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No.: **ICC-02/11-01/15**

Date: **9 May 2016**

TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera Carbuccion
Judge Geoffrey Henderson

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

IN THE CASE OF

THE PROSECUTOR

v. LAURENT GBAGBO and CHARLES BLÉ GOUDÉ

Public

With Confidential Annexes A to D

**Public redacted version of "Prosecution's application
for protective measures for [REDACTED]" ICC-02/11-01/15-507-Conf, 9 May 2016**

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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Introduction

1. The Prosecution hereby files an application seeking in-court protective measures for [REDACTED],¹ in accordance with articles 68(1) and (2) of the Rome Statute (“Statute”) and rules 87 and 88 of the Rules of Procedure and Evidence (“Rules”) and in conformity with the Trial Chamber’s Amended and Supplemented Directions on the conduct of proceedings.² The measures described below are requested in order to protect the safety, physical and psychological well-being, dignity and privacy of the Witness, and to facilitate his testimony while preserving the Accused’s right to a fair and public trial.
2. The Prosecution requests the Chamber to authorise (i) continued in-court use of a pseudonym, in lieu of [REDACTED] name, in accordance with rule 87(3)(d) of the Rules, (ii) image and voice distortion, in accordance with rule 87(3)(c) and; (iii) recourse to *in camera* proceedings for identifying portions of the Witness’s testimony, in accordance with rule 87(3)(e). Pursuant to rule 88(1), the Prosecution also requests the following special measures: (i) based on the Witness’s condition, shorter sessions of one hour instead of the standard one and a half hour session; and (ii) presence of medical assistance during the course of the Witness’s testimony.

Confidentiality

3. The Prosecution files this submission and its annexes as confidential pursuant to regulation 23*bis*(2) of the Regulations of the Court (“Regulations”), as it contains information related to the identity of a Prosecution witness. This also conforms with the guidance provided by the Chamber that applications under rule 87 of the

¹ On 15 October 2015, the Prosecution filed the list of the first 20 witnesses it intends to call at trial (ICC-02/11-01/15-0294), stating its intention to call [REDACTED] as the eleventh witness to testify for the Prosecution.

² ICC-02/11-01/15-0498-AnxA, paras.55-58.

Rules should be filed confidentially but not *ex parte*, and may include an *ex parte* annex.³

Submissions

4. The Prosecution incorporates by reference its presentation of the law and jurisprudence as described in its filing relating to [REDACTED].⁴ It also incorporates the background factors relating to the security situation in Côte d'Ivoire;⁵ indeed, both the polarisation of society and media coverage of this trial in Côte d'Ivoire remain unchanged. [REDACTED].
5. There is an objectively justifiable risk to [REDACTED] safety if his identity becomes known to the public. [REDACTED].⁶ It is expected that his testimony will be widely commented upon and critiqued, and that this may impact on the physical and medical well-being of the witness.⁷ The Witness himself has raised security concerns for himself and his family resulting from his testimony.⁸ As such, protective measures in the form of a pseudonym and image and voice distortion are necessary to mitigate the risk of public exposure of his status as a Prosecution witness. Voice distortion will be necessary for the additional reason that [REDACTED] will testify in French. Therefore, his testimony will be transmitted without interpretation.
6. The Prosecution also requests that identifying portions of [REDACTED] testimony are conducted in camera under rule 87(3)(e) of the Rules. The Prosecution is not seeking full in camera testimony for [REDACTED]. Rather, it is anticipated that portions of the Witness' evidence, which can identify him, will need to be heard in private session in accordance with rule 87(3)(e) of the Rules

³ ICC-02/11-01/15-205, para. 63.

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ It is expected that the Victims and Witnesses Section will report to the Chamber in detail with respect to [REDACTED] condition and the VWS's recommendation.

⁸ See ICC-02/11-01/15-486-Conf-AnxA.

and as envisaged by paragraph 59 of the Amended and Supplemented Directions on the conduct of proceedings⁹.

7. The suggested measures are the least intrusive steps that will balance the interests of the public, the Parties and participants and the Witness. The requested measures are also not prejudicial to or inconsistent with the rights of the Accused to a fair and impartial trial. Although [REDACTED] identity should be withheld from the public, it has of course been disclosed to the Defence, who will be able to examine the Witness on any relevant issues and largely in open session.
8. The Prosecution also proposes special measures provided by rule 88(1). [REDACTED], it is suggested to hold shorter sessions of one hour each, instead of the standard one and a half hour session. As such, one possibility would be to hold four sessions of one hour per day, including the usual one and a half hour break for lunch from 12:00 to 13:30. The presence of a medical assistant or paramedic would be strongly advised out of abundance of caution, should the witness require medical attention.

Conclusion

9. For the foregoing reasons, the Prosecution requests that the Chamber order that [REDACTED] is granted in-court protective measures in the form of the continued in-court use of a pseudonym, image and voice distortion, and recourse

⁹ ICC-02/11-01/15-498-AnxA.

to in camera proceedings for identifying portions of the Witness' testimony and special measures such as shorter examination sessions.



Fatou Bensouda, Prosecutor

Dated this 9th day of May 2016

At The Hague, The Netherlands