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Pénale
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**International
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Court**

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Date: **6 July 2010**

TRIAL CHAMBER III

Before: Judge Adrian Fulford, Presiding Judge
Judge Elizabeth Odio-Benito
Judge Joyce Aluoch

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

**Public Redacted Version
With
Public Redacted Annex A**

**Corrigendum to “Prosecution’s Request for Protective and Special Measures for
Prosecution Witnesses at Trial”**

Source: The 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 in-court protective measures to be applied during the testimony of 21 Prosecution witnesses at the upcoming trial pursuant to Articles 68(1) and 64(2) of the Rome Statute (“Statute”) and Rules 87 and 88 of the Rules of Procedure and Evidence (“Rules”). Collectively, these provisions authorise the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly including victims of sexual violence, and to facilitate the testimony of vulnerable witnesses and those who are particularly at risk, while at the same time preserving the Accused’s right to a fair and public trial.

2. In particular, the Prosecution requests that Trial Chamber III (“Chamber”) authorize: (i) image and voice distortion; (ii) continued in-court use of witness numbers and pseudonyms in lieu of names; (iii) closed sessions for the entire testimonies of three witnesses¹; (iv) limited closed sessions for those brief portions of testimony wherein the witnesses provide information that would identify victims of rape, sexual violence, or related crimes (hereinafter broadly referred to as victims of sexual violence)² and; (v) that victims be accompanied, as they choose, by a psychologist, a trustworthy person, or family member at trial in accordance with Rule 88 of the Rules. While the bulk of these measures is asked for specific witnesses, the Prosecution submits that the discrete portion of all evidence which refers to the identity or other identifying information of protected witnesses should be given in closed session. This is to maintain the effectiveness of protective measures for specific witnesses throughout the trial.

¹ ICC-02/05-02/09-186 pages 6-7 (Decision on witness to be called by the Defence at the confirmation hearing). Pre-Trial Chamber I (“PTC I”) allowed the examination of a witness in closed session. In arriving at this Decision, PTC I stated: “Considering, moreover, taking into account the status of the Defence’s Proposed Witness as a member of the investigative team of the OTP, that questions posed to him could seek information that cannot be disclosed in a public hearing;” “Considering, therefore, that the examination of such a witness shall be conducted in closed session;” “The main consideration that made PTC I order the witness to testify in closed session was because questions posed to the witness could have elicited answers that could not be disclosed in a public hearing. The Prosecution relies on the same argument in support of its application for a closed session in respect of its three Witnesses 47, 75 and 169.

² The Prosecution consulted with the Office of Public Counsel for Victims (“OPCV”) and Ms Marie-Edith Douzima-Lawson who act as legal representatives for nine dual-status witnesses referred to in this application. These dual-status witnesses are: Witness 23, Witness 29, Witness 42, Witness 69, Witness 110 and Witness 112 (OPCV); Witness 22, Witness 68 and Witness 87 (Ms Marie-Edith Douzima-Lawson). The legal representatives agree with the measures the Prosecution seeks in relation to their clients. Similarly, the Prosecution will inform VWU of its intention to seek in-court protective measures for its vulnerable and at-risk witnesses, in particular, victims of sexual violence and those witnesses whose evidence is intrinsically linked to the identification of victims of sexual violence.

3. The Prosecution contemplates that all the witnesses at issue, except the three witnesses for whom the Prosecution is seeking closed session proceedings,³ will testify substantially in open session. Their identities, though withheld from the public, will be known by the Defence. With these requested measures in place, the Defence will be able to examine each of these witnesses publicly, except on discrete matters that bear on the witnesses' identity, and it will be able to present its case at trial without restriction. The requested measures are intended to prevent the public disclosure at trial of the identities – but not the substantive evidence – of witnesses who are vulnerable or at-risk.

4. The witnesses for whom the Prosecution requests protective and special measures are witnesses whose lives may be in danger as a result of cooperating with the Court and victims of sexual violence. For the first category, the measures requested will provide security, are proportionate to these risks, and are appropriate and necessary, especially bearing in mind that the Prosecution has sought the inclusion of only three witnesses into the International Criminal Court Protection Program ("ICCPP"). For the second category, public disclosure of the identity of the victims will create the possibility of punishment or marginalization or stigmatization or shaming. It is generally accepted that privacy and dignitary interests of sexual violence victims deserve protection, and it is even more important to do so when the victims, if identified, will face serious consequences in their families and communities. Therefore, the suggested measures are the least intrusive steps that will balance the interests of the public, the Defence, the Prosecution, and the sexual violence victims themselves. These measures will facilitate the testimony of the witnesses, help prevent their re-traumatization and protect their psychological well-being, dignity and privacy.

II. Request for confidentiality

5. The Prosecution requests that this application and its attached Annex A - which is a chart setting out the specific measures sought and the justification for these measures for each witness - and Annex B - which is the list of authorities -, be received by the Chamber as Confidential, *Ex Parte*, only available to the Prosecution and the Victims and Witnesses Unit ("VWU"), since it relates to a request for protective measures, communication of which will defeat the object of the

³ The Prosecution is requesting for closed session proceedings for the entire testimonies of Witness 47, Witness 75 and Witness 169.

request. Separate redacted versions of this filing will be submitted simultaneously and will be available to the Defence, the Office of Public Counsel for Victims (“OPCV”) and Ms. Marie-Edith Douzima-Lawson, the latter as legal representatives of some of the victims referred to in this application.

III. Application for in-court protective measures

6. The Prosecution’s request for in-court measures is based on, and supported by, the core texts of this Court and its practice. Accordingly, the Chamber throughout the proceedings shall have “*due regard for the protection of victims and witnesses*”.⁴ The Prosecution and the Court have the duties to elicit the truth and, in doing so, to protect the physical and psychological well-being, dignity and privacy of its witnesses and of victims.⁵ In particular, the fact that a witness is a victim of sexual violence is a specific factor to be taken into account when considering protective or special measures pursuant to Rules 87 and 88 of the Rules.

7. The Prosecution must also protect the safety of vulnerable and at-risk witnesses. In this instance, the Prosecution is cognizant of the needs of witnesses at potential risk from supporters of the Accused who may follow the proceedings. At the same time, the Prosecution is also aware that any measures put in place to protect these victims and witnesses must not unfairly prejudice the Defence. Accordingly, the measures proposed are proportionate to the identified risk and are least intrusive to the lives of persons at risk and to the rights of the Accused.

8. Chambers of this Court have authorized similar measures to protect the safety of witnesses.⁶ Thus, it is clear that granting such measures is within the discretion of the Court and that the Court is open to exercising that discretion in appropriate circumstances. Trial Chamber I in the *Lubanga* case granted requests for in-court protective measures for vulnerable and at-risk witnesses. In reaching its conclusion, that Chamber reasoned that:

“If any of their identities were to become known, the whole purpose of their protection which has been afforded to the witnesses would be undermined, and they, together

⁴ Article 64(2) of the Statute.

⁵ Article 68(1) of the Statute; see also ICC-01/04-01/07-776 OA7, para. 101.

⁶ For instance, in the *Katanga* case, Trial Chamber II granted in-court protective measures for witnesses who have been admitted to the ICCPP: ICC-01/04-01/07-1795-Red). See also Oral Decision of Trial Chamber I in the *Lubanga* case rendered on 16 January 2009: ICC-01/04-01/06-T-104-ENG, p. 4, lines 13-25.

with their families would be at risk for an indefinite period of time. The accused has been given the full identifying details for these and is able, therefore, to deal with their evidence without restriction.[...] Without the totality of these measures, there is a real risk that witnesses before the Court will be put at significant risk of harm and the court would thereby have failed to discharge its obligations under Article 68. They do not in any way render the trial against the accused unfair; and in all the circumstances they are necessary and proportionate”.⁷

9. The use of in-court protective measures also is well established in other international criminal tribunals. Thus, it is clear that granting such measures is within the discretion of the Court, and that in line with generally accepted practice this Court is open to exercising that discretion in appropriate circumstances

IV. Victims of sexual violence

10. The Prosecution seeks protective and special measures for 10 vulnerable and at-risk victims of sexual violence: Witness 22, Witness 23, Witness 29, Witness 68, Witness 69, Witness 79, Witness 80, Witness 81, Witness 82 and Witness 87. As some of them specifically have indicated in their requests to the Prosecution, they fear that public disclosure of their identities will compromise their security and their dignity and privacy.⁸ While these victims are desirous of cooperating with the Court in its search for the truth, they have clearly expressed their desire to do so in circumstances which do not expose their identities, in particular, to the local population in their communities in the Central African Republic (“CAR”). The measures will enable the witnesses to provide full accounts of the events at issue with minimal re-traumatisation, to protect their privacy and the privacy of family members, and to avoid the stigma that is associated with rape and/or HIV infection. Because the protective measures will enable the witnesses to testify without reticence, they will permit the Court to discover the truth. In the assessment of the Prosecution, the witnesses’ subjective perception of risk of stigma is supported by objective

⁷ Oral Decision of Trial Chamber I in the *Lubanga* case rendered on 16 January 2009: ICC-01/04-01/06-T-104-ENG, p. 4, lines 13-25.

⁸ These are Witness 23, Witness 80, Witness 81 and Witness 82.

information.⁹ Hence, the proposed measures are also necessary to protect the physical security of these witnesses and their family members.

11. As noted above, the use of in-court protection has been contemplated and approved in the international criminal tribunals. For example, in *Tadic*, the ICTY Trial Chamber considered requests for various in-court protective measures for Witness F, a victim of “*forcible sexual intercourse*”, and Witnesses G, H, and I, all of whom were victims of or witnesses to sexual mutilation.¹⁰ The Trial Chamber allowed these victims and witnesses to testify behind a screen, finding that the use of the screen would in “*no way affect the accused’s right to a fair and public trial*”.¹¹ The Trial Chamber also relied in particular on national practice regarding sexual assault to allow all witnesses involved the *Tadic* application to use pseudonyms.¹²

12. Subsequently, the Special Court for Sierra Leone, in *Sesey*, relied on *Tadic* to justify the use of in-court protection measures for the special category of sexual violence witnesses/victims, explaining that “*the need for special consideration to victims of sexual violence ... has been widely recognised in both domestic laws of states and in international courts.*”¹³ That Chamber also allowed all witnesses to use pseudonyms and to allow sexual violence and insider witnesses to testify behind a screen and to use voice distortion.¹⁴

13. The Tribunals’ justifications for excluding identification information, despite the public nature of the trial process, consistently recognize the need to protect the privacy of the survivor/witness in the interest of both psychological and physical well-being. Rape and other crimes of sexual violence have been called “*despicable act[s] which strike [] at the very core of human dignity and physical integrity*”.¹⁵ It is recognized that these sexual offences have

⁹ See para. 16 and 17 below.

¹⁰ *Prosecutor v Tadic*, Decision on the Prosecutor’s Motion Requesting Protective measures for Victims and Witnesses, Case No. IT-94-1-T, 10 August 1995, para. 50.

¹¹ *Id.* at para. 50-51. The temporary screen also prevented the victim/witness from seeing the accused.

¹² *Id.* at para. 42: the Chamber also discussed at length provisions of the ICTY Statute, various human rights conventions, and widespread practice of both common and civil law jurisdictions that allow for the use of such measures to protect the identity of witnesses and victims, as balanced against the right of the accused to a public trial. *Id.* at paras. 34-41. Finally, Witness H was allowed to use voice and image distortion to protect his/her identity from the accused; while the Prosecution is requesting the use of similar measures, their purpose is protection from the public, not the accused.

¹³ *Prosecutor v Sesey et al.*, Decision on the Prosecution Motion for Modification of Protective Measures for Witnesses, Case No, SCSL-04-15, 5 July 2004, para. 32.

¹⁴ *Id.* at paras. 26-28, 33. The Chamber also allowed child witnesses to testify via one-way closed circuit television. *Id.* at para. 34.

¹⁵ *Prosecutor v. Delalic et al.*, IT-96-21-T, 16 November 1998, para. 495.; United Nations Commission on the Status of Women, Fifty-fourth session, New York, 1-12 March 2010; Interactive Expert Panel, Unite to End Violence

“particularly devastating consequences”¹⁶ and cause “severe pain and suffering” that can be both “physical and psychological.”¹⁷

14. Similarly, several national legislations consider the identity of sexual assault victims as not the subject matter of public disclosure. A number of jurisdictions, both civil and common law, have adopted the position that the identity of an alleged victim of sexual assault should be kept from the public. In England and Wales, Section 4 of the Sexual Offences (Amendment) Act, 1976,¹⁸ provides that after a woman has complained of a rape offence, neither her name nor her address nor a still or moving picture of her shall be published during her lifetime if it is “likely to lead members of the public to identify her as an alleged victim of such an offence”.

15. Civil law jurisdictions such as Switzerland, Denmark and Germany have similar legislation. Swiss law prohibits the publication of the identity of a victim if it is necessary to protect the interests of the prosecution or if the victim requests non-disclosure. The courtroom may be closed during the victim’s testimony (*Bundesgesetz Über die Hilfe an Opfer von Straftaten*, art. 5). In Denmark, a victim in an incest or rape case, may request a trial *in camera* and would be granted (Administration of Justice Act section 29). In Germany, publicity can be restricted or excluded, in order to protect the accused and witnesses (*Gerichtsverfassungsgesetz* sec. 170).¹⁹

16. The stigma of rape, in cultures that “place tremendous value on women’s sexual purity, may subject a victim to ‘physical threats’, ‘social contempt,’ severe traumatising, feelings of guilt and shame ... [and] the fear of rejection by husband or family.”²⁰ In particular, the fear of disclosure, and the ensuing rejection, may deter victims from testifying about the crimes committed upon them, thus depriving the Court of the evidence from which to make a reliable determination of guilt or innocence.

against Women; Walter A. Füllemann, International Committee of the Red Cross: Women and War Talking Points, The Impact of Conflict on Women, at:

http://www.un.org/womenwatch/daw/beijing15/interactive_panel_V/ICRC%20Women%20and%20War%20Speaking%20Points%20CSW%20NYc.pdf.

¹⁶ *Tadic*, at para. 46.

¹⁷ *Prosecutor v. Delalić et al.*, Judgment, Case No. IT-96-21-T, 16 November 1998, para. 495.

¹⁸ http://www.opsi.gov.uk/acts/acts1976/pdf/ukpga_19760082_en.pdf.

¹⁹ *Prosecutor v. Delalić et al.*, Decision on the motions by the Prosecution for protective measures for the Prosecution Witnesses pseudonymed “B” through to “M”, Case No. IT-96-21-T, 28 April 1997, at Para 42.

²⁰ Notes, Protecting Rape In International Criminal Tribunals: The Need to Balance Victim’s Rights With The Due Process Rights Of The Accused, 23 St. John’s Journal of Legal Commentary 168, at 197 (citations omitted) (2008).

17. Another consequence of sexual violence is the spread of HIV, which compounds the stigma that is already attached to being a victim of rape. Several witnesses in this case now are HIV positive. Numerous studies reflect that, especially in Africa, persons infected with HIV or AIDS are avoided and rejected within their communities. For example, a recent survey by Action Aid International, an anti-poverty agency, and Women fighting AIDS in Kenya, a local NGO in Kenya, found that more than half the respondents in the survey - representing 430 households in three districts of western Kenya - were unwilling to share a meal with an HIV positive person or allow the HIV person to cook or serve meals to guests. They were even unwilling to allow HIV positive people to share household utensils. One respondent stated that she would not use the same basin as somebody who had HIV to bathe or wash her clothes: as she explained, "*I just feel ... that they can do something to also make me get it.*" Moreover, the overwhelming majority (74 percent) of respondents agreed that persons with HIV deserved the disease as punishment for their immoral behaviour. Thirty-three percent of HIV positive married women interviewed had been abandoned by their husbands after testing positive. One woman explained, "*You simply keep quiet because you do not want to reveal your status and in essence reveal the fact that you were 'immoral'.*"²¹

18. The special measures proposed here thus have three primary purposes. First, it avoids re-traumatisation and protects the victim from the consequence of feeling that he or she has been "*raped a second time*"²² by the legal process. Second, it attempts to ameliorate the psychological suffering of survivors, which "*may be exacerbated by social and cultural conditions*";²³ this is particularly an issue where the public disclosure of rape results "*in rejection by the victim's family and community.*"²⁴ Third, it addresses the physical and psychological fear of "*reprisals during an on-going conflict*",²⁵ which emanate both from those supporting the Accused and from family and community members who may punish people shamed by sexual violence, pregnancy and HIV.²⁶

²¹ See <http://www.irinnews.org/report.aspx?ReportID=89316>.

²² *Tadic*, at para. 46.

²³ *Delalić*, at para. 495.

²⁴ *Tadic*, at para. 46.

²⁵ *Id.* at para. 42.

²⁶ While not the primary purpose of this request, the Prosecution further notes that the Court's willingness and ability to protect the dignity of rape victims will affect the readiness of witnesses to come forward and cooperate in future investigations and prosecutions. Cf, Notes, Protecting Rape In International Criminal Tribunals: The Need to Balance Victim's Rights With The Due Process Rights Of The Accused, 23 St. John's Journal of Legal Commentary 168, at

19. Based on the above, the Prosecution requests that: (i) these victims/witnesses continue to be referred to by their numbers throughout the proceedings, pursuant to Rule 87(3)(d) of the Rules, in order to prevent their identities from being disclosed to the public; and (ii) image and voice distortions be applied during their testimony in accordance with Rule 87(3)(c) of the Rules. The Prosecution further requests that where evidence will be elicited that will either reveal or provide substantial clues to their identities and, where applicable, their HIV/AIDS status, the Court authorize closed or private sessions – with the sound closed off to the public gallery – during those portions of their testimony pursuant to Rule 87(3)(e) of the Rules. Finally, where necessary, the Prosecution requests that victims be accompanied, as they choose, by a psychologist, a trustworthy person, or family member at trial in accordance with Rule 88 of the Rules.

20. In the *Katanga* case, Trial Chamber II permitted victims to be accompanied by persons of their choice in order to facilitate their testimonies during trial.²⁷ In this case, the accompaniment of these witnesses, mainly victims of rape,²⁸ by persons of their choice will *inter alia*, minimize trauma. This is important in maintaining their dignity during proceedings and preserving the overall quality of their testimonies during trial. Being accompanied by a person of their choice will also minimize any additional fear associated with participating in these proceedings. This special measure will also, to an extent, address issues relating to witness reluctance and fatigue that may otherwise prevent a witness from properly providing testimony.²⁹

21. The following sets out further specific considerations for each of the above witnesses in support of the present request for protective and special measures:

a. Witness 22

22. [REDACTED]³⁰

198 (“Protecting the victim-witness is necessary in order to fulfil the tribunals’ mission to ‘put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them’”).

²⁷ ICC-01/04-01/07-1667-Conf, at para 15 : Ordonnance relative aux mesures de protection de certains témoins cités à comparaître par le Procureur et par la Chambre (règles 87 et 88 du Règlement de procédure et de preuve).

²⁸ These are Witness 75, Witness 79 and Witness 87.

²⁹ Human Rights Watch, *Narrowing the Impunity Gap*, 11 February 1997, available at: <http://www.hrw.org/en/node/11032/section/5>.

³⁰[REDACTED]

b. Witness 23

23. [REDACTED]³¹

c. Witness 29

24. [REDACTED]³²

d. Witness 68

25. [REDACTED]³³

e. Witness 69

26. [REDACTED]

f. Witness 79

27. [REDACTED]

g. Witness 80

28. [REDACTED]

h. Witness 81

29. [REDACTED]

i. Witness 82

30. [REDACTED]

j. Witness 87

31. [REDACTED]

³¹ [REDACTED]

³² [REDACTED]

³³ [REDACTED]

V. Witnesses whose evidence will identify victims of sexual violence

32. Pursuant to Rules 87(3) (c)-(e) of the Rules, the Prosecution seeks limited protective measures for three witnesses - Witness 38, Witness 42 and Witness 209. These witnesses will testify about sexual assaults committed on others, and their evidence thus may reveal, directly or indirectly the identities of victims of sexual violence. For the reasons set out above regarding evidence from the victims themselves, the Prosecution requests that: (i) these victims/witnesses continue to be referred to by their numbers throughout the proceedings, pursuant to Rule 87(3)(d) of the Rules, in order to prevent their identities from being disclosed to the public; (ii) image and voice distortions be applied during their testimony in accordance with Rule 87(3)(c) of the Rules and; (iii) any part of testimony of other witnesses that could lead to the positive identification of victims of sexual violence be heard in private or closed session.

33. The three persons for whom this measure is sought provide either first-hand eye-witness accounts of the acts of sexual violence or were informed of the victims' identities and victimisation by the victims or by third parties. The use of private or closed sessions when information identifying the victims is likely to be elicited is necessary to protect the safety, physical and psychological well-being, dignity and privacy of the victims of sexual violence. All other portions of the testimony related to the details of the crimes would be provided to the public, thus preserving the public nature of proceedings at the Court.

VI. Witnesses living in or travelling to the Democratic Republic of the Congo ("DRC")

34. In accordance with Rules 87 and 88 of the Rules, the Prosecution seeks image and voice distortions and use of pseudonyms for five witnesses who [REDACTED], or [REDACTED], namely Witness 33, Witness 65, Witness 173, Witness 178 and Witness 213.³⁴ One witness (Witness 173) will be relocated permanently, [REDACTED];³⁵ [REDACTED]. The requested measures will be necessary regardless whether the witnesses are or will be in the ICCPP, to

³⁴ Three of these witnesses - Witness 33, Witness 65, and Witness 173 - reside in the DRC. In addition, [REDACTED] within the DRC where the MLC and the Accused's supporters have previously reacted violently against the Accused's arrest. [REDACTED]

³⁵ [REDACTED]

protect the witnesses and their unprotected family members and/or to ensure the effectiveness of the ICCPP.³⁶ The Prosecution further requests that evidence regarding the identity or other identifying information of these witnesses be given in closed session.

a. Witness 33

35. [REDACTED]

b. Witness 65

36. [REDACTED]

c. Witness 173

37. [REDACTED]

d. Witness 178

38. [REDACTED]

e. Witness 213

39. [REDACTED]

40. [REDACTED]

41. [REDACTED]^{37 38}

VII. Witnesses identifiable by their evidence

42. The Prosecution requests closed session proceedings for the entire trial testimonies of three witnesses - Witness 47, Witness 75 and Witness 169 - pursuant to Rule 87(3)(e) of the Rules. This protective measure is necessary as, even if protective measures such as face and voice

³⁶ For instance, in the *Katanga* case, Trial Chamber II granted in-court protective measures for witnesses who have been admitted to the ICCPP (ICC-01/04-01/07-1795-Red).

³⁷ "Congo Protesters demand release of arrested ex-VP", available at : <http://www.reuters.com/article/latestCrisis/idUSL27385005>.

"Protests in DR Congo against former rebel leader's arrest", 26 May 2008 available at: http://www.afrikanieuws.nl/site/Bemba_arrest_prompts_mobs_in_the_streets/list_messages/18516.

³⁸ [REDACTED]

distortion and use of a pseudonym are used, the substance of the testimonies of these witnesses could reveal details about these witnesses that could result in their identification.³⁹

43. In the *Abu Garda* case, Pre-Trial Chamber I permitted the examination of a Defence witness in closed session. Pre-Trial Chamber I's justification for this protective measure was that "*questions posed to him could seek information that cannot be disclosed in a public hearing*".⁴⁰

44. Closed session proceedings as a protective measure have been used both in national and international tribunals. In *Kunarac*, the ICTY Trial Chamber granted a closed session for witness FWS-191 - a victim of sexual slavery and rape.⁴¹ In the *Taylor* case, the Trial Chamber permitted four out of a total of 91 Prosecution witnesses to testify entirely in closed session.⁴² National jurisdictions, cited in paragraphs 14 and 15 above, also permit entirely closed sessions for the victims of sexual violence.

45. The Prosecution's request is limited to three witnesses. Two are uniquely placed to provide evidence against the MLC; even if their identities are elicited in private session, the nature of their evidence itself will enable persons to identify them. The third witness is a victim of rape, who could [REDACTED] based on the substance of her evidence. Although the evidence of these witnesses would be withheld from the public, the Accused and his Defence will have access both to the witnesses and their evidence. Moreover, the Prosecution will undertake to prepare summaries, for the agreement of the parties and Chamber, of the testimony that could be publicly released.⁴³

46. The circumstances of each of these three witnesses that warrant the requested measures are set out below.

a. Witness 47

47. [REDACTED]

48. [REDACTED]

³⁹ Human Rights Watch, *Narrowing the Impunity Gap*, 11 February 1997, available at: <http://www.hrw.org/en/node/11032/section/5>.

⁴⁰ ICC-02/05-02/09-186 pages 6-7 (Decision on witness to be called by the Defence at the confirmation hearing).

⁴¹ *Prosecutor v. Dragoljub Kunarac*, Decision granting protective measures for Witness FWS-191, 20 November 1998.

⁴² Africa News, *Liberia: Prosecutor presents last witness at UN-Backed Trial of Taylor*, 3 February 2009, available at: <http://africaheadlines.wordpress.com/2009/02/03/liberia-prosecutor-presents-final-witness-at-un-backed-trial-of-taylor/>

⁴³ *Prosecutor v. Krajisnik*, ICTY, IT-1198, para. 1198 (accepting into evidence statements or transcripts from other cases; "at several points during the trial, summaries of the evidence of these Rule 92 *bis* witnesses were read into the record, for the benefit of the public audience").

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

b. Witness 75

- 51. [REDACTED]
- 52. [REDACTED]

c. Witness 169

- 53. [REDACTED]
- 54. [REDACTED]⁴⁴
- 55. [REDACTED]
- 56. [REDACTED]

VIII. Relief sought

57. In light of the foregoing, the Prosecution respectfully requests that the Chamber, in the upcoming trial:

- (i) Authorize image and voice distortions and assigns pseudonyms to witnesses 22, 23, 29, 33, 38, 42, 65, 68, 69, 79, 80, 81, 82, 87, 173, 178, 209 and 213 during their testimony;
- (ii) Authorize witnesses 75, 79 and 87 to be accompanied, as they choose, by a psychologist, a trustworthy person, or family member at trial in accordance with Rule 88 of the Rules;
- (iii) Authorize portions of testimony of Witnesses 38, 42, and 209, as well as the witnesses named above, when the testimony will identify sexual violence victims, to be heard in closed session;

⁴⁴ [REDACTED]

- (iv) Ensure that evidence regarding the identity or other identifying information of protected witnesses be given in closed session by all witnesses;
- (v) Authorize testimony of Witnesses 47, 75 and 169 to be heard in closed session.



Luis Moreno-Ocampo, Prosecutor

Dated this 6th Day of July 2010

At The Hague, The Netherlands