

**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 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 [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]'" (ICC-02/11-01/15-1050-Conf-Corr)

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 in-court protective and/or special measures for Witnesses [REDACTED] (the “Application”)² should be granted in its entirety.

2. Indeed, the Application 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”). In particular, the Legal Representative contends that the protective and/or special measures must be granted in order to protect the safety and privacy, and to avoid any risk of re-traumatisation of vulnerable Witnesses [REDACTED]. The Legal Representative also supports the request for special measures for Witnesses [REDACTED], in light of their personal circumstances.

3. Finally, the Legal Representative supports the Prosecution’s request to permit Witnesses [REDACTED] to testify by means of video-link pursuant to article 69(2) of the Statute and rule 67(1) of the Rules, and does not oppose the requested change in Witness [REDACTED]’s order of appearance.

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 is filed simultaneously.

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 “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]”, No. ICC-02/11-01/15-1050-Conf-Corr, 11 October 2017 (the “Application”) with Confidential Annexes A, B, C and D.

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 10 October 2017, the Prosecution filed the Application.⁵

8. 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

a) Request for protective and special measures

Dual status individuals [REDACTED] and Witnesses [REDACTED]

9. The Legal Representative supports the Application and submits that in-court protective and special measures are justified and necessary for dual status individuals [REDACTED] and Witnesses [REDACTED]. The information on which

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 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.

the Prosecution bases its request is objective and specific enough. Indeed, he witnesses' personal circumstances, as described in the Application⁶ and its Annexes,⁷ show the continued existence of a concrete and objectively justifiable risk of re-traumatisation.⁸

10. Dual status individuals [REDACTED] and Witness [REDACTED]. [REDACTED].⁹ [REDACTED].¹⁰ [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³

11. The Legal Representative has recently met with dual status individuals [REDACTED]. They were both anxious about their upcoming testimony and [REDACTED]. [REDACTED] clearly mentioned that it will be [REDACTED]. During the conversations with each of them, they felt reassured knowing that in-court protective measures will be requested in order for them to testify being at ease as much as possible. Having been informed of this possibility, [REDACTED] reiterated their determination in testifying before the Court.

12. As far as Witness [REDACTED] is concerned, [REDACTED].¹⁴ In this instance, [REDACTED].

13. 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*

⁶ *Idem*, paras. 13-15.

⁷ See Annexes A, B, C and D of the Application, *supra* note 2, respectively related to [REDACTED].

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.

⁹ See [REDACTED], CIV-OTP-0051-0236, paras. 44-47.

¹⁰ See [REDACTED], CIV-OTP-0029-0656, paras. 73-75. See also [REDACTED], CIV-OTP-0071-2215, paras. 55-60.

¹¹ See also [REDACTED], CIV-OTP-0071-2215, paras. 55-60.

¹² See Annexes A, B and C to the Application, *supra* note 2.

¹³ *Idem*.

¹⁴ See [REDACTED], CIV-OTP-0077-0153, paras. 56-58.

nature of a witness's victimisation",¹⁵ and "to take into account the nature of the conduct allegedly suffered by the witness".¹⁶

14. The witnesses concerned by the Application have all experienced events of an *exceedingly violent and shocking nature*,¹⁷ [REDACTED].¹⁸ 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 suffer re-traumatisation. In this regard, Trial Chamber III in the *Bemba* case granted in-court protective measures 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".¹⁹

15. 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 witnesses protected under Article 68 of the Statute – be it their physical security and safety or their psychological well-being, privacy and dignity".²⁰

¹⁵ 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.

¹⁶ 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 24, para. 22.

¹⁷ 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.

¹⁸ In this regard, see [REDACTED], CIV-OTP-0029-0656, paras. 72 and 81. See also [REDACTED], CIV-OTP-0051-0236, paras. 44-45 and 52-53; and [REDACTED], CIV-OTP-0077-0153, paras. 56-60.

¹⁹ 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.

²⁰ 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.

16. In the present case, in similar instances, the Chamber already decided to grant in-court protective measures to witnesses [REDACTED].²¹ The Chamber went further in deciding [REDACTED].²²

17. Accordingly, the Legal Representative supports the Application regarding dual status individuals [REDACTED] and Witnesses [REDACTED] in relation to the use of in-court protective measures in the form of *in camera* proceedings. Furthermore, she requests that Witness [REDACTED] also benefits from the same measure – [REDACTED]. In the alternative, in-court protective measures in the form of continued use of a pseudonym, image and voice distortion, and limited *in camera* proceedings should be applied to these four witnesses.

18. In the same vein, the Legal Representative supports the use of special measures such as [REDACTED].²³

19. The Legal Representative further notes that the requested protective and special measures do not unduly prejudice the rights of the Accused. The identity of the [REDACTED] witnesses will remain unknown to the public only,²⁴ and the Defence will be able to see these witnesses giving evidence and to hear their voices without distortion.²⁵

²¹ [REDACTED].

²² [REDACTED].

²³ See the Application, *supra* note 2, paras. 19-21. 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.

²⁴ 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 20, para. 13.

²⁵ 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.

Dual status individuals [REDACTED], and Witness [REDACTED]

20. The Legal Representative also supports the Application in relation to the use of special measures for Witnesses [REDACTED]. The Legal Representative has recently met with dual status individuals [REDACTED]. They were [REDACTED].²⁶

21. In addition, dual status [REDACTED] expressed some security concerns in testifying publicly, [REDACTED]. In this regard, the Legal Representative wishes to underline the need to closely monitoring the general security situation of the relevant area during the time leading to [REDACTED] appearance before the Court. Accordingly, the Legal Representative reserves her right to request protective measures should the need arise.

b) Request for testimony by means of video-link technology

22. The Legal Representative supports the Prosecution's request for Witnesses [REDACTED] to testify by means of video-link pursuant to article 69(2) of the Statute and rule 67(1) of the Rules. In the specific circumstances, said mode of testimony is appropriate and this measure would not be prejudicial to or inconsistent with the rights of the Accused.

23. As indicated in the Application,²⁷ the time foreseen by the Prosecution for the questioning of Witness [REDACTED] has been substantially reduced, while [REDACTED]. In light of the information available, it seems [REDACTED]. In these circumstances, video-link testimony would be appropriate to overcome the logistics constrains of having the witness testifying in person at the seat of the Court.

²⁶ [REDACTED].

²⁷ See the Application, *supra* note 2, paras. 29-30.

24. In the event that Witness [REDACTED], the Legal Representative submits that it is necessary and appropriate to also have Witness [REDACTED] on standby during the first week of November and to proceed with video-link testimony.

25. Both Witness [REDACTED]²⁸ and their testimony [REDACTED].²⁹ The use of video-link technology [REDACTED] would allow their appearances in an uninterrupted manner - thereby increasing the expeditiousness of the trial - while avoiding a lengthy travel far away from their families and places of residence. In accordance with rule 67(3) of the Rules, this measure will also contribute to protect their physical and psychological well-being.

26. In this regard, the Chamber already allowed [REDACTED].³⁰

27. Moreover, the measure would not be prejudicial to or inconsistent with the rights of the Accused, since the Defence will still be able to question the witnesses, including through the use of documents, and the Chamber will be in the position to observe their demeanour while giving their testimonies.

c) Request for a change in the order of Witness [REDACTED]'s appearance

28. The Legal Representative does not oppose the part of the Application requesting a change in the order of appearance of Witness [REDACTED], and concurs with the Prosecution that having Witness [REDACTED] testifying before [REDACTED] would result in a clearer presentation of evidence.³¹

²⁸ See the "Decision on the 'Prosecution's consolidated application to conditionally admit the prior recorded statements and related documents of various witnesses under rule 68 and Prosecution's application for the introduction of documentary evidence under paragraph 43 of the directions on the conduct of proceedings relating to the evidence of Witnesses P-0087 and P-0088'" (Trial Chamber I), No. ICC-02/11-01/15-950-Conf, 16 October 2017.

²⁹ [REDACTED].

³⁰ [REDACTED].

³¹ See the Application, *supra* note 2, para. 34.

V. Conclusion

29. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to grant the Application in its entirety and to also order [REDACTED] to testify *in camera*. In the alternative, the Legal Representative respectfully requests that Witnesses [REDACTED] testify under pseudonym, with image and voice distortion, and that the identifying portions of their testimony be heard *in camera*.

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

Paolina Massidda
Principal Counsel

Dated this 19th day of October 2017

At The Hague, The Netherlands