

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/12-01/18**
 Date: **21 February 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 D,
 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-0605 upon
 whose evidence the Prosecution will rely at the confirmation hearing”,
 21 February 2019, ICC-01/12-01/18-253-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)**

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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-0605 (“P-0605”).

2. [REDACTED]

[REDACTED]¹

3. [REDACTED]

[REDACTED]² [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]

5 [REDACTED]

[REDACTED]

6 [REDACTED]

6. P-0605 is an important witness, whose evidence the Prosecution intends to rely on for the purpose of the confirmation of charges. Considering [REDACTED] [REDACTED] the current stage of proceedings and 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 to only disclose to the Defence anonymous summaries a) of [REDACTED] of P-0605's [REDACTED] and b) of [REDACTED] [REDACTED], and that these 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 D are filed secret and *ex parte*, available only to the Prosecution and VWU. Indeed, the motion refers to [REDACTED] and 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:

5 [REDACTED]

6 [REDACTED]

- Annex A contains [REDACTED] interview of P-0605⁷ and [REDACTED] [REDACTED],⁸ the non-disclosure of which is requested;
- Annex B contains a proposed anonymous summary of [REDACTED] and a separate proposed anonymous summary of [REDACTED] [REDACTED];
- Annex C contains documents that cannot be redacted or summarised without revealing the identity of the witness, the non-disclosure of which is requested;⁹
- Annex D contains [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED].¹⁰

9. The Prosecution will simultaneously file a confidential redacted version of the present motion.

Applicable law

10. The Prosecution refers to its prior submissions on the applicable law in a prior motion and the Single Judge's decision resolving the motion.¹¹ The Prosecution also recalls the finding of the Chamber in its decision ICC-01/12-01/18-122- [REDACTED]
[REDACTED].¹²

⁷ [REDACTED]
[REDACTED]
[REDACTED].

⁸ [REDACTED].
⁹ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

¹¹ ICC-01/12-01/18-48 [REDACTED] para. 12-26; ICC-01/12-01/18-88 [REDACTED] particularly para. 15-17.

¹² Cf. ICC-01/12-01/18 [REDACTED], para. 42.

Submissions

A. Security risks

11. [REDACTED]
[REDACTED]¹³ The Prosecution submits that, in the present circumstances at this stage, the use of summaries and the non-disclosure of documents requested below are necessary 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 [REDACTED] P-0605's interview with the OTP and another anonymous summary [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Copies of [REDACTED] and [REDACTED] are enclosed at Annex A. The proposed summaries are found at Annex B. The Prosecution submits that in the case of P-0605 summaries are best suited to protect his identity as opposed to redactions.
13. The Prosecution is also in possession of documents that, given their form and nature, could still directly or indirectly reveal the identity of P-0605 even when redacted or summarised. These documents are enclosed at Annex C and consist of the following: [REDACTED]¹⁴ one investigation note,¹⁵ [REDACTED]¹⁶ [REDACTED]
[REDACTED]¹⁷ [REDACTED]¹⁸ and a

¹³ [REDACTED]
¹⁴ [REDACTED]
¹⁵ [REDACTED]
¹⁶ [REDACTED]
¹⁷ [REDACTED]
¹⁸ [REDACTED]

[REDACTED].¹⁹ Annex C finally contains
[REDACTED] of P-
0605.²⁰

14. Annex D contains a [REDACTED],²¹ [REDACTED]
[REDACTED]. [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]. [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]²² [REDACTED]
[REDACTED].

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

¹⁹ [REDACTED]
[REDACTED]
²⁰ [REDACTED].
²¹ [REDACTED].
²² [REDACTED]
[REDACTED].

[REDACTED]²³ [REDACTED]
 [REDACTED]
 [REDACTED]²⁴ [REDACTED]
 [REDACTED] [REDACTED] [REDACTED]²⁵

C. Lack of prejudice to Defence

16. The proposed summaries contain the key relevant information for the Defence in the context of the confirmation hearing.
17. The disclosure of summaries of [REDACTED] interview and [REDACTED] of P-0605 and the non-disclosure of some related evidence will not prejudice the rights of the Defence nor impede fair and impartial confirmation proceedings.

Relief sought

18. For the aforementioned reasons, the Prosecution seeks from the Single Judge an order authorising:
- a. to not disclose the identity and identifying information of P-0605;
 - b. to not disclose the interview [REDACTED] and [REDACTED] of P-0605 (Annex A);
 - c. to disclose to the Defence anonymous summaries of [REDACTED] interview [REDACTED] and [REDACTED] of Prosecution Witness P-0605 (Annex B);
 - d. to not disclose the documents in Annexes C and D ([REDACTED]
 [REDACTED]
 [REDACTED]);

²³ [REDACTED]
 [REDACTED]
 [REDACTED]
²⁵ [REDACTED].

- e. to use the pseudonym P-0605 instead of any identifying information in the metadata.



Fatou Bensouda, Prosecutor

Dated this 21st day of February 2019
At The Hague, The Netherlands