

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



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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 K, 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-0065 upon whose evidence the Prosecution will rely at the confirmation hearing”, 14 March 2019, ICC-01/12-01/18-272-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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Other

Introduction

1. The Office of the Prosecutor ("Prosecution") hereby seeks authorisation to withhold the identity of Prosecution Witness MLI-OTP-P-0065 ("P-0065").

- 2.

[REDACTED]

- 3.

[REDACTED]

[REDACTED]

[REDACTED]²

4. Witness P-0065 is a witness whose evidence the Prosecution intends to rely on for the purpose of the confirmation of charges. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³

5. Considering [REDACTED] the limited scope of the confirmation hearing, the security situation in Mali, and the threat posed by armed groups at issue in this case, the Prosecution requests to only disclose to the Defence redacted versions of P-0065's ICC [REDACTED] [REDACTED].

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It further requests the non-disclosure of other documents [REDACTED]

[REDACTED]

Confidentiality

6. Pursuant to regulation 23bis(2) of the Regulations of the Court, this motion and its Annexes A to K are filed as secret, *ex parte*, available only to the Prosecution and Victims and Witnesses Unit (VWU). [REDACTED]

[REDACTED] 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.

7. These annexes are divided as follows:

- Annex A contains [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]⁵ [REDACTED]
[REDACTED]
[REDACTED]⁶ [REDACTED]
- Annex B contains [REDACTED] of P-0065, for which redactions are being proposed to its content and metadata;⁷ non-disclosure is requested for [REDACTED]⁸
- Annex C contains [REDACTED] of P-0065, for which redactions are being proposed to its content and metadata;⁹

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- Annex D contains [REDACTED] of P-0065¹⁰ [REDACTED] for which redactions are being proposed to their content and metadata.¹¹ Annex D also contains an investigation note concerning an error in the [REDACTED] the metadata thereof needs to be redacted;¹²
- Annex E(I) contains [REDACTED]
[REDACTED]
[REDACTED]¹³
- Annex E(II) contains [REDACTED] for which non-disclosure is requested;
- Annex E(III) contains, for the Single Judge's information [REDACTED]
[REDACTED]
[REDACTED]¹⁴
- Annex F contains [REDACTED]
[REDACTED]¹⁵ [REDACTED]
- Annex G(I) contains [REDACTED]
[REDACTED]
[REDACTED]¹⁶
- Annex G(II) contains [REDACTED]
[REDACTED]
[REDACTED]¹⁷

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- Annex H contains [REDACTED]¹⁸ [REDACTED]¹⁹ [REDACTED]
[REDACTED]
[REDACTED];
- Annex I contains investigation notes concerning P-0065 mainly relating to security, as well as screening notes whose contents are highly identifying and [REDACTED] for which non-disclosure is also requested;²⁰
- Annex J contains material that is potentially exonerating for the Suspect,²¹ the metadata thereof needs to be redacted; and
- Annex K [REDACTED]

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

Applicable law

9. 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.²²

Submissions

A. Security risks

10. [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]²³

¹⁸ [REDACTED]
¹⁹ [REDACTED]
²⁰ [REDACTED]
²¹ [REDACTED]
²² ICC-01/12-01/18-48 [REDACTED] para. 12-26; ICC-01/12-01/18-88-[REDACTED] particularly para. 15-17.
²³ [REDACTED]

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

12. [REDACTED]²⁵ the limited scope of the confirmation hearing, the current security risk posed by the disclosure of the witness's identity, [REDACTED], the Prosecution submits that, at this stage, the redaction of the witness's [REDACTED] evidence and the non-disclosure of documents are necessary and proportionate to the risks the witness is facing in case of disclosure of his identity.

B. Documents to be redacted or withheld

13. The Prosecution seeks the non-disclosure of material in Annex A. [REDACTED]
[REDACTED]²⁶ [REDACTED]²⁷ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]²⁸ [REDACTED]
[REDACTED]

14. The Prosecution seeks to disclose redacted versions of th [REDACTED] of P-0065 in Annexes B, C and D.²⁹ [REDACTED]

²⁴ [REDACTED]
²⁵ [REDACTED]
²⁶ [REDACTED]
²⁷ [REDACTED]
²⁸ [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

15. [REDACTED] in Annex B contains [REDACTED]³⁰ [REDACTED]³¹ These documents cannot be disclosed [REDACTED]

[REDACTED]

16. [REDACTED] in Annex D [REDACTED]³² The Annex also contains an investigation note concerning an error [REDACTED]³³ Identifying information in these items should also be redacted together with the metadata.

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
[REDACTED]³⁴
- [REDACTED]
[REDACTED]

³⁰ [REDACTED]

³² [REDACTED]

³⁴ [REDACTED]

[REDACTED]³⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

[REDACTED]

19. Annex F contains [REDACTED]³⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]³⁷

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁵ [REDACTED]

[REDACTED]

³⁷ [REDACTED]

[REDACTED]

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

23. Annex H contains [REDACTED]
[REDACTED]

a result, the Prosecution requests that they should not be disclosed.

24. Annex I contains investigation and screening notes concerning P-0065,³⁸ the non-disclosure of which is requested. Their disclosure would expose the identity of the witness. Additionally, the notes do not contain any information of relevance for the Defence at this stage of proceedings save [REDACTED] already referred to in Annex D above, and [REDACTED] which contains potentially exonerating information. This potentially exonerating information has been extracted into [REDACTED] and can be found at Annex J below. The content of the screening notes is highly identifying and has essentially also been covered in the witness statements.

25. Annex J contains material that is potentially exonerating and should be disclosed with redactions to any identifying information in the metadata so as to protect the identity of the witness.³⁹

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

³⁸ [REDACTED]

³⁹ [REDACTED]

C. Lack of prejudice to Defence

27. [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.
28. The disclosure of that redacted material and the non-disclosure of the other related evidence will not prejudice the rights of the Defence nor impede fair and impartial confirmation proceedings.

Relief sought

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

- to not disclose the identity and identifying information of P-0065;
- [REDACTED]
[REDACTED];
- to disclose [REDACTED] (see Annexes B, C, D) and non-identifying [REDACTED] of P-0065 as well as the investigation note⁴⁰ (in Annex D) with the proposed redactions to their content and/or with redactions to any identifying information in their metadata;
- to not disclose the identifying [REDACTED] of P-0065 (see Annex B);
- [REDACTED]⁴¹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

⁴⁰ [REDACTED]

⁴¹ [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- to apply the same redactions in the content and metadata of the translations [REDACTED];
- to disclose the investigation note in Annex J with redaction to any identifying information in the metadata; and
- [REDACTED].

30. T [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].



Fatou Bensouda, Prosecutor

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