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No.: ICC-02/04-01/15

Date: **17 June 2016**

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

SITUATION IN UGANDA

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

**Public
With one public Annex 1**

Registry's Submissions on the Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses

Source: Registry

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. Introduction

1. In accordance with Trial Chamber IX's (the "Chamber") communication,¹ requesting that submissions on any protocols to be adopted in this case be on 17 June 2016, and following its "Registry Submissions on the Order Scheduling the First Status Conference and Other Matters",² the Registry hereby submits the "Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses" ("Vulnerability Protocol") for its adoption in the current case.

II. Applicable law

2. The present submission and the amended Vulnerability Protocol as Annex I are based on articles 43(6) and 44 of the Rome Statute and rules 19 and 88 of the Rules of Procedure and Evidence.

III. Submissions

3. In order to best ensure the protection of the dignity and privacy of vulnerable witnesses, the assessment of vulnerable witnesses is done by a neutral organ of the Court, the Victims and Witnesses Unit ("VWU"). Such assessment is provided to the Chamber, upon its request and for its determination on the required special measures to be implemented. In addition, the VWU informs the parties, and if applicable the legal representative of the victim, of the recommended special measures.
4. The VWU includes staff with expertise in trauma and trauma related to crimes of sexual violence and specialists in psychology in criminal proceeding.

¹ Email sent by the Legal Officer of the Chamber on 23 May 2016 at 18:17.

² Registry "Registry Submissions on the Order Scheduling the First Status Conference and Other Matters", dated 18 May 2016, ICC-02/04-01/15-440.

As such, the specialists who intervene within the scope of the Vulnerability Protocol are qualified staff members of the Registry with the relevant expertise to assess and assist vulnerable witnesses, and they fulfil the highest standards of competency and integrity.

5. The VWU emphasizes that the Vulnerability Protocol has been applied by the VWU as part of an established practice since the *Lubanga* case and has been adopted in all cases before the Court in which vulnerable witnesses were called to testify.³ Therefore, in order to maintain this uniform practice, the VWU would recommend adopting the same Vulnerability Protocol in the present case.
6. However, some minor terminological and non-substantial⁴ amendments were made in order to reflect the recent restructuration of the Registry and to adjust the protocol to the present case. For efficiency purposes, the VWU has already circulated the amended version of the Vulnerability Protocol with the track changes featured to all parties and participants in the current case⁵ in order for them to be in a better position to submit their final observations.
7. The Office of the Prosecutor (“Prosecution”) has already indicated that it is, in general, in agreement with its content. The Prosecution⁶ has however requested that the Protocol be modified in order to allow the calling party to independently share its concerns with the Chamber about the measures proposed by the VWU when these measures differ from the measures deemed appropriate by the calling party. This proposal is supported by the Office of Public Counsel for Victims.⁷

³ *The Prosecutor v. Jean-Pierre Bemba Gombo* (ICC-01/05-01/08-974-Anx2); in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (ICC-01/09-01/11-303-Conf-Exp-Anx); in the case of *The Prosecutor v. Charles Blé Goudé* (ICC-02/11-02/11-110-Anx2); and in the case of *The Prosecutor v. Bosco Ntaganda* (ICC-01/04-02/06-445-Anx1).

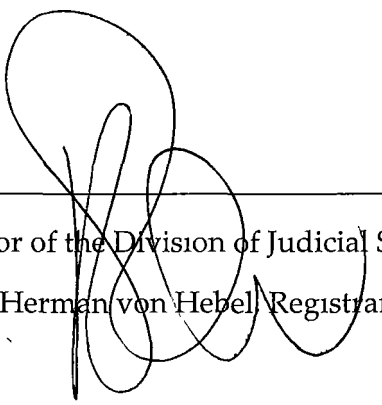
⁴ Such amendments included the removal of footnotes referring to other cases.

⁵ Email sent on 13 June 2016 at 17h27.

⁶ Email sent by the Prosecution on 15 June 2016 at 16h15.

⁷ Email sent by the the Office of Public Counsel for Victims on 16 June 2016 at 15h16.

8. The VWU notes that the calling party and the legal representatives will have access to the recommendation of the VWU after the conduct of the vulnerability assessment at the location of testimony. The VWU also notes that some special measures such as the use of video-link require, by nature, an earlier communication to the Chamber. Finally, these measures are recommended in consultation with the calling party after the preliminary assessment. Therefore, the VWU submits that the calling party will have ample opportunity to raise directly with the Chamber any objection that they may have against the VWU proposed measures before the start of the witness's testimony. In these circumstances, and for consistency purposes, the VWU does not advise that the Prosecution's proposal for amendment be incorporated in the text of the Vulnerability Protocol.



Marc Dubuisson, Director of the Division of Judicial Services
per delegation of Herman von Hebel, Registrar

Dated this 17 June 2016

At The Hague, the Netherlands