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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 Annex A

Public redacted version of "Prosecution's application for protective and/or special measures for Witnesses [REDACTED] and [REDACTED]", 3 March 2017, ICC-02/11-01/15-832-Conf

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 seeks in-court protective measures and special measures for three of the witnesses testifying in the next evidentiary block whose evidence relates to the 25 February 2011 incident. The Prosecution requests first, in-court protective measures for Witness [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] and [REDACTED] under article 68(1) and rule 88.

2. In accordance with the specific circumstances of these three witnesses, the Prosecution requests the Chamber to authorise a combination of the following measures:² (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) breaks to enable the observation of daily prayers in accordance with rule 88(1) of the Rules; (vi) regular breaks in testimony for vulnerable witnesses in accordance with rule 88(1) of the Rules; (vii) presence of a psychologist during testimony in accordance with rule 88(2) of the Rules; and (viii) adapted questioning to the needs and capabilities of the witness.

3. In addition to the protective measures now sought for Witness [REDACTED], the Prosecution may further seek recourse to *in camera* proceedings, should the need arise, during the course of the testimony of other witnesses scheduled to testify during this block. Apart from this limited measure, however, the Prosecution does not anticipate requesting any further in-court protective measures for Witnesses [REDACTED] or [REDACTED]. Nor does it anticipate seeking special measures for Witnesses [REDACTED] or [REDACTED].

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

² Detailed in para. 24 below.

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, help prevent their re-traumatisation and protect their dignity, privacy, physical and psychological well-being. The measures are proportionate to the rights of the Accused and as such, are not prejudicial to or inconsistent with their rights to a fair, impartial and public trial.

Confidentiality

5. The Prosecution files this submission and its annex as confidential, pursuant to regulation 23*bis*(2) of the Regulations of the Court ("Regulations"), as it contains information related to the identity of Prosecution witnesses. The Prosecution will file a redacted version of this submission.

Submissions

6. 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.

7. 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 Witness [REDACTED]. These measures are necessary because publicly revealing his identity risks compromising his safety and security.

8. There is an objectively justifiable risk to Witness [REDACTED] safety, if his 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 the witness, as described below.

9. The Prosecution also requests that identifying portions of Witness [REDACTED] 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.³

10. The protective measures sought will ensure that Witness [REDACTED] is able to give evidence without fear for his personal safety and security, or that of his family members.

11. The identity of Witness [REDACTED], though withheld from the public, is known to the Defence. With these requested measures in place, the Defence will also be able to examine the witness 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 Witness [REDACTED], who is at risk.

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

Personal circumstances of Witness [REDACTED]

13. Witness [REDACTED] is scheduled to testify about the 25 February 2011 incident. He will testify in French. Since the beginning of his cooperation with the Office of the Prosecutor, Witness [REDACTED] has expressed serious concerns about the impact his involvement in the case may have on his security.⁴ As previously found in a Single Judge decision of this Chamber, there is also an objectively justifiable risk in relation to him.⁵ The witness's subjective concerns, as well as the objective risk factors, are detailed in the investigator report in Confidential Annex A.

³ ICC-02/11-01/15-498-AnxA.

⁴ See CIV-OTP-0068-0054 at 0055.

⁵ ICC-02/11-01/15-68-Corr-Red2, para. 40.

By reference to this report, the Prosecution submits that Witness [REDACTED] should be considered a vulnerable witness.

Protective Measures for Witness [REDACTED]

14. Publicly revealing Witness [REDACTED] identity will risk compromising his safety, privacy, and his physical and psychological well-being within the meaning of article 68(1) of the Statute.

15. Given the factors set out in Confidential Annex 1, the likely increased risk to Witness [REDACTED] from public exposure of the identifying 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]

16. Witness [REDACTED] status as a vulnerable witness further provides an additional, 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.

17. Given his vulnerability, Witness [REDACTED] may also need regular breaks in his testimony in accordance with rule 88(1) of the Rules to allow him to compose himself. Subject to an assessment by the Victims and Witnesses Unit (“VWU”), he may also benefit from the presence of a psychologist during his testimony.

Personal circumstances of Witness [REDACTED]

18. Witness [REDACTED], a dual status witness,⁶ is also scheduled to testify about the 25 February 2011 incident. He will testify in French. [REDACTED]. Witness [REDACTED] is of the Muslim faith.⁷

⁶ See victim application no. [REDACTED], at CIV-OTP-0091-0392.

⁷ CIV-OTP-0057-1345 at 1345.

Special Measures for Witness [REDACTED]

19. Given the issues with his sight, Witness [REDACTED] will need special measures under rule 88(1) of the Rules in the form of in-court assistance for reading. He may also need regular breaks, if he begins to tire while testifying.

20. Due to his faith, Witness [REDACTED] may also need breaks in his testimony to observe his daily prayers.

Personal circumstances of Witness [REDACTED]

21. Witness [REDACTED], is also scheduled to testify about the 25 February 2011 incident. He will testify in Dioula and has been assessed to have limited literacy.⁸ OTP investigators have observed that the witness becomes tearful when talking about [REDACTED].

Special Measures for Witness [REDACTED]

22. Given his limited literacy, Witness [REDACTED] will need special measures under rule 88(1) of the Rules in the form of in-court assistance for reading, as well as simple questioning, adapted to his needs and capabilities.

23. Witness [REDACTED] may also need regular breaks while testifying [REDACTED] in accordance with rule 88(1) of the Rules to allow him to compose himself. Subject to an assessment by the VWU, he may also benefit from the presence of a psychologist during his testimony.

Conclusion

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

- a) Witness [REDACTED] to testify under his pseudonym and with image and voice distortion of his testimony and recourse to *in camera* proceedings for

⁸ CIV-OTP-0057-1570 at 1573, para. 14.

identifying portions of his 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] and [REDACTED];
- c) Regular breaks in testimony enabling the observation of daily prayers in accordance with rule 88(1) of the Rules for Witness [REDACTED];
- d) Regular breaks in testimony in accordance with rule 88(1) of the Rules, in light of their vulnerability, for Witnesses [REDACTED] and [REDACTED];
- e) Presence of a psychologist during testimony, for Witnesses [REDACTED] and [REDACTED]; and
- f) Questioning adapted to the needs and capabilities of Witness [REDACTED].



Fatou Bensouda, Prosecutor

Dated this 9th day of March 2017

At The Hague, The Netherlands