

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **8 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*, Annexes A and B
only available to the Prosecution and the Victims and Witnesses Unit**

**Public redacted version of “Prosecution Request for non-disclosure
of statements of witnesses MLI-OTP-P-0554 and MLI-OTP-P-0984”, 8 July 2019,
ICC-01/12-01/18-397-Conf-Exp**

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart

Counsel for the Defence

Ms Melinda Taylor
Ms Marie-Helene Proulx

Legal Representatives of the Victims

Mr Seydou Doumbia
Mr Mayombo Kassongo
Mr Fidel Luvengika Nsita

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

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 authorization to not disclose to the Defence the statements of Witnesses P-0554 and P-0984 at this stage of the proceedings.

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

3. The Prosecution intends to disclose their statements later on as incriminatory evidence, [REDACTED].

4. At the same time, the Prosecution acknowledges that now these two [REDACTED] statements may be material to the preparation of the Defence, and should normally be disclosed under rule 77 of the Rules. However, the Prosecution wishes to request non-disclosure of these two statements at this stage, as disclosure would reveal their identities as Prosecution witnesses and raise security concerns. The Prosecution submits that it would not be possible to redact or summarise their statements in a meaningful manner without either of their identities being easily discernible.

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

6. There will be no material prejudice to the Defence as the Prosecution will not be relying on the two statements during the confirmation hearing. [REDACTED]

[REDACTED]

7. Accordingly, the Prosecution requests authorisation to not disclose these two statements at this stage of the proceedings.

Confidentiality

8. Pursuant to regulation 23bis(2) of the Regulations of the Court, this motion and its Annexes A to B are filed as confidential *ex parte*, available only to the Prosecution and the VWU. Indeed, the motion discusses security concerns specific to P-0554 and P-0984. In addition, the annexes contain personal identifying information, the disclosure of which would place the witnesses and their families at risk and render this request moot.

9. The annexes are divided as follows:

) Annex A contains the statement of Witness P-0554¹ and annexes A² to B³ thereto;

¹ [REDACTED].

² [REDACTED].

) Annex B contains the statement of Witness P-0984⁴ and annex A⁵ thereto.

10. A confidential redacted version of this request will be filed as soon as possible.

Applicable law

11. 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

Submissions

12. The non-disclosure of the statements of Witnesses P-0554 and P-0984 is necessary under rule 81(2) and (4) of the Rules in order to protect their safety and that of their family members, and to avoid prejudice against further or ongoing investigations being carried out by the Prosecution.

A. Information on Prosecution Witness P-0554

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

³ [REDACTED]
⁴ [REDACTED]
⁵ [REDACTED]

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

14. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁷

15. [REDACTED]
[REDACTED].

B. Information on Prosecution Witness P-0984

16. [REDACTED]
[REDACTED].

17. P-0984 identifies AL HASSAN as being in charge of the Islamic Police, and Houka Houka as the person responsible for rendering justice during the occupation of Timbuktu by the armed groups. While P-0984 described AL HASSAN as a Tamasheq, having neither dark ("*noir*") nor fair ("*blanc*") complexion, and of medium stature ("*taille moyenne*"), he was unsure whether he would recognise him: "*Il se pourrait que je reconnaisse Al Hassan si je le revoyais.*" P-0984 explained that, when he saw AL HASSAN, the latter's face was partially covered, and it was nighttime. Indeed, P-0984 did not recognise AL HASSAN's photo when shown to him, and he thought that the photo of a different individual resembled AL HASSAN.

⁷ [REDACTED]

C. The non-disclosure of the statements of P-0554 and P-0984 is necessary under rule 81(4) of the Rules

18. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].⁸

19. The Prosecution submits that it would not be possible to redact or summarise their related statements in a meaningful manner without either of their identities being easily discernible.

D. The non-disclosure of the statements of P-0554 and P-0984 is necessary under rule 81(2) of the Rules to protect the Prosecution's investigations

20. 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."⁹

21. Any incident involving either P-0554 or P-0984 would discourage them from further cooperating with the Prosecution and testifying at trial should the charges against AL HASSAN be confirmed. This would also discourage other current and future witnesses from cooperating with the Prosecution.

E. Lack of prejudice to Defence

[REDACTED]
[REDACTED]
[REDACTED].

22. The non-disclosure of these two statements will not prejudice the Defence. The Prosecution will not be relying on the two statements during the confirmation hearing. [REDACTED]

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

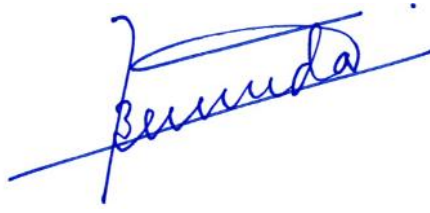
Relief requested

23. For all the above reasons, the Prosecution seeks an order under article 68(1) of the Statute and rules 81(2) and (4) of the Rules authorising the Prosecution not to disclose at this stage the statements of Witnesses P-0554 and P-0984 to the Defence.

24. In the event that the Single Judge were to deny this request in whole or in part, the Prosecution [REDACTED]

[REDACTED]

¹⁰ [REDACTED].



Fatou Bensouda
Prosecutor

Dated this 8th day of July 2019

At The Hague, The Netherlands