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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

**With Confidential, *EX PARTE* Annex A – only available to the Chamber,
Prosecution and VWU**

**Confidential, *EX PARTE* Annex B – only available to the Chamber, Prosecution,
LRV and VWU**

Confidential, Annexes C and D

**Public redacted version of “Prosecution’s application for protective and/or special
measures for [REDACTED]”, 11 October 2016, ICC-02/11-01/15-720-Conf**

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

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Introduction

1. The Prosecution seeks in-court protective measures and special measures for a number of its witnesses testifying in the next evidentiary block, all crimes base witnesses testifying to the 16 December 2010 incident. The Prosecution requests first, in-court protective measures for Witnesses [REDACTED] under articles 68(1) and (2) of the Rome Statute ("Statute") and rule 87 of the Rules of Procedure and Evidence ("Rules"),¹ and second, special measures for Witnesses [REDACTED] under article 68(1) and rule 88.

2. The Prosecution does not currently anticipate seeking in-court protective measures for Witnesses [REDACTED] nor does it anticipate seeking special measures for Witness [REDACTED]. Witness [REDACTED] was addressed in an earlier application² in which the Prosecution only sought the special measure of courtroom reading assistance which was granted by the Chamber.³ [REDACTED],⁴ [REDACTED].

3. Depending on each witness's specific circumstances, the Prosecution requests the Chamber to authorise (i) continued in-court use of witness pseudonyms *in lieu* of names in accordance with rules 87(3)(d) and 88(1) of the Rules, (ii) image and voice distortion in accordance with rules 87(3)(c) and 88(1) of the Rules; (iii) recourse to *in camera* proceedings for identifying portions of the Witness's testimony under rule 87(3)(e) and 88(1) of the Rules; (iv) in-court reading assistance in accordance with rule 88(1) of the Rules; (v) [REDACTED]; (vi) breaks to enabling the observation of daily prayers in accordance with rule 88(1) of the Rules; (vii) [REDACTED]; [REDACTED]; and (viii) [REDACTED].

4. These measures are necessary in light of a concrete and objectively justifiable risk to the safety and security of the Witnesses and their family members and in some cases, [REDACTED]. The measures are proportionate to the rights of the

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

² ICC-02/11-01/15-360-Conf.

³ ICC-02/11-01/15-T-8-CONF-ENG ET, p. 9, lns. 7-8.

⁴ ICC-02/11-01/15-652-Conf ; ICC-02/11-01/15-693-Conf; ICC-02/11-01/15-T-80-Red-ENG WT, p. 85, lns. 4-5.

Accused and as such, are not prejudicial to or inconsistent with the rights of the Accused to a fair, impartial and public trial.

Confidentiality

5. The Prosecution files this submission as confidential pursuant to regulation 23bis(2) of the Regulations of the Court (“Regulations”), as it contains information related to the identity of Prosecution witnesses. Annex A is classified as confidential, *ex parte* – only available to the Prosecution and Victims and Witnesses Unit (“VWU”) because it contains information related to the personal situation of Prosecution witnesses. Annex B is classified as confidential, *ex parte* – only available to the Prosecution, VWU and Legal Representatives of the Victims (“LRV”), because it contains personal information related to three Prosecution witnesses who are also participating victims.

6. 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

7. The Prosecution will not herein reiterate the relevant jurisprudence guiding applications for protective and special measures articulated in previous applications. Similarly, and taking into account the guidance provided by the Chamber, the Prosecution will not repeat all of its arguments related to relevant context factors regarding the impact of the security situation, polarisation of society and media and social coverage of the proceedings.

8. The Prosecution nonetheless recalls, as has been noted in recent filings, that the polarised media coverage of this trial in Côte d’Ivoire, and repeated efforts in

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

both news and social media to identify protected witnesses continue.⁶ [REDACTED].⁷ Media and social media coverage have also included efforts to identify crime base witnesses.⁸

9. [REDACTED]⁹ [REDACTED]¹⁰ [REDACTED]. The publication of identifying information related to protected witnesses - however inadvertent - underscores the need for vigilance in ensuring both that protective measures are applied and observed.

10. The Prosecution seeks in-court protective measures, under article 68(1) and (2) and rule 87(3)(c), (d) and (e), in the form of continued use of a pseudonym, image and voice distortion, and limited *in camera* proceedings for [REDACTED]. These measures are necessary because publicly revealing their respective identities risks compromising their safety and security.

11. In the circumstances of these [REDACTED] Witnesses,¹¹ respectively, there is an objectively justifiable risk to each witness's safety, if his or her identity *qua* witness becomes known to the public. Protective measures in the form of a pseudonym, and image and voice distortion are therefore necessary to mitigate this risk. The risk is also concrete, and specific to each witness, as described below.

12. The Prosecution also requests that identifying portions of the Witness's testimony are conducted *in camera* under rule 87(3)(e) of the Rules and as envisaged by paragraph 59 of the Trial Chamber's amended and supplemented Directions on the conduct of the proceedings.¹²

13. The protective measures sought will ensure that each of these witnesses is able to give evidence without fear for his personal safety and security or that of his or her family members.

⁶ See, for e.g., ICC-02/11-01/15-389-Conf, paras. 11-18.

⁷ [REDACTED].

⁸ See ICC-02/11-01/15-507-Conf-AnxB and ICC-02/11-01/15-507-Conf-AnxC.

⁹ See Confidential Annex C. [REDACTED].

¹⁰ See Confidential Annex D. [REDACTED].

¹¹ [REDACTED].

¹² ICC-02/11-01/15-498-AnxA.

14. The identity of these witnesses, though withheld from the public, is known by the Defence. With these requested measures in place, the Defence will also be able to examine each of these witnesses in open session on any relevant issue, except on matters that may reveal their identities. The requested measures are intended to prevent the public disclosure at trial of the identity – but not the substantive evidence – of each of these witnesses, who are at risk.

15. The Prosecution is also seeking certain special measures for [REDACTED] under article 68(1) and rule 88 as detailed below.

Personal circumstances of Witness [REDACTED]

16. Witness [REDACTED] is scheduled to testify about the 16 December 2010, 3 March 2011 and 17 March 2011 incidents. The Witness will testify in French.

Special Measures

17. Given his limited literacy,¹³ special measures under rule 88(1) of the Rules in the form of in-court assistance for reading are requested.

Personal circumstances of Witness [REDACTED]

18. Witness [REDACTED] is scheduled to testify about the 16 December 2010, 3 March 2011, and 17 March 2011 incidents. He will testify in French.

19. Witness [REDACTED] lives in a pro-Gbagbo stronghold of Abidjan¹⁴ where direct perpetrators of the violence during the post-election period remain. During the 16 December 2010 march, Witness [REDACTED],¹⁵ [REDACTED]. [REDACTED].

Protective Measures for Witness [REDACTED]

20. Publicly revealing Witness [REDACTED] identity will risk compromising [REDACTED] within the meaning of article 68(1) of the Statute.

21. Given the precarious security situation in Witness [REDACTED] area of residence, the likely increased risk to him from public exposure of the identifying

¹³ CIV-OTP-0019-0211 at 0211.

¹⁴ ICC-02/11-01/15-344-Conf-Anx1-A.

¹⁵ CIV-OTP-0020-0064 at 0076, para. 90.

elements of his testimony, and the fact that he will be testifying in French, the use of in-court protective measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings in accordance with rule 87(3)(c) (d) and (e) and 88(1) of the Rules are necessary to mitigate the risk of public exposure of his status as a Prosecution witness.

Special Measures for Witness [REDACTED]

22. Further, Witness [REDACTED] status [REDACTED] provides an independent basis for the use of in-court special measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings in accordance with rule 88(1) of the Rules. [REDACTED].

23. As a result of [REDACTED] and his limited literacy,¹⁶ Witness [REDACTED] will need special measures under rule 88(1) of the Rules, in the form [REDACTED] assistance for reading.¹⁷ Finally, [REDACTED]¹⁸ [REDACTED].

Personal circumstances of Witness [REDACTED]

24. Witness [REDACTED], a crime-base witness, is scheduled to testify about the 16 December 2010, 3 March 2011, and 17 March 2011 incidents. [REDACTED]. She will testify in Dioula.

25. Witness [REDACTED] lives in a neighbourhood of Abidjan that suffers high crime rates¹⁹ and where a large number of ex-combatants reside.

26. [REDACTED] participated in the march on the RTI on 16 December 2010 and [REDACTED].

Protective Measures for Witness [REDACTED]

27. Publicly revealing Witness [REDACTED] identity will risk compromising [REDACTED] within the meaning of article 68(1).

¹⁶ CIV-OTP-0020-0064 at 0064.

¹⁷ CIV-OTP-0020-0064 at 0064.

¹⁸ CIV-OTP-0020-0064 at 0064.

¹⁹ ICC-02/11-01/15-344-Conf-Anx1-A.

28. Given the precarious security situation in Witness [REDACTED] area of residence [REDACTED], the use of in-court protective measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings in accordance with rule 87(3)(c) (d) and (e) and 88(1) of the Rules are necessary to mitigate the risk of public exposure of [REDACTED].

29. Further, publicly revealing Witness [REDACTED]. These measures are sought in accordance with rule 87(3)(c) of the Rules.

Special measures for Witness [REDACTED]

30. Further, Witness [REDACTED] status [REDACTED] an independent basis for the need for the use of in-court special measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings in accordance with rule 88(1) of the Rules. [REDACTED].

31. [REDACTED].

32. Given her limited literacy,²⁰ Witness [REDACTED] will need special measures under rule 88(1) of the Rules in the form of in-court assistance for reading.

33. [REDACTED]²¹ and may need breaks in her testimony in accordance with rule 88(1) of the Rules testimony to observe her daily prayers.

34. Finally, and in accordance with the Chamber's Decision on Protocol of vulnerable witnesses²² and rule 88(1) of the Rules and Regulation 94*bis* of the Regulations of the Registry, [REDACTED]. [REDACTED].

Personal circumstances of Witness [REDACTED]

35. Witness [REDACTED],²³ is scheduled to testify about the 16 December 2010 incident. In order of appearance, [REDACTED]. She will testify in French.

36. Witness [REDACTED] participated in the march on the RTI on 16 December 2010 and [REDACTED].²⁴ [REDACTED].

²⁰ CIV-OTP-0020-0033 at 0033.

²¹ CIV-OTP-0020-0033 at 0033.

²² ICC-02/11-01/15-357, para. 16.

²³ CIV-OTP-0069-0189.

Protective Measures for Witness [REDACTED]

37. Publicly revealing Witness [REDACTED] identity will risk compromising [REDACTED] within the meaning of article 68(1).

38. [REDACTED], the use of in-court protective measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings in accordance with rule 87(3)(c) (d) and (e) and 88(1) of the Rules are necessary to mitigate the risk of public exposure of [REDACTED].

39. Publicly revealing Witness [REDACTED]. These measures are sought in accordance with rule 87(3)(c) of the Rules.

Special measures for Witness [REDACTED]

40. Witness [REDACTED] provides an independent basis for the need for the use of in-court special measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings in accordance with rule 88(1) of the Rules.

41. [REDACTED].

42. Finally, and in accordance with the Chamber's Decision on Protocol of vulnerable witnesses²⁵ and rule 88(1) of the Rules and Regulation 94bis of the Regulations of the Registry, [REDACTED].

Personal circumstances of Witness [REDACTED]

43. Witness [REDACTED]²⁶ and is scheduled to testify about the 16 December 2010 incident. He will testify in French.

Special Measures for Witness [REDACTED]

44. Given his limited literacy,²⁷ Witness [REDACTED] will need special measures under rule 88(1) of the Rules in the form of in-court assistance for reading.

Personal circumstances of Witness [REDACTED]

²⁴ CIV-OTP-0071-2240.

²⁵ ICC-02/11-01/15-357, para. 16.

²⁶ CIV-OTP-0069-0209.

²⁷ CIV-OTP-0077-0128 at 0131, para. 5.

45. Witness [REDACTED] is scheduled to testify about the 16 December 2010 incident. He will testify in Dioula.

46. Witness [REDACTED] and his brother participated in the 16 December 2010 march. Witness [REDACTED].

47. During the post-election violence period, Witness [REDACTED], who told him that they were going to kill all foreigners, all people from Burkina-Faso [REDACTED].²⁸ [REDACTED].²⁹

Protective Measures for Witness [REDACTED]

48. Publicly revealing Witness [REDACTED] identity will risk compromising [REDACTED] within the meaning of article 68(1) of the Statute.

49. [REDACTED], the use of in-court protective measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings in accordance with rule 87(3)(c) (d) and (e) and 88(1) of the Rules are necessary to mitigate the risk of public exposure of his status as a Prosecution witness.

Special Measures for Witness [REDACTED]

50. Given his limited literacy,³⁰ Witness [REDACTED] will need special measures under rule 88(1) of the Rules in the form of in-court assistance for reading.

Personal circumstances of Witness [REDACTED]

51. Witness [REDACTED], is scheduled to testify about the 16 December 2010 incident. He will testify in French.

Special Measures for Witness [REDACTED]

52. Given his limited literacy,³¹ Witness [REDACTED] will need special measures under rule 88(1) of the Rules in the form of in-court assistance for reading.

²⁸ CIV-OTP-0084-0042 at 0049, para. 27.

²⁹ CIV-OTP-0084-0042 at 0049, para. 27.

³⁰ CIV-OTP-0084-0043 at 0043.

³¹ CIV-OTP-0084-0079 at 0082, para. 12.

Conclusion

53. For the foregoing reasons, the Prosecution requests that the Chamber grant protective and special measures as follows:

- a. Witnesses [REDACTED] to testify under their respective pseudonyms and with image and voice distortion of their testimony and recourse to *in camera* proceedings for identifying portions of their testimony in accordance with rules 87(3)(c)(d) and (e) and 88(1) of the Rules;
- b. In-court assistance for reading in accordance with rule 88(1) of the Rules for Witnesses [REDACTED];
- c. [REDACTED];
- d. Regular breaks in testimony enabling the observation of daily prayers in accordance with rule 88(1) of the Rules for Witness [REDACTED];
- e. [REDACTED];
- f. [REDACTED]; and
- g. [REDACTED].



Fatou Bensouda, Prosecutor

Dated this 14th day of October 2016

At The Hague, The Netherlands