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Date: **22 January 2019**
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13 February 2019

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 D,
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-0595 upon whose evidence the
Prosecution will rely at the confirmation hearing”,
23 January 2019, ICC-01/12-01/18-222-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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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-0595, *i.e.* to redact all identifying information from his statement² and associated material in order to protect both the safety of the witness and his family, as well as 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-0595

[REDACTED]

[REDACTED]³⁾ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. P-0595 agreed to testify and the Prosecution intends to rely on P-0595's evidence at the confirmation hearing. [REDACTED]

[REDACTED]

¹ ICC-01/12-01/18-31-tENG, para. 33.

² And the translation thereof.

³ [REDACTED]

[REDACTED] therefore his security situation remains highly precarious.

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 this witness's cooperation with the Court would place him and his family at high risk. This risk is likely to be further heightened by the Prosecution's intention to rely on P-0595's evidence at the confirmation hearing.
5. Under these circumstances, and particularly considering the limited scope of the Confirmation Hearing, during which the Prosecution has no obligation to call witnesses, the Prosecution submits that P-0595's identity and identifying information should not be disclosed and that, at this stage of the proceedings, the requested redactions should be granted.

Confidentiality

6. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this motion and its Annexes A to D are filed confidential *ex parte*, available only to the Prosecution and the 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 and his family at risk and render the motion moot.
7. The annexes are divided as follows:

- Annex A contains P-0595's statement [REDACTED]⁴ (and its translation in Arabic⁵) with proposed redactions⁶; P-0595's name and any identifying information also need to be redacted from the metadata of this statement;
- Annex B contains: [REDACTED]
[REDACTED]
[REDACTED];⁷ b) [REDACTED]⁸ [REDACTED]
[REDACTED]⁹. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- Annex C contains [REDACTED] the non-disclosure of which is requested¹⁰;
- Annex D contains [REDACTED].

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

Background

9. On 4 April 2018, Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“AL HASSAN” or the “Suspect”) made his initial appearance before the Court.

4 [REDACTED].
5 [REDACTED].
6 The statement also contains *proprio motu* redactions.
7 [REDACTED].
8 [REDACTED]
[REDACTED]
[REDACTED]
9 [REDACTED].
1 [REDACTED]

10. 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 P-0595, among others, as a witness whose evidence it intends to rely upon at the confirmation hearing, but with redactions to any identifying information which might expose his interaction with the Court.

Applicable law

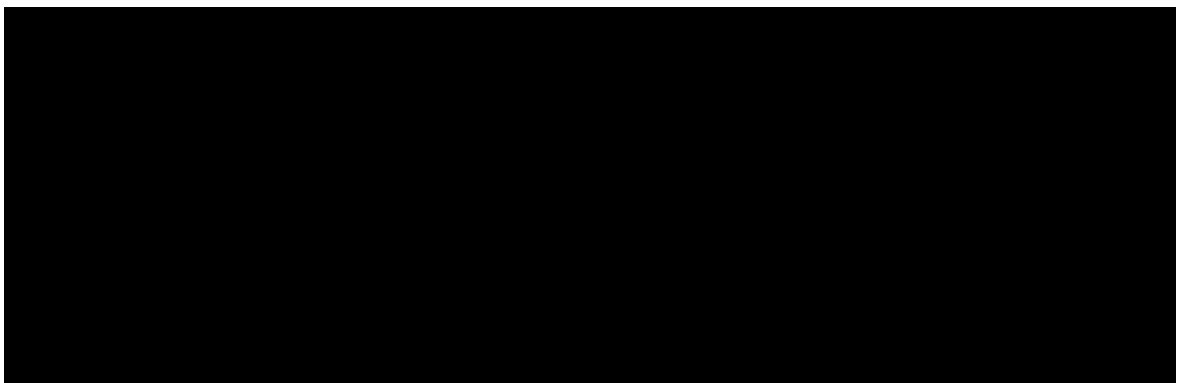
11. With respect to the applicable law, the Prosecution refers to its prior filing ICC-01/12-01/18-48-Conf-Exp and the Single Judge's finding in the decision ICC-01/12-01/18-88-Conf-Exp, in particular in paragraphs 15-17.

Submissions

12. Withholding P-0595's identity and other identifying information which might lead to his exposure is necessary under rule 81(2) and (4) of the Rules in order to protect the safety of the witness and his family members and to avoid prejudice against further or ongoing investigation by the Prosecution.

A. Information on Prosecution Witness P-0595

13.



14.



15. P-0595 states, in his statement [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

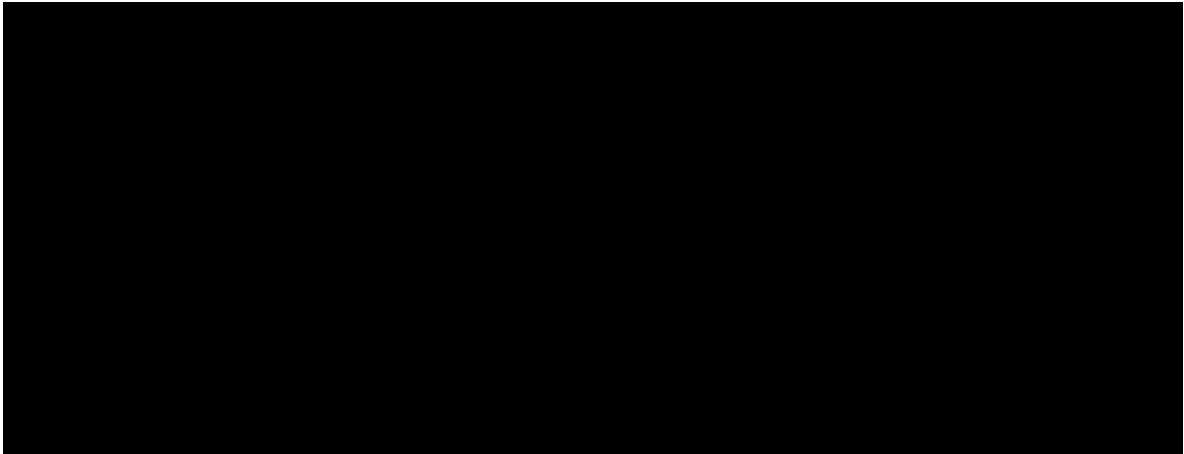
16. In his statement, P-0595 speaks [REDACTED] about: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]; b) [REDACTED]
[REDACTED] c) [REDACTED]
[REDACTED] d) [REDACTED]
[REDACTED]
and e) [REDACTED]
[REDACTED]. These are the elements the Prosecution will
rely on at the confirmation hearing.

B. Disclosure of a redacted statement and additional material provided by the witness and non-disclosure of material is necessary under article 68(1) of the Rome Statute and rule 81(4) of the Rules to protect the safety of P-0595 and his family members

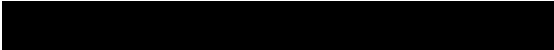
a) Redacting the identity and identifying information of P-0595 and non-disclosure of material is necessary because there is an objectively justifiable risk

17. [REDACTED]
[REDACTED] constitute an objectively justifiable risk to the
safety of P-0595 and his family should his identity be disclosed to the Defence.

18. [REDACTED]



19. In particular:

- 
 ¹¹,
- 
 ¹²,
- 
 
 ¹³ 

 ¹⁴,

¹¹  .

¹²  .

¹³  .

- [REDACTED]
[REDACTED]¹⁴
- [REDACTED]
[REDACTED]¹⁵

20. [REDACTED]

21. While P-0595 has not reported threats or incidents against him, the existing risk would be significantly heightened should it become known that he was cooperating with the ICC in this case.

22. [REDACTED]

23. [REDACTED]

¹⁴ [REDACTED]
¹⁵ [REDACTED]

24. In the circumstances, considering the disclosure obligations incumbent on the Prosecution, and bearing in mind that P-0595's family members would also be at risk in case of disclosure of his identity, the Prosecution considers it preferable to request at this stage the redaction of his identity.

25. The Prosecution refers to: a) the Single Judge's findings in paragraph 33 of decision ICC-01/12-01/18-88-Conf-Exp and [REDACTED]

[REDACTED]

[REDACTED] and b) [REDACTED]

[REDACTED]¹⁶ [REDACTED]

[REDACTED]¹⁷

26. 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 or her family is "high". This conclusion is based in part on documented instances in which Al-Qaeda in the Islamic Maghreb ("AQIM") and other groups have been involved in targeted attacks and assassinations against individuals suspected of cooperating with international organisations.¹⁸ As a matter of fact, as mentioned previously, the

¹⁶ [REDACTED]

¹⁷ [REDACTED]

¹⁸ 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> [last accessed 24/10/2018]; "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> [last accessed 24 October 2018]; "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> [last accessed 24/10/2018]; "Mali: des civils enlevés par des jihadistes à la frontière nigérienne," *RFI*, 12 March 2015, available at http://www.rfi.fr/afrique/20150312-trois-civils-maliens-enleves-jihadistes-frontiere-nigerienne-mujao/#/?&_suid=144768778866503002341593728486 [last accessed 24 October 2018]; Report of the Secretary-General on the situation in Mali, 26 December 2017, MLI-OTP-0058-0400; Report of the Independent Expert on the situation of human rights in Mali, 2 February 2018, MLI-OTP-0058-0354; Report of the Secretary-

main actors that pose a threat against Prosecution witnesses or potential witnesses include a coalition of “jihadist” groups, the *Jama’at Nusrat Al-Islam wal-Muslimin* (“Groupe pour le soutien de l’Islam et des musulmans” or “JNIM”),¹⁹ established in March 2017 and led by Iyad Ag GHALY, the top leader of Ansar Dine with which AL HASSAN was associated until his capture in April 2017.²⁰

27. The capacity of these groups to conduct numerous and significant attacks [REDACTED] is well established: the Prosecution refers in this regard to its prior filing ICC-01/12-01/18-48-Conf-Exp, in particular paragraphs 38-39. The latest report of the United Nations Secretary-General on the situation in Mali confirms that JNIM continues to attack the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), Malian defence and security forces and international forces across central and northern Mali.²¹

28. Concretely, [REDACTED] armed groups such as JNIM could easily reach to him after an intentional or inadvertent disclosure of information provided to the Defence under the Court’s disclosure regime.

General on the situation in Mali, 29 March 2018, MLI-OTP-0058-0368; “Al Qaeda affiliate claims responsibility for Burkina Faso attacks,” *Reuters*, 3 March 2018, MLI-OTP-0058-0419.

¹⁹ *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.

²⁰ “Les groupes terroristes du Nord Mali se réunifient avec Iyad AG GHALY comme Leader”, *Malijet*, 2 March 2017, MLI-OTP-0041-0041, p. 0043 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.

²¹ Report of the Secretary-General on the situation in Mali, S/2018/866, 25 September 2018, para.33. Most recently, JNIM claimed its responsibility for the two attacks against MINUSMA camps in Ber and Konna on 27 October 2018, which killed two peacekeepers and wounded several persons. See “Mali : Nusrat Al-Islam revendique l’attaque de Ber à Tombouctou”, *Alakhbar*, 29 October 2018, available at <http://fr.alakhbar.info/14263-0-Mali-Nusrat-Al-Islam-revendique-lattaques-de-Ber-a-Tombouctou.html> [last accessed on 01/11/2018]; “La MINUSMA repousse une attaque contre son camp de Ber et à Kona au Mali, déplore la perte de deux casques bleus et plusieurs blessés”, MINUSMA, 27 October 2018, available at <https://minusma.unmissions.org/la-minusma-repousse-une-attaque-contre-son-camp-de-ber-et-%C3%A0-konna-au-mali-d%C3%A9ploire-la-perte-de-deux> [last accessed on 1 November 2018].

29. 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]
[REDACTED] It will be even more difficult for the Defence to operate discretely [REDACTED] and to effectively avoid any inadvertent disclosure of information related to association of witnesses with the Court or with international organisations more generally. Consequently, the existing confidentiality obligations of counsel are insufficient to protect witnesses from the serious threats described above.

30. With respect to P-0595's personal situation, the Prosecution also refers to the results of the analysis [REDACTED]

[REDACTED]:

- JNIM's activities are highly concentrated in central and northern Mali, [REDACTED]
- based on past behaviour, consistent warnings and known capacity, it is likely that JNIM will take action against Prosecution witnesses without additional warning or observable escalation; and
- once P-0595's statement and cooperation are disclosed to the Suspect and his Defence team and if the information leaks to threat actors, the level of risk to him will be high [REDACTED].

31. Given the seriousness of the risks mentioned, the limited scope of the confirmation hearing, and the specific situation of this witness, redaction of any information related to the identity of P-0595 in the statement and related items is the only viable solution at this stage. The Prosecution will inform the Single Judge should the circumstances change, [REDACTED]

[REDACTED]

b) Withholding P-0595's identity and identifying information and non-disclosure of material is the least restrictive means available

32.

[REDACTED]

[REDACTED].²²

33. However:

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

- [REDACTED]
[REDACTED].²³

34. Accordingly,

[REDACTED]

[REDACTED] to ensure P-0595'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.

35. With regard to the redactions applied in his statement, the Prosecution wishes to make two observations:

- first, the Prosecution tried to find a balance. [REDACTED]
[REDACTED]
[REDACTED];

²²

²³

[REDACTED]

[REDACTED]
[REDACTED].

- [REDACTED]
- [REDACTED]²⁴. [REDACTED]
- [REDACTED]
- [REDACTED]²⁶.

36. Regarding [REDACTED] the Prosecution requests the non-disclosure [REDACTED]²⁷ [REDACTED]²⁸

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

37. Last, the Prosecution request the non-disclosure of the [REDACTED] in Annex C. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

c) Withholding P-0595's identity and identifying information and non-disclosure of material will not prejudice the Defence

38. The redactions applied to P-0595's evidence will not result in any prejudice to the Defence nor undermine the fairness and impartiality of the confirmation proceedings.

39. The Prosecution has proposed redactions to P-0595's statement, instead of preparing an anonymous summary.

40. 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.²⁹

41. P-0595's evidence mainly concerns the events [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]³⁰, [REDACTED]
[REDACTED]
[REDACTED]³¹.

42. In addition the Prosecution has already disclosed to the Defence information on

[REDACTED]³², [REDACTED]
[REDACTED]³³.

43. Finally, the requested measures are of an interim nature, [REDACTED]

[REDACTED]³⁴ The

²⁹ ICC-01/12-01/18-31-tENG, para. 32.

³⁰ [REDACTED].

³¹ [REDACTED] to be compared with [REDACTED]

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

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

B. Disclosure of a redacted statement and related material originating from the witness and non-disclosure of material is necessary under rule 81(2) of the Rules to avoid prejudice against further or ongoing investigations

44. 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.”³⁵

45. The Prosecution is concerned that any incident happening to P-0595 would discourage:

- him from further cooperating with the Prosecution and testifying at trial, should the charges against AL HASSAN be confirmed; and
- current and future witnesses to cooperate with the Prosecution.³⁶

Relief sought

46. For the reasons set forth above, the Prosecution seeks from the Single Judge an order under article 68(1) of the Rome Statute and rule 81(2) and (4) of the Rules authorising the Prosecution to:

- not disclose the identity and identifying information of P-0595;

³⁴

ICC-01/12-01/18-48-Conf-Exp, para. 55, citing ICC-01/04-01/07-476, para. 49.

³⁶

- disclose a redacted version of his statement (and translation thereof) attached in Annex A to the present filing, from which any identifying information is expunged;
- redact any identifying information of P-0595 from the metadata of his statement attached in Annex A to the present filing;
- not disclose [REDACTED]³⁷ referred to in Annex B to the present filing;
- [REDACTED]
- not disclose the [REDACTED] in Annex C to the present filing.

47. 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-0595 only after [REDACTED]
[REDACTED]



Fatou Bensouda, Prosecutor

Dated this 22nd day of January 2019
At The Hague, the Netherlands

³⁷ [REDACTED].