

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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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

Public redacted version of "Response to the 'Prosecution's application for protective and/or special measures for Witnesses P-0402, P-0433 and P-0438 (ICC-02/11-01/15-832-Conf)'" (ICC-02/11-01/15-850-Conf)

Source: Office of Public Counsel for Victims

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

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Unrepresented Victims

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I. Introduction

1. The Common Legal Representative of the victims admitted to participate in the proceedings (the “Legal Representative”)¹ submits that the Prosecution’s application for in-court protective measures and special measures for Witnesses [REDACTED] (the “Application”)² satisfies the requirements of article 68(1) and (2) of the Rome Statute (the “Statute”) and rules 87 and 88 of the Rules of Procedure and Evidence (the “Rules”), and should therefore be granted.

2. In particular, the Legal Representative submits that the requested measures must be granted in order to protect the safety, privacy, and well-being of Witness [REDACTED]. The Legal Representative also supports the request for special measures for Witnesses [REDACTED].

II. Confidentiality

3. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidentially following the classification chosen by the Prosecution. A public redacted version of this response will be filed in due course.

III. Background

4. On 4 December 2015, Trial Chamber I (the “Chamber”) adopted the “Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses” (the “Protocol on vulnerable witnesses”).³

¹ See the “Decision on victim participation” (Trial Chamber I), No. ICC-02/11-01/11-800, 6 March 2015; and the “Decision on victims’ participation status” (Trial Chamber I), No. ICC-02/11-01/15-379, 7 January 2016, p. 23.

² See the “Prosecution’s application for protective and/or special measures for Witnesses [REDACTED]”, No. ICC-02/11-01/15-832-Conf, 3 March 2017 (the “Application”) with Annex A (the “Investigator’s Report”).

³ See the “Decision on Protocol on vulnerable witnesses” (Trial Chamber I), No. ICC-02/11-01/15-357, 4 December 2015, and the adopted “Protocol on the vulnerability assessment and support procedure

5. On 4 May 2016, the Chamber indicated that applications for in-court protective measures, including requests pursuant to rules 87 and 88 of the Rules, should be submitted as soon as possible.⁴

6. On 3 March 2017, the Prosecution filed the Application.⁵

7. Pursuant to rules 87(2)(c) and 88(3) of the Rules, and regulation 24(2) of the Regulations of the Court, the Legal Representative files her response to the Application.

IV. Submissions

8. The Legal Representative supports the Application and submits that in-court protective measures and special measures are justified and necessary for Witness [REDACTED]. Indeed, the information on which the Prosecution bases its request is objective and specific enough. This witness' personal circumstances, as described in the Application⁶ and its Annex,⁷ show the continued existence of a concrete and objectively justifiable risk to his safety and privacy, [REDACTED].⁸

9. In this regard, it must be noted that other Trial Chambers have found that “[t]he available information must still indicate the existence of circumstances for which in-court testimony, in the absence of adequate protective measures under Rule 87 of the Rules, creates or unduly increases an impermissible danger to any of the legitimate interests of

used to facilitate the testimony of vulnerable witnesses” (Trial Chamber I), No. ICC-02/11-02/11-110-Anx2, 30 July 2014 (the “Protocol on vulnerable witnesses”).

⁴ See the “Annex A to Decision adopting amended and supplemented directions on the conduct of the proceedings” (Trial Chamber I), No. ICC-02/11-01/15-498-AnxA, 4 May 2016, para. 55.

⁵ See the Application, *supra* note 2.

⁶ *Idem*, paras. 13-15.

⁷ See the Investigator's Report, *supra* note 2, p. 3-4.

⁸ See the “Public redacted version of ‘Decision on Prosecution requests on redactions’” (Trial Chamber I, Single Judge), No. ICC-02/11-01/15-68-Corr-Red2, 21 July 2015, para. 40.

witnesses protected under Article 68 of the Statute – be it their physical security and safety or their psychological well-being, privacy and dignity”,⁹ and that “[e]vidence of prior direct threats to a witness, or his/her family, are not required in order to determine that they face an objectively justifiable risk sufficient to support the granting of protective measures”.¹⁰

10. Accordingly, the Legal Representative supports the Application regarding Witness [REDACTED] in relation to both (i) in-court protective measures in the form of continued use of a pseudonym, image and voice distortion, and limited *in camera* proceedings; and (ii) special measures such as [REDACTED].¹¹

11. The Legal Representative further notes that the requested protective measures, justified by the [REDACTED],¹² do not unduly prejudice the rights of the Accused. The identity of Witness [REDACTED] will remain unknown to the public only,¹³ and the Defence will be able to see the Witness giving evidence and to hear his voice without distortion.¹⁴

⁹ See the “Decision on the ‘Prosecution’s application for in-court protective and special measures’” (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-612-Red, 30 November 2016, para. 8. See also *idem*, para. 46.

¹⁰ See the “Second redaction of: Decision on ‘Prosecutor’s First Request for In-Court Protective Measures for Trial Witnesses’” (Trial Chamber V(A)), No. ICC-01/09-01/11-902-Red2, 3 September 2013, para. 14. See also the “Public redacted version of ‘Decision on Prosecution request for in-court protective measures for Witness P 0863’” (Trial Chamber VI), No. ICC-01/04-02/06-1714-Red, 12 January 2017, para. 10.

¹¹ See the Application, *supra* note 2, paras. 15, 17 and 24.a), d) and e). See also rule 88(1) of the Rules, Regulation 94bis of the Regulations of the Registry, and the Protocol on vulnerable witnesses, *supra* note 3, paras. 19-20.

¹² See the transcripts of the hearings held on 14 and 16 June 2016, No. ICC-02/11-01/15-T-50-Red-ENG WT, p. 2, line 25 to p. 3, line 3; and No. ICC-02/11-01/15-T-52-Red-ENG WT, p. 92, lines 20-25. See also the “Decision on Mr Gbagbo’s Detention” (Trial Chamber I), No. ICC-02/11-01/15-846, 10 March 2017, para. 15.

¹³ See the “Decision on in-court protective measures for Witnesses 38, 22 and 87, ICC-01/05-01/08-1021 of 19 November 2010” (Trial Chamber III), No. ICC-01/05-01/08-1021-Red, 27 June 2016, para. 30; and the “Decision on the ‘Prosecution’s application for in-court protective and special measures’”, *supra* note 9, para. 13.

¹⁴ See the “Decision on request for in-court protective measures relating to the first Prosecution witness” (Trial Chamber VI), No. ICC-01/04-02/06-824-Red, 16 September 2015, para. 16; and the “Public Redacted Version of ‘Decision on Prosecution Requests for In-Court Protective Measures for P-182 and P-431’” (Trial Chamber VIII, Single Judge), No. ICC-01/12-01/15-133-Red, 2 December 2016, para. 11.

12. Moreover, the measures requested by the Prosecution are the least intrusive ones that will balance the interests of the public, the parties, and the victims in facilitating the witness' testimony, while minimising [REDACTED].¹⁵

13. The Legal Representative also supports the special measures requested in the Application for Witness [REDACTED].¹⁶ As a consequence, in addition to in-court assistance for reading and [REDACTED].¹⁷

14. In this regard, the Legal Representative recalls that, in assessing the need for protective or special measures, different Trial Chambers found that it is appropriate *"to consider the nature of a witness's victimisation"*,¹⁸ and *"to take into account the nature of the conduct allegedly suffered by the witness"*.¹⁹ Indeed, as the Legal Representative underlined in her previous submissions,²⁰ the *"exceedingly violent and shocking nature"*²¹ of the events experienced by a witness constitutes an independent basis for the implementation of in-court protective and/or special measures.

15. Lastly, the Legal Representative agrees that dual status individual Witness [REDACTED] also requires special measures. As a consequence, the Legal Representative makes her own the Prosecution's request for this witness to be granted in-court assistance for reading, and to have regular breaks while testifying in

¹⁵ See, for instance, the transcript of the hearing held on 22 November 2016, No. ICC-02/11-01/15-T-103-Red-ENG WT, p. 80, lines 11-18.

¹⁶ See the Application, *supra* note 2, para. 21.

¹⁷ *Idem*, paras. 22-23 and 24.b), d), e) and f). See also rule 88(1) of the Rules, Regulation 94*bis* of the Regulations of the Registry, and the Protocol on vulnerable witnesses, *supra* note 3, paras. 19-20.

¹⁸ See the "Public redacted version of 'Decision on Prosecution request for in-court protective measures for Witness P-0019'" (Trial Chamber VI), No. ICC-01/04-02/06-1433-Red, 1 July 2016, para. 5. See also the "Public redacted version of 'Decision on Prosecution request for in-court protective measures for Witness P-0018'" (Trial Chamber VI), No. ICC-01/04-02/06-1418-Red2, 22 June 2016, para. 8.

¹⁹ See the "Decision on in-court protective measures for Witnesses 38, 22 and 87, ICC-01/05-01/08-1021 of 19 November 2010", *supra* note 13, para. 22.

²⁰ See the "Response to the 'Prosecution's application for protective and/or special measures for P-0106, P-0107, P-0117, P-0513, P-0555, P-0587 and P-0588' (ICC-02/11-01/15-720-Conf)", No. ICC-02/11-01/15-737-Conf, 21 October 2016, para. 11.

²¹ See the "Decision on the participation of victims in the appeal" (Appeals Chamber), No. ICC-02/04-01/05-324 OA2, 27 October 2008, para. 11.

order to rest and observe his daily prayers.²² Similar requests granted to meet the religious requirements of previous witnesses have never resulted in the need to make major adjustments to the schedule of the proceedings.²³

V. Conclusion

16. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant the Application.

A handwritten signature in black ink, reading 'Paolina Massidda', with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 8th day of June 2017

At The Hague, The Netherlands

²² See the Application, *supra* note 2, paras. 19-20 and 24.b) and c).

²³ See the transcript of the hearing held on 22 November 2016, No. ICC-02/11-01/15-T-103-Red-ENG WT, p. 79, lines 12-15.