



Original: English

No.: ICC-02/11-01/15
Date: 12 October 2017

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 Annexes A, B, C and D

**Public redacted version of “Corrected version of Prosecution’s application for protective and/or special measures for Witnesses [REDACTED], for testimony by means of video-link technology for Witnesses [REDACTED], and for a change in the order of witnesses with respect to Witness [REDACTED]”, 11 October 2017,
ICC-02/11-01/15-1050-Conf-Corr**

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 requests first, in-court protective and/or special measures for seven of the remaining Prosecution witnesses; second, that the two Prosecution witnesses to testify immediately after Witness [REDACTED] be allowed to testify by means of video-link from [REDACTED]; and third, that the evidence of one Prosecution witness be put back in the order of witnesses so that she is scheduled to testify at a later date.

2. Specifically, the Prosecution first requests, in relation to Witnesses [REDACTED], protective and/or special measures, under articles 68(1) and (2) of the Rome Statute ("Statute") and rules 87 and 88(1) of the Rules of Procedure and Evidence ("Rules"),¹ in the form of *in camera* proceedings. In relation to Witnesses [REDACTED], in the alternative, the Prosecution requests continued use of a pseudonym, image and voice distortion, and limited *in camera* proceedings. In respect of Witness [REDACTED], in the alternative, it seeks maintenance of the same protective measures, as ordered by the Chamber [REDACTED]. In relation to Witness [REDACTED], the Prosecution requests protective and/or special measures in the form of continued use of a pseudonym, image and voice distortion, and limited *in camera* proceedings. These measures are necessary to help prevent re-traumatisation of the victims [REDACTED], and to protect their dignity, privacy, physical and psychological well-being.

3. The Prosecution also requests other special measures, under rule 88(1) of the Rules, to facilitate the testimony of Witnesses [REDACTED]. These measures, as elaborated below, are necessary to protect the dignity, privacy, physical and psychological well-being of these witnesses.

4. Second, the Prosecution requests, under article 69(2) of the Statute and rule 67(1) of the Rules, that Witnesses [REDACTED] be allowed to testify by means of video-link from [REDACTED]. Further, the Prosecution gives notice that it may need

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

to apply for the testimony of Witnesses [REDACTED] to be heard by video-link, once these witnesses have been contacted by the Prosecution.

5. Finally, the Prosecution requests that Witness [REDACTED] is moved down in the order of witnesses, to testify after [REDACTED]. [REDACTED].

Confidentiality

6. The Prosecution files this submission and its annexes 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. The Prosecution concurrently files a redacted version of this submission.

Request for Protective and Special Measures

7. The Prosecution requests protective and/or special measures under articles 68(1) and (2) of the Statute and rules 87 and 88(1) of the Rules as elaborated below.

In camera/anonymity measures to protect [REDACTED]

8. Article 68(1) of the Statute requires the Chamber to "take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses". Importantly, protection of victims and witnesses is not limited to their physical safety and security, but extends to their psychological well-being, privacy and dignity. Article 68(2) provides an express exception to the general principle of publicity in order to protect, *inter alia*, victims and witnesses. In particular, it authorises the Chamber to "conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means". [REDACTED].

9. [REDACTED]. [REDACTED].² [REDACTED].³

² [REDACTED].

³ [REDACTED].

10. In relation to the application of rule 87 of the Rules, as found by the Single Judge in the *Ongwen* case, protective measures under rule 87 include measures necessary to protect psychological well-being, privacy and dignity, since these are legitimate interests of witnesses protected under article 68 of the Statute.⁴

11. In relation to the application of rule 88 of the Rules in this context, the Prosecution submits that the range of measures which may be ordered under rule 88 includes measures to protect the identity of [REDACTED]. Rule 88 was purposely intended by its drafters to provide Chambers with sufficient flexibility to tailor specific measures as necessary for individual witnesses. [REDACTED]. Chambers are therefore not limited to measures that will facilitate the testimony, but any other special measures deemed necessary for the individual witness. Accordingly, the Chamber has discretion under rule 88, not only rule 87, to allow for anonymity measures, where a vulnerable witness feels unable to testify if he or she can be seen or heard publicly. Even if the Chamber considers that the preconditions for anonymity measures under rule 87 have not been met, the Chamber can still impose such measures under the independent and separate authority of rule 88 in order to address the particular circumstances of the witness.

12. [REDACTED].

13. In the present case, the Chamber has previously granted measures to prevent the public exposure of witnesses as such, [REDACTED].⁵ [REDACTED].⁶ In relation to vulnerable witnesses, the Chamber has more recently authorised appropriate measures to protect the psychological well-being of a traumatised witness under article 68(1) of the Statute.⁷

Witnesses [REDACTED]

14. [REDACTED]. The Prosecution seeks in-court measures under rule 87 and/or rule 88(1) in respect of all three witnesses, in the form of *in camera* proceedings, to

⁴ ICC-02/04-01/15-612-Red, para. 8; footnote 12.

⁵ See ICC-02/11-01/15-T-103-Red-ENG, p. 80, lns. 11-24; and ICC-02/11-01/15-T-153-Red-ENG, p. 88, lns. 3-17.

⁶ [REDACTED].

⁷ See ICC-02/11-01/15-896-Conf; ICC-02/11-01/15-T-153-Red-ENG, p. 88, lns. 3-17.

protect these witnesses from suffering psychological harm as a result of their testimony. In respect of Witnesses [REDACTED], in the alternative, it seeks measures in the form of continued use of a pseudonym, image and voice distortion, and limited *in camera* proceedings. In respect of Witness [REDACTED], in the alternative, it seeks maintenance of the same protective measures, as ordered by the Chamber on [REDACTED].⁸ These measures are necessary to facilitate the witnesses' testimony and to protect their psychological well-being, dignity and privacy.

15. The specific circumstances of all three witnesses [REDACTED]. All three have expressed the preference that they testify in closed session.

a. [REDACTED].⁹ [REDACTED].¹⁰

b. [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³

c. [REDACTED].¹⁴ [REDACTED].¹⁵ [REDACTED].¹⁶ [REDACTED].¹⁷

16. Full *in camera* proceedings – or, in the alternative, measures maintaining anonymity – will ensure that all three witnesses are able to give evidence in a way that [REDACTED].

17. The protective/special measures requested 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.

Witness [REDACTED]

18. [REDACTED]. The Prosecution requests in-court measures under rule 87 and/or rule 88(1) for Witness [REDACTED] to give effect to the measures requested for Witness [REDACTED] (see above, paragraph 14). [REDACTED]. The Prosecution

⁸ [REDACTED].

⁹ CIV-OTP-0771-2215, paras. 54-60.

¹⁰ CIV-OTP-0100-1032.

¹¹ CIV-OTP-0029-0656, paras. 72-77.

¹² CIV-OTP-0029-0656, paras. 72 and 81.

¹³ CIV-OTP-0100-1026.

¹⁴ CIV-OTP-0051-0236, paras. 44-45.

¹⁵ CIV-OTP-0051-0236, paras. 52-53.

¹⁶ CIV-OTP-0100-1030.

¹⁷ CIV-OTP-0100-1030.

therefore requests in-court measures for Witness [REDACTED] in the form of continued use of a pseudonym, image and voice distortion, and limited *in camera* proceedings, as considered necessary to protect [REDACTED] identity from being publicly revealed. In the case of this witness, the protective/special measures requested are, again, 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.

Special measures to facilitate testimony

19. The Prosecution also seeks further special measures, under rule 88(1), to facilitate the testimony of Witnesses [REDACTED], subject to the views of the Victims and Witnesses Unit (“VWU”).

20. Witness [REDACTED].

21. Witness [REDACTED].

Witnesses [REDACTED]

22. Witness [REDACTED].

23. Witness [REDACTED]. [REDACTED] and regular breaks in her testimony.

24. Witness [REDACTED]. [REDACTED].¹⁸ [REDACTED].

25. [REDACTED].

Request for testimony by means of video-link technology

26. Pursuant to article 69(2) of the Statute, the Court may permit the giving of *viva voce* testimony by means of video or audio technology, as long as these measures are not prejudicial to or inconsistent with the rights of the Accused.

27. Under rule 67(1) of the Rules, a Chamber may allow a witness to give *viva voce* testimony by means of audio or video technology, provided that such technology permits the witness to be examined by the Parties and the Chamber. Rule 67(3) further states that the Chamber, with the assistance of the Registry, shall ensure

¹⁸ CIV-OTP-0089-0912 at 0913.

that the venue chosen for video-link testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness.¹⁹

28. This Chamber has previously authorised testimony *via* video-link for Prosecution witnesses.²⁰ In doing so in the particular case of crime base witnesses, it has considered that their “testimony will be shorter than that of certain other witnesses” and that “there is no significant difference between live testimony in The Hague and live testimony by means of video-link”.²¹

Witnesses [REDACTED]

29. The Prosecution hereby notifies the Chamber, Parties and participants that it intends to reduce its questioning time of Witness [REDACTED] – currently scheduled to testify for the [REDACTED] – to less than four hours.

30. Witnesses [REDACTED] are currently scheduled to testify immediately after Witness [REDACTED], as the first [REDACTED] in the week of [REDACTED]. To date, Witness [REDACTED]. As a result, [REDACTED] in early November. The Prosecution remains in contact with Witness [REDACTED], and is retaining him on its List of Witnesses. Given these circumstances, the Prosecution requests that Witness [REDACTED] be considered for testimony *via* video-link.

31. In any case, given the volume of witnesses scheduled to testify during the week of 13 November 2017, and the potential for Witness [REDACTED] to complete his testimony [REDACTED], the Prosecutions asks that both Witnesses [REDACTED] are made available as standby witnesses during the week of 6 November 2017. In order to facilitate this, the Prosecution requests that Witness [REDACTED], as well as Witness [REDACTED], be permitted to testify *via* video-link from [REDACTED].

32. Video-link testimony in this instance would not be prejudicial to or inconsistent with the rights of the Accused. Counsel for the Accused would still be

¹⁹ See also article 68(1) of the Statute: “The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.”

²⁰ ICC-02/11-01/15-721, para. 16. See also ICC-02/11-01/15-T-12-CONF-ENG, p. 81-83; ICC-02/11-01/15-721; ICC-02/11-01/15-T-103-CONF-ENG, p. 82.

²¹ ICC-02/11-01/15-870, para. 20.

able to question the witnesses, including through the use of documents. Further, the Chamber would still be in the position to observe the witnesses' demeanour and their delivery of testimony.

Witnesses [REDACTED]

33. The Prosecution has recently had difficulty in contacting Witnesses [REDACTED]. It hereby notifies the Chamber that, once these witnesses are contacted, it may need to make a request for their testimony to be heard *via* video-link from [REDACTED].

**Request for a change in the order of witnesses with respect to Witness
[REDACTED]**

34. [REDACTED]. In light of the difficulties experienced in establishing contact with Witness [REDACTED], the Prosecution requests that [REDACTED] be moved down the order of witnesses, to testify after Witness [REDACTED]. An order whereby Witness [REDACTED]'s testimony follows that of Witness [REDACTED] would, in any case, make for a clearer presentation of the evidence.

Conclusion

35. For the foregoing reasons, the Prosecution requests:

35.1 That the Chamber grant protective and/or special measures under articles 68(1) and (2) of the Statute and rules 87 and/or 88(1) of the Rules as follows:

- a. Witnesses [REDACTED] to testify *in camera*, or alternatively, to testify under pseudonym, with image and voice distortion, and recourse to *in camera* proceedings for identifying portions of testimony;
- b. Witness [REDACTED] to testify under pseudonym, with image and voice distortion, and recourse to *in camera* proceedings as necessary;
- c. Witnesses [REDACTED]; and

d. Witnesses [REDACTED].

35.2 That the Chamber permit, under article 69(2) of the Statute and rule 67(1) of the Rules, Witnesses [REDACTED] to testify by means of video-link.

35.3 That Witness [REDACTED] is moved down in the order of witnesses, to testify after Witness [REDACTED].

A handwritten signature in blue ink, appearing to read 'Fatou Bensouda', is written over a light blue rectangular background. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Fatou Bensouda, Prosecutor

Dated this 12th day of October 2017

At The Hague, The Netherlands