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

Date: 21 May 2015

**TRIAL CHAMBER I**

**Before:** Judge Geoffrey Henderson, Presiding Judge  
Judge Olga Herrera-Carbuccia  
Judge Bertram Schmitt

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE**

***IN THE CASE OF THE PROSECUTOR v. LAURENT GBAGBO***

**Public**

**With confidential *EX PARTE* Annexes A and B only available to  
the Prosecution and VWU**

**Public redacted version of "Prosecution's further request for authorisation to  
maintain redactions to documents related to P-0316 and P-0402", 5 March 2015,  
ICC-02/11-01/11-797-Conf-Exp**

**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 Office of the Prosecutor (“Prosecution” or “OTP”) respectfully maintains its request for authorisation from Trial Chamber I (“Chamber”) to apply redactions falling under Category D (“non-standard redactions”) of the Protocol establishing a redaction regime to certain documents related to witness P-0316 and to witness P-0402. The basis for the request is the need for the continued protection of certain information pertaining to these two witnesses, namely [REDACTED].
2. To this end, this further request seeks to provide the Chamber with further justification for the redactions sought in the original request of 6 February 2015.<sup>1</sup> The documents to which redactions are sought are provided in unredacted form, together with corresponding redaction charts, in Annexes A and B.

## **Procedural history**

3. On 15 December 2014, the Single Judge issued the 'Decision on the Protocol establishing a redaction regime',<sup>2</sup> deciding that the parties shall apply the Redaction protocol set out in Annex A.
4. On 6 February 2015, the Prosecution requested authorisation to maintain redactions to certain documents, including two documents related to witness P-0316 and three documents related to witness P-0402.<sup>3</sup>
5. On 25 February 2015, the Chamber declined to authorise the requested redactions for absence of adequate justification, but allowed the Prosecution to provide such justification within seven days.<sup>4</sup>

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<sup>1</sup> ICC-02/11-01/11-761 and Annexes L and O.

<sup>2</sup> ICC-02/11-01/11-737 and Annex A.

<sup>3</sup> ICC-02/11-01/11-761 and Annexes L and O.

<sup>4</sup> ICC-02/11-01/11-782, paras.24 and 27.

### **Confidentiality level**

6. This request is classified as “Confidential, EX PARTE, only available to the Prosecution and the VWU” pursuant to regulation 23bis(1) of the Regulations of the Court because it contains information relevant to the security situation of witnesses P-0316 and P-0402. Revealing this information would undermine the requested relief and create security risks to these witnesses. The Prosecution also files a confidential redacted version of this request.

### **Request for authorisation to apply redactions in relation to witness P-0316**

7. Witness P-0316 was screened by the Prosecution on [REDACTED], and interviewed between [REDACTED]. As per Annex A, the documents to which non-standard redactions are sought are:
  - a. CIV-OTP-0042-0665 (screening notes of [REDACTED]); and
  - b. CIV-OTP-0043-0461 (the witness’ statement of [REDACTED]).
8. The Prosecution maintains its request for redactions as outlined in Annex A, in order to protect certain identifying information of the witness, namely [REDACTED]. For the reasons outlined below, disclosure of this information would lead to an objectively justifiable risk to the safety of the witness [REDACTED]. Non-disclosure of the information is necessary in order to protect the safety and well-being of the witness, pursuant to articles 54(3)(f), 64(2) and 64(6)(e), and 68(1) of the Rome Statute (“Statute”), and rule 81(4) of the Rules of Procedure and Evidence (“Rules”). It is also necessary in order to protect [REDCATED]. Granting the request will strike the appropriate balance between the Accused’s rights and the Court’s protection obligations.

*Profile of the witness*

9. [REDACTED].

*Witness' relevance to the case*

10. [REDACTED],<sup>5</sup> [REDACTED].<sup>6</sup> [REDACTED].<sup>7</sup>

*Relevant security considerations*

11. The nature and significance of the witness' evidence is the main objective factor justifying concerns for the safety of the witness [REDACTED]. [REDACTED]. [REDACTED],<sup>8</sup> [REDACTED].

12. [REDACTED].

a. [REDACTED].<sup>9</sup>

b. [REDACTED].<sup>10</sup>

13. The Prosecution furthermore draws the Chamber's attention to the significant subjective concerns expressed by the witness for [REDACTED]. The witness reported concerns about his evidence being disclosed, "[REDACTED]." <sup>11</sup> [REDACTED].<sup>12</sup>

14. These concerns may have a bearing on the witness' ability to deliver his testimony at trial with ease and comfort, if [REDACTED] is disclosed. Accordingly, the Prosecution submits that the requested redactions would best

<sup>5</sup> Witness statement P-0316, CIV-OTP-0043-0461 at 0466-0472, paras. 18-41, and 0490-0494, paras. 117-134.

<sup>6</sup> Witness statement P-0316, CIV-OTP-0043-0461 at 0472-0473, paras. 44-50 and at 0483-0484, paras. 86-97.

<sup>7</sup> Witness statement P-0316, CIV-OTP-0043-0461 at 0486, paras. 98-99, at 0494-0499, paras. 135-145 and 150-159.

<sup>8</sup> *The Prosecutor v. Charles Blé Goudé*, ICC-02/11-02/11.

<sup>9</sup> Witness statement P-0316, CIV-OTP-0042-0665 at 0501, para.165.

<sup>10</sup> Witness statement P-0316, CIV-OTP-0042-0665 at 0501, para.167.

<sup>11</sup> Witness statement P-0316, CIV-OTP-0042-0665 at 0463-0464, para.9.

<sup>12</sup> Witness statement P-0316, CIV-OTP-0042-0665 at 0463-0464, para.9.

enable the Court to exercise its function of determining the truth based on the submission of all evidence it considers necessary.<sup>13</sup>

*Protective measures currently in place*

15. On 2 August 2013, the Single Judge of Pre-Trial Chamber I authorised the interim-non-disclosure of the witness' identity, pending the implementation of protective measures.<sup>14</sup> On 7 November 2013, the Single Judge further authorised the Prosecution to rely on the witness' anonymous statement for the purposes of the confirmation of the charges.<sup>15</sup> These measures were authorised on the basis of the "[REDACTED]"<sup>16</sup> The level of risk was deemed by the Single Judge to be such that "[REDACTED]".<sup>17</sup>

16. The OTP has taken steps to secure the following protection measures for the witness [REDACTED]:

- a. [REDACTED]; and
- b. [REDACTED].

17. In relation to the first measure, [REDACTED]. As to the second measure, [REDACTED].

18. The witness' identity was subsequently disclosed to the Defence on 6 February 2015, by way of re-disclosure of his screening notes and statement with fewer redactions.

*No prejudice to the Accused*

19. The Prosecution submits that the requested redactions would not be unduly prejudicial to, or inconsistent with, the rights of the Accused and a fair and impartial trial. The Defence already has access to the identity and other

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<sup>13</sup> Art 69(3), Rome Statute.

<sup>14</sup> ICC-02/11-01/11-466-Conf-Exp.

<sup>15</sup> ICC-02/11-01/11-555-Conf-Exp.

<sup>16</sup> ICC-02/11-01/11-466-Conf-Exp, paras.14-17.

<sup>17</sup> ICC-02/11-01/11-555-Conf-Exp, para.26.

identifying information of the witness. The redaction of [REDACTED] is the only measure being sought and does not impair the Defence's ability to understand his evidence or to conduct investigations.

20. The crux of the witness' evidence is [REDACTED]. [REDACTED] is immaterial to his evidence in this regard, and the non-disclosure of this fact does not impair the Defence's ability to prepare its case.

**Request for authorisation to apply redactions in relation to witness P-0402**

21. Witness P-0402 was interviewed by the Prosecution between [REDACTED] and [REDACTED]. As per Annex B, the documents to which non-standard redactions are sought are:

- a. CIV-OTP-0068-0169 (the witness' statement of [REDACTED]);
- b. CIV-OTP-0068-0189 (a handwritten sketch appended to the witness' statement as Annex 3); and
- c. CIV-OTP-0068-0190 (a handwritten sketch appended to the witness' statement as Annex 4).

22. The Prosecution maintains its request for redactions as outlined in Annex B, in order to protect the information of the witness, namely [REDACTED]. The two handwritten sketches [REDACTED]. For the reasons outlined below, disclosure of this information would lead to an objectively justifiable risk to the safety of the witness [REDACTED]. Non-disclosure of the information is necessary in order to protect the safety and well-being of the witness, pursuant to articles 54(3)(f), 64(2) and 64(6)(e), and 68(1) of the Statute, and rule 81(4) of the Rules. It is also necessary in order to protect [REDACTED]. Granting the request will strike the appropriate balance between the Accused's rights and the Court's protection obligations.

*Profile of the witness*

23. [REDACTED].<sup>18</sup> [REDACTED].<sup>19</sup> [REDACTED].

*Witness' relevance to the case*

24. The witness' evidence relates principally to:

- a. [REDACTED];<sup>20</sup>
- b. [REDACTED];<sup>21</sup>
- c. [REDACTED];<sup>22</sup>
- d. [REDACTED],<sup>23</sup> [REDACTED].<sup>24</sup>

25. The witness provides a direct account of [REDACTED]. The Prosecution submits that his evidence is of significant probative value in the case.

*Relevant security considerations*

26. There are multiple objective factors justifying concerns for the safety of the witness [REDACTED]. Firstly, [REDACTED].<sup>25</sup> As outlined in the witness' statement, [REDACTED].<sup>26</sup> [REDACTED].<sup>27</sup> [REDACTED].

27. Secondly, [REDACTED]. [REDACTED],<sup>28</sup> [REDACTED].<sup>29</sup> [REDACTED].<sup>30</sup> [REDACTED]. [REDACTED].<sup>31</sup>

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<sup>18</sup> [REDACTED].

<sup>19</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0172, para.11.

<sup>20</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0173, para.22; at 0175, p.32; at 0176-0177, paras.35-36; at 0184, para.72.

<sup>21</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0176-0179, paras.35-49.

<sup>22</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0179-0182, paras.51-60; at 0183-0184, paras. 67-71.

<sup>23</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0182-0183, paras.61-66.

<sup>24</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0184-0185, paras.73-75.

<sup>25</sup> [REDACTED].

<sup>26</sup> [REDACTED].

<sup>27</sup> [REDACTED].

<sup>28</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0172, para.11.

<sup>29</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0175, para.29; at 0179, para.49.

<sup>30</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0175, para.31.

<sup>31</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0175, para.29; at 0173, paras.20-21.



28. Finally, as is also apparent from his statement, [REDACTED].<sup>32</sup> [REDACTED].
29. The Prosecution furthermore draws the Chamber's attention to the significant subjective concerns expressed by the witness for his safety, as detailed below.
- a. On [REDACTED], the witness told OTP investigators that [REDACTED].
  - b. [REDACTED].
30. OTP investigators have described the demeanour of the witness as agitated and fearful throughout their dealings with him. They are of the view that, if [REDACTED] is not protected, he may desist from cooperation with the Court. Accordingly, the Prosecution submits that the requested redactions would best enable the Court to exercise its function of determining the truth based on the submission of all evidence it considers necessary.<sup>33</sup>

*No prejudice to the Accused*

31. The Prosecution submits that the requested redactions would not be unduly prejudicial to, or inconsistent with, the rights of the Accused and a fair and impartial trial. The Defence already has access to the identity and other identifying information of the witness. The redaction of [REDACTED] is the only measure being sought and does not impair the Defence's ability to understand his evidence or to conduct investigations.
32. [REDACTED],<sup>34</sup> [REDACTED].<sup>35</sup> That [REDACTED] is immaterial to his evidence, and the non-disclosure of this fact does not impair the Defence's ability to prepare its case.

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<sup>32</sup> Witness statement P-0402, CIV-OTP-0068-0169 at 0176, para.32; at 0178, paras.46-47; at 0180, para.55.

<sup>33</sup> Art 69(3), Rome Statute.

<sup>34</sup> [REDACTED].

<sup>35</sup> [REDACTED].

### Conclusion

33. For the reasons set out above, the Prosecution submits that there are tangible and objective risks to the safety of witnesses P-0316 and P-0402 [REDACTED] are disclosed and requests the Chamber to authorise the requested redactions as set out in Annexes A and B.



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Fatou Bensouda, Prosecutor

Dated this 21<sup>st</sup> day of May 2015

At The Hague, The Netherlands