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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-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 and C
and confidential *EX PARTE* Annexes D and E – only available to the Chamber,
Prosecution and VWU**

**Public redacted version of "Prosecution's application for protective measures for
its 18th Witness", 8 September 2016, ICC-02/11-01/15-662-Conf**

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. In conformity with the Trial Chamber's amended and supplemented Directions on the conduct of the proceedings ("Directions"),¹ the Prosecution requests in-court protective measures for Witness P-0238 (the "Witness"), in accordance with articles 68(1) and (2) of the Rome Statute ("Statute") and rule 87 of the Rules of Procedure and Evidence ("Rules").
2. In particular, the Prosecution requests the Chamber to authorise (i) continued in-court use of a pseudonym *in lieu* of the Witness's name, in accordance with rule 87(3)(d) of the Rules, (ii) image and voice distortion, in accordance with rule 87(3)(c) and; (iii) recourse to *in camera* proceedings for identifying portions of the witness's testimony, in accordance with rule 87(3)(e). The requested measures are intended to prevent the public disclosure at trial of the identity – but not the substantive evidence – of this Witness, who is at risk. The measures described below are requested in order to protect the safety, physical and psychological well-being, dignity and privacy of the Witness, and are not prejudicial to or inconsistent with the rights of the accused to a fair, impartial and public trial.
3. The proposed measures are the least intrusive steps that will balance the interests of the public, the Parties, participants and the Witness and will facilitate the testimony of the Witness. Facilitating the testimony of witnesses falls squarely within the ambit of the Chamber's core judicial duty to establish the truth,² and will ensure that the best evidence that the witness can give is placed before the Chamber.³

Confidentiality

4. The Prosecution files this submission as confidential with confidential Annexes A, B and C and confidential *ex parte* Annexes D and E pursuant to regulation 23*bis*(2) of the Regulations of the Court ("Regulations"), as it contains information related to the identity of the Witness and the *ex parte* Annexes contain further detailed

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

² Article 64(2) of the Statute; *See also*, ICC-01/04-02/12-271-AnxA, para. 5.

³ ICC-02/11-01/15-355-Anx1, para. 14.

information on the current situation of the Witness. This also conforms with the guidance provided by the Chamber that applications under rule 87 of the Rules should be filed confidentially but not *ex parte*, and may include an *ex parte* annex.⁴ A public redacted version of this submission is filed simultaneously.

Submissions

5. The Prosecution seeks in-court protective measures under rule 87(3)(c), (d) and (e) of the Rules for the Witness in the form of image and voice distortion, use of a pseudonym, and limited *in camera* proceedings. These measures are necessary because publicly revealing the identity will risk compromising the Witness's safety, privacy and physical and psychological well-being within the meaning of article 68(1) of the Statute. The Prosecution has notified the Victims and Witnesses Unit that it would be applying for in-court protective measures for this Witness prior to the commencement of trial.
6. The Prosecution incorporates by reference its presentation of the applicable law and jurisprudence as described in its filing relating to Witness P-0321.⁵
7. As detailed below, the in-court protective measures requested are necessary first, due to the security situation in Côte d'Ivoire, namely the polarisation of the society and the media coverage of the trial; second, due to the repeated efforts in both news and social media to identify protected witnesses, specifically including Witness P-0238, and third, because these efforts to identify protected witnesses have continued, even after the Chamber put in place increased protective measures on 16 June 2016.⁶ These repeated attempts to identify Prosecution witnesses are intimidating in nature, and, given the political and security situation in Côte d'Ivoire, present security risks to both Witness P-0238 and other Prosecution witnesses. As such, these efforts also carry the significant risk of undermining these proceedings, including through having a chilling effect upon the willingness of Prosecution witnesses to testify truthfully and openly - or at all.

⁴ ICC-02/11-01/15-498-AnxA, para. 57; ICC-02/11-01/15-205- AnxA, para. 63.

⁵ ICC-02/11-01/15-494-Conf-Corr, paras. 16-19.

⁶ ICC-02/11-01/15-T-52-CONF-ENG ET, p. 91, lns. 14-17, p.92, lns 2-18 ("16 June 2016 Direction").

In the case of Witness P-0238, all of these circumstances, compounded by the Witness's particular circumstances, constitute an objectively justifiable risk to the Witness's safety, if the identity becomes known to the public.

Security situation, polarisation of society and media coverage

8. The Prosecution incorporates by reference the background factors relating to the security situation in Côte d'Ivoire in its filing relating to Witness P-0097.⁷ Both the polarisation of society and media coverage of this trial in Côte d'Ivoire remain unchanged.

Repeated efforts in news and social media to identify witnesses in these proceedings

9. The Prosecution further incorporates its submissions concerning media outlets in Côte d'Ivoire having continually attempted to speculate on the identity of protected Prosecution witnesses since the commencement of trial, specifically including Witness P-0238.⁸ The Prosecution's filing relating to Witness P-0520 demonstrates attempts to identify Witness P-0238, as well as Prosecution Witnesses P-0547, P-0536 and P-0190.⁹ The Prosecution has also alerted the Chamber about attempts to identify Prosecution Witnesses P-0625 and P-0441¹⁰ as well as Witnesses P-0097 and P-0520, as further detailed below.
10. Indeed, the Chamber is well aware of [REDACTED].¹¹ [REDACTED].¹² Consequently, the Prosecution made submissions, on 8 June 2016, [REDACTED].¹³ Further, the Prosecution noted [REDACTED]¹⁴ On 8 June 2016, the Chamber recognised the ongoing speculations about the Witness's identity and reminded "the members of the public gallery, but also in general the public in Côte d'Ivoire, of the reasons why it takes the time and care to impose protective

⁷ ICC-02/11-01/15-389-Conf, paras. 11-18.

⁸ See Annex A.

⁹ ICC-02/11-01/15-507-Conf, para.4 and Annexes A-D.

¹⁰ ICC-02/11-01/15-T-48-CONF-ENG ET, p.5, lns. 13-23.

¹¹ ICC-02/11-01/15-T-47-CONF-ENG ET, p.1-p. 4; ICC-02/11-01/15-T-48-CONF-ENG ET, p.1, lns. 20-22.

¹² See ICC-02/11-01/15-T-47-CONF-ENG ET, pp.25-26.

¹³ ICC-02/11-01/15-T-48-CONF-ENG ET, p.3, lns. 1-3.

¹⁴ ICC-02/11-01/15-T-48-CONF-ENG ET, p.1, lns. 1-17.

measures to prevent the identification of witnesses, both Prosecution and Defence. It follows that the disclosure of the identity of protected witnesses is prohibited and that any attempt to do so, either successful or futile, may constitute crime against the administration of justice.”¹⁵ The Chamber afforded Witness P-0097 the opportunity to continue the remainder of his testimony in closed session, but the Witness opted to continue with the protective measures initially granted.¹⁶

11. Subsequently, and in spite of the Chamber’s 8 June 2016 Warning, [REDACTED].¹⁷

12. As a result of these repeated attempts and “in order to protect witnesses and in order to prevent regular disruption of proceedings” the Chamber put in place, on 16 June 2016, stricter measures regulating public access to the proceedings.¹⁸ Specifically, where protective measures have been ordered, the public broadcast of the proceedings and the publication of the transcripts are delayed until the completion of the witness’s testimony and the subsequent review and redaction of the transcripts and videos. Further, the Registry is to collect the name and nationality of each visitor attending the public gallery of the proceedings in order to ensure that any breach in confidentiality be contained and followed-up.¹⁹ As illustrated by Annex B, the Chamber’s 16 June 2016 Decision was greatly criticised in the local pro-Gbagbo media, known as *presse bleue*.²⁰

Continuing efforts to identify protected witnesses, even after the Chamber’s 16 June 2016 Decision

¹⁵ ICC-02/11-01/15-T-48-CONF-ENG ET, p. 20, lns. 3-19.

¹⁶ ICC-02/11-01/15-T-48-CONF-ENG ET, p. 19, ln. 15 – p. 20, ln. 7 & p. 21, lns 6-19 & p. 26, ln. 19 - p. 27, ln. 8 (“8 June 2016 Warning”).

¹⁷ ICC-02/11-01/15-T-51-CONF-ENG ET, p. 1, ln. 1- p. 3, ln. 12.

¹⁸ ICC-02/11-01/15-T-52-CONF-ENG ET, p. 91 (“16 June 2016 Decision”), ln. 5- p. 92, ln. 18.

¹⁹ ICC-02/11-01/15-T-52-CONF-ENG ET, p. 92, lns. 13-16.

²⁰ See Annex B.

13. Notwithstanding the Chamber's 16 June 2016 Decision, the speculation as to the identity of the next Prosecution Witness P-0321 continued.²¹

Security concerns resulting from the personal circumstances of this Witness and [REDACTED]

14. The Witness was a [REDACTED].²² On 7 November 2013, upon the Prosecution's request,²³ Pre-Trial Chamber I authorised the non-disclosure of the Witness's identity to the Gbagbo Defence ("non-disclosure decision").²⁴ [REDACTED] identity is now known to both Defence teams.

15. [REDACTED]. The Witness's fears extend to [REDACTED].

16. Furthermore, [REDACTED], the Witness may be at risk of intimidation or even harm from members of the wider public. [REDACTED].²⁵

17. For these reasons, protective measures in the form of a pseudonym and image and voice distortion are necessary to mitigate the risk of public exposure of this Witness's status as a Prosecution witness. Voice distortion will be necessary for the additional reason that the Witness will testify in French. Therefore [REDACTED] testimony will be transmitted without interpretation.

18. The Prosecution also requests that identifying portions of the Witness's testimony are conducted *in camera* under rule 87(3)(e) of the Rules. The nature of the Witness's evidence makes [REDACTED] readily identifiable: [REDACTED]. Nevertheless, the Prosecution is not seeking full *in camera* testimony for the Witness. Rather, it is anticipated that given the nature of [REDACTED] testimony and [REDACTED] previous position, portions of the Witness's evidence, which can identify [REDACTED], will need to be heard in private session in accordance

²¹ See Annex C.

²² See Annex D for a detailed report.

²³ ICC-02/11-01/11-535-Conf-Red.

²⁴ ICC-02/11-01/11-554-Conf, para. 31.

²⁵ See Annex E.

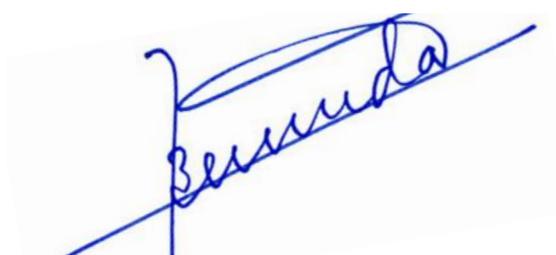
with rule 87(3)(e) of the Rules and as envisaged by paragraph 59 of the Directions.²⁶

19. The identity of the Witness, though withheld from the public, is known by the Defence. With these requested measures in place, the Defence will also be able to examine [REDACTED] in open session on any relevant issue, except on matters that may reveal [REDACTED] identity. The requested measures are intended to prevent the public disclosure at trial of the identity – but not the substantive evidence – of the Witness, who is at risk.

Conclusion

20. For the foregoing reasons, the Prosecution requests that the Chamber grant protective measures during the testimony of the Witness, as follows:

- i. Continued in-court use of a pseudonym, *in lieu* of the Witness's name, in accordance with rule 87(3)(d) of the Rules;
- ii. Image and voice distortion for the testimony of the Witness, in accordance with rule 87(3)(c) of the Rules; and
- iii. Recourse to *in camera* proceedings for identifying portions of the Witness's testimony, in accordance with rule 87(3)(e) of the Rules.



Fatou Bensouda, Prosecutor

Dated this 9th day of September 2016

At The Hague, The Netherlands

²⁶ ICC-02/11-01/15-498-AnxA.