

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

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TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

IN THE CASE OF
THE PROSECUTOR v. LAURENT GBAGBO AND CHARLES BLÉ GOUDÉ

Public Document

Redacted version of "Response to the 'Prosecution's application for protective and/or special measures for [REDACTED] (ICC-02/11-01/15-720-Conf)" (ICC-02/11-01/15-737-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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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 protective and/or 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 relation to dual status individuals [REDACTED], the Legal Representative submits that the Application satisfies the interests of the persons concerned in being granted protective measures and/or assistance while testifying before the Court.

3. Furthermore, the Legal Representative submits that, given the [REDACTED].

II. Confidentiality

4. 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.

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 [REDACTED]”, No. ICC-02/11-01/15-720-Conf, 11 October 2016 (the “Application”).

III. Background

5. 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

6. 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

7. On 11 October 2016, the Prosecution filed the Application.⁵

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

IV. Submissions

9. The Legal Representative submits that the Application demonstrates that in-court protective measures and/or special measures are justified and necessary for witnesses [REDACTED]. Indeed, their personal circumstances, as described in the Application,⁶ show concrete and objectively justifiable risk to their safety and/or to the safety of their family members, [REDACTED].

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

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

⁵ See *supra* note 2.

⁶ *Idem*, paras. 16-52.

10. As regard the requested in-court protective measures - in the form of continued use of a pseudonym, image and voice distortion and limited *in camera* proceedings - the Legal Representative supports the Application in relation to witnesses [REDACTED].⁷ Indeed, [REDACTED] is a [REDACTED]; while [REDACTED] reside in areas of Abidjan where a significant number of pro-Gbagbo supporters or ex-combatants still live and where the security situation is volatile.⁸ In this regard, Trial Chamber III in the *Bemba* case granted in-court protective measures such as the use of a pseudonym and the use of private sessions in considering that “[p]rotective measures are necessary to enable [the witness] to continue to live in her current community without the fear of being identified and, as a result, being re-traumatised, threatened or harassed”.⁹

11. In addition the concerned individuals are all [REDACTED]. They have experienced events of [REDACTED]. The Legal Representative argues that on this basis alone, the protective in-court measures should be granted in order to mitigate both the risk to be publicly exposed and to [REDACTED].

12. The need for those measures applies even more forcefully for dual status individual [REDACTED]. They are both [REDACTED]¹⁰ and as such they are [REDACTED]. The Legal Representative agrees with the Prosecution’s submissions that such a status provides “*an independent basis*” for the application of in-court protective measures and/or special measures in the form of a pseudonym, image and voice distortion, and recourse to *in camera* proceedings,¹¹ in order to [REDACTED].

⁷ *Ibidem*, para. 10.

⁸ *Ibid.*, paras. 19-20; 25; 39 and 49.

⁹ See the transcript of the hearing held on 3 March 2011, No. ICC-01/05-01/08-T-79-Red2-ENG CT2, p. 44, lines 20-22.

¹⁰ See the Application, *supra* note 2, paras. 24-26 and 35-36.

¹¹ *Idem*, para. 40.

13. Moreover, the Legal Representative submits that their status [REDACTED]. Indeed, [REDACTED].¹² The Legal Representative further submits that [REDACTED].¹³

14. Moreover, considering the [REDACTED], the Legal Representative is of the opinion that, in accordance with article 68(1) of the Statute, rule 88(1) of the Rules and the Protocol on vulnerable witnesses,¹⁴ [REDACTED].

15. The Legal Representative also supports the Prosecution's request for the special measure of [REDACTED].¹⁵

16. Finally, the Legal Representative supports the Prosecution's requests for special measures under rule 88(1) of the Rules in the form of: (i) in-court assistance for reading for witnesses [REDACTED];¹⁶ (ii) in-court assistance for [REDACTED],¹⁷ and (iii) regular breaks in testimony enabling the observation of daily prayers for witnesses [REDACTED].¹⁸

¹² See annex 2 to the Protocol on vulnerable witnesses, *supra* note 3, p. 7.

¹³ See the "Decision on the participation of anonymous victims in the appeal and on the maintenance of deceased victims on the list of participating victims" (Appeals Chamber), No. ICC-01/04-02/12-140 A, 23 September 2013, para. 16.

¹⁴ See annex 2 to the Protocol on vulnerable witnesses, *supra* note 3, p. 5.

¹⁵ See the Application, *supra* note 2, para. 41.

¹⁶ *Idem*, paras. 17; 23; 32; 44; 50; 52.

¹⁷ *Ibidem*, para. 23.

¹⁸ *Ibid.*, para. 23 and 33.

V. Conclusion

17. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant the protective and special measures sought by the Prosecution in its Application, and to allow for [REDACTED].

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 2016

At The Hague, The Netherlands