Netherlands

²⁷ See e.g., ICC-01/12-01/18-88-Conf-Exp-Red-tENG, 27 November 2018, para. 17, 37.

²⁷ *Lubanga* Appeal Decision, ICC-01/04-01/06-568, para. 33-34, 67, 71, 72.