

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date: **25 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 I  
only available to the Prosecution and the Victims and Witnesses Unit**

**Public redacted version of the “Prosecution Request for [REDACTED]  
[REDACTED] and to withhold the identity of Witness  
MLI-OTP-P-0004 upon whose evidence the Prosecution will rely at the  
confirmation of charges hearing”, 26 February 2019, ICC-01/12-01/18-257-Secret-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**

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**Legal Representatives of the Victims**

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**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**

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**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”), rule 81(2) of the Rules of Procedure and Evidence (“Rules”), and regulation 42(3) of the Regulations of the Court (“Regulations”), the Prosecution seeks the Single Judge’s authorisation to withhold at this stage of the proceedings the identity of Prosecution Witness MLI-OTP-P-0004 from [REDACTED] and other evidence he provides, which the Prosecution will rely upon at the confirmation of charges hearing.

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

3. [REDACTED]

4. [REDACTED]  
[REDACTED].<sup>2</sup>

5. [REDACTED]<sup>3</sup> [REDACTED]  
[REDACTED]  
[REDACTED]

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<sup>1</sup> [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED].  
<sup>2</sup> [REDACTED]  
<sup>3</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>4</sup>

6. [REDACTED]

[REDACTED].<sup>5</sup>

7. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>6</sup>

8. The Prosecution intends to rely on P-0004 during the confirmation of charges hearing. [REDACTED]

[REDACTED] the Prosecution seeks to redact all identifying information from P-0004's evidence prior to its disclosure to the Defence. [REDACTED]

[REDACTED]

[REDACTED].<sup>7</sup>

**Confidentiality**

9. Under regulation 23bis(2) of the Regulations, this application and its annexes are classified secret *ex parte* as they relate [REDACTED]

[REDACTED]<sup>8</sup> [REDACTED]

[REDACTED]

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4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

No. ICC-01/12-01/18

4/10

25 February 2019



- Annex I contains [REDACTED]

6

11. A secret redacted version of the present motion, available to the Defence, is filed simultaneously.

### **Applicable law**

12. The Prosecution recalls and reproduces by reference its submissions on the applicable law in a prior motion and the Single Judge's decision resolving the motion.<sup>17</sup> The Prosecution also recalls the finding of the Chamber in its decision ICC-01/12-01/18-122 [REDACTED]<sup>18</sup>

### **Submissions**

#### ***A. Security risks***

13. [REDACTED]  
[REDACTED] The Prosecution submits that, in the present circumstances at this stage, the redactions and the non-disclosure of documents requested below are necessary and proportionate to the risks P-0004 is facing in case of disclosure of his identity.

#### ***B. Documents to be redacted or withheld***

14. The Prosecution seeks to disclose P-0004's [REDACTED]  
[REDACTED] (see Annexes A and E), with redaction of any identifying information in their content and metadata.

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<sup>16</sup> [REDACTED]

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

<sup>18</sup> Cf. ICC-01/12-01/18-122 [REDACTED] para. 42.

<sup>19</sup> [REDACTED]

15. The Prosecution seeks to disclose Annexes B and D to the present filing with redactions of any identifying information from their content and/or metadata.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>20</sup>).

16. The Prosecution seeks to disclose Annex C to the present filing with redactions of any identifying information from its content and metadata. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

17. In Annex F, the Prosecution seeks to disclose [REDACTED] investigation notes it contains, with redactions to their content and/or metadata. In addition, in the investigation note [REDACTED], the Prosecution seeks to not replace [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Prosecution seeks to not disclose the investigation note [REDACTED]

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<sup>20</sup> [REDACTED]

[REDACTED]

[REDACTED] This investigation note is in any event of minimal relevance for the Defence, and [REDACTED]

[REDACTED].<sup>21</sup>

18. Annex G [REDACTED]

[REDACTED]

[REDACTED].

19. The Prosecution seeks to no longer disclose Annex I [REDACTED]

[REDACTED]

[REDACTED]

20. All the above mentioned annexes contain, when necessary, the Prosecution's proposed redactions to their content/metadata to protect P-0004's identity, although some also contain *proprio motu* redactions.<sup>22</sup>

### *C. Lack of prejudice to Defence*

21. Withholding information identifying P-0004 from his evidence will neither prejudice the Defence nor undermine the fairness and impartiality of the confirmation proceedings. The redactions proposed to be applied aim at protecting the witness as necessary, resulting in incriminatory information also being redacted. They should not hinder the Defence's understanding and appreciation of P-0004's evidence.

22. More so, the Single Judge's authorisation will enable the disclosure of P-0004's evidence to the Defence, albeit in redacted form, which will provide more details

<sup>21</sup> [REDACTED]

<sup>22</sup> ICC-01/12-01/18-31, para. 29.



to the Defence than any updated anonymous summary of his evidence, [REDACTED]

[REDACTED]<sup>3</sup>

#### *D. Variation of protective measures*

23. The Prosecution submits that the requested measures [REDACTED]

[REDACTED] bearing also in mind

that P-0004's evidence is incriminatory as regards the Suspect [REDACTED]

#### **Relief requested**

24. Based on the foregoing, the Prosecution seeks the Single Judge's authorisation to disclose the following materials with redactions to their content and/or metadata to prevent the identification of P-0004 as a Prosecution witness<sup>24</sup>:

- P-0004's two ICC [REDACTED] P-0004's [REDACTED]  
[REDACTED] and the [REDACTED] attached to his [REDACTED] (see Annexes A and E); and
- Investigation notes [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] and [REDACTED] (see Annex F).

<sup>23</sup> [REDACTED]

<sup>24</sup> That material also contains *proprio motu* redactions.

25. The Prosecution also seeks to disclose the following material with redactions of any identifying information to the content and/or metadata, [REDACTED]

- [REDACTED]  
[REDACTED] (Annex B);
- [REDACTED] (Annex D);  
and
- [REDACTED]

26. Finally, the Prosecution seeks authorisation not to disclose the following evidence:

- Investigation note [REDACTED] (in Annex F); and

- [REDACTED]
- [REDACTED]<sup>25</sup>

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Fatou Bensouda  
Prosecutor

Dated this 25<sup>th</sup> of February 2019

At The Hague, The Netherlands