

**Cour
Pénale
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**International
Criminal
Court**

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Date: **23 December 2015**

PRE-TRIAL CHAMBER II

Before: Judge Cuno Tarfusser, Single Judge

SITUATION IN UGANDA

**IN THE CASE OF
*THE PROSECUTOR v. DOMINIC ONGWEN***

Confidential

Prosecution's request for protective measures

Source: The 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 Prosecution hereby submits its request for protective measures in respect of eight witnesses whose evidence will be relied upon at the confirmation hearing: P-0099, P-0101, P-0198, P-0214, P-0226, P-0227, P-0235, and P-0236.
2. The testimony of these witnesses in support of charges related to Dominic Ongwen's direct perpetration of sexual and gender based crimes ("direct SGBC charges") has already been received under the provisions of article 56 of the Rome Statute ("Statute") and *in camera*. Divulging information to the public about direct SGBC charges and evidence in the course of the confirmation hearing will render the precautions taken thus far of no effect, and create the risk of re-traumatising and endangering these witnesses and their families.
3. Pursuant to article 68 of the Statute and rule 87 of the Rules of Procedure and Evidence ("Rules"), the Prosecution requests this Chamber to authorise the following protective measures to prevent the release of sensitive information to the public:
 - i) Redactions to all references to the direct SGBC charges and supporting evidence in the public records of the Chamber;
 - ii) *In camera* presentation of evidence and legal submissions relating to direct SGBC charges during the confirmation of the charges hearing.

Confidentiality

4. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this document is filed confidentially because it includes information about vulnerable witnesses, disclosure of which may endanger their safety and well-being.

Submissions

The Court has the obligation to protect witnesses and victims, as well as members of their families

5. Pursuant to article 68(1) of the Statute, “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.”¹ The Court must have regard to the nature of the crime, in particular where the crime involves sexual or gender violence, or violence against children, but must not take steps which are inconsistent with the rights of the accused and a fair and impartial trial.
6. Rule 87 of the Rules entitles the Prosecution to request the Chamber to grant measures to protect witnesses or other persons at risk on account of testimony given by a witness. In particular, a Chamber may order such measures as: expunging names and identifying information of witnesses from the public records; prohibiting the Prosecution, the Defence and any other participant in the proceedings from disclosing such information to a third party; and conducting part of proceedings *in camera*.²

There is a real risk to direct SGBC witnesses

7. P-0099, P-0101, P-0198, P-0214, P-0226, P-0227, P-0235, and P-0236 (“direct SGBC witnesses”) are direct victims of sexual and gender based crimes allegedly perpetrated by Dominic Ongwen. In September and November 2015, these witnesses testified in the article 56 proceedings to preserve their evidence for trial.³ These proceedings were conducted entirely *in camera* “as a result of the nature of their alleged victimisation”, and to safeguard them from possible re-traumatisation should the nature of their evidence become public.⁴ The

¹ Pursuant to articles 43(6) and 68(4) of the Statute, and rules 16-19 of the Rules, the Victims and Witnesses Section shall advise on appropriate protective measures to witnesses and victims, as well as others who are at risk on account of testimony given by such witnesses, in consultation with the Prosecution.

² Rule 87(3)(a), (b), and (e) of the Rules.

³ See ICC-02/04-01/15-T-8-CONF-ENG to ICC-02/04-01/15-T-19-CONF-ENG.

⁴ ICC-02/04-01/15-T-8-CONF-ENG, p. 2.

circumstances that required these protective measures persist. Similarly, references to the direct SGBC charges (of which these individuals are the victims) and to the evidence supporting those charges have been redacted in all public records to date.

8. As argued previously, the eight witnesses with whom this filing is concerned are highly vulnerable, subject to distress resulting from societal pressure, and face a high risk of re-traumatisation.⁵ The Prosecution relies on factual submissions made in paragraphs 22 to 39 of its second article 56 application, which are incorporated herein by reference.⁶
9. P-0198's testimony could not be completed as scheduled in November 2015 due to her fragile psychological state, given that the "witness was still struggling with the memories from the past traumatic events".⁷
10. Several of the eight witnesses have returned from captivity with the LRA in the recent past, some as recently as this year. They are going through the delicate process of reunification with their families and reintegration into their communities. All direct SGBC witnesses have minor children, some of whom were allegedly fathered by Dominic Ongwen. P-0236 has said that her children found it difficult to adapt to normal life.⁸ News media frequently report on the hardships of reintegration, the stigma of being an LRA "wife", the hostility of local communities, and the divided perception of the criminal proceedings against Dominic Ongwen.⁹ P-0227 said that her experience in the bush made her "feel bad for [her] life".¹⁰

⁵ ICC-02/04-01/15-310-Conf, p. 4-5.

⁶ ICC-02/04-01/15-310-Conf, p. 8-15.

⁷ ICC-02/04-01/15-T-19-CONF-ENG, p. 1; ICC-02/04-01/15-353-Conf, p. 3.

⁸ ICC-02/04-01/15-T-16-CONF-ENG, p. 37.

⁹ Media articles, UGA-OTP-0233-1416 at 1417-1422; UGA-OTP-0233-1427 at 1427-1428; UGA-OTP-0233-1430 at 1430-1432; UGA-OTP-0233-1434 at 1434-1439; UGA-OTP-0233-1441 at 1441-1443; UGA-OTP-0233-1444 at 1444-1445; UGA-OTP-0236-0028 at 0028-0029.

¹⁰ ICC-02/04-01/15-T-10-CONF-ENG, p. 62.

11. Publicly divulging information about direct SGBC charges and evidence will undoubtedly generate media and community interest. This interest risks further traumatising and endangering the eight witnesses and their families.
12. The mere mention of the direct SGBC charges will lead to speculation as to the identity of the possible victims, and may ultimately lead to the identification of the direct SGBC witnesses as ICC witnesses, or suspected ICC witnesses. It will place the direct SGBC witnesses and their families under undue pressure, and expose them to potential reprisals from disaffected community members. These communities are closely knit and speculation on possible Ongwen's family members could spread easily with the concomitant effect of re-traumatising the witnesses. Even if the direct SGBV witnesses are not in fact identified as ICC witnesses, however, public speculation as to the identity of the victims and the fear of identification is likely to re-traumatise them.

The protective measures are necessary and proportionate

13. The requested measures are necessary to protect the safety, physical and psychological well-being, dignity and privacy, and to prevent further traumatisation of the direct SGBC witnesses, their minor children, and other family members.
14. The requested protective measures do not unduly prejudice Dominic Ongwen's rights because the existence of the direct SGBC charges and the identities of the direct SGBC witnesses will remain unknown to the public only. The existence of these charges, and the identities and evidence of direct SGBC witnesses have been made available in full to the Defence prior to the confirmation of charges.¹¹ The Defence have had (with the exception of P-0198) the opportunity to cross-examine them.

¹¹ See ICC-02/04-01/15-305-Conf; ICC-02/04-01/15-311-Conf; ICC-02/04-01/15-375 and ICC-02/04-01/15-375-Conf-AnxA to -AnxD.

15. Less intrusive measures, such as redacting identities and certain portions of direct SGBC evidence, will not adequately remove the risk to the direct SGBC witnesses and their families. Rather, it will fuel speculation as to the potential identities of direct SGBC witnesses, and cause them distress.

Relief requested

16. The Prosecution requests that the Chamber order the protective measures described in paragraph three.



Fatou Bensouda,
Prosecutor

Dated this 23rd day of December 2015
At The Hague, The Netherlands