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**International
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29 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 G,
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 Witnesses MLI-OTP-P-0553 and MLI-OTP-P-0574
upon whose evidence the Prosecution will rely at the confirmation hearing",
25 September 2018, ICC-01/12-01/18-135-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. 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 Witnesses P-0553 and P-0574. Specifically, the Prosecution wishes to redact all identifying information from their statements and associated documents, and to not disclose some documents related to P-0553, in order to protect both witnesses' safety, psychological well-being, dignity and privacy, as well as Prosecution investigation, pursuant to article 68(1) of the Rome Statute and rules 81(2) and (4) of the Rules of Procedure and Evidence ("Rules").

2. Witnesses P-0553 and P-0574 are both witnesses and victims of [REDACTED] crimes committed during the occupation of Timbuktu by AQIM and Ansar Dine in 2012 and early 2013. P-0553 was [REDACTED] and [REDACTED] [REDACTED]. P-0574, for her part, was taken from [REDACTED] for not wearing a proper veil, [REDACTED]. Both witnesses identified by name leaders of the armed groups and mentioned their involvement in [REDACTED] crimes [REDACTED].

3. The Prosecution intends to rely on the evidence of these two witnesses at the confirmation hearing. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

¹ ICC-01/12-01/18-31-tENG, para. 33.

available to the OTP or [REDACTED] that would reduce the risk of harm to these two witnesses in the event their identity would be disclosed.

4. In this context, considering the danger for all persons whom the armed groups perceive to be cooperating with international organisations in Mali and the threat posed by armed groups at issue in this case, the exposure of these witnesses' cooperation with the Court would place them and their family at risk.

5. [REDACTED]
[REDACTED] As such, withholding her identity, at this stage before the charges are confirmed, is important to avoid [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].²

6. Under these circumstances, and particularly considering the limited scope of the confirmation hearing, the request for redactions of P-0553's and P-0574's identifying information and the non-disclosure of specific documents listed below should be granted.

Confidentiality

7. Pursuant to regulation 23bis(2) of the Regulations of the Court, this motion and its Annexes A to G are filed *ex parte*, available only to the Prosecution and VWU. Indeed, the motion discusses security concerns specific to these witnesses. In addition, most of the annexes contain personal identifying information, the disclosure of which would place the witnesses at risk and render the motion moot.
8. The annexes are divided as follows:

² [REDACTED]

- Annex A contains the statement of Witness P-0553,³ one annex thereto,⁴ a clarifying investigation note⁵ and a [REDACTED]⁶ with proposed redactions to their content (metadata will have to be redacted too);
- Annex B contains several documents ([REDACTED]
[REDACTED]
[REDACTED])⁷ the metadata of which need to be redacted;
- Annex C contains the statement of Witness P-0574⁸ with proposed redactions and one annex thereto⁹ (for the Single Judge's complete information, there exist also three investigation notes, the content of which refers to the witness directly with her P number "P-0574", for which only *proprio motu* redactions are necessary, except for the metadata where P-0574's name will have to be redacted)¹⁰;
- Annex D contains [REDACTED] [REDACTED]
[REDACTED];
- Annex E contains [REDACTED]
- Annex F contains [REDACTED]
- Annex G contains [REDACTED]¹¹ [REDACTED]
[REDACTED]
[REDACTED]¹²

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

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. In the course of the review of evidence in its possession for disclosure purpose, the Prosecution has identified Witnesses P-0553 and P-0574, among others, as witnesses whose evidence it intends to rely upon at the confirmation hearing, but with redactions of any identifying information which might expose their 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 P-0553’s and P-0574’s identity and any information that might lead to their exposure is necessary under rules 81(2) and (4) of the Rules, to not put them and their family in danger, and to protect the Prosecution’s investigation.

A. Information on Prosecution Witnesses P-0553 and P-0574

Information on Prosecution Witness P-0553

[REDACTED]

14. [REDACTED] During the occupation of Timbuktu by AQIM and Ansar Dine, she was [REDACTED] and [REDACTED]. There, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] P-0553 [REDACTED] when these incidents took place.

15. Witness P-0553 provides information on, amongst others, the following facts (see Annex A):

- the arrival of the “rebels” in Timbuktu and enduring life under their rule, including the flogging she witnessed and imprisonment of women who did not cover themselves according to the jihadists’ rules;
- several armed men [REDACTED], [REDACTED], [REDACTED], threatening to kill her [REDACTED], [REDACTED] [REDACTED];
- her [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], [REDACTED];
- [REDACTED] [REDACTED] [REDACTED] [REDACTED];
- [REDACTED] [REDACTED];

- the case [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
- her knowledge of [REDACTED]
[REDACTED]
[REDACTED]; and
- her knowledge about Hamed MOUSSA as a leader of the “rebels” present in Timbuktu.

Information on Prosecution Witness P-0574

16. P-0574 [REDACTED]. P-0574 stated that she was taken [REDACTED] by men led by Hamed MOUSSA allegedly for not having worn a proper veil. She was detain[REDACTED] [REDACTED] [REDACTED]. She also witnessed [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [REDACTED] [REDACTED]. She was [REDACTED] [REDACTED] when these incidents took place.

17. Witness P-0574 provides information on, among others, the following facts (see Annex C):

- the arrival of the “rebels” in Timbuktu and life under their rule, including the beating, lashing and imprisonment of people who did not dress according to the jihadists’ demands or breached other rules;
- her arrest from [REDACTED] by armed men led by Hamed MOUSSA for not dressing according to the occupiers’ rules, [REDACTED]
[REDACTED];
- [REDACTED];

- the [REDACTED] girls detainee [REDACTED];
- her knowledge of the violence and mistreatment of other women and girls by the “rebels” in Timbuktu;
- her knowledge of leaders of the “rebels” present in Timbuktu, including Hamed MOUSSA and Adama; and
- her identification of individuals and buildings on images shown to her by the Prosecution.

B. Disclosure of redacted statements and associated documents is necessary under article 68(1) and rule 81(4) to protect these witnesses and their family

Redacting the identity and identifying information of Witnesses P-0553 and P-0574 is necessary because there is an objective risk of physical harm

18. P-0553 and P-0574 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

20. At this juncture, 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) to the *ex parte* Prosecution

[REDACTED]¹³ [REDACTED]

[REDACTED]¹⁴

21. In particular, the Prosecution reminds the Chamber of the serious and dire security situation in Mali and the heightened risks for witnesses residing in northern 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 including 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.¹⁵

22. 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)¹⁶ and the *Jama'at Nusrat Al-Islam wal-Muslimin* (“Groupe pour le

¹³ [REDACTED]

¹⁴ [REDACTED]

¹⁵ 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-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.

¹⁶ For example, Annex D [REDACTED]

soutien de l'Islam et des musulmans" or "JNIM",¹⁷ established in March 2017 and led by Iyad Ag GHALY).¹⁸ Recently, on 5 September 2018, the U.S. Department of State has designated JNIM as a Foreign Terrorist Organisation under section 219 of the Immigration and Nationality Act; the U.S. Department has also designated JNIM as a Specially Designated Global Terrorist (SDGT) under section 1(b) of Executive Order (E.O.) 13224.¹⁹

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

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

25. In this regard, the Prosecution emphasises that these two witnesses 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 discretely [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.

¹⁷ *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.

¹⁸ "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.

¹⁹ <https://www.state.gov/r/pa/prs/ps/2018/09/285705.htm>.

26. In addition to the risks associated with P-0553's and P-0574's [REDACTED]
[REDACTED], the requested protective measures are also justified by

27. [REDACTED]
[REDACTED]
[REDACTED].²⁰ [REDACTED]
[REDACTED]
[REDACTED]. Disclosing the identity of the witnesses to the Defence at this early stage in the proceedings – before the charges have been confirmed – unnecessarily risks that [REDACTED]
[REDACTED]. The [REDACTED]
[REDACTED]
[REDACTED]. In this sense, the Prosecution submits that the measure requested is indeed consistent with the Court's duty to "take appropriate measures to protect the safety, physical and psychological well-being, privacy and dignity of victims and witnesses", [REDACTED]
[REDACTED]

28. Further, the Prosecution wishes to stress that both Witnesses P-0553 and P-0574
[REDACTED]
[REDACTED].

29. Lastly, the Prosecution relies on [REDACTED]
[REDACTED] ([REDACTED]
[REDACTED]):

²⁰ [REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED];
- It is assessed that once the witnesses' statements and cooperation are disclosed to the Suspect and his Defence team and if the information leaks to threat actors, the risk of physical harm to them – [REDACTED] will be high;
- this risk can be mitigated, in part, through [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

30. Overall, given the seriousness of the risks mentioned, the limited scope of the confirmation hearing, the specific situation of these witnesses, redaction of any information related to their identity and non-disclosure of related identifying evidence and metadata are the most reasonable and practical solution at this stage.

*Withholding P-0553's and P-0574's identity and identifying information
is the least restrictive measure presently available*

31. [REDACTED]
[REDACTED]

32. However, the Prosecution recalls that:

- unlike in other cases, the risk of violence in this case is likely to escalate immediately to physical harm, including death;

- [REDACTED]
[REDACTED]
- [REDACTED].

33. Accordingly, withholding their identity and identifying information is the least restrictive measure available to effectively protect their safety and that of their family members, at this stage of the proceedings.

*Withholding P-0553's and P-0574's identifying information
will not prejudice the Suspect's rights and defence at this stage of the proceedings*

34. The redactions applied to Witnesses P-0553's and P-0574's evidence will not result in any prejudice to AL HASSAN's rights and his defence, or undermine the fairness and impartiality of the confirmation proceedings.

35. The Prosecution has proposed limited redactions to the two witnesses' statements and associated materials instead of preparing an anonymous summary, and these redactions do not hinder the understanding of the statements in terms of the substance of the witnesses' accounts.

36. In this regard, the Pre-Trial Chamber held 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"*. As such, the Prosecution cannot rely on information redacted from the statement disclosed to the Defence.²¹

37. Witnesses P-0553's and P-0574's evidence exclusively concerns crimes committed in Timbuktu, [REDACTED], and does not address the Suspect's role in their commission.

38. In addition, the Prosecution will make every effort to disclose in advance of the confirmation hearing, the identity and statements of other Prosecution witnesses

²¹ ICC-01/12-01/18-31-tENG, para. 32.

and a number of items of documentary evidence containing similar information as that contained in P-0553's and P-0574's statements, including information on [REDACTED] violence committed in Timbuktu.

39. Lastly, the Prosecution would disclose the identity of these witnesses prior to trial, should the relevant charges against AL HASSAN be confirmed.

C. Disclosure of redacted statements and associated documents 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."²²

41. The Prosecution is concerned that an incident involving either P-0553 or P-0574:

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

Relief sought

42. For the reasons set forth above, the Prosecution seeks from the Single Judge an order under article 68(1) and rules 81(2) and (4) authorising the Prosecution:

- not to disclose the identity and identifying information of Witnesses P-0553 and P-0574;

²² 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.

- to disclose redacted versions of their statements in Annexes A and C (and translation thereof) and associated materials in Annex A that expunge any identifying information;
- to redact any identifying information from the metadata of all documents referred to in Annexes A, B, and C [REDACTED]
[REDACTED]; and
- to redact the identity of Witness P-0574 from the document in Annex G.

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 to make any necessary disclosures regarding Witnesses P-0553 and P-0574 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



Fatou Bensouda
Prosecutor

Dated this 25th day of September 2018
At The Hague, the Netherlands