

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/12-01/18

Date: 16 July 2019

Date of submission:

1 August 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 confidential, *EX PARTE*, Annex 1,
only available to the Prosecution and the Victims and Witnesses Unit,
and confidential Annex 2

Public redacted version of the “Prosecution motion for authorisation to withhold
the identity of Witness MLI-OTP-P-0577 from the latter’s statement, upon which
the Prosecution does not rely for the confirmation of charges,”

16 July 2019, ICC-01/12-01/18-410-Conf-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 for
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**Victims Participation and Reparations
Section**

Introduction

1. Pursuant to article 68(1) of the Rome Statute ("Statute") and rule 81(2) and (4) of the Rules of Procedure and Evidence ("Rules"), the Prosecution seeks the Single Judge's authorisation to withhold the identity of Prosecution Witness P-0577 by redacting all identifying information from her statement in order to protect her safety and that of her family, as well as the Prosecution's ongoing investigations.
2. [REDACTED], the Prosecution interviewed P-0577. The Prosecution does not rely upon her witness statement provided to the Prosecution for the confirmation of the charges against AL HASSAN.
3. As P-0577's [REDACTED]
[REDACTED], her statement is now disclosable to the Defence under rule 77 of the Rules. P-0577 [REDACTED] was disclosed to the Defence in Pre-Confirmation INCRIM Package 12 on 3 August 2018.
4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
5. The Prosecution submits that, [REDACTED]
[REDACTED], P-0577's identity should not be disclosed at this stage of the proceedings. [REDACTED]
[REDACTED]
[REDACTED]. Moreover, it cannot be excluded that she could be targeted by the armed groups to which AL HASSAN is affiliated, in retaliation for having cooperated with the Prosecution.

Confidentiality

6. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this motion and its annexes are filed confidential, *ex parte*, available only to the Prosecution and VWU.
7. The annexes to this motion are as follows:
- Annex 1 contains the statement of Witness P-0577 with proposed redactions,¹ and [REDACTED] (annex A)² and [REDACTED] (annex B)³; and
 - Annex 2 contains [REDACTED]⁴ [REDACTED] which has been previously disclosed.⁵
8. The Prosecution will simultaneously file a confidential redacted version of the present motion.

Applicable law

9. 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 motion.⁶

¹ [REDACTED]

² [REDACTED]

³ [REDACTED]

⁴ [REDACTED]

⁵ Pre-Confirmation INCRIM Package 12, disclosed on 3 August 2018.

⁶ ICC-01/12-01/18-48-[REDACTED], para. 12-26; ICC-01/12-01/18-88-[REDACTED], particularly para. 15-17.

Submissions

10. Withholding P-0577's identity and other identifying information from her evidence is necessary and appropriate under article 68(1) and rules 81(4) and 81(2) of the Rules.

A. Information on Prosecution Witness P-0577⁷

11. P-0577 is [REDACTED]
[REDACTED] [REDACTED]
[REDACTED].

12. P-0577 states that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

14. [REDACTED]
[REDACTED]
[REDACTED]

⁷ This summary of evidence is based on P-0577's witness statement [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED].

15. [REDACTED]

[REDACTED].

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

17. [REDACTED]

[REDACTED]⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED].

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

⁸ Annex 2.

B. The redaction of P-0577's statement is necessary under rule 81(4) of the Rules for her protection

19. P-0577 currently lives in [REDACTED]

[REDACTED] with [REDACTED]

[REDACTED]⁹.

20. [REDACTED]

[REDACTED] Al HASSAN was a member of Ansar Dine, which was one of four armed groups that merged to create JNIM. Therefore, it cannot be excluded that P-0577 is targeted by the armed groups if her cooperation with the OTP becomes known.

21. P-0577's identity may become known to these armed groups through an intentional or inadvertent disclosure of information provided to the Defence under the Court's disclosure regime.

⁹ See, generally, [REDACTED]

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

C. The redaction of P-0577's statement is likewise necessary under rule 81(2) of the Rules to protect the Prosecution's further or ongoing investigations

23. As mentioned in prior filings, the Appeals Chamber has accepted that "further or ongoing investigations may be prejudiced if potential prosecution witnesses are interfered with in a manner that could lead to them being unable to cooperate further with the Prosecutor."¹⁰

24. Should any harm befall P-0577 or her family as a result of the disclosure of her identity, this could discourage her or other current and future witnesses from cooperating with the Prosecution and providing evidence.

D. Lack of prejudice to the Defence

25. The Prosecution submits that redactions of any identifying information from P-0577's statement will not prejudice the Defence.

26. In addition to P-0577's statement not being relied upon for the confirmation hearing, the Prosecution's proposed redactions to her statement do not deprive the Defence of any relevant and disclosable information. [REDACTED]
[REDACTED].

¹⁰ [REDACTED], citing *Prosecutor v. Katanga*, Judgment on Katanga's Appeal against the First Redaction Decision, ICC-01/04-01/07-476, 13 May 2008, para. 49.

Relief requested

27. For the reasons set forth above, the Prosecution seeks from the Single Judge an order under article 68(1) and rule 81(2) and (4) authorising the Prosecution to redact any information identifying P-0577 prior to its disclosure to the Defence.

28. In the event that the Single Judge were to deny this motion in whole or in part, the Prosecution requests an order permitting the Prosecution to make any necessary disclosures regarding P-0577 [REDACTED]

[REDACTED]

[REDACTED].



Fatou Bensouda, Prosecutor

Dated this 16th day of July 2019
At The Hague, The Netherlands