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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 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 Witness MLI-OTP-P-0570 upon whose
evidence the Prosecution will rely at the confirmation hearing”,
7 January 2019, ICC-01/12-01/18-217-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 the Victims

Legal Representatives of the 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
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-0570, *i.e.* to redact all identifying information from her statements and associated documents,² in order to protect her safety, psychological well-being and dignity as well as the Prosecution investigations pursuant to article 68(1) of the Rome Statute and rule 81(2) and (4) of the Rules of Procedure and Evidence ("Rules").

2. Witness P-0570 is a witness and victim [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]. Apart from her account regarding her own victimisation, Witness P-0570 also provides information on hearsay of other cases [REDACTED]
[REDACTED] violence in Timbuktu at the relevant time.

3. The Prosecution intends to rely on Witness P-0570's evidence at the confirmation hearing. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4. In this context, considering [REDACTED] and the danger for all persons whom the armed groups perceive to be cooperating with

¹ ICC-01/12-01/18-31-tENG, para. 33.

² And the translation thereof.

international organisations in Mali as well as the threat posed by armed groups at issue in this case, the exposure of this witness's cooperation with the Court would place her and her family at risk. This risk is further heightened by the Prosecution's intention to rely on her evidence at the confirmation hearing as well as by the nature of her allegations.

5. Moreover, the redaction of her identity is necessary to prevent [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. In addition, the disclosure of P-0570's name, [REDACTED]
[REDACTED], can have an impact on the Prosecution investigations.
7. 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-0570's identity and identifying information should not be disclosed and that the requested redactions should be granted.

Confidentiality

8. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this motion and its Annexes A to G are filed confidential, *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.

³ [REDACTED]

- Annex G [REDACTED]

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

Background

11. On 4 April 2018, Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ("AL HASSAN") made his initial appearance before the Court.

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-0570, among others, as a witness whose evidence it intends to rely upon at the confirmation hearing. However, due to her precarious personal and security situation, [REDACTED] the Prosecution suggests redactions of any identifying information which might expose her interaction with the Court.

Applicable law

13. 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 findings in decision ICC-01/12-01/18-88-Conf-Exp (in particular in paragraphs 15-17) as well as in decision [REDACTED]

Submissions

14. Withholding Witness P-0570's identity and other information which might lead to her exposure is necessary under rule 81(2) and (4) in order not to put her and/or her family in danger and protect the Prosecution investigation.

A. Prosecution Witness P-0570's account

15. Witness P-0570 is [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] 15

16. Witness P-0570 [REDACTED]
 [REDACTED]
 [REDACTED] 16

17. Witness P-0570 is a victim [REDACTED]
 [REDACTED]
 [REDACTED] 17
 [REDACTED] 18
 [REDACTED]
 [REDACTED] 19
 [REDACTED] 20
 [REDACTED] 21
 [REDACTED] 22

18. Witness P-0570 provides information on, amongst others, the following facts (see Annex A):

15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

- a. the arrival of the armed groups in Timbuktu and enduring life under their rule, including the imprisonment of women who did not cover themselves according to the jihadists' rules;
- b. [REDACTED]
[REDACTED];
- c. [REDACTED];
- d. [REDACTED]
- e. her knowledge [REDACTED]
during the occupation of Timbuktu by members of the armed groups,
including [REDACTED] [REDACTED]
- f. her [REDACTED] and
- g. her description of [REDACTED]
[REDACTED].

19. The Prosecution intends to rely on such information in order *inter alia* to demonstrate the existence of a pattern [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Hearsay information provided by this witness will further help the Prosecution to corroborate the practice of [REDACTED] t that time.

B. Disclosure of redacted statements and other documents and non-disclosure of some documents is necessary under article 68(1) and rule 81(4) to protect this witness and her family

Redacting the identity and identifying information of Witness P-0570 and non-disclosure of some documents is necessary because there is an objectively justifiable risk

20. Witness P-0570 is [REDACTED]
[REDACTED]
[REDACTED]

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

22. Critically, the security situation in the north of Mali, [REDACTED]
[REDACTED] remains precarious. 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].²³
[REDACTED]²⁴

23. 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 her 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.²⁵

²³ [REDACTED]

²⁴ [REDACTED]

²⁵ [REDACTED]
[REDACTED]
[REDACTED]

24. 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)²⁶ and the *Jama’at Nusrat Al-Islam wal-Muslimin* (“*Groupe pour le soutien de l’Islam et des musulmans*” or “JNIM”,²⁷ established in March 2017 and led by Iyad Ag GHALY).²⁸

25. The capacity of these groups to conduct numerous and significant attacks [REDACTED] is well established: the Prosecution refers to [REDACTED].

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]

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.

²⁸ “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.

[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.

28. Several incidents recounted by Witness P-0570 also highlight the lack of security

[REDACTED] and the witness' vulnerability [REDACTED]:

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

29. More generally, [REDACTED]

[REDACTED]
[REDACTED]:

- [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED];

- [REDACTED], it is assessed that once her statement and cooperation are disclosed to the Suspect, and if the information leaks to threat actors, the risk level to her will be high;
- This risk can be mitigated, in part, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

30. Furthermore, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].²⁹

31. In addition to the risks associated with [REDACTED]
[REDACTED], [REDACTED]
[REDACTED]
[REDACTED].

32 [REDACTED]
[REDACTED]³⁰
[REDACTED]
[REDACTED]³¹ Disclosing the identity of the witness to the Defence at this early stage in the proceedings – before the charges

²⁹ [REDACTED]

³⁰ [REDACTED]

³¹ [REDACTED]

have been confirmed – risks [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

33. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34. Overall, given the seriousness of the risks mentioned, the limited scope of the confirmation hearing, the nature of the information provided by this witness, redaction of any information related to the identity of Witness P-0570 and non-disclosure of some related identifying evidence and metadata are the most reasonable.

Withholding P-0570's identity and identifying information and non-disclosure of some documents is the least restrictive means available

35. [REDACTED]

[REDACTED]

36. 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;
 - the [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

37. Accordingly, further discussions will be necessary with Witness P-0570, [REDACTED]

[REDACTED]

[REDACTED], withholding her identity and identifying information is the least restrictive means available to effectively protect her safety and that of her family members, particularly at this stage of the proceedings.

38. With regard to the redactions applied in her statement, the Prosecution has two clarifications to make:

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

- [REDACTED]
[REDACTED]
[REDACTED]

³² [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

39. In addition, the non-disclosure of [REDACTED] (Annex 3 to her statement³³) and of [REDACTED],³⁴ [REDACTED] [REDACTED],³⁵ is necessary in order to keep confidential the fact that (1) [REDACTED] [REDACTED] (which could lead to her identification) and that (2) [REDACTED] [REDACTED] (which would put her at risk).

*Withholding P-0570's identity and identifying information
will not prejudice the Defence*

40. The redactions applied to Witness P-0570's evidence will not result in any prejudice to the Defence nor undermine the fairness and impartiality of the confirmation proceedings.

41. The Prosecution has proposed redactions to Witness P-0570's statements 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.

42. 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.³⁶

³³ [REDACTED]

³⁴ [REDACTED]

³⁵ [REDACTED]

³⁶ [REDACTED].

43. Witness P-0570's evidence exclusively concerns crimes committed in Timbuktu, including [REDACTED] and does not address AL HASSAN's role in their commission.

44. In addition, the Prosecution is making every effort to disclose in advance of the confirmation hearing the identity and statements of other Prosecution witnesses and a number of items of documentary evidence containing similar information as that contained in P-0570's statement, including information [REDACTED] violence.

45. Lastly, the Prosecution continues the management of P-0570 and aims at disclosing her identity prior to trial, should the relevant charges against AL HASSAN be confirmed.

C. Disclosure of redacted statements and associated documents and non-disclosure of documents is necessary under rule 81(2) of the Rules to protect the Prosecution investigation

46. 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."³⁷

47. The Prosecution is concerned that any incident happening to Witness P-0570:

- would discourage her 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.

³⁷ 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

48. 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-0570;
- to disclose a redacted version of her statement³⁸ and two of the annexes thereto³⁹ (content and/or metadata) that expunge any identifying information (see Annex A);
- to disclose a redacted version of her statement [REDACTED] in Annex B (content and any identifying in the metadata);
- to disclose redacted versions of investigation notes [REDACTED] contained in Annex C (content and metadata);
- to not disclose Annex 3 to her statement,⁴⁰ [REDACTED]
[REDACTED]
[REDACTED]; and
- to not disclose [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

49. In the event that the Single Judge were to deny this motion in whole or in part, the Prosecution requests an order permitting it to make any necessary disclosures regarding Witness P-0570 [REDACTED]

³⁸ And the translation thereof.

³⁹ [REDACTED]

⁴⁰ [REDACTED]





Fatou Bensouda, Prosecutor

Dated this 7th day of January 2019
At The Hague, the Netherlands