

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



Original: **English**

No.: **ICC-01/12-01/18**
Date: **15 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*, Annexes A to E,
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-0537 upon
whose evidence the Prosecution will rely at the confirmation hearing”,
15 March 2019, ICC-01/12-01/18-279-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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**Unrepresented Applicants
(Participation/Reparation)**

Unrepresented Victims

**The Office of Public Counsel for
Victims**

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States' Representatives

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Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Office of the Prosecutor (“the Prosecution”) hereby seeks authorisation to withhold the identity of Prosecution Witness MLI-OTP-P-0537 (“P-0537”).
2. P-0537 [REDACTED], whose evidence the Prosecution intends to rely on for the purpose of the confirmation of charges in the case *The Prosecutor v. Al Hassan AG ABDOUL AZIZ AG MOHAMED AG MAHMOUD*.
3. [REDACTED]
[REDACTED]
[REDACTED].¹
4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].³
5. [REDACTED]
[REDACTED].⁴
6. [REDACTED]
[REDACTED]

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

[REDACTED]⁵ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁶

7. Considering [REDACTED]⁷ [REDACTED]⁸ the limited scope of the confirmation hearing, and [REDACTED], 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 a) redacted [REDACTED] of P-0537's interview by the Prosecution and b) anonymous summaries [REDACTED]. The Prosecution further requests c) the non-disclosure of other material related to this witness.

Confidentiality

8. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this motion and its Annexes A to E are filed as secret, *ex parte*, available only to the Prosecution and VWU [REDACTED] [REDACTED]. In addition, the present request contains identifying information, including in the annexes, which would place the witness at risk and render the motion moot.

9. The annexes are divided as follows:

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

- Annex A contains [REDACTED] of P-0537's interview by the Prosecution, with proposed redactions;⁹
- Annex B contains [REDACTED]
[REDACTED]¹⁰
- Annex C contains proposed anonymous summaries of the non-identifying information contained [REDACTED] in Annex B;
- Annex D contains documents related to P-0537 that cannot be meaningfully summarised or redacted, the non-disclosure of which is requested;¹¹ and

9

11

- Annex E is [REDACTED]

10. A secret redacted version of the present motion, available to the Defence, will be filed as soon as possible.

Applicable law

11. The Prosecution recalls and reproduces by reference its submissions on the applicable law in a prior motion ICC-01/12-01/18-48-[REDACTED] and the Single Judge's decision resolving the motion ICC-01/12-01/18-88-[REDACTED].¹²

Submissions

A. Security risks

12. [REDACTED]
[REDACTED]
[REDACTED]¹³ [REDACTED]. The Prosecution submits that, in the present circumstances at this stage, the use of redactions and summaries, and the non-disclosure of documents are necessary and proportionate to the risks the witness is facing in case of disclosure of his identity.

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

¹³ [REDACTED].

B. Documents to be redacted, summarised or withheld

13. The Prosecution seeks to disclose redacted [REDACTED] of P-0537's interviews by the Prosecution and anonymous summaries [REDACTED]

[REDACTED].

14. The redactions were applied to [REDACTED] in Annex A with the view to anonymising these [REDACTED] to the extent possible. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

15. [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]. Notably, the disclosure of anonymous summaries of P-0537's [REDACTED]

[REDACTED] is necessary [REDACTED]

[REDACTED]

[REDACTED].

16. The Prosecution is also in possession of documents that are not essentially relevant at this stage of the proceedings and that, given their form and nature, could still directly or indirectly reveal the identity of P-0537 even if they were redacted or summarised. These documents should not be disclosed. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] They are enclosed at Annex D and consist of the following:

e) [REDACTED]:

- 

Category	Percentage
Category 1	100%
Category 2	25%
- 

Category	Percentage
Category 1	100%
Category 2	26%
- 

Category	Percentage
Category 1	100%
Category 2	27%

Question	Yes (%)	No (%)
19. Do you have any family members who are currently in the military?	100	0
20. Do you have any family members who are currently in the military?	100	0
21. Do you have any family members who are currently in the military?	100	0
22. Do you have any family members who are currently in the military?	100	0
23. Do you have any family members who are currently in the military?	100	0
24. Do you have any family members who are currently in the military?	100	0
25. Do you have any family members who are currently in the military?	100	0
26. Do you have any family members who are currently in the military?	100	0
27. Do you have any family members who are currently in the military?	100	0
21. Do you have any family members who are currently in the military?	100	0
22. Do you have any family members who are currently in the military?	100	0
23. Do you have any family members who are currently in the military?	100	0
24. Do you have any family members who are currently in the military?	100	0
25. Do you have any family members who are currently in the military?	100	0
26. Do you have any family members who are currently in the military?	100	0
27. Do you have any family members who are currently in the military?	100	0

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED],³¹ T [REDACTED]

[REDACTED]

[REDACTED],³³

18. The disclosure of the redacted version [REDACTED] of P-0537's interviews and of the summaries [REDACTED], and the non-disclosure of some related evidence will not prejudice the rights of the Suspect nor impede the fairness and impartiality of the confirmation of charges proceedings. The Suspect will be in a position to understand the evidence of P-0537. In particular, the

Year	Percentage of respondents
28	100%
29	100%
30	100%
31	100%
32	100%
33	100%
34	100%
35	100%
36	100%
37	100%
38	100%
39	100%
40	100%
41	100%
42	100%
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86	100%
87	100%
88	100%
89	100%
90	100%
91	100%
92	100%
93	100%
94	100%
95	100%
96	100%
97	100%
98	100%
99	100%
100	100%

redactions are only devoted to conceal the identity of the witness and ensure his security and safety. The relevant information and all information relied upon are disclosed.

Relief sought

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

- to not disclose the identity and identifying information of P-0537;
- to not disclose [REDACTED] (in Annex B);
- to disclose to the Defence redacted versions of the interview [REDACTED] (in Annex A) and anonymous summaries [REDACTED] (in Annex C);
- to not disclose the documents in Annex D nor any translation thereof in the Arabic language;
- to use the pseudonym P-0537 instead of the name of the witness in the metadata of the [REDACTED] and summaries to replace any identifying information.



Fatou Bensouda, Prosecutor

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