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16 November 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 “Prosecution’s Request for authorisation to
withhold the identity of Witness MLI-OTP-P-0576 upon whose evidence
the Prosecution will not rely at the Confirmation of Charges Hearing”,
10 October 2018, ICC-01/12-01/18-151-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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Introduction

1. The Office of the Prosecutor ("Prosecution") seeks authorisation, pursuant to article 68(1) of the Rome Statute ("Statute") and rule 81(4) of the Rules of Procedure and Evidence ("Rules"), to redact all identifying information from all materials related to Witness MLI-OTP-P-0576 ("P-0576") in its possession.
2. P-0576 is a victim and witness of abduction and sexual and gender based crimes committed in Timbuktu in 2012. She does not seem to refer to Ansar Dine or AQIM perpetrators; and the Prosecution does not intend to rely on her evidence at the Confirmation of Charges Hearing ("Confirmation Hearing").
3. The Prosecution should however disclose her redacted statement and related materials under rule 77 of the Rules in the case against Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ("AL HASSAN").
4. However, disclosing her identity and exposing her cooperation with the Court at this stage of the proceedings, while the Prosecution is not relying on her evidence and [REDACTED], is unwarranted, and would place her and her family at a risk of harm given the security situation in Mali, and the danger for any person considered by the armed groups operating in Mali to be cooperating with international organisations.

Confidentiality

5. Pursuant to regulation 23bis(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 the Victims and Witnesses Unit ("VWU"). Indeed, the motion discusses security concerns specific to P-0576. In addition, the annexes contain personal identifying

information, the disclosure of which would place the witness at risk and render the motion moot.

6. The annexes are divided as follows:

- Annex A contains the statement of Witness P-0576 and its four annexes, with proposed redactions;¹
- Annex B contains [REDACTED]
[REDACTED] and
- Annex C contains [REDACTED]

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

Background

8. On 4 April 2018, AL HASSAN made his initial appearance before the Court.

9. In the course of its continuous review of evidence in its possession, the Prosecution decided to not rely on P-0576's evidence at the Confirmation Hearing. It however determined that, prior to the disclosure of her evidence under rule 77 of the Rules, redaction of all identifying information that might expose her interaction with the Court is necessary to protect her safety and that of members of her family.

Applicable law

10. With respect to the applicable law, the Prosecution relies on its 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.

¹ [REDACTED]

Submissions

11. Considering the evidence provided by P-0576 and the limited scope of the Confirmation Hearing, combined with the potential risks to her safety and that of members of her family, the Prosecution suggests, pursuant to article 68(1) and rule 81(4), that P-0576's identity and any information that might lead to her exposure is withheld.

A. Information on Prosecution Witness P-0576

12. P-0576 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

13. P-0576 provided a statement [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

14. During her captivity, P-0576 witnessed armed men violently taking the other girls, one after the other, to a room where they raped them. P-0576 could hear the girls screaming in the nearby room. She saw them coming back after the rape with wounds on their faces as if they had been beaten, and blood running down their legs. [REDACTED]
[REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED]

B. Disclosure of a redacted statement is necessary under article 68(1) and rule 81(4) to protect P-0576 and her family

Redacting the identity and identifying information of Witness P-0576 is necessary because there is an objective justifiable risk

15. The Prosecution will not rely on P-0576's evidence at the Confirmation Hearing.

16. [REDACTED]
[REDACTED]
[REDACTED]

17. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

18. In the circumstances, exposing P-0576's cooperation with the Court could place her and members of her family, [REDACTED], at a high risk of physical harm. Indeed, the risk associated with armed groups operating in Mali, [REDACTED], would be significantly heightened should it become known that P-0576 has cooperated with the ICC in any way.

19. In this regard, the Prosecution draws the Single Judge's attention to (a) his 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]

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20. In particular, the Prosecution reminds the Chamber of the serious and dire security situation in Mali and the heightened risks for people residing in Northern Mali. This assessment determined that the risk of physical harm or killing is high for witnesses and their families, if it becomes known to the armed groups that they have cooperated with the Court. It is based in part on documented instances in which armed groups launched targeted attacks and assassinations against individuals they considered were cooperating with international and foreign organisations.⁴ These armed groups conduct violent and deadly operations throughout Mali and the Sahel region.⁵ The Prosecution refers to paragraphs 38-39 of its filing ICC-01/12-01/18-48-Conf-Exp, incorporated here by way of reference.

21. AQIM and Ansar Dine are among the main threat actors against Prosecution witnesses or potential Prosecution witnesses. Both armed groups are part of a coalition of so-called jihadist groups under the name *Jama'at Nusrat Al-Islam wal-*

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⁴ 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-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.

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Muslimin (“Groupe pour le soutien de l’Islam et des musulmans” or “JNIM”),⁶ established in March 2017 and led by Iyad Ag GHALY.⁷ On 5 September 2018, the US Department of State listed JNIM as a Foreign Terrorist Organization under section 219 of the Immigration and Nationality Act; it also designated JNIM as a Specially Designated Global Terrorist (SDGT) under section 1(b) of Executive Order (E.O.) 13224.⁸

22. The Prosecution recalls that AL HASSAN admittedly was associated with these armed groups, in particular AQIM and Ansar Dine, and with Iyad Ag GHALY.⁹ There is information that the armed groups have associates and sympathisers among the inhabitants of Timbuktu, including individuals involved in the 2012 occupation. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁰

23. At this juncture, P-0576’s account regarding [REDACTED] [REDACTED] in the abduction and sexual crimes she described suggests that Ansar Dine or AQIM were not involved. However, the Prosecution submits that JNIM and related threat actors do not retaliate based on the content of a statement but rather based on the mere cooperation with an international organisation.

⁶ *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.

⁷ “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) and 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, from 00:02:36:00 to 00:03:06:00.

⁸ <https://www.state.gov/r/pa/prs/ps/2018/09/285705.htm>

⁹ See *Requête urgente du Bureau du Procureur aux fins de délivrance d’un mandat d’arrêt et de demande d’arrestation provisoire à l’encontre de M. Al Hassan ag ABDOUL AZIZ Ag Mohamed Ag Mahmoud*, ICC-01/12-01/18-1-Conf-Exp-Red2, para. 8-9 and 30-34.

¹⁰ [REDACTED]

24. Members of the armed groups could well acquire knowledge of P-0576's cooperation with the Court through an intentional or inadvertent disclosure of information. [REDACTED]

[REDACTED] Even assuming that the Defence makes efforts to operate discretely [REDACTED], the Court's obligations to protect the security and safety of victims and witnesses and counsel's obligations to uphold the confidentiality of disclosed material may prove insufficient to prevent the potential harm described above.

25. In the circumstances, even if the risk level associated with P-0576's situation [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

26. In sum, the fact that the Prosecution does not rely on the evidence of P-0576 for the Confirmation Hearing, the limited scope of the hearing, and the specific situation of P-0576 who is vulnerable as a sexual crime victim, all justifies the redactions of her identifying information prior to any disclosure. The non-disclosure of P-0576's identity constitutes the most reasonable and practical solution to protect the safety of this victim and members of her family.

*Withholding P-0576's identity and other identifying information
is the least restrictive means presently available*

27. Withholding P-0576's identity and identifying information remains the least restrictive means available to protect the safety of P-0576 and members of her family.

28. [REDACTED]
[REDACTED]
[REDACTED]

29. However, the Prosecution recalls that:

- unlike in other cases before the Court, the risk of violence in this case is more likely to escalate immediately to physical violence or death, without warning ;
- [REDACTED]
[REDACTED]
[REDACTED]

*Withholding P-0576's identity and identifying information will not
prejudice the Suspect's rights and his defence at this stage of the proceedings*

30. The proposed redactions to P-0576's statement are limited and will not cause any prejudice to the Suspect's rights and his defence, or undermine the fairness of the confirmation proceedings: they do not prevent a sufficient understanding of the substantial part of her anticipated evidence.

31. In all events, P-0576's evidence is essentially limited to her abduction and what happened to her and other girls [REDACTED]. As mentioned above, her account suggests that the persons involved do not belong to AQIM or Ansar Dine, the two armed groups AL HASSAN was associated

with. Moreover, the incidents and [REDACTED] will not form part of the allegations in support of the charges against AL HASSAN.

Relief sought

32. For all the reasons set forth above, the Prosecution seeks from the Single Judge an order authorising the Prosecution, pursuant to article 68(1) of the Statute and rule 81(4) of the Rules:

- to not disclose the identity and identifying information of Witness P-0576;
- to disclose redacted versions of her statement and annexes that expunge any identifying information; and
- to redact any identifying information from the metadata of these documents.

33. In the event the Single Judge were to deny this motion in whole or in part, the Prosecution requests an order permitting the Prosecution to make necessary disclosures only after [REDACTED]

[REDACTED]



Fatou Bensouda
Prosecutor

Dated this 10th day of October 2018

At The Hague, the Netherlands