

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/11-01/15

Date: 20 April 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 redacted version

Decision on the Prosecutor's application for protective measures for Witness P-0428

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Eric MacDonald

Counsel for Laurent Gbagbo

Mr Emmanuel Altit
Ms Agathe Bahi Baroan

Counsel for Mr Charles Blé Goudé

Mr Geert-Jan Alexander Knoops
Mr Claver N'dry

Legal Representatives of Victims

Ms Paolina Massidda

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber I of the International Criminal Court, in the case of *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, having regard to Articles 64(7), 67(1)(e), 68(1) and 68(3) of the Rome Statute (“Statute”); Rule 87 of the Rules of Procedure and Evidence (“Rules”) and paragraph 56 of the Directions on the Conduct of the Proceedings (“Directions”)¹, issues this decision on the “Prosecution’s application for protective measures for Witness P-0428” (“Prosecutor’s Request”).²

I. Procedural background

1. On 19 July 2016, the Chamber authorised the submission of evidence provided by Witness P-0428 into the record of the case pursuant to Rule 68(2)(b) of the Rules of Procedure and Evidence.³
2. On 1 February 2018, the Prosecutor filed her Request. The Prosecutor submits that, “[i]n the event that the Chamber is minded at any time to publicise” her evidence, Witness P-0428’s identity “should not be revealed publicly, in order to protect her safety and security”. More specifically, the Prosecutor requests: (i) that certain redactions to Witness P-0428’s statement, as detailed in Annex A to the Request, be applied; (ii) that the parties and participants to the proceedings be prohibited from disclosing Witness P-0428’s identifying information to a third party, in accordance with Rule 87(3)(b) of the Rules and (iii) that the Witness’s pseudonym be used, *in lieu* of the Witness’s name in accordance with rule 87(3)(d) of the Rules.
3. [REDACTED] at the time of the post-electoral crisis, Witness P-0428 currently works [REDACTED] in Abidjan. The Prosecutor submits that, should her role as a witness in these proceedings become public knowledge, Witness P-0428

¹ ICC-02/11-01/15-498-AnxA.

² ICC-02/11-01/15-1117-Conf.

³ ICC-02/11-01/15-629-Red.

would be “more vulnerable to possible security threats as a private individual”, in particular since [REDACTED]. Accordingly, the requested measures would be necessary “to mitigate the risk of public exposure of Witness P-0428’s status as witness” and to avoid any possible negative impact on her wish to continue to [REDACTED].

4. On 12 February 2018, the Defence for Mr Gbagbo⁴ and the Defence for Mr Blé Goudé⁵ responded, both objecting to the Request.
5. On 23 March 2018, by e-mail and pursuant to the Presiding Judge’s request, the VWU submitted its security assessment for Witness P-0428.⁶

II. Determinations by the Chamber

6. Articles 64(7) and 67(1) of the Statute set forth the paramount principle of the publicity of the proceedings as a fundamental tenet of a fair trial. Accordingly, it is only under limited and specific circumstances that a Chamber may exceptionally restrict the scope of application of the principle: in particular, in light of the need to ensure the protection of victims, witnesses and innocent third parties pursuant to article 68(1) of the Statute. This may result in the Court adopting protecting measures in the form of redactions, to the extent that these measures are not prejudicial to or inconsistent with the rights of the accused, pursuant to rule 87 of the Rules.
7. As submitted by the Prosecutor, during the post-electoral crisis Witness P-0428 [REDACTED] in Abidjan. The Prosecutor reports one incident where

⁴ ICC-02/11-01/15-1128-Conf.

⁵ ICC-02/11-01/15-1129-Conf.

⁶ E-mail to Trial Chamber I Communications, 23 March 2018, at 15:23 hours.

[REDACTED]. Furthermore, Witness P-0428 mentioned to the Prosecutor that [REDACTED] in [REDACTED] 2017.

8. The Chamber reiterates and confirms the principles which have guided it throughout these proceedings in decisions relating to protective measures resulting in a restriction of the publicity of the trial. More specifically, the Chamber recalls that the following factors are all unsuitable to trigger the application of rule 87: (i) generic references to the social context in Ivory Coast, including its alleged “polarisation”, or to the level of attention reserved to this trial by media, social media and ordinary citizens; (ii) speculative and hypothetical scenarios; (iii) a witness’s personal subjective fears and concerns, or preferences, not substantiated by objective, verifiable circumstances, and (iv) isolated past episodes, even when serious. Protective measures resulting in limiting the right of the accused to a public trial can only be granted in the presence of a concrete, objective, identifiable risk suitable to be neutralised or mitigated by the specific requested measure. All witnesses before the Court are neutral and only expected to tell the truth and appearing in public is part of the responsibilities attached to the role.⁷
9. In light of the information submitted by both the Prosecutor and the VWU, the Chamber is not satisfied that the measures requested by the Prosecutor are warranted. First, as noted by the VWU, “*the incidents reported by the witness are more closely linked [REDACTED]*”;⁸ accordingly, it appears speculative to

⁷ See, among many, the Chamber’s oral ruling dated 17 October 2016, ICC-02/11-01/15-T-86-Red-ENG, page 17 line 11 to page 20, line 13. See also: Chamber’s oral ruling dated 14 January 2016, ICC-02/11-01/15-T-8-Red ENG, page 7 line 5 to page 9 line 14; Chamber’s oral ruling dated 19 September 2016, ICC-02/11-01/15-T-74- Red-ENG, page 1 line 17 to page 3 line 15; Chamber’s oral ruling dated 3 October 2016, ICC-02/11-01/15-T-84- Red-ENG, page 1 line 16 to page 2 line 24; Chamber’s oral ruling dated 2 May 2017, ICC-02/11-01/15-T-149- Red-ENG, page 70 line 18 to page 71 line 2; Chamber’s oral ruling dated 8 May 2017, ICC-02/11-01/15-T-153- Red-ENG, page 87 line 15 to page 88 line 17.

⁸ E-mail to Trial Chamber I Communications, 23 March 2018, 15:23.

assume that a risk would materialise on the basis of disclosure of her role as a witness in the context of these proceedings. Second, the Prosecutor does not submit any information in support of the statement that disclosure of the Witness's association with the Court's proceedings would have an adverse impact on the Witness's employability [REDACTED]; moreover, as also noted by the VWU, this interest does not fall within the scope of those served by the requested protective measures. Third, as further observed by the VWU, "*the security climate* [during the post-electoral crisis] *was vastly different to that of today*" and, accordingly, an assessment of the risks has to be adjusted to the actual situation as it exists today. Fourth, as regards the [REDACTED] reportedly having occurred in [REDACTED] 2017, no connection could be established by the VWU between this incident, on the one hand, and any elements related to this trial, on the other; in the absence of such link, the episode, while serious and deplorable, is unsuitable to substantiate a risk relevant for the purposes of protective measures in these proceedings.

10. The Chamber further notes that Witness P-0428 appears to have refused to meet with the VWU and discuss with them the security concerns which form the basis of the Prosecutor's Request. This refusal to take advantage of the advice of security professionals might per se cast a doubt on the seriousness of the Witness's own concerns. In addition, the fact that the Prosecutor only points to one incident, having occurred during the post-electoral crisis, makes it likely that this episode is indeed the sole basis of the Witness's concern and of the ensuing Request.
11. In light of the above, and pursuant to paragraph 56 of the Directions, the Chamber finds no reason to question the VWU's assessment to the effect that, in the absence of any information suggesting that the disclosure of the

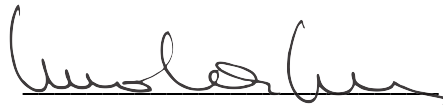
Witness's identity would result in creating or increasing a risk, the requested protective measures are unwarranted.

FOR THE FOREGOING REASONS, THE CHAMBER, HEREBY

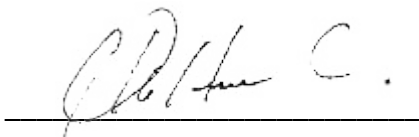
REJECTS the Prosecutor's Request;

ORDERS the parties to file public redacted versions of their respective filings as soon as practicable and no later than 18 May 2018.

Done in both English and French, the English version being authoritative.



Judge Cuno Tarfusser, Presiding Judge



Judge Olga Herrera Carbuccion



Judge Geoffrey Henderson

Dated 20 April 2018

At The Hague, The Netherlands