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TRIAL CHAMBER I

Before: Judge Cuno Tarfusser, Presiding Judge
Judge Olga Herrera-Carbuccia
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

Public redacted version of "Prosecution's application for protective measures for its 15th Witness", 17 August 2016, ICC-02/11-01/15-648-Conf

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Introduction

1. In conformity with the Trial Chamber's amended and supplemented Directions on the conduct of the proceedings ("Directions"),¹ the Prosecution requests in-court protective measures for [REDACTED] (the "Witness"),² in accordance with articles 68(1) and (2) of the Rome Statute ("Statute") and rule 87 of the Rules of Procedure and Evidence ("Rules").
2. In particular, the Prosecution requests the Chamber to authorise (i) continued in-court use of a pseudonym *in lieu* of the Witness's 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). The requested measures are intended to prevent the public disclosure at trial of the identity – but not the substantive evidence – of this Witness, who is at risk. The measures described below are requested in order to protect the safety, physical and psychological well-being, dignity and privacy of the Witness, and are not prejudicial to or inconsistent with the rights of the accused to a fair, impartial and public trial.
3. The proposed measures are the least intrusive steps that will balance the interests of the public, the Parties, participants and the Witness and will facilitate the testimony of the Witness. Facilitating the testimony of witnesses falls squarely within the ambit of the Chamber's core judicial duty to establish the truth,³ and will ensure that the best evidence that the witness can give is placed before the Chamber.⁴

Confidentiality

4. The Prosecution files this submission as confidential with confidential *ex parte* Annex A and confidential Annexes B and C pursuant to regulation 23bis(2) of the Regulations of the Court ("Regulations"), as it contains information related to the

¹ ICC-02/11-01/15-498-AnxA, paras.55-58

² The Witness is the 15th witness that will testify for the Prosecution [REDACTED] (ICC-02/11-01/15-294-Conf-AnxA) [REDACTED] (ICC-02/11-01/15-613-Conf)

³ Article 64(2) of the Statute; *See also*, ICC-01/04-02/12-271-AnxA, para. 5.

⁴ ICC-02/11-01/15-355-Anx1, para. 14.

identity of a Prosecution witness. This also conforms with the guidance provided by the Chamber that applications under rule 87 of the Rules should be filed confidentially but not *ex parte*, and may include an *ex parte* annex.⁵

Submissions

5. The Prosecution seeks in-court protective measures under rule 87(3)(c), (d) and (e) of the Rules for the Witness in the form of image and voice distortion, use of a pseudonym, and limited *in camera* proceedings. These measures are necessary because publicly revealing this Witness's identity will risk compromising his safety, privacy and physical and psychological well-being within the meaning of article 68(1) of the Statute. The Prosecution has notified the Victims and Witnesses Unit that it would be applying for in-court protective measures for this Witness prior to the commencement of trial.
6. The Prosecution incorporates by reference its presentation of the applicable law and jurisprudence as described in its filing relating to Witness P-0321.⁶
7. As detailed below, the in-court protective measures requested are necessary first, due to the security situation in Côte d'Ivoire, namely the polarisation of the society and the media coverage of the trial; second, due to the repeated efforts in both news and social media to identify protected witnesses, and third, because these efforts to identify protected witnesses have continued, even after the Chamber put in place increased protective measures on 16 June 2016.⁷ These repeated attempts to identify Prosecution witnesses are intimidatory in nature, and, given the political and security situation in Côte d'Ivoire, present security risks to both Witness [REDACTED], and other Prosecution witnesses. As such, these efforts also carry the significant risk of undermining these proceedings, including through having a chilling effect upon the willingness of Prosecution witnesses to testify truthfully and openly - or at all. In the case of Witness [REDACTED], all of these circumstances, compounded by the Witness's personal

⁵ ICC-02/11-01/15-498-AnxA, para. 57; ICC-02/11-01/15-205- AnxA, para. 63.

⁶ ICC-02/11-01/15-494-Conf-Corr, paras. 16-19.

⁷ ICC-02/11-01/15-T-52-CONF-ENG ET, p. 91, lns. 14-17, p.92, lns 2-18 ("16 June 2016 Direction")

circumstances,⁸ constitute an objectively justifiable risk to the Witness's safety, if [REDACTED] identity becomes known to the public.

Security situation, polarisation of society and media coverage

8. The Prosecution incorporates by reference the background factors relating to the security situation in Côte d'Ivoire in its filing relating to Witness P-0097.⁹ Both the polarisation of society and media coverage of this trial in Côte d'Ivoire remain unchanged.

Repeated efforts in news and social media to identify witnesses in these proceedings

9. The Prosecution further incorporates its submissions concerning media outlets in Côte d'Ivoire having continually attempted to speculate on the identity of protected Prosecution witnesses since the commencement of trial, as presented in its filing relating to Witness P-0520; these submissions demonstrated attempts to identify Prosecution Witnesses P-0238, P-0547, P-0536 and P-0190.¹⁰ The Prosecution has also alerted the Chamber about attempts to identify Prosecution Witnesses P-0625 and P-0441¹¹ as well as Witnesses P-0097 and P-0520, [REDACTED].
10. Indeed, the Chamber is well aware of [REDACTED].¹² [REDACTED].¹³ Consequently, the Prosecution made submissions, [REDACTED].¹⁴ Further, the Prosecution noted [REDACTED].¹⁵ On 8 June 2016, the Chamber recognised the ongoing speculations about the Witness's identity and reminded "the members of the public gallery, but also in general the public in Côte d'Ivoire, of the reasons why it takes the time and care to impose protective measures to prevent the identification of witnesses, both Prosecution and Defence. It follows that the disclosure of the identity of protected witnesses is prohibited and that any

⁸ See also Annex A.

⁹ ICC-02/11-01/15-389-Conf, paras. 11-18.

¹⁰ ICC-02/11-01/15-507-Conf, para.4 and Annexes A-D.

¹¹ ICC-02/11-01/15-T-48-CONF-ENG ET, p.5, lns. 13-23.

¹² ICC-02/11-01/15-T-47-CONF-ENG ET, p.1- p. 4; ICC-02/11-01/15-T-48-CONF-ENG ET, p.1, lns. 20-22.

¹³ See e.g., ICC-02/11-01/15-T-47-CONF-ENG ET, pp.25-26.

¹⁴ ICC-02/11-01/15-T-48-CONF-ENG ET, p.3, lns. 1-3.

¹⁵ ICC-02/11-01/15-T-48-CONF-ENG ET, p.1, lns. 1-17.

attempt to do so, either successful or futile, may constitute crime against the administration of justice.”¹⁶ The Chamber afforded [REDACTED] the opportunity to continue the remainder of his testimony in closed session, but the witness opted to continue with the protective measures initially granted.¹⁷

11. Subsequently, and in spite of the Chamber’s 8 June 2016 Warning, [REDACTED].¹⁸

12. As a result of these repeated attempts and “in order to protect witnesses and in order to prevent regular disruption of proceedings” the Chamber put in place, on 16 June 2016, stricter measures regulating public access to the proceedings.¹⁹ Specifically, where protective measures have been ordered, the public broadcast of the proceedings and the publication of the transcripts are delayed until the completion of the witness’s testimony and the subsequent review and redaction of the transcripts and videos. Further, the Registry is to collect the name and nationality of each visitor attending the public gallery of the proceedings in order to ensure that any breach in confidentiality be contained and followed-up.²⁰ As illustrated by Annex B, the Chamber’s 16 June 2016 Decision was greatly criticised in the local media, known as *presse bleue*.²¹

Continuing efforts to identify protected witnesses, even after the Chamber’s 16 June 2016 Decision

13. Notwithstanding the Chamber’s 16 June 2016 Decision, the speculation as to the identity of the next Prosecution Witness P-0321 - continued.²²

¹⁶ ICC-02/11-01/15-T-48-CONF-ENG ET, p. 20, lns. 3-19.

¹⁷ ICC-02/11-01/15-T-48-CONF-ENG ET, p. 19, ln. 15 – p. 20, ln. 7 & p. 21, lns 6-19 & p. 26, ln. 19 - p. 27, ln. 8 (“8 June 2016 Warning”)

¹⁸ ICC-02/11-01/15-T-51-CONF-ENG ET, p. 1, ln. 1- p. 3, ln. 12.

¹⁹ ICC-02/11-01/15-T-52-CONF-ENG ET, p. 91 (“16 June 2016 Decision”), ln. 5- p. 92, ln. 18.

²⁰ ICC-02/11-01/15-T-52-CONF-ENG ET, p. 92, lns. 13-16.

²¹ See Annex B.

²² See Annex C.

Security concerns resulting from the personal circumstances of this Witness and [REDACTED]

14. Witness [REDACTED] faces security concerns due to [REDACTED]. In addition, there are security risks faced by the Witness's family.
15. The Witness is currently a [REDACTED].
16. During the post-electoral crisis [REDACTED]. Given this role, [REDACTED]. Further, the nature of the Witness's evidence makes him readily identifiable.
17. [REDACTED].
18. 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 this Witness's status as a Prosecution witness. Voice distortion will be necessary for the additional reason that the Witness will testify in French. Therefore his testimony will be transmitted without interpretation.
19. The Prosecution also requests that identifying portions of the Witness's testimony are conducted *in camera* under rule 87(3)(e) of the Rules. The Prosecution is not seeking full *in camera* testimony for the Witness. Rather, it is anticipated that given the nature of his testimony and his previous position, portions of the Witness's evidence, which can identify him, will need to be heard in private session in accordance with rule 87(3)(e) of the Rules and as envisaged by paragraph 59 of the Directions.²³
20. The identity of the Witness, though withheld from the public, is known by the Defence. With these requested measures in place, the Defence will also be able to examine him in open session on any relevant issue, except on matters that may reveal his identity. The requested measures are intended to prevent the public disclosure at trial of the identity – but not the substantive evidence – of the Witness, who is at risk.

²³ ICC-02/11-01/15-498-AnxA.

Conclusion

21. For the foregoing reasons, the Prosecution requests that the Chamber grant protective measures during the testimony of the Witness, as follows:

- i. Continued in-court use of a pseudonym, *in lieu* of the Witness's name, in accordance with rule 87(3)(d) of the Rules;
- ii. Image and voice distortion for the testimony of the Witness, in accordance with rule 87(3)(c) of the Rules and;
- iii. Recourse to *in camera* proceedings for identifying portions of the Witness's testimony, in accordance with rule 87(3)(e) of the Rules.



Fatou Bensouda, Prosecutor

Dated this 14th day of October 2016

At The Hague, The Netherlands