

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

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

Date: **16 July 2018**

Date of submission:
21 September 2018

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 to E,
only available to the Prosecution and the Victims and Witnesses Unit**

**Public redacted version of the “Prosecution’s motion under regulation 42(3) for
authorisation to disclose an updated anonymous summary for Witness MLI-OTP-
P-0113 upon whose evidence the Prosecution will rely at the confirmation
hearing”, 16 July 2018, ICC-01/12-01/18-86-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

Mr Yasser Hassan

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
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 Other
Section**

Introduction

1. The Office of the Prosecutor ("Prosecution") hereby seeks authorisation to disclose an updated anonymous summary of the evidence of Prosecution Witness P-0113.
2. P-0113's identity was withheld with the approval of the Single Judge of Pre-Trial Chamber I in the *Al Mahdi* case¹ and an anonymous summary² of his statement was disclosed to the Defense under rule 77. Therefore, regulation 42 of the Regulations of the Court ("RoC") applies to his statement and several associated items.³
3. However:
 - First, due to the scope of the present case, a summary drafted anew is necessary in order to include information that is directly relevant to Mr Al Hassan's case;
 - Second, while P-0113's summary was disclosed under rule 77 in the *Al Mahdi* case, the Prosecution now intends to rely on the evidence of this witness at the article 61 confirmation hearing ("confirmation hearing");
 - Third, since the Prosecution intends to use P-0113's evidence for confirmation and trial, part of the content of a [REDACTED] [REDACTED]⁴ becomes potentially relevant for the summary of the witness's evidence in the present case;

¹ See [REDACTED]
 [REDACTED]
 [REDACTED] *Prosecutor v. Ahmad Al Faqi Al Mahdi*, 16 December 2015, ICC-01/12-01/15-61-Conf.

² See [REDACTED], included in Annex A.

³ See Annex A.

⁴ [REDACTED].

- Fourth, in [REDACTED] P-0113 gave additional information to the Prosecution when he was met to [REDACTED]. This was documented in an investigation note⁵.

4. For these reasons, the Prosecution is seeking authorisation to disclose an updated anonymous summary of P-0113's evidence as incriminatory pursuant to regulation 42(3) of the RoC and to not disclose the first summary⁶ and the investigation note mentioned above⁷. The other associated items remain in the realm of regulation 42(1) and (2) of the RoC.⁸
5. As a matter of fact, due to P-0113's personal circumstances, the security situation in Mali, and the threat posed by armed groups at issue in this case, exposure of this witness's cooperation with the Court would place him and his family at a risk of physical violence or death, while also prejudicing ongoing and future investigations. Consequently, any disclosure of his identity or other information which might lead to his exposure would require [REDACTED]
[REDACTED]
[REDACTED].
6. The Prosecution notes that it will disclose as soon as practicable the identities of other Prosecution witnesses, including eye-witnesses to events in Timbuktu in 2012. The decision to disclose some witnesses' identities and to seek non-disclosure of others was made after careful consideration by the Prosecution of the relevance of each witness's evidence and the risks to each.

5
6
7

I.e. the following items: [REDACTED]
[REDACTED]
[REDACTED].

7. In this context, and particularly considering the current stage of proceedings, the limited scope of the confirmation hearing and the fact that P-0113 [REDACTED] [REDACTED], the Prosecution submits that P-0113's identity and identifying information should not be disclosed and that an updated summary of his statement⁹ (and of the investigation notes¹⁰) should be disclosed instead.

Confidentiality

8. Pursuant to regulation 23bis(2) of the RoC, this motion and its Annexes A to D are filed *ex parte*, only available to the Prosecution and VWU. Indeed, the motion discusses security concerns specific to this witness, including his occupation and place of residence.
9. In addition, the annexes contain personal identifying information the disclosure of which would place the witness at risk and render the motion moot:
- Annex A consists of the materials related to P-0113 for which regulation 42 of the RoC applies, including the summary of P-0113's information as submitted in the *Al Mahdi* case;
 - Annex B contains [REDACTED];
 - Annex C contains the evidence relied upon to draft the updated summary of P-0113¹¹;
 - Annex D contains the proposed anonymous summary of P-0113; and
 - Annex E contains [REDACTED] (see *infra* para. 47).
10. The Prosecution will file a confidential redacted version of the present motion as soon as practicable.

⁹ [REDACTED].
¹ [REDACTED].

¹¹ Namely the statement of the witness and the [REDACTED] and [REDACTED].

Background

11. On 4 April 2018, Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”) made his initial appearance before the Court. The confirmation hearing was set for 24 September 2018.
12. Since then, the Prosecution has been reviewing the evidence in its possession for possible disclosure to the Defence. During this review, the Prosecution has identified Witness P-0113, among others,¹² upon whose evidence the Prosecution will rely at the confirmation hearing.
13. To protect him, as well as the Prosecution’s ability to conduct further investigation into the situation in Mali, the Prosecution requests *inter alia* authorisation to disclose to the Defence an updated anonymous summary of the statement of Prosecution Witness P-0113 as incriminatory evidence.
14. Such measure will avoid revealing the witness’s identity or other information which might unnecessarily expose his interaction with the Court at this stage.

Applicable Law

Prosecution’s disclosure obligations

15. Pursuant to article 61(3)(b) of the Rome Statute (“Statute”) and rules 77 and 76, the Prosecution must disclose to the Defence all evidence upon which it intends to rely at the confirmation hearing.
16. Pursuant to article 67(2), the Prosecution must disclose to the Defence all evidence in its possession or control which it believes shows or tends to show the innocence of the suspect, or to mitigate his guilt, or which may affect the credibility of Prosecution evidence.

¹² The Prosecution will submit separate motions related to other witnesses.

17. Pursuant to rule 77, the Prosecution must also permit the Defence to inspect any books, documents, photographs and other tangible objects in the Prosecution's possession or control which are "*material to the preparation of the Defence.*" The Appeals Chamber in *Lubanga* ruled that the term "*'material to the preparation of the defence' must be interpreted broadly,*" and clarified that this includes "*objects which, while not directly linked to exonerating or incriminating evidence, may otherwise be material to the preparation of the defence.*"¹³ However, the Appeals Chamber has also indicated that "*the right to disclosure is not unlimited and which objects are 'material to the preparation of the defence' will depend upon the specific circumstances of the case.*"¹⁴

Duty to protect witnesses

18. The Prosecution must meet its disclosure obligations in a manner consistent with its duty under articles 54(1)(b), 68(1) and 68(5) of the Statute to protect victims and witnesses and others at risk because of the activities of the Court. In some circumstances, not disclosing certain information to the Defence may be necessary to protect the fundamental rights of an individual put at risk by the activities of the Court.¹⁵

19. Rule 81(4) provides that the Chamber, on its own motion or at the request of the Prosecution, must take necessary steps "*to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of trial.*"¹⁶

¹³ *Prosecutor v. Lubanga*, Judgment on Appeal against Oral Disclosure, ICC-01/04-01/06-1433, 11 July 2008, para. 77.

¹⁴ *Prosecutor v. Banda and Jerbo*, ICC-02/05-03/09-501, 28 August 2013, para. 38-39.

¹⁵ *Prosecutor v. Katanga*, Judgment on Prosecution's Appeal against the First Redaction Decision, ICC-01/04-01/07-475, 13 May 2008, para. 57-58.

¹⁶ The protections of rule 81(4) were extended by the Appeals Chamber to all individuals at risk on account of the activities of the Court in *Prosecutor v. Katanga*, Judgment on Prosecution's Appeal against the First Redaction Decision, ICC-01/04-01/07-475, 13 May 2008, para. 56.

20. Non-disclosure of a person's identity under rule 81(4) must be assessed on a case-by-case basis,¹⁷ taking into account at least the following factors:

- (1) the danger to the person or to members of his or her family that the disclosure of his or her identity might cause;¹⁸
- (2) the necessity of the non-disclosure (and in particular the feasibility and sufficiency of less restrictive measures);¹⁹
- (3) whether the non-disclosure would be prejudicial to or inconsistent with the rights of the suspect and a fair and impartial proceeding;²⁰ and
- (4) the relevance of the information to the Defence.²¹

21. In assessing the existence of a risk, a Single Judge or Pre-Trial Chamber should ensure that there is an "*objectively justifiable risk*" to the safety of the person concerned and that such risk arises from disclosure of the identity or other information to the Defence, rather than to the public at large, taking into account the circumstances of the individual suspect.²²

22. The Prosecution submits that factors relevant to the assessment of risk include, but are not limited to, the witness's personal circumstances, any existing protection or security measures in place for the witness, the security situation in the area where the witness or his or her family currently resides, whether the witness or his or her family has received any threats on account of his or her

¹⁷ *Prosecutor v. Lubanga*, Judgement on Disclosure Restriction pursuant to Rule 81(2) and (4), ICC-01/04-01/06-568, 13 October 2006, para. 36-37; *Prosecutor v. Katanga*, Judgment on Katanga's Appeal against the First Redaction Decision, ICC-01/04-01/07-476, 13 May 2008, para. 66.

¹⁸ *Prosecutor v. Lubanga*, Judgment on Appeal against First Redaction Decision, ICC-01/04-01/06-773, 14 December 2006, para. 21.

¹⁹ *Prosecutor v. Lubanga*, Judgment on Appeal against First Redaction Decision, ICC-01/04-01/06-773, 14 December 2006, para. 21; *Prosecutor v. Lubanga*, Judgment on Disclosure Restriction pursuant to Rule 81(2) and (4), ICC-01/04-01/06-568, 13 October 2006, para. 37.

²⁰ *Prosecutor v. Lubanga*, Judgment on Appeal against First Redaction Decision, ICC-01/04-01/06-773, 14 December 2006, para. 21.

²¹ *Prosecutor v. Katanga*, Judgement on Katanga's Appeal against the First Redaction Decision, ICC-01/04-01/07-476, 13 May 2008, para. 62.

²² *Prosecutor v. Katanga*, Judgment on Prosecution's Appeal against the First Redaction Decision, ICC-01/04-01/07-475, 13 May 2008, para. 71.

perceived involvement with the Court, whether the witness himself or herself has taken any actions that might endanger his or her personal safety, and whether the witness has consented to disclosure of his or her identity.

Protecting the Prosecution's ability to investigate

23. Rule 81(2) provides that the Prosecution may also request non-disclosure of information where necessary to protect future or ongoing investigations. The Appeals Chamber has held that the same general factors, used to analyse applications for non-disclosure under rule 81(4), apply under rule 81(2), namely:

"a thorough consideration of the danger that the disclosure of the information may cause; the necessity of the non-disclosure, including whether it is the least intrusive measure necessary to avoid prejudice to the investigations of the Prosecutor; and the fact that any measures taken shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial".²³

Non-disclosure and redactions or use of summaries at the confirmation stage

24. Article 68(5) provides:

"Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purpose of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measure shall be exercised in a manner which is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial".

²³ *Prosecutor v. Katanga*, Judgment on Katanga's Appeal against the First Redaction Decision, ICC-01/04-01/07-476, 13 May 2008, para. 59.

25. The Appeals Chamber has emphasised that the standard for permitting non-disclosure at the confirmation stage is less demanding than the standard at trial. In the *Katanga* case, the Appeals Chamber stated:

“[I]t must be emphasised that this judgment concerns the stage of the proceedings relating to the confirmation of the charges against a suspect and must be seen in that light. A hearing to confirm the charges is not a trial to establish guilt or innocence. It is a phase of the proceedings designed to “determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged” prior to confirming any charges and committing the person to a Trial Chamber to be tried on the charges as confirmed. As such, it may be permissible to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial”.²⁴

26. The Single Judge in *Ruto et al.* concluded that *“the Prosecutor has the obligation to protect victims and witnesses and, to that effect, he may request that certain information be redacted or rely on summary evidence for the purposes of the confirmation hearing.”²⁵* The Single Judge in *Ntaganda* similarly authorised the use of anonymous summaries and redactions for rule 77 material at the confirmation stage under rules 81(2) and 81(4), reasoning that *“in light of the limited scope of the confirmation of charges hearing, the anonymity is necessary and not prejudicial to or inconsistent with*

²⁴ *Prosecutor v. Katanga*, Judgment on Katanga’s Appeal against the First Redaction Decision, ICC-01/04-01/07-475, 13 May 2008, para. 68.

²⁵ *Prosecutor v. Ruto et al.*, Decision on the “Prosecution’s Application for leave to Appeal the Decision on the ‘Prosecution’s application requesting disclosure after a final resolution of the Government of Kenya’s admissibility challenge’ and Establishing a Calendar for Disclosure” (ICC-01/09-01/11-62)”, ICC-01/09-01/11-85, para. 18.

*the rights of the suspect and fair and impartial proceedings as the Defence will have access to the relevant information contained in the summary."*²⁶

Submissions

27. The Prosecution submits that withholding the identity and other information which might lead to the exposure of Witness P-0113 is necessary and appropriate under both rule 81(2) and rule 81(4).

A. Information on Witness P-0113

28. P-0113

[REDACTED]

[REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

(b) [REDACTED]

[REDACTED]

29. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30. [REDACTED]

[REDACTED]

[REDACTED].

²⁶ See, e.g., *Prosecutor v. Ntaganda*, Redacted Seventh Decision on the Prosecutor's Requests for Redactions, ICC-01/04-02/06-248-Red2, 3 July 2014, para. 21, 22, 29.

31. P-0113 gave a statement to the Office of the Prosecutor [REDACTED]²⁷ and provided the investigators with three documents: [REDACTED]²⁸ [REDACTED]²⁹ and a [REDACTED]³⁰. In the course of the investigations, investigators drafted one screening note.³¹ There are also two investigation notes (*cf. supra* para. 3).³²

B. Disclosure of a summary and non-disclosure of some related evidence is necessary under rule 81(4) to protect this witness and his family

32. First, disclosure of anonymous summaries for this witness is appropriate under rule 81(4), because such approach is necessary to reduce or eliminate objectively justifiable risks to the witness and his family and is consistent with the rights of the suspect and fair and impartial proceedings.

There exists an objectively justifiable risk of danger

33. [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]³⁴

34. [REDACTED]
[REDACTED]
[REDACTED]

35. [REDACTED] - that should it become known to armed groups that an individual has cooperated with the Court, the risk of physical harm or death to the individual and his family is “high.” This

²⁷ [REDACTED], falling under regulation 42(3).
²⁸ [REDACTED], falling under regulation 42(1) and (2).
²⁹ [REDACTED], falling under regulation 42(1) and (2).
³⁰ [REDACTED], falling under regulation 42(1) and (2).
³¹ [REDACTED], falling under regulation 42(1) and (2).
³² [REDACTED] and [REDACTED]
³³ [REDACTED]
³⁴ [REDACTED].

conclusion is based in part on documented instances in which AQIM and other groups have been involved in targeted attacks and assassinations against individuals suspected of cooperating with international organisations.³⁵

36. As a matter of fact, the main threat actors against Prosecution witnesses or potential witnesses include a coalition of “jihadist” groups including Ansar Dine and AQIM (with which Mr Al Hassan was associated, and which operate throughout Mali and the neighbouring countries, *i.e.* the very armed groups at issue in this case³⁶) and the *Jama’at Nusrat Al-Islam wal-Muslimin* (“Groupe pour le soutien de l’Islam et des musulmans” or “JNIM”³⁷ established in March 2017 and led by Iyad Ag GHALY³⁸).

37. The general security situation in Mali, particularly in the north, remains highly volatile, due, *inter alia*, to the threat posed by the armed groups associated with Mr Al Hassan (the latter is a member of Ansar Dine and was still acting under

³⁵ See, e.g., “Mali : Ansar Dine revendique l’attaque contre la Minusma à Kidal”, RFI, 28 November 2015 (available at <http://www.rfi.fr/afrique/20151128-mali-ansar-dine-revendique-attaque-contre-minusma-kidal>); “Mali: Le groupe Ansar Eddine envoie des tracts aux populations locales,” Sahelien.com, 7 January 2015, MLI-OTP-0022-0404. See also “Deux Touaregs Imghads, guides de la force Barkhane, égorgés à Aguelhok,” Mali-Web, February 2015 (available at <http://mali-web.org/nord-mali/deux-touaregs-imghads-guides-de-la-force-barkhane-egorges-a-aguelhok>); “Nouvelle victime à Zoueira près de Tombouctou : Un présumé informateur des forces françaises éliminé,” Maliweb, November 2014 (available at <https://www.maliweb.net/la-situation-politique-et-securitaire-au-nord/nouvelle-victime-zoueira-pres-tombouctou-presume-informateur-forces-francaises-elimine-629332.html>); “Mali: des civils enlevés par des jihadistes à la frontière nigérienne,” RFI, March 2015 (available at http://www.rfi.fr/afrique/20150312-trois-civils-maliens-enlevés-jihadistes-frontière-nigérienne-mujao/#./?&_suid=144768778866503002341593728486); UNSC, Report of the Secretary-General on the situation in Mali, 26 December 2017, MLI-OTP-0058-0400; UNGA, Report of the Independent Expert on the situation of human rights in Mali, 2 February 2018, MLI-OTP-0058-0354; UNSC, Report of the Secretary-General on the situation in Mali, 29 March 2018, MLI-OTP-0058-0368; Reuters, Al Qaeda affiliate claims responsibility for Burkina Faso attacks, 3 March 2018, MLI-OTP-0058-0419.

³⁶ [REDACTED]

³⁷ Déclaration à la presse faite par le Conseil de sécurité sur l’attaque ayant visé la MINUSMA, SC/12810-PKO/636, 4 May 2017, [MLI-OTP-0046-9012](#); Déclaration à la presse faite par le Conseil de sécurité à l’occasion de l’attentat terroriste perpétré contre la MINUSMA, SC/12837-PKO/644, 23 May 2017, [MLI-OTP-0046-9011](#).

³⁸ “Les groupes terroristes du Nord Mali se réunifient avec Iyad AG GHALY comme Leader”, *Malijet*, 2 March 2017, [MLI-OTP-0041-0041](#), p. 0043 (version française) et [MLI-OTP-0041-0037](#), p. 0038; video, “Announcement of the victory of Islam and Muslim groups/ Speech Sheikh Abou Fadl”, 6 March 2017, [MLI-OTP-0042-0178](#), de 00:02:36:00 à 00:03:06:00.

Iyad Ag GHALY's order at the time of his arrest³⁹). The capacity of the said groups to conduct numerous and significant attacks [REDACTED] is well established.⁴⁰ Around a week ago, one serious attack was conducted against the G5 Sahel forces.⁴¹

38. [REDACTED]

39. The Prosecution emphasises that this witness could be placed at risk even if the Defence does not desire or intend such a result. [REDACTED]

[REDACTED] It will be even more difficult for the Defence to operate [REDACTED] and to effectively avoid any inadvertent association of witnesses with the Court or with international organisations more generally. Consequently, the existing confidentiality obligations of counsel are insufficient by themselves to protect witnesses from the serious threats described above.

40. [REDACTED] of the witness is provided in the attached *ex parte* Annex B.

³⁹ [REDACTED]

[REDACTED] and e.g. MINUSMA, "Attaque de Tombouctou", 15 April 2018, MLI-OTP-0058-0422. Some of the vehicles used by the attackers were disguised with signs of the UN and Malian armed forces; MINUSMA, "Déclaration attribuable au porte-parole du Secrétaire général sur l'attaque contre la MINUSMA à Tombouctou, au Mali", MLI-OTP-0058-0425; Security Council, "Security Council Press Statement on Attack against United Nations Multidimensional Integrated Stabilization Mission in Mali", 15 April 2018, MLI-OTP-0058-0424; "Mali : l'attaque de Tombouctou revendiquée par un groupe lié à Al-Qaïda", *Jeune Afrique*, 21 avril 2018, MLI-OTP-0058-0426.

⁴¹ "At least six dead in Mali after attack on regional anti-terror force base," The Guardian, 29 June 2018, <https://www.theguardian.com/world/2018/jun/29/mali-people-dead-after-attack-on-g5-sahel-anti-terror-taskforce-base> .

The use of summaries is the least restrictive means available

41. Given the risks discussed above, and the human and financial costs associated with the implementation of highly intrusive protection measures, disclosure of an updated anonymous summary is the least restrictive means available to effectively protect the safety of this witness and his family, particularly at this stage of the proceedings.

42. Other protective measures, even if technically possible, are not feasible or appropriate at this moment. The disclosure of any information that might expose the cooperation of this witness with the Court would require [REDACTED]
[REDACTED]
[REDACTED] (see *ex parte* Annex B).

43. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

44. The Prosecution has also determined that disclosure of redacted statements rather than summaries would not, in the case of this witness, provide adequate protection. Even a heavily redacted statement would still allow [REDACTED]
[REDACTED], to potentially identify the witness. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

The use of summaries will not prejudice the Defence

45. The Prosecution submits that disclosure of an anonymous summary for this witness will not result in any prejudice to the Defence nor undermine the fairness and impartiality of the confirmation proceedings.

46. First, the Prosecution has drafted the summary of P-0113 with a view to including all relevant and disclosable information while protecting the security of the witness and his family.⁴²

47. Second, the information provided by P-0113 on crimes committed by the armed groups in Timbuktu, as well as on the structure and leaders of Ansar Dine and AQIM, [REDACTED] the Islamic police, the *Hesbah*, the Islamic tribunal and crimes committed by the armed groups is contained in other types of evidence. Indeed, the evidence he gave is also available from other sources that have or will be disclosed to the Defence as incriminatory evidence such as:

- statements of other witnesses, including [REDACTED] statements and [REDACTED] [REDACTED] [REDACTED] interview;⁴³
- [REDACTED]⁴⁴
- [REDACTED].⁴⁵

⁴² Including relevant information contained [REDACTED] [REDACTED]

⁴³ E.g. witness statement of [REDACTED]
[REDACTED]
[REDACTED].

48. [REDACTED]

[REDACTED] 50 [REDACTED]

[REDACTED].

49. Second, the use of an anonymous summary is independently warranted under rule 81(2) to protect the Prosecution's future and ongoing investigations in Mali.

[illegible]

Yahoo! News, *Mali: Girl in Timbuktu whipped for speaking to men*, MLI-OTP-0001-4086; Al Jazeera, *Northern Mali: A dying land*, MLI-OTP-0001-4812; Algérie.com, *Mali: Quand la police islamique fait sa loi à Tombouctou*, MLI-OTP-0033-2980.

48 [REDACTED].
49 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].
[REDACTED].

There exists an objectively justifiable risk of interference

50. The Appeals Chamber has held that interference with Prosecution witnesses may prejudice further and ongoing investigations.⁵¹

51. This is true in the sense that the particular witnesses targeted may cease cooperating, [REDACTED]

[REDACTED]

[REDACTED].

52. As set forth above, disclosure of the identities or identifying information of this witness would create a risk that he or his family might be targeted for violence or even death.

53. That risk to witnesses poses a direct threat to the Prosecution's ability to continue investigating these and other crimes committed in Timbuktu and elsewhere in Mali.

54. In addition, in the Prosecution's judgment, disclosure of the identity or identifying information of this witness would necessitate [REDACTED]

[REDACTED]

The use of a summary is the least restrictive means available

55. In the Prosecution's submission, there are no less restrictive means available to protect its investigative ability in Mali, particularly with regards to crimes allegedly committed in Timbuktu.

⁵¹ See *Prosecutor v. Katanga*, Judgment on Katanga's Appeal against the First Redaction Decision, ICC-01/04-01/07-476, 13 May 2008, para. 49 ("The Appeals Chamber accepts 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 co-operate further with the Prosecutor.").

56. The pool of witnesses with relevant knowledge who may be safely contacted [REDACTED]

57. Under these circumstances, the disclosure of any information which could expose one or more of these witnesses could affect the willingness of [REDACTED] [REDACTED] witnesses and potential witnesses to cooperate with the Prosecution, thus severely hampering ongoing and future investigations.

58. Also, as noted above, the Prosecution has determined that the disclosure of even heavily redacted statements would not sufficiently protect this witness.

The use of a summary will not prejudice the Defence

59. For the reasons set forth above in relation to rule 81(4), the disclosure of an updated anonymous summary of P-0113 will not prejudice the rights of the Defence nor impede fair and impartial confirmation proceedings.

Relief sought

60. In conclusion, the Prosecution seeks from the Single Judge an order under rules 81(2) and 81(4) authorising the disclosure of the updated anonymous summary as provided in *ex parte* Annex D in lieu of the witness statement and associated items of P-0113.

61. 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 Witness P-0113 only after all practicable protective measures [REDACTED].



Fatou Bensouda, Prosecutor

Dated this 16th day of July 2018
At The Hague, The Netherlands