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

**Public redacted version of the “Prosecution motion for authorisation to
withhold the identity of Witness MLI-OTP-P-0569, upon whose evidence
the Prosecution will not rely at the Confirmation Hearing”,
23 November 2018, ICC-01/12-01/18-191-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") seeks authorisation to withhold the identity of Prosecution Witness P-0569, by redacting all identifying information from his [REDACTED] transcripts [REDACTED] in order to protect his safety as well as the Prosecution investigation, pursuant to article 68(1) of the Rome Statute and rule 81(2) and (4) of the Rules of Procedure and Evidence ("Rules").

2. P-0569 is [REDACTED] [REDACTED] [REDACTED] [REDACTED] in Timbuktu [REDACTED] 2012. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] He has been interviewed by the Prosecution [REDACTED]
[REDACTED].

3. The Prosecution does not envisage relying upon his evidence at the hearing to confirm the charges under article 61 of the Rome Statute ("Confirmation Hearing"), but is still obliged to disclose the information that he provides under rule 77 of the Rules. He provides some, albeit limited, information that may be material for the preparation of the Defence, including regarding some of the leaders, and operations conducted [REDACTED] in Timbuktu from [REDACTED] 2012 until January 2013, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

¹ ICC-01/12-01/18-31-tENG, para. 33.

4. P-0569 is [REDACTED]
 [REDACTED]
 [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED]

5. Since P-0569 is [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

6. In addition, experience has shown that [REDACTED]
 [REDACTED]
 [REDACTED].³ As a result, should the identity of any of the [REDACTED] witnesses, including P-0569, be disclosed to the Suspect, whether by intentional or inadvertent disclosure, there is a risk that this information will reach [REDACTED] aligned with armed groups. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED].

7. Under these circumstances, and considering that the Prosecution is not relying on the limited evidence of P-0569 regarding Timbuktu events for the Confirmation Hearing, the Single Judge should authorise the Prosecution to protect his identity and potentially identifying information (see Annex A).

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

8. In contrast with the anonymous summaries of evidence from other [REDACTED] [REDACTED] witnesses the Prosecution has previously sought authorisation to disclose, redactions are sufficient in the present case to protect P-0569's identity. Indeed, [REDACTED] [REDACTED] he has provided very limited relevant information concerning events in Timbuktu: he stayed in Timbuktu [REDACTED] [REDACTED]; there is currently no indication that he met the Suspect there at the time; he has not provided any information on the Suspect's position or involvement in the events from April 2012 to January 2013 in Timbuktu. Accordingly, redactions are sufficient to avoid that the Suspect, [REDACTED] [REDACTED] identify P-0569 following the disclosure of his redacted statements.

9. Lastly, the information provided by P-0569 is disclosable not only because it relates to events in Timbuktu in 2012, but also because of the information concerning [REDACTED]

[REDACTED]

Confidentiality

10. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this motion and Annexes A to F are filed confidential, *ex parte*, available only to the Prosecution and VWU.

11. This classification is necessary because the motion details security concerns specific to Witness P-0569, [REDACTED] [REDACTED] [REDACTED]. The annexes must also remain confidential and *ex parte* to the Prosecution and VWU because they contain personal identifying information the disclosure of which would place the witness at risk and render the motion moot.

12. The annexes to this motion are as follows:

- Annex A consists of the five [REDACTED] transcripts of P-0569's interview [REDACTED] [REDACTED] [REDACTED] [REDACTED]⁴, the redaction of which is requested;
- Annex B contains P-0569's [REDACTED] [REDACTED] [REDACTED] [REDACTED]⁵ and the redaction of which is requested;
- Annex C contains the [REDACTED] [REDACTED] [REDACTED] [REDACTED], and the non-disclosure of which is requested;⁶
- Annex D contains [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Witness P-0569, and the redaction of which is requested;⁷
- Annex E contains the [REDACTED] [REDACTED] [REDACTED];
- Annex F contains information on [REDACTED] [REDACTED]

⁴ [REDACTED]

⁶ [REDACTED]

⁷ See [REDACTED]

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

Background

14. On 4 April 2018, Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud made his initial appearance before the Court.

15. The Prosecution has since been reviewing the evidence in its possession for possible disclosure to the Defence. During this review the Prosecution has identified a number of witnesses, including P-0569, whose evidence may be material to the preparation of the Defence under rule 77 of the Rules.

Submissions

16. Withholding P-0569's identity and other identifying information from his evidence is necessary and appropriate under article 68(1) and rules 81(4) and 81(2) of the Rules.

17. The Prosecution recalls and refers to its prior submissions on the applicable law in a prior motion and the Chamber's decision resolving the motion.⁸

18. The Prosecution further refers to the Chamber's decision of 6 November 2018, in which it decided on, *inter alia*, the Prosecution's prior motion to withhold the identity of Prosecution witnesses [REDACTED]. In that decision, the Single Judge agreed that there was an objective security risk posed to [REDACTED] from former members of the armed groups to which the Prosecution alleges that the Suspect belonged.⁹ The Single Judge accepted that [REDACTED]

⁸ ICC-01/12-01/18-48-Conf-Exp, para. 12-26; ICC-01/12-01/18-88-Conf-Exp, particularly para. 15-17.

⁹ ICC-01/12-01/18-174-Conf-Exp-Corr, para. 65.

[REDACTED] [REDACTED] the implementation of protective measures by the Court.¹⁰ The Single Judge further agreed that the non-disclosure of these witnesses' identities was justified under rule 81(2) of the Rules, as their non-cooperation as a result of security threats could preclude other witnesses from cooperating with the Prosecution.¹¹

A. Information on Prosecution Witness P-0569 and summary of his evidence

19. P-0569 is a [REDACTED]
[REDACTED].

20. [REDACTED] [REDACTED] [REDACTED] [REDACTED],
[REDACTED] [REDACTED]¹² [REDACTED]
[REDACTED]¹³ [REDACTED] [REDACTED]
[REDACTED], [REDACTED] [REDACTED] [REDACTED]¹⁴ [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED],
[REDACTED] [REDACTED]¹⁵.

21. P-0569 said that the Muslim occupiers of Timbuktu were acting [REDACTED]
[REDACTED]¹⁶ [REDACTED]
[REDACTED] [REDACTED] [REDACTED]¹⁷ [REDACTED]
[REDACTED]¹⁸ [REDACTED]
[REDACTED] [REDACTED]¹⁹ [REDACTED]
[REDACTED], [REDACTED]

¹⁰ [REDACTED]

¹¹ ICC-01/12-01/18-174-Conf-Exp-Corr, para. 65.

¹² [REDACTED]
¹³ [REDACTED]
¹⁴ [REDACTED]
¹⁵ [REDACTED]
¹⁶ Annex B, [REDACTED]
¹⁷ [REDACTED]
¹⁸ [REDACTED]
¹⁹ [REDACTED]

[REDACTED] 20, [REDACTED]

[REDACTED] 21 [REDACTED] [REDACTED] [REDACTED]

[REDACTED] 22 [REDACTED] [REDACTED] 23 [REDACTED]

[REDACTED]

[REDACTED] 24 [REDACTED]

[REDACTED] [REDACTED] [REDACTED] 25

22. [REDACTED] 26 [REDACTED]

[REDACTED] 27 [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] 28 [REDACTED]

[REDACTED]

[REDACTED] 29 [REDACTED]

[REDACTED] 30 [REDACTED] 31 [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] 32 [REDACTED]

[REDACTED] 33 [REDACTED]

[REDACTED] [REDACTED] [REDACTED] 34

²⁰ Iyad Ag GHALY is also known as Abou Fadl.

²¹ [REDACTED]

²² [REDACTED]

²³ [REDACTED]

²⁴ [REDACTED]

²⁵ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁸ [REDACTED]

²⁹ [REDACTED]

³⁰ [REDACTED]

³¹ [REDACTED]

³² [REDACTED]

³³ [REDACTED]

³⁴ [REDACTED]

23. [REDACTED] 35
[REDACTED] 36
[REDACTED] 37 [REDACTED] 38 [REDACTED]
[REDACTED]
[REDACTED] 39 [REDACTED] 40

24 [REDACTED] 41 [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] 42 [REDACTED] [REDACTED] [REDACTED] 43 [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] 44

25. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] 45 [REDACTED] [REDACTED] [REDACTED] 46 [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] 47 [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] 48

35 [REDACTED]
36 [REDACTED]
37 [REDACTED]
[REDACTED]
[REDACTED]
39 [REDACTED]
40 [REDACTED]
41 [REDACTED]
42 [REDACTED]
43 [REDACTED]
44 [REDACTED]
45 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
48 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] .⁴⁹ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]⁵⁰

26. [REDACTED]
 [REDACTED]⁵¹

27. In sum, P-0569 had limited interactions with leaders of Ansar Dine whilst he lived in Timbuktu [REDACTED] January 2013. He does not provide any information regarding the Suspect's position or involvement in the events in Timbuktu from April 2012 to January 2013. P-0569 [REDACTED]
 [REDACTED]
 [REDACTED].

*B. The redaction of P-0569's [REDACTED] transcripts, [REDACTED]
 [REDACTED] is necessary under rule 81(4) of the Rules for his
 protection*

There exists an objectively justifiable risk of danger

28. [REDACTED]
 [REDACTED]⁵² P-0569's security situation [REDACTED] is precarious.

29. More precisely:

⁴⁹ [REDACTED]
⁵⁰ [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

- the Prosecution notes that [REDACTED] [REDACTED] who have or may have been in contact with the Suspect and may still be supportive of Ansar Dine and AQIM, or the *Jama'at Nusrat Al-Islam wal-Muslimin*, i.e. "Groupe pour le soutien de l'Islam et des musulmans" or "JNIM" (the JNIM was formed through the merger of Ansar Dine, AQIM and other armed groups; the Prosecution recalls its extensive discussions in prior submissions of the involvement of AQIM and JNIM in targeted attacks and assassinations throughout Mali and neighbouring countries against individuals suspected of cooperating with international organisations⁵³);
- [REDACTED]
[REDACTED]
[REDACTED] (see further details below in Annexes E and F);
- [REDACTED];
- as a result, in case of intentional or inadvertent disclosure of information by the Defence, there is a risk that information regarding P-0569's cooperation with the OTP and disclosure of his evidence in the present [REDACTED] [REDACTED]⁵⁴
- as a result, P-0569 would then be at risk.

30.

⁵³ ICC-01/12-01/18-48-Conf-Exp, para. 34-39; [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

31. Also, [REDACTED]
[REDACTED].

32. In addition, the Prosecution possesses [REDACTED]
[REDACTED] [REDACTED]. [REDACTED]
[REDACTED]⁵⁵ [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]

33. The Prosecution further refers to P-0569's [REDACTED].⁵⁶ In particular, the risks to P-0569 are reinforced by [REDACTED] the jihadist groups under the general command of Iyad Ag Ghaly, who is the current head of JNIM. It is possible that Ag Ghaly and his associates either know or can obtain the current location of P-0569 and his family. JNIM's members have the capacity to operate in Mali and could target P-0569 and his family because of P-0569's cooperation with the OTP or the Court.

Withholding P-0569's identity by way of redactions is the least restrictive means available

34. In contrast with the anonymous summaries of evidence from [REDACTED] witnesses the Prosecution has previously sought authorisation to disclose,⁵⁷ the Prosecution considers that redactions are sufficient in the present case to protect P-0569's identity. P-0569 can be considered an [REDACTED]

⁵⁵ [REDACTED]

⁵⁶ See Annex E, [REDACTED]

⁵⁷ See, for example, [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. Moreover, given *inter alia* that he stayed in Timbuktu for [REDACTED]
[REDACTED] the Prosecution submits that the proposed redactions are sufficient to prevent the Suspect from deducing P-0569's identity.

35. Nevertheless, given P-0569's [REDACTED] and the existing risk to him, redaction of any identifying information from his [REDACTED]
[REDACTED] is not only necessary but also the least restrictive and most reasonable solution at this stage.

*Redacting information identifying P-0569 from his transcripts [REDACTED]
[REDACTED] will not prejudice the Defence at this
stage of the proceedings*

36. The redactions applied to P-0569's transcripts, [REDACTED]
[REDACTED] will not result in any prejudice to the Defence or undermine the fairness and impartiality of the confirmation proceedings.

37. The Defence will be able to read the transcripts of P-0569's [REDACTED] interview [REDACTED]
[REDACTED] with redactions as opposed to only an anonymous summary of his evidence. These redactions will not hinder the Defence's understanding of the substance of P-0569's account.

38. In addition, P-0569 does not indicate that he ever met the Suspect nor does he provide any information on the Suspect's position or involvement in the events from April 2012 to January 2013 in Timbuktu.

39. [REDACTED]
[REDACTED]
[REDACTED].

*C. The redaction of P-0569's transcripts, [REDACTED]
[REDACTED] is likewise necessary under rule 81(2) of the Rules to protect
the Prosecution's further or ongoing investigations*

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."⁵⁸

41. Should any harm befall P-0569 as a result of the disclosure of his identity, this could discourage other current and future witnesses, particularly [REDACTED]
[REDACTED], from cooperating with the Prosecution and providing evidence. [REDACTED]
[REDACTED] and are thus crucial to the Prosecution current case or other on-going investigations.

D. Non-disclosure [REDACTED]
[REDACTED]

42. [REDACTED]
[REDACTED]. Moreover, it may reveal at some point P-0569's identity because [REDACTED]
[REDACTED].

43. Given the nature of the document, it would have to be entirely redacted and as such cannot be summarised without revealing the identity of Witness P-0569. The non-disclosure of these documents is solely requested under rule 81(4)) to protect

⁵⁸ 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.

the witness. Moreover, their non-disclosure will not prejudice the Defence in the preparation of their case for the purposes of the Confirmation Hearing.

Relief requested

44. 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:

- to not disclose the identity and identifying information of P-0569;
- to disclose a redacted version of P-0569's transcripts in Annex A [REDACTED]
[REDACTED] in Annex B, and [REDACTED] in Annex D;⁵⁹
- to redact any identifying information from the metadata of all documents referred to in Annexes A, B and D; and
- to not disclose the documents in Annex C.

45. Should the Single Judge grant the present motion, [REDACTED]

[REDACTED]

[REDACTED]⁶⁰ [REDACTED]

[REDACTED].

46. 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 P-0569 [REDACTED]

[REDACTED]

[REDACTED].

⁵⁹ [REDACTED]

47. In this regard, the Prosecution informs the Single Judge that [REDACTED]

[REDACTED]⁶¹ [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]



Fatou Bensouda, Prosecutor

Dated this 23rd day of November 2018
At The Hague, The Netherlands

⁶¹ See [REDACTED]
[REDACTED]