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Date: **13 September 2018**
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15 October 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 C,
only available to the Prosecution and the Victims and Witnesses Unit**

**Public redacted version of the “Prosecution’s Request for authorisation
to withhold the identity of Witness MLI-OTP-P-0160 upon whose
evidence the Prosecution will rely at the confirmation hearing,
13 September 2018, ICC-01/12-01/18-121-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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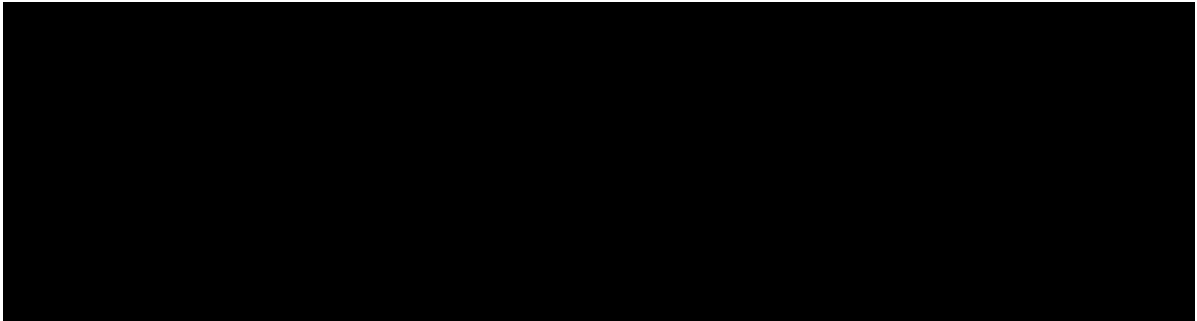
**Victims Participation and Reparations
Section**

Other

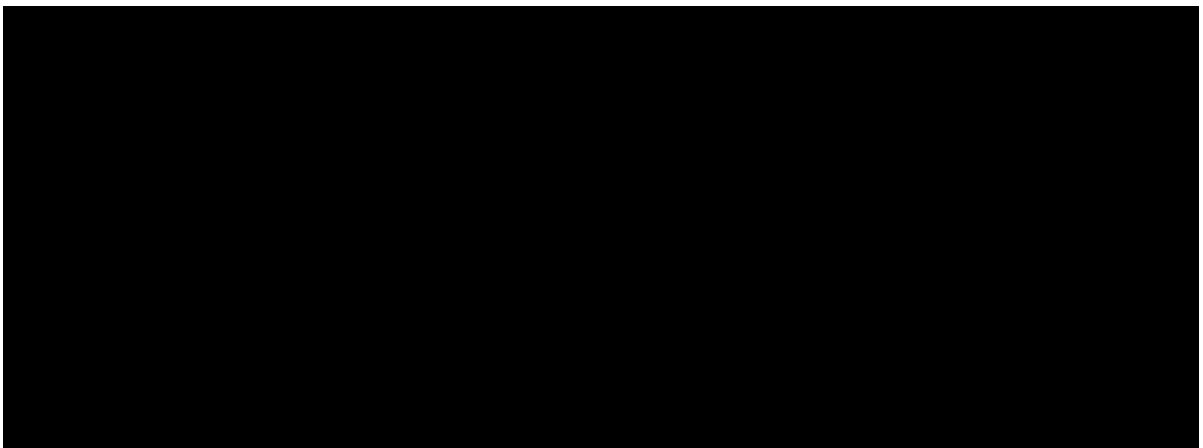
Introduction

1. Further to the Single Judge's *Decision on the Evidence Disclosure Protocol and Other Related Matters*,¹ the Office of the Prosecutor ("Prosecution") hereby seeks authorisation to withhold the identity of Prosecution Witness P-0160, *i.e.* to redact all identifying information from his screening note and his statement,² in order to protect his safety, psychological well-being and dignity pursuant to article 68(1) of the Rome Statute and rule 81(2) and (4) of the Rules of Procedure and Evidence ("Rules").

2.



3. The Prosecution intends to rely on Witness P-0160's evidence at the confirmation hearing. 



4. Given P-0160's current residence and work in 
, his security situation remains precarious.

¹ ICC-01/12-01/18-31-tENG, para. 33.

² And the translation thereof.

5. In this context, considering the danger for all persons whom the armed groups perceived to be cooperating with international organisations in Mali and the threat posed by armed groups at issue in this case, the exposure of this witness's cooperation with the Court would place him and his family at risk. This risk is further heightened by the Prosecution's intention to rely on his evidence at the confirmation hearing [REDACTED]

6. Under these circumstances, and particularly considering the current stage of the proceedings and the limited scope of the confirmation hearing, the Prosecution submits that P-0160's identity and identifying information should not be disclosed and that the requested redactions should be granted.

Confidentiality

7. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this motion and its Annexes A to C are filed *ex parte*, available only to the Prosecution and VWU. Indeed, the motion 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. The annexes are divided as follows:

- Annex A contains the screening note and statement of Witness P-0160 with proposed redactions;³
- Annex B contains a [REDACTED]
- Annex C contains [REDACTED]

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

³ [REDACTED] and [REDACTED].

Background

10. On 4 April 2018, Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ("AL HASSAN") made his initial appearance before the Court.
11. 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-0160, among others, as a witness whose evidence it intends to rely upon at the confirmation hearing, but with redactions of any identifying information which might expose his interaction with the Court.

Applicable Law

12. As for the applicable law, the Prosecution refers to its prior filing ICC-01/12-01/18-48-Conf-Exp and the Single Judge's finding in the Decision ICC-01/12-01/18-88-Conf-Exp, in particular in paragraphs 15-17.

Submissions

13. Withholding Witness P-0160's identity and other information which might lead to his exposure is necessary under rule 81(2) and (4) in order not to put him and/or his family in danger and protect the Prosecution investigation.

A. Information on Prosecution Witness P-0160

14. Witness P-0160 is [REDACTED]
[REDACTED]
[REDACTED]
15. [REDACTED]

[REDACTED]

16.

[REDACTED]

17. Witness P-0160's statement deals with, amongst others, the following topics (see Annex A):

- his personal and professional background;
- his work [REDACTED]

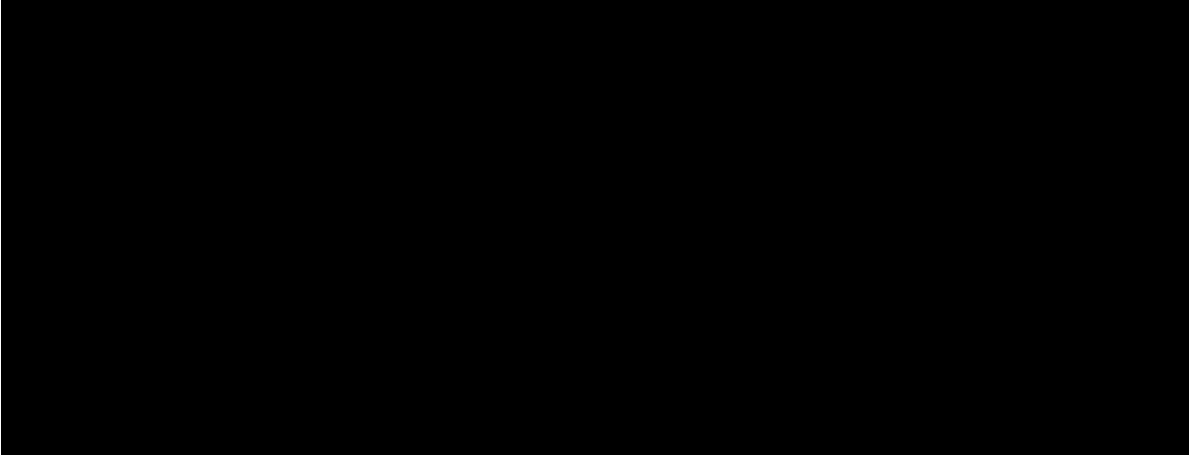
[REDACTED]

- [REDACTED] [REDACTED]
[REDACTED] [REDACTED]; and
- individual case [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

B. Disclosure of a redacted screening note and statement is necessary under article 68(1) and rule 81(4) to protect this witness and his family

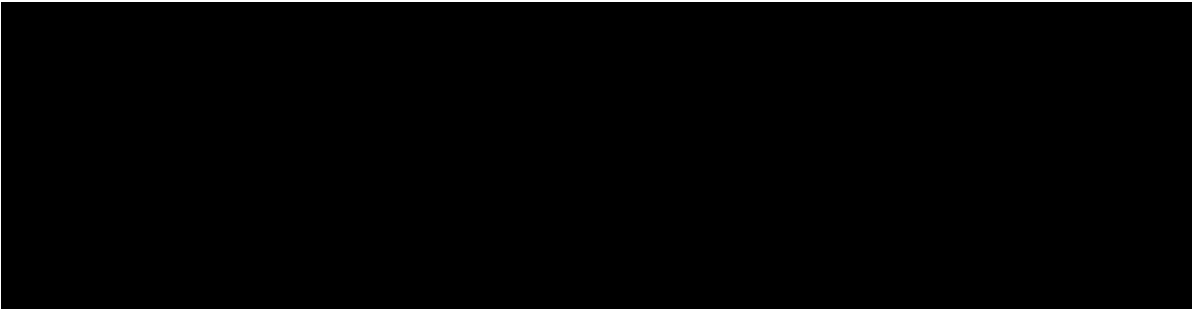
Redacting the identity and identifying information of Witness P-0160 is necessary because there is an objectively justifiable risk

18.



19. [REDACTED], Witness P-0160 is at risk of being targeted by the armed groups. This existing risk would be significantly heightened should it become known that Witness P-0160 is also cooperating with the ICC in this case.

20.



- [REDACTED]
- [REDACTED]

- moreover, at a practical level, [REDACTED]
[REDACTED] before it is certain that the case will proceed to trial would result in significant impact in Witness P-0160's life;
- in this context, and bearing in mind [REDACTED]
[REDACTED]
[REDACTED] the Prosecution considers preferable to request the redaction of Witness P-0160's identity at this stage (if the circumstances change, the Prosecution will inform the Single Judge).

21. The Prosecution refers a) to the Single Judge's findings in paragraph 33 of decision ICC-01/12-01/18-88-Conf-Exp, especially with regard to the Suspect's role at the time of his arrest, as well as b) [REDACTED]

[REDACTED]⁴ [REDACTED]
[REDACTED]⁵

22. In particular, the Prosecution reminds the Chamber of the serious and dire conclusions of its witness security assessment for Mali. This assessment concluded – [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 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.⁶

⁴ [REDACTED]

⁵ [REDACTED]

⁶ 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

23. As mentioned previously, the main threat actors against Prosecution witnesses or potential witnesses include a coalition of “jihadist” groups including Ansar Dine and AQIM (with which AL HASSAN was associated, and which operate throughout Mali and the neighbouring countries, *i.e.* the very armed groups at issue in this case)⁷ and the *Jama’at Nusrat Al-Islam wal-Muslimin* (“Groupe pour le soutien de l’Islam et des musulmans” or “JNIM”,⁸ established in March 2017 and led by Iyad Ag GHALY).⁹ Recently, on 5 September 2018, the US Department of State has designated JNIM as a Foreign Terrorist Organisation under section 219 of the Immigration and Nationality Act; the Department has also designated JNIM as a Specially Designated Global Terrorist (SDGT) under section 1(b) of Executive Order (E.O.) 13224.¹⁰

24. The capacity of these groups to conduct numerous and significant attacks [REDACTED] is well established: the Prosecution refers to its prior filing ICC-01/12-01/18-48-Conf-Exp, in particular paragraphs 38-39.

25. As a matter of fact, [REDACTED]
[REDACTED]
[REDACTED]

jihadistes à la frontière nigérienne,” RFI, March 2015 (available at http://www.rfi.fr/afrique/20150312-trois-civils-maliens-enleves-jihadistes-frontiere-nigerienne-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.

⁷ For example, [REDACTED]
[REDACTED]

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.

⁹ “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.

¹⁰ <https://www.state.gov/r/pa/prs/ps/2018/09/285705.htm>.

- [REDACTED]
[REDACTED]^{.11}
- [REDACTED]
[REDACTED]^{.12}

26. Concretely, one manner in which armed groups such as AQIM and Ansar Dine could obtain knowledge about this witness is through an intentional or inadvertent disclosure of information provided to the Defence under the Court's disclosure regime.

27. In this regard, 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]

[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.

28. Last, the Prosecution relies on the results of the analysis of Witness P-0160's personal situation as conducted by its Protection Strategies Unit ("PSU") [REDACTED]

[REDACTED]

¹¹ See e.g. Reports of the Secretary-General on the situation in Mali, [S/2017/478](#), dated 6 June 2017, [REDACTED] [S/2017/811](#), dated 28 September 2017, [REDACTED] [S/2018/273](#), dated 29 March 2018, [REDACTED]; [S/2018/541](#), dated 6 June 2018, [REDACTED]

¹² [REDACTED]

- [REDACTED]
- it is assessed that once Witness P-0160's statement and cooperation are disclosed to the Suspect and if the information leaks to threat actors, the risk level to him – [REDACTED] will be high;
- this risk can be mitigated, in part, [REDACTED]

29. Overall, given the seriousness of the risks mentioned, the limited scope of the confirmation hearing, the specific situation of this witness, redaction of any information related to the identity of P-0160 and non-disclosure of some related identifying evidence and metadata are the most reasonable and practical solution

[REDACTED]

*Withholding P-0160's identity and identifying information
is the least restrictive means available*

30.

[REDACTED]

31. However:

- as noted above, the Prosecution has determined that, unlike in other cases, the risk of violence in this case is likely to escalate immediately to physical violence or death, without warning;

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32. Accordingly, pending the implementation of the measures that have been determined to be required to ensure P-0160's protection, withholding his identity and identifying information is the least restrictive means available to effectively protect his safety and that of his family members, particularly at this stage of the proceedings.

*Withholding P-0160's identity and identifying information
will not prejudice the Defence*

33. The redactions applied to Witness P-0160's evidence will not result in any prejudice to the Defence nor undermine the fairness and impartiality of the confirmation proceedings.

34. The Prosecution has proposed redactions to Witness P-0160's screening note and statement, instead of preparing an anonymous summary and, while these redactions are extensive, they do not hinder the intelligibility of the statements in terms of the substance of the witness's accounts.

35. The Pre-Trial Chamber made it clear that "*in its decision on the confirmation of charges, [it] shall take into account only the version of evidence that was communicated to the Defence*", meaning that any information redacted in the disclosure to the Defence cannot be relied upon by the Prosecution.¹³

36. Witness P-0160's evidence exclusively concerns [REDACTED] and does not address the Suspect's role in their commission.

¹³ ICC-01/12-01/18-31-tENG, para. 32.

37. At the confirmation hearing, the Defence will know the identity of other Prosecution witnesses; and a number of items of documentary evidence will provide similar information as that contained in Witness P-0160's materials, including [REDACTED]

38. For instance, [REDACTED]
[REDACTED]
[REDACTED].¹⁴ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].¹⁵

39. Last, the Prosecution will disclose the identity of this witness prior to trial, should the charges be confirmed.

C. Disclosure of a redacted screening note and statement is necessary under rule 81(2) of the Rules to protect the Prosecution investigation

40. 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."¹⁶

41. The Prosecution is concerned that any incident happening to P-0160:

- would discourage him from further cooperating with the Prosecution and testifying at trial, should the charges against AL HASSAN be confirmed; and
- would discourage current and future witnesses to cooperate with the OTP.

¹⁴ [REDACTED]

¹⁵ [REDACTED]

¹⁶ ICC-01/12-01/18-48-Conf-Exp, para. 55, 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 sought

42. 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:

- not to disclose the identity and identifying information of Witness P-0160;
- to disclose redacted versions of his screening note and statement (and translation thereof) that expunge any identifying information; and
- to redact any identifying information from the metadata of these documents.

43. 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 [REDACTED]

[REDACTED]

[REDACTED]



Fatou Bensouda, Prosecutor

Dated this 13th day of September 2018
At The Hague, the Netherlands