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No.: **ICC-01/12-01/18**

Date: **19 July 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 REDACTED VERSION

**Decision on the Prosecution Request for Leave Not to Disclose the Identity of
Witness MLI-OTP-P-0431**

Decision to be notified in accordance with regulation 31 of the Regulations of the Court to:

Office of the Prosecutor

Ms Fatou Bensouda

Mr James Stewart

Counsel for the Defence

Mr Yasser Hassan

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

States' Representatives

**Office of Public Counsel for the
Defence**

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Mr Nigel Verrill

Detention Section

**Victims Participation and Reparations
Section**

Other

Judge Péter Kovács, having been designated by Pre-Trial Chamber I (“Chamber”) of the International Criminal Court (“Court”) as Single Judge responsible for carrying out the functions of the Chamber in the case of *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud* (“Al Hassan case”) as of 28 March 2018,¹ hereby renders this decision.

I. Procedural history

1. On 27 March 2018, pursuant to article 58 of the Rome Statute (“Statute”), the Chamber issued a warrant of arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (“Mr Al Hassan”).²
2. On 31 March 2018, Mr Al Hassan was surrendered to the Court, and he is currently in custody at the Court’s detention centre in The Hague.³
3. On 4 April 2018, a hearing was held at which Mr Al Hassan first appeared before the Single Judge, in the presence of his counsel and the Prosecution.⁴
4. [REDACTED].⁵
5. On 16 May 2018, the Single Judge issued the “Decision on the Evidence Disclosure Protocol and Other Related Matters” (“Decision on the Evidence Disclosure Protocol”).⁶
6. [REDACTED].⁷
7. On 5 June 2018, the Prosecution filed a confidential *ex parte* motion for authorization to withhold the identity of Witness MLI-OTP-P-0431.⁸ On 12 June 2018,

¹ “Decision Designating a Single Judge”, 28 March 2018, reclassified as public on 31 March 2018, ICC-01/12-01/18-6-tENG.

² “Warrant of Arrest for Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud”, 27 March 2018, reclassified as public on 31 March 2018, ICC-01/12-01/18-2-tENG.

³ ICC-01/12-01/18-11-US-Exp.

⁴ Transcript of the initial appearance hearing, 4 April 2018, ICC-01/12-01/18-T-1-Red-ENG.

⁵ [REDACTED].

⁶ ICC-01/12-01/18-31-tENG.

⁷ [REDACTED].

the Prosecution filed an amended version of the confidential *ex parte* version of its motion (“Motion”).⁹ On 13 June 2018, the Prosecution filed a confidential redacted version of its Motion, available without the annexes to the Defence.¹⁰ On 10 July 2018, the Prosecution filed a public redacted version of its amended Motion.¹¹

8. On 25 June 2018, the Defence filed a confidential *ex parte* response to the Motion (“Response”).¹² On 12 July 2018, the Defence filed a public redacted version of its response.¹³

II. Applicable law

9. The Single Judge refers to articles 21, 54, 57(3)(c), 61, 67 and 68 of the Statute and to rules 15, 76, 77, 81(2) and (4) and 121 of the Rules of Procedure and Evidence (“Rules”).

10. The Single Judge observes that, pursuant to article 68(1) of the Statute, the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. For that purpose, rule 81 of the Rules provides for restrictions on disclosure and, pursuant to paragraphs 2 and 4 of that rule, the Single Judge may, *inter alia*, authorize the withholding of witnesses’ identities before the commencement of the trial.

11. The Appeals Chamber has considered that non-disclosure to the Defence of the identities of witnesses on whom the Prosecution intends to rely at the

⁸ “Prosecution’s motion for authorization to withhold the identity of Prosecution Witness MLI-OTP-P-0431 upon whose evidence the prosecution will rely at the confirmation hearing”, 4 June 2018, ICC-01/12-01/18-44-Conf-Exp, and six confidential annexes *ex parte*, Prosecution and Victims and Witnesses Unit.

⁹ “Amended Prosecution’s motion for authorisation to withhold the identity of Prosecution Witness MLI-OTP-P-0431 upon whose evidence the Prosecution will rely at the confirmation hearing”, ICC-01/12-01/18-48-Conf-Exp and annex, ICC-01/12-01/18-48-Conf-Exp-Anx.

¹⁰ ICC-01/12-01/18-48-Conf-Exp-Red.

¹¹ ICC-01/12-01/18-48-Red2.

¹² “Response to the confidential redacted version of the Prosecution’s motion for authorisation to withhold the identity of Prosecution Witness MLI-OTP-P-0431”, 25 June 2018, ICC-01/12-01/18-58-Conf-Exp.

¹³ “Public redacted version of the Defence response to the confidential redacted version of the Prosecution’s motion for authorisation to withhold the identity of Prosecution Witness MLI-OTP-P-0431”, ICC-01/12-01/18-58-Red.

confirmation hearing was “an exception to the general rule that the identity of such witnesses and their prior statements are to be disclosed”.¹⁴

12. The Single Judge notes that the Appeals Chamber has had previous occasion to set out those factors that must be addressed by the Pre-Trial Chamber when considering whether to authorize the non-disclosure of certain information pursuant to rule 81(2) and (4) of the Rules as follows:¹⁵ (i) the existence of an “objectively justifiable” risk (Would disclosure of the particular information *to the Defence* endanger the person’s security?);¹⁶ (ii) the necessity of the measure (Would non-disclosure of the information eliminate or reduce that risk? Is the measure the least intrusive possible?);¹⁷ and (iii) the proportionality of the measure in the light of the rights of the suspect and a fair and impartial trial.¹⁸

13. In *Katanga*, the Appeals Chamber emphasized the need for the Pre-Trial Chamber to balance the interests at stake:

[T]he Pre-Trial Chamber should carefully assess the relevance of the information in question to the Defence. If, having carried out that assessment, the Chamber concludes that the information concerned is not relevant to the Defence, that is likely to be a significant factor in determining whether the interests of the person potentially placed at risk outweigh those of the Defence. If, on the other hand the information may be of assistance to the case of the suspect or may affect the credibility of the case of the prosecutor, the Pre-Trial Chamber will need to take particular care when balancing the interests at stake.¹⁹

¹⁴ *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the Prosecutor’s Appeal against the decision of Pre-Trial Chamber I entitled ‘Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81(2) and (4) of the Rules of Procedure and Evidence’”, 13 October 2006, [ICC-01/04-01/06-568](#) (“Appeals Judgment of 23 October 2006”), para. 1.

¹⁵ *The Prosecutor v. Germain Katanga*, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Request for Authorisation to Redact Witness Statements’”, 13 May 2008, [ICC-01/04-01/07-475](#) (“Appeals Judgment of 13 May 2008”), paras. 67, 71-72, 97.

¹⁶ [Appeals Judgment of 13 May 2008](#), paras. 67, 71; *The Prosecutor v. Thomas Lubanga Dyilo*, “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81’”, 14 December 2006, [ICC-01/04-01/06-773](#) (“Appeals Judgment of 14 December 2006”), para. 21.

¹⁷ [Appeals Judgment of 13 May 2008](#), paras. 67, 72; [Appeals Judgment of 14 December 2006](#), para. 33.

¹⁸ [Appeals Judgment of 14 December 2006](#), paras. 33-34; [Appeals Judgment of 13 May 2008](#), paras. 67, 72. See also [Appeals Judgment of 13 October 2006](#), para. 37.

¹⁹ [Appeals Judgment of 13 May 2008](#), para. 72(c).

14. The Single Judge notes that the Appeals Chamber specified that it was merely providing guidance “which must be understood to be capable of being interpreted flexibly depending upon the specific circumstances of the particular application”.²⁰ The Appeals Chamber also deemed it “imperative that the Pre-Trial Chamber, which will have an overall view of the proceedings as a whole, take fully into account the individual facts and circumstances of each case and each specific request for any individual redaction before it”.²¹

15. The Single Judge recalls that the Appeals Chamber has emphasized the specificity of the confirmation of the charges stage – which, under article 61(7) of the Statute, is designed “to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged” – and set forth, in particular, that “it is permissible to withhold the disclosure of certain information from the Defence prior to the hearing to confirm the charges that could not be withheld prior to trial”.²²

16. Previous rulings by pre-trial chambers show that, when assessing whether there is a risk to the safety of witnesses, they have also taken the following factors, among others, into consideration: the particular circumstances of the personal situation of the witness;²³ the witness’s place of residence and, in some cases, the

²⁰ [Appeals Judgment of 13 May 2008](#), para. 68.

²¹ [Appeals Judgment of 13 May 2008](#), para. 69.

²² [Appeals Judgment of 13 May 2008](#), para. 68. See also ICTY, Trial Chamber, *Prosecutor v. Tihomir Blaškić*, “Decision on the Application of the Prosecutor dated 17 October 1996 requesting protective measures for victims and witnesses”, 5 November 1996, IT-95-14-PT, para. 24: “The philosophy which imbues the Statute and the Rules of the Tribunal appears clear: the victims and witnesses merit protection, even from the accused, during the preliminary proceedings and continuing until a reasonable time before the start of the trial itself; from that time forth, however, the right of the accused to an equitable trial must take precedence and require that the veil of anonymity be lifted in his favour, even if the veil must continue to obstruct the view of the public and the media.”

²³ *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, “Decision on the Prosecutor’s requests for redactions”, 2 December 2015, ICC-01/12-01/15-53-Red (“Decision of 2 December 2015”), para. 6; *The Prosecutor v. Laurent Gbagbo*, “First decision on the Prosecutor’s requests for redactions and other protective measures”, 27 March 2012, [ICC-02/11-01/11-74-Red](#) (“Decision of 27 March 2012”), para. 41; *The Prosecutor v. Callixte Mbarushimana*, “Decision on the Prosecution’s applications for redactions pursuant to Rule 81(2) and Rule 81(4)”, 20 May 2011, [ICC-01/04-01/10-167](#) (“Decision of 20 May 2011”), para. 13.

Court's ability to set up security measures in that location;²⁴ whether the suspect is in the Court's custody;²⁵ whether disclosure of the names of witnesses, even to a limited number of persons – namely the Defence – might lead to broader dissemination of that information, including to people who may order retaliatory attacks, even without any instruction from the suspect;²⁶ whether the witness benefits from any other protective measures;²⁷ and whether the witness has consented to the disclosure of his or her identity.²⁸

17. In its analysis of the proportionality of the measure, weighed against the rights of the suspect and the requirement of a fair and impartial trial, the Pre-Trial Chamber took into account, *inter alia*: the fact that the Prosecution used the evidence brought by the witness merely to corroborate other evidence;²⁹ and the fact that the measure was requested at the pre-trial stage of the proceedings.³⁰

18. Lastly, the Single Judge notes that, in accordance with previous rulings by pre-trial chambers, the non-disclosure of the witness's identity to the Defence will be taken into consideration in the assessment of the probative value of the testimony and other evidence relating to that witness. The Single Judge recalls that the pre-trial chambers have consistently held that anonymous witness statements and summaries are admissible but that they are to be accorded lower probative value than evidence emanating from witnesses whose identities were known to the Defence,³¹ that they

²⁴ Decision of 2 December 2015, paras. 6-7; [Decision of 27 March 2012](#), para. 36; [Decision of 20 May 2011](#), para. 13; *The Prosecutor v. Bahar Idriss Abu Garda*, "Decision on the Prosecutor's Requests for Authorisation for Non-disclosure of Identities of Witnesses DAR-OTP-WWWW-0304, DAR-OTP-WWWW-0305, DAR-OTP-WWWW-0306, DAR-OTP-WVWW-0307, DAR-OTP-VVWWW-0312 and DAR-OTP-WVWW-0314", 31 August 2009, [ICC-02/05-02/09-74](#) ("Decision of 31 August 2009"), para. 10; *The Prosecutor v. Bahar Idriss Abu Garda*, "Decision on the Prosecutor's Request for Authorisation for Non-disclosure of Witnesses DAR-OTP-WWWW-0433", 31 August 2009, [ICC-02/05-02/09-77](#) ("Second Decision of 31 August 2009"), para. 6.

²⁵ [Decision of 31 August 2009](#), para. 10; [Second Decision of 31 August 2009](#), para. 4.

²⁶ [Decision of 31 August 2009](#), para. 10; [Second Decision of 31 August 2009](#), para. 4.

²⁷ [Decision of 27 March 2012](#), para. 36; [Decision of 20 May 2011](#), para. 13.

²⁸ Decision of 2 December 2015, para. 6.

²⁹ Decision of 2 December 2015, para. 10; [Decision of 27 March 2012](#), paras. 42-43.

³⁰ See, e.g. [Decision of 20 May 2011](#), para. 15; [Second Decision of 31 August 2009](#), paras. 7-8; [Decision of 31 August 2009](#), para. 15.

³¹ *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", 23 January 2012, [ICC-01/09-01/11-373](#) ("Decision of 23 January 2012"), para. 78; *The Prosecutor v. Bahar Idriss Abu Garda*, "Decision on the

should be corroborated³² and that no conclusions are to be made solely on the basis of anonymous hearsay evidence.³³

III. Analysis

1. Arguments of the parties

19. In its Motion, the Prosecution states that it wishes to rely on the evidence of Witness MLI-OTP-P-0431 (“Witness P-0431” or “P-0431”) at the confirmation hearing³⁴ and that [REDACTED] testimony deals with [REDACTED].³⁵ The Prosecution explains that Witness P-0431 [REDACTED].³⁶ The Prosecution contends that exposure of this witness’s cooperation with the Court would place [REDACTED] and [REDACTED] family at a risk [REDACTED], while also prejudicing ongoing and future investigations.³⁷

20. The Prosecution therefore asks to be authorized to: (i) not disclose the identity or identifying information of Witness P-0431; (ii) introduce into the case record an anonymous redacted version of Witness P-0431’s statement and its Arabic translation; (iii) redact the name of the witness in the chain of custody of [REDACTED] statement and of one of the annexes to [REDACTED] statement [REDACTED]; and (iv) not disclose whole items, including [REDACTED]

Confirmation of Charges”, 8 February 2010, [ICC-02/05-02/09-243-Red](#) (“Decision of 8 February 2010”), para. 52; *The Prosecutor v. Jean-Pierre Bemba Gombo*, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, 15 June 2009, [ICC-01/05-01/08-424](#) (“Decision of 15 June 2009”), para. 50; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Corrigendum to the Decision on Evidentiary Scope of the Confirmation Hearing, Preventive Relocation and Disclosure under Article 67(2) of the Statute and Rule 77 of the Rules”, 25 April 2008, [ICC-01/04-01/07-428-Corr](#), para. 18. See also *The Prosecutor v. Callixte Mbarushimana*, “Decision on the confirmation of charges”, 16 December 2011, [ICC-01/04-01/10-465-Red](#) (“Decision of 16 December 2011”), para. 49; *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Decision on the confirmation of charges”, 30 September 2008, [ICC-01/04-01/07-717](#) (“Decision of 30 September 2008”), para. 160.

³² [Decision of 23 January 2012](#), paras. 78, 297; [Decision of 16 December 2011](#), para. 49; [Decision of 8 February 2010](#), para. 52; [Decision of 30 September 2008](#), para. 140.

³³ [Decision of 30 September 2008](#), para. 140.

³⁴ Motion, para. 2.

³⁵ [REDACTED].

³⁶ [REDACTED].

³⁷ Motion, para. 2.

documents annexed to [REDACTED] statement and reproduced in Annex D to the Motion, and the witness's CV, annexed to [REDACTED] statement and reproduced in Annex B to the Motion ("Requested Measures").³⁸

21. [REDACTED]³⁹ [REDACTED].⁴⁰

22. The Prosecution refers, among others, to article 68(5) of the Statute, to rule 81(2) and (4) of the Rules and to the decisions of the Appeals Chamber in the *Lubanga* and *Katanga* cases concerning four factors that the Single Judge should consider when examining a motion for the non-disclosure of the identity of a witness.⁴¹ The Prosecution also points out that the Appeals Chamber has emphasized, in its previous decisions, that the standard for permitting non-disclosure at the confirmation stage is less demanding than the standard at trial.⁴²

23. The Prosecution submits that, in the case at hand, the disclosure of a redacted version of P-0431's statement, and the non-disclosure of some evidence and metadata is necessary under rule 81(4) of the Rules to protect the witness and [REDACTED] family.⁴³ To demonstrate that there is an objectively identifiable risk to safety,⁴⁴ the Prosecution refers to the general security situation in Mali, in particular

³⁸ Motion, paras. 10, 61.

³⁹ [REDACTED].

⁴⁰ [REDACTED].

⁴¹ Motion, paras. 16-23 referring, *inter alia*, to [Appeals Judgment of 13 May 2008](#), para. 62; [Appeals Judgment of 13 October 2006](#); [Appeals Judgment of 14 December 2006](#). The Prosecution adds that factors relevant to the assessment of risk include: the witness's personal circumstances, any existing protection or security measures in place for the witness, the security situation in the area where the witness or his or her family currently resides, whether the witness or his or her family has received any threats on account of his or her perceived involvement with the Court, whether the witness himself or herself has taken any actions that might endanger his or her personal safety, and whether the witness has consented to disclosure of his or her identity. See Motion, para. 20.

⁴² Motion, para. 24, referring to [Appeals Judgment of 13 May 2008](#), para. 59.

⁴³ Motion, paras. 34-48.

⁴⁴ Motion, paras. 34-45.

in the north and in Timbuktu,⁴⁵ [REDACTED],⁴⁶ [REDACTED].⁴⁷ The Prosecution also refers to the risk assessment for this witness conducted by the OTP.⁴⁸

24. The Prosecution maintains that, [REDACTED].⁴⁹

25. The Prosecution claims that the Requested Measures are the least intrusive available, [REDACTED].⁵⁰

26. The Prosecution also submits that the Requested Measures will not be prejudicial to the Defence, because the redactions were applied only to the witness's identifying information not to the substance; other evidence will be disclosed [REDACTED]; and Witness P-0431 does not provide information about Mr Al Hassan in person.⁵¹ [REDACTED].⁵²

27. The Prosecution submits that the requested non-disclosure is also warranted under rule 81(2) of the Rules because disclosure could prejudice ongoing and future investigations, in particular because there is an objectively identifiable risk of interference with the witness.⁵³ The Prosecution explains that such interference may [REDACTED] cause [REDACTED].⁵⁴ The Prosecution states that Witness P-0431 [REDACTED].⁵⁵ Lastly, the Prosecution emphasizes [REDACTED].⁵⁶

28. The Defence asks the Single Judge to deny the Motion, and to order that the identity of Witness P-0431 be disclosed to the Defence and that [REDACTED] CV be made available.⁵⁷ According to the Defence, that is the only way it would be in a

⁴⁵ Motion, paras. 34-39 [REDACTED].

⁴⁶ [REDACTED].

⁴⁷ [REDACTED].

⁴⁸ Motion, para. 42; [REDACTED].

⁴⁹ [REDACTED].

⁵⁰ Motion, para. 47. [REDACTED].

⁵¹ Motion, paras. 49-53.

⁵² [REDACTED].

⁵³ Motion, paras. 54-60, referring to and citing *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, "Judgment on the appeal of Mr Germain Katanga against the decision of Pre-Trial Chamber I entitled 'First Decision on the Prosecution Request for Authorisation to Redact Witness Statements'", 14 May 2008, [ICC-01/04-01/07-476](#) ("Appeals Judgment of 14 May 2008"), para. 49.

⁵⁴ [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ [REDACTED].

⁵⁷ Response, paras. 5, 14, 18.

position to test the credibility of this witness, who will testify on a material issue in the case.⁵⁸ The Defence also asks the Single Judge to order the Prosecution to provide less redacted versions of its motions for non-disclosure so as to ensure that the Defence is given sufficient information to respond.⁵⁹

29. The Defence responds that the Prosecution has not demonstrated⁶⁰ that non-disclosure is warranted by the existence of an objectively justifiable risk to the safety of the witness concerned, or interference with the Prosecution's investigations,⁶¹ as a result of disclosure to the Defence specifically⁶² or that the requested measures are proportionate to the rights of the Defence.⁶³ In particular, the Defence submits that the Prosecution's assessment that there is a risk [REDACTED] to the witness is based only on vague associations between Mr Al Hassan and Al Qaeda in the Islamic Maghreb ("AQIM"), and other groups, and refers to the "general security situation" in Mali.⁶⁴ The Defence adds that if the Motion were accepted as meeting the standard for non-disclosure under rule 81(2) and (4) of the Rules, then the identity of any individual in contact with the Office of the Prosecutor could be withheld from the Defence on similar grounds.⁶⁵ The Defence contends that [REDACTED].⁶⁶

30. The Defence emphasizes that, should the Single Judge grant the Motion, any evidence provided by Witness P-0431 and relied on by the Prosecution at the confirmation hearing must be considered as having lesser probative value than statements of witnesses whose identities have been disclosed to the Defence.⁶⁷

⁵⁸ Response, paras. 14, 18.

⁵⁹ Response, paras. 5, 19.

⁶⁰ Response, paras. 2-5, referring, *inter alia*, to [Decision of 20 May 2011](#), para. 6; [Appeals Judgment of 13 May 2008](#), paras. 56, 61, 70-73, 97; [Appeals Judgment of 14 December 2006](#), paras. 33-34; [Appeals Judgment of 13 October 2006](#), paras. 36-39.

⁶¹ Response, paras. 7-8, 10, 13, 18.

⁶² Response, paras. 7, 9, 11, 13, 16, 18.

⁶³ Response, para. 12.

⁶⁴ Response, paras. 10, 18.

⁶⁵ Response, para. 10.

⁶⁶ [REDACTED].

⁶⁷ Response, para. 17.

3. The Single Judge's findings

31. Before analysing the Prosecution's Motion, the Single Judge takes note of the Defence submission that, because the Motion is heavily redacted, the Defence has not been able to conduct a sufficient assessment of it.⁶⁸ On this matter, the Single Judge, who has access to the unredacted version of the Prosecution's Motion, considers that the redactions applied by the Prosecution are necessary, in particular to prevent the identification of the witness in question, which would defeat the whole purpose of the Motion.

32. Furthermore, regarding the Defence request asking the Single Judge to order the Prosecution to provide it with less redacted versions of its motions for non-disclosure, the Single Judge emphasizes that the need for redactions can only be assessed on a case-by-case basis and not in general terms or in advance. This by no means prevents the Defence from contesting the level of redaction in a motion or any other document⁶⁹ filed in the case record, by submitting an application to the Chamber, as the Defence has done here. The Single Judge will now analyse the Motion. For the reasons set out below, the Single Judge sees fit to grant the Motion.

33. The Single Judge takes note of the information provided by the Prosecution attesting to retaliation, including killing, [REDACTED],⁷⁰ and, in that context, the Single Judge accepts the Prosecution's argument that, if Mr Al Hassan was indeed a member of Ansar Dine acting under Iyad Ag Ghaly's orders at the time of his arrest,⁷¹ that is a factor to be taken into consideration when assessing the risk of disclosing the witness's identity to the Defence. Moreover, in a particularly worrying security situation and [REDACTED],⁷² the Single Judge points out that disclosure of the witness's name, even to a limited number of people – in this instance to the

⁶⁸ Response, para. 16.

⁶⁹ Regulation 22 of the Regulations of the Court.

⁷⁰ Motion, paras. 36-39, [REDACTED].

⁷¹ Motion, para. 39, [REDACTED].

⁷² [REDACTED].

Defence – inevitably entails the risk that the information will be disseminated more widely,⁷³ even without the Defence’s knowledge.⁷⁴

34. The Single Judge notes that, [REDACTED],⁷⁵ in its Motion the Prosecution [REDACTED]⁷⁶ [REDACTED]⁷⁷ [REDACTED].⁷⁸

35. The Single Judge also emphasizes that the existence of an objectively justifiable risk here stems [REDACTED]⁷⁹ [REDACTED].⁸⁰ [REDACTED].⁸¹ The Single Judge notes that, according to the Prosecution, the witness [REDACTED] refused to consent to the disclosure of [REDACTED] identity to the Defence.⁸²

36. The Single Judge also notes that the specific security situation [REDACTED]⁸³ and that the Prosecution [REDACTED].⁸⁴ Therefore, withholding [REDACTED] identity from the public and from the Defence appears to be the only measure that can properly ensure [REDACTED] safety.

37. Most importantly, these observations must be considered together with the fact that the Prosecution has demonstrated in its Motion that P-0431’s testimony is intended to establish [REDACTED] and therefore is not of a nature that could yield exculpatory evidence and is not essential to Mr Al Hassan’s defence in that it does not relate to his conduct or directly to his individual responsibility.⁸⁵

38. The Single Judge is also convinced by the Prosecution’s arguments that the requested measures are necessary under rule 81(2) of the Rules.⁸⁶ After all, [REDACTED].⁸⁷

⁷³ [Decision of 31 August 2009](#), para. 10; [Second Decision of 31 August 2009](#), para. 4.

⁷⁴ Motion, para. 41.

⁷⁵ [REDACTED].

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ [REDACTED].

⁸⁰ [REDACTED].

⁸¹ [REDACTED].

⁸² Motion, para. 44.

⁸³ [REDACTED].

⁸⁴ [REDACTED].

⁸⁵ [Appeals Judgment of 13 May 2008](#), para. 72.

⁸⁶ Motion, paras. 55-56.

39. The Single Judge therefore considers that withholding the identity of Witness P-0431 from the Defence is the least restrictive measure possible for protecting the witness and the best possible for striking a balance between the need to ensure the witness's safety and, [REDACTED], the need to limit any prejudice to the OTP's further or ongoing investigations, and the rights of the Defence and the suspect.

40. The Single Judge also accepts the Prosecution's arguments – in support of its request that whole documents [REDACTED].⁸⁸ That is especially true of [REDACTED] CV, contained in Annex B.⁸⁹

⁸⁷ [REDACTED].

⁸⁸ [REDACTED].

⁸⁹ Annex B to the Motion, ICC-01/12-01/18-44-Conf-Exp-AnxB.

FOR THESE REASONS, the Single Judge

DECIDES to authorize the Prosecution to withhold the identity of Witness MLI-OTP-P-0431 from the Defence and to continue to use that code name during the forthcoming proceedings; and

DECIDES to authorize the Prosecution to apply the requested redactions and to withhold certain whole documents, as proposed in the Motion.

Done in both English and French, the French version being authoritative.

[signed]

Judge Péter Kovács

Single Judge

Dated this 19 July 2018

At The Hague, Netherlands