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13 May 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 secret, *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-0626 upon whose
evidence the Prosecution will rely at the confirmation hearing”,
26 February 2019, ICC-01/12-01/18-258-Secret-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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I. Introduction

1. The Office of the Prosecutor ("Prosecution") seeks authorisation to withhold from the defence of Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud ("AL HASSAN" or the "Suspect") the identity of Prosecution Witness MLI-OTP-P-0626 ("P-0626"). Specifically, the Prosecution requests to only disclose, at this stage, a summary of P-0626's statement and to withhold all identifying information pertaining to this witness, pursuant to article 68(1), article 68(5) and article 61(5) of the Rome Statute ("Statute"), as well as rule 81(2) and (4) of the Rules of Procedure and Evidence ("Rules").
2. [REDACTED]
3. The Prosecution intends to rely on P-0626's evidence at the confirmation hearing. The witness is cooperative and indicated his willingness to testify at trial. There are however concerns regarding his safety and security [REDACTED] which are exacerbated by [REDACTED] [REDACTED] the hazardous security situation in Northern Mali.
4. In the circumstances, P-0626's identity and any identification information should not be disclosed to the Suspect at this stage. Considering the limited scope of the confirmation hearing, the proposed anonymous summary is sufficient given the

need to protect this witness' security and safety [REDACTED], as well as the Prosecution's on-going investigations.

5. As shown in more details below (a) there is an objective risk to P-0626 if his cooperation with the Prosecution were disclosed to the Suspect. In addition, (b) the non-disclosure of his cooperation with the Prosecution and the provision of an anonymous summary of his account are necessary and are the only available and least intrusive measures available at the moment. Furthermore, (c) the proposed measures are proportionate and would not prejudice the Defence at this preliminary stage of the proceedings.¹ [REDACTED]

II. Confidentiality

6. Pursuant to regulation 23bis(2) of the Regulations of the Court, this motion and its Annexes A to D are filed secret and *ex parte*, available only to the Prosecution and the Victims and Witnesses Unit ("VWU"). The motion discusses security concerns specific to P-0626. In addition, the annexes contain personal identifying information, the disclosure of which would place him [REDACTED] at a higher risk and defeat the purpose of this motion.

7. The annexes are divided as follows:

- Annex A contains the [REDACTED] interview of Witness P-0626² and [REDACTED]³, the non-disclosure of which is requested;

¹

68, para. 33-34, 67, 71, 72; [REDACTED]

11. The Prosecution also recalls the Single Judge's findings, including in decision ICC-01/12-01/18-88 [REDACTED] at paragraphs 15-17 and decision ICC-01/12-01/18-122 [REDACTED] concerning the disclosure of an anonymous summary of witness statement at the pre-trial stage, in particular at paragraphs 30-41.

V. Submissions

A. Information on P-0626 and his evidence

12. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
13. [REDACTED]
[REDACTED]
[REDACTED]
14. P-0626 [REDACTED] the [REDACTED]
[REDACTED] [REDACTED]
[REDACTED].
15. [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

16. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
17. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
18. [REDACTED]
[REDACTED]
19. [REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
20. [REDACTED]

*B. Disclosure of an anonymous summary and non-disclosure of [REDACTED]
[REDACTED] as well as [REDACTED] [REDACTED] is
necessary under article 68(1) and rule 81(4) to protect the security and safety
of P-0626 and his family*

(a) There is an objectively justifiable risk of harm facing P-0626

21. The disclosure of P-0626's identifying information and cooperation with the Prosecution represents an objective risk for this witness' security and safety [REDACTED]
[REDACTED].

22. First, P-0626 will face a risk of intimidation and physical harm in case of intentional or inadvertent disclosure of his identity and his status as Prosecution witness relied upon at the confirmation hearing.

23. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

25. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]⁷).

26. Thus, the risk to P-0626 will be higher, if [REDACTED] the armed groups become aware of his specific participation in the *Al Hassan* case.

[REDACTED]

[REDACTED] As a result, they could decide or receive orders to prevent P-0626 from cooperating or take other actions against him. [REDACTED]

[REDACTED]

[REDACTED]

27. In this regard, the Chamber has found that the security situation [REDACTED] is particularly worrying⁸. The armed groups operating there pose a danger to anyone perceived to be cooperating with any international organisation. Groups forming a coalition under the name *Jama'at Nusrat Al-Islam was-Muslimin (Groupe pour le soutien de l'Islam et des musulmans*" or "JNIM") have made threats and conducted targeted attacks and assassinations against such individuals.⁹

⁷ [REDACTED]

⁸ S [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

See e.g. ICC-01/12-01/18-185-Red2, para. 36. See also "Mali : Ansar Dine revendique l'attaque contre la Minusma à Kidal," RFI, 28 November 2015 (<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 ; "Deux Touaregs Imghads, guides de la force Barkhane, égorgés à Aguelhok," Mali-Web, February 2015 (<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 (<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 (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

28. [REDACTED]
 [REDACTED],¹⁰ [REDACTED]
 [REDACTED]
 i [REDACTED]
 [REDACTED]
 [REDACTED]y.

29. Second, considering [REDACTED] rofile, [REDACTED]
 [REDACTED]
 [REDACTED] the risk would be
 higher, were these groups to learn about P-0626's [REDACTED]
 [REDACTED] willingness to testify subsequently at the Court.

30. [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

31. In sum, the only viable protective measure available at this stage is the redaction of all P-0626's identifying information and the disclosure of an anonymous summary of his evidence.

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.

¹⁰

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

(b) Providing an anonymous summary of P-0626's evidence and non-disclosure of [REDACTED] th [REDACTED] and [REDACTED] is necessary to reduce the security risk and is the only least intrusive measure available

32. In the circumstances, [REDACTED] P-0626 would be easily identifiable, should the Prosecution disclose a redacted version of [REDACTED] his interview.

33. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

34. [REDACTED]
[REDACTED] An anonymous summary thus appears to be the only viable and least intrusive protective measure available in his situation and that of his family.

35. In addition, the content and circumstances of [REDACTED] of P-0626 could give some information about the possible identity of this witness.

(c) The Suspect's defence will not be prejudiced

36. The defence of the Suspect will not be prejudiced by the disclosure of an anonymous summary at this stage of the proceedings, considering that:

- the sole purpose of the non-disclosure and the proposed summary is to prevent an identification of the witness and ensure the best available protection in the circumstances;
- the summary provides the substantive parts of P-0626's account, including
[REDACTED]
[REDACTED];
- P-0626's account is corroborative of other evidence available to the defence
[REDACTED]¹² [REDACTED]¹³)
[REDACTED]
[REDACTED]
[REDACTED] and
- the [REDACTED] contains little relevant information.

37. In sum, the Suspect will be in a position to understand the anticipated evidence of P-0626. The disclosure of an anonymous summary of this witness' account and the non-disclosure of the above mentioned material should be granted as requested.¹⁴

¹² [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

¹⁴ [REDACTED]
[REDACTED]
[REDACTED].

C. The disclosure of an anonymous summary is necessary under rule 81(2) of the Rules to protect the Prosecution investigations

38. As the Appeals Chamber held, “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.”¹⁵

39. In light of the risk discussed above, the Prosecution is concerned that any incident affecting P-0626 would:

- discourage him to cooperating further with the Prosecution; and
- undermine the willingness of other witnesses to cooperate with the OTP.

VI. Relief sought

40. For the above reasons, the Prosecution seeks from the Single Judge an order authorising the Prosecution to:

- not disclose the identity and identifying information of P-0626;
- not disclose the [REDACTED] and [REDACTED] contained in Annex A to the present filing as well as the material in Annex C;
- disclose the anonymous summary in Annex B to the present filing (and the translation thereof), and redact any identifying information from the metadata.

41. In the event that the Single Judge were to deny this motion in whole or in part, the Prosecution requests an order granting the Prosecution leave to make necessary disclosures concerning P-0626 only after [REDACTED]

■ [REDACTED] 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.



A handwritten signature in blue ink, appearing to read 'Bensouda', with a horizontal line drawn through it.

Fatou Bensouda, Prosecutor

Dated this 26th day of February 2019
At The Hague, the Netherlands