

**Cour
Pénale
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**International
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Court**

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Date: **13 July 2018**

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 Document

Redacted Version of "Response to the 'Requête aux fins de levée de mesures de protection, de levée d'expurgations et de reclassification de pièces, documents et transcrits, nécessaires à la préparation et à la bonne conduite des enquêtes' (ICC-02/11-01/15-1173-Conf)", ICC-02/11-01/15-1183-Conf, 13 June 2018

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 addresses in this response only the parts of the Defence’s Request² related to the dual-status individuals she represents. In this regard, she submits that Mr Gbagbo’s request for lifting redactions and reclassifying documents related to said individuals as specified *infra* should be rejected.

2. The Legal Representative submits that the testimony provided with in-court protective measures by the dual-status individuals referred to in the Request (Witnesses P-0350, P-0404, P-0407, P-0442, P-0513, P-0547, P-0579) cannot be re-classified as public without depriving said individuals of the protection still required at present. For the same reason, the prior recorded testimony of some dual-status individuals to whom protective measures were granted referred to in the Request (in particular, Witness P-0407) must not be re-classified as public.

3. Assuming *arguendo* that the Chamber orders the re-classification as public of the testimony of the dual-status individuals addressed in the Request, the Legal Representative requests that the necessary redactions be implemented in the public version of the testimony in order to protect said individuals pursuant to rule 87(1) of the Rules of Procedure and Evidence (the “Rules”).

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 “Requête aux fins de levée de mesures de protection, de levée d’expurgations et de reclassification de pièces, documents et transcrits, nécessaires à la préparation et à la bonne conduite des enquêtes.”, No. ICC-02/11-01/15-1173-Conf, 4 June 2018 (the “Request”).

II. Confidentiality

4. Pursuant to regulation 23*bis*(2) of the Regulations of the Court, this response is filed confidentially because it makes reference to submissions filed with the same classification. A public redacted version will be filed in due course.

III. Background

5. On 14 January 2016, the Chamber granted in-court protective measures to Witnesses P-0442, P-0547 and P-0579.³

6. On 9 June 2016, the Chamber, by majority, Judge Henderson partially dissenting, found that the written statement of, *inter alia*, Witness P-0555 was suitable for introduction under rule 68(3) of the Rules.⁴

7. On 22 November 2016, the Chamber granted in-court protective measures to Witnesses P-0350 and P-0513.⁵

8. On 6 June 2017, the Chamber by majority, Judge Henderson partially dissenting, found that the written statements of, *inter alia*, Witnesses P-0172, P-0237, P-0297, P-0407, P-0567, P-0568, P-0580 and P-0582 were suitable for introduction under rule 68(3) of the Rules.⁶

³ See the transcript of the hearing held on 14 January 2016, No. ICC-02/11-01/15-T-8-Red-ENG WT, p. 7, lines 20-25.

⁴ See the "Public redacted Decision on the Prosecutor's application to introduce prior recorded testimony under Rules 68(2)(b) and 68(3)" (Trial Chamber I), No. ICC-02/11-01/15-573-Red, 9 June 2016.

⁵ See the transcript of the hearing held on 22 November 2016, No. ICC-02/11-01/15-T-103-Red-ENG WT, p. 80, lines 7-24.

⁶ See the "Public Redacted version of 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

9. On 3 November 2017, the Chamber granted in-court protective measures to Witnesses P-0404 and P-0407.⁷

10. On 1 June 2018, the Defence of Mr Gbagbo filed the Request.⁸

IV. Submissions

11. The Legal Representative addresses in this response only the submissions in the Request regarding the protective measures and the restrictions on disclosure authorised by the Chamber regarding the testimony and statement(s) provided by her clients, i.e. by dual-status individuals.

12. More precisely, this response addresses the parts of the Request concerning the testimony provided by dual-status individuals who were granted protective measures (Witnesses P-0350, P-0404, P-0407, P-0442, P-0513, P-0547, P-0579),⁹ and the statements of dual-status individuals who were examined under rule 68(3) of the Rules (Witnesses P-0172, P-0237, P-0297, P-0555, P-0567, P-0568, P-0580, P-0582).¹⁰

13. The Legal Representative's silence regarding the remaining submissions contained in the Request cannot be understood as her agreement with the other legal arguments and claims made by the Defence, especially those related to the Protocol

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-Red, 6 June 2017.

⁷ See the "Decision on protective and special measures, mode of testimony and the order of appearance of certain upcoming witnesses" (Trial Chamber I), No. ICC-02/11-01/15-1060, 3 November 2017, paras. 12-14.

⁸ See *supra* note 2.

⁹ See the Request, *supra* note 2, para. 29.

¹⁰ *Idem*, para. 41.

on the use of confidential information¹¹ and the disclosure of materials under rule 77 of the Rules.¹²

1. The testimony of dual-status individuals who testified with protective measures must not be disclosed to the public at present

14. The Legal Representative submits that the testimony provided with in-court protective measures by the dual-status individuals referred to in the Request (i.e. Witnesses P-0350, P-0404, P-0407, P-0442, P-0513, P-0547, P-0579) must not be re-classified as public.

15. The abovementioned dual-status individuals have recently reported to the Legal Representative that their personal circumstances have not changed since the time of their testimony before the Court. Accordingly, any change or reversal of the protective measures adopted by the Chamber at the time of their testimony would unjustifiably deprive said individuals of the protection still required at present.

16. In particular, the victims [REDACTED] who testified *in camera* (Witnesses P-0350, P-0404, P-0407 and P-0513) are still vulnerable witnesses. As ruled by the Chamber before and at the time of their testimony, these dual-status individuals suffered traumatic events and risk being exposed to re-traumatisation if their testimony becomes public, also in light of their family and residence circumstances.¹³

17. Regarding other victims who testified with a pseudonym, image and voice distortion and partial private sessions (Witnesses P-0442, P-0547 and P-0579), their testimony must not be reclassified as public either. The objectively justified risk with respect to said dual-status individuals still exists today as found by the Chamber at

¹¹ *Ibid.*, paras. 7-11.

¹² *Ibid.*, paras. 4-6, 24 and 46-53.

¹³ See *supra* notes 5 and 7.

the time of their appearance before the Court because all these individuals [REDACTED] reside in areas where direct perpetrators of the violence during the post-election period are reported to be still active.¹⁴

18. Moreover, the Legal Representative submits that the start of the Defence's case may worsen the situation in certain areas of Abidjan [REDACTED]. The testimony of witnesses and/or the documentary evidence eventually presented by Mr Gbagbo are likely to maintain and/or spark the animosity in Abidjan *vis-à-vis* the victims who were called to testify by the Prosecution. Depriving said victims of the protective measures granted by the Chamber during their testimony would be inconsistent with article 68(1) of the Statute.

19. Assuming *arguendo* that the Chamber orders the re-classification as public of the testimony given by the dual-status individuals addressed in the Request, the Legal Representative requests that the necessary redactions be implemented in the version of the testimony disclosed to the public in order to protect said individuals pursuant to rule 87(1) of the Rules, and that she is consulted on the matter before such re-classification occurs in order to be able to verify each necessary redaction.¹⁵

20. In this regard, she underlines, in particular, that any information that may lead to the identification of the dual-status individuals who testified with protective measures, such as names of their relatives or their place of residence, should be redacted.

¹⁴ See *supra* note 3. See also the transcript of the hearing held on 3 February 2016, No. ICC-02/11-01/15-T-13-Red3-ENG CT WT, p. 4, line 22 to p. 5, line 11; the transcript of the hearing held on 9 February 2016, No. ICC-02/11-01/15-T-19-CONF-ENG CT, p. 64, lines 11-14; and the transcript of the hearing held on 16 May 2016, No. ICC-02/11-01/15-T-39-CONF-ENG CT, p. 2, lines 1-9 and p. 8, lines 1-9.

¹⁵ See the "Public Redacted Version of Judgment on the appeal of Mr Laurent Gbagbo against the oral decision on redactions of 29 November 2016" (Appeals Chamber), No. ICC-02/11-01/15-915-Red OA9, 31 July 2017, para. 43.

2. **The prior recorded testimony of dual-status individuals introduced under rule 68(3) of the Rules and for whom protective measures were granted must remain classified as confidential or, in the alternative, must be reclassified as public with redactions**

21. The Legal Representative submits that the prior recorded testimony of dual-status individuals referred to in the Request (Witnesses P-0172, P-0237, P-0297, P-0407, P-0555, P-0567, P-0568, P-0580, P-0582) and for whom protective measures were granted must not be re-classified as public or, at least, must not be re-classified as public without the necessary redactions.

22. The Legal Representative has contacted the abovementioned dual-status individuals and they all have reported to her that their personal circumstances have not changed since the time of their testimony before the Court. As a consequence, the public disclosure of their rule 68(3) statements may render ineffective the protective measures adopted by the Chamber at the time of their testimony.

23. In particular, victims [REDACTED] who testified pursuant to rule 68(3) of the Rules and did so *in camera* (in particular, Witness P-0407) remain vulnerable witnesses, as argued above.¹⁶ Accordingly, their prior recorded testimony cannot be re-classified as public, not even with redactions, without rendering ineffective the adopted protective measures.

24. By contrast, the Legal Representative agrees that the prior recorded statements of dual-status individuals who testified in public session without protective measures (Witnesses P-0555 and P-0582) may be reclassified as public.

¹⁶ See *supra* para. 16.

25. In any event, the Legal Representative requests that the necessary redactions be implemented in the prior recorded testimony of dual-status individuals who testified with protective measures if they are re-classified as public, in order to protect said individuals pursuant to rule 87(1) of the Rules, and that she is consulted on the matter before such re-classification occurs in order to be able to verify each necessary redaction.¹⁷

26. In this regard, she underlines, in particular, that any information in the prior recorded statements that may lead to the identification of the dual-status individuals who testified with protective measures, such as names of their relatives or their place of residence, should be redacted.

V. Conclusion

27. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to reject the Request in the parts dealing with the dual-status individuals she represents to whom protective measures were granted.



Paolina Massidda
Principal Counsel

Dated this 13th day of July of 2018

At The Hague, The Netherlands

¹⁷ See the “Public Redacted Version of Judgment on the appeal of Mr Laurent Gbagbo against the oral decision on redactions of 29 November 2016”, *supra* note 15, para. 43.