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TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

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

Public

Prosecution submissions on witness familiarisation and vulnerable witness protocols

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 requests the Chamber to adopt two of the protocols annexed to two filings to be made by the Registry on the same date as this request. The Registry filings have not been made at the time of drafting the instant submissions and therefore detailed reference to them is not possible. The Prosecution has had advanced sight of these protocols, and understands that they are to be found at Annex 1 of each of the Registry filings. Those protocols are referred to in this request, respectively, as the “Familiarisation/Witness Preparation Protocol”¹ and the “Vulnerability Protocol”.

Witness familiarisation

2. The Prosecution has requested, in a separate filing of today’s date,² permission to conduct witness preparation in this case.
3. If that request is accepted, the Prosecution submits that the Familiarisation/Witness Preparation Protocol should be adopted. This protocol has been prepared by the Registry’s Victims and Witnesses Unit (“VWU”) and is based upon protocols adopted in previous trials,³ with minor amendments.

Vulnerability

4. The Prosecution will shortly make written submissions concerning the Chamber’s directions for the conduct of the proceedings, under rule 140 of the Rules of Procedure and Evidence. The Prosecution will submit, *inter alia*, that the

¹ For the avoidance of error, this is a protocol based upon that currently in use in the trial of Bosco Ntaganda, ICC-01/04-02/06, in which proceedings witness preparation by the calling party has been permitted by the Trial Chamber.

² Prosecution’s request for authorisation to conduct witness preparation, dated 17 June 2016, ICC-02/04-01/15-472.

³ Trial Chamber VI, “Decision on the protocol on witness familiarisation”, dated 17 June 2015, ICC-01/04-02/06-656; Registry, “Victims and Witnesses Unit’s Amended Protocol on the practices used to familiarise witnesses for giving testimony”, dated 24 April 2013 and registered on 25 April 2013, ICC-01/09-01/11-704-Anx; Registry, “Victims and Witnesses Unit’s Amended Protocol on the practices used to familiarise witnesses for giving testimony”, dated 24 April 2013 and registered on 25 April 2013, ICC-01/09-02/11-727-Anx.

party calling a witness should make submissions outlining what, if any, protective measures under rule 87 should be adopted no less than 30 days before the anticipated date of each witness's testimony.

5. With regard to special measures under rule 88, the Prosecution submits that the Vulnerability Protocol should, with one addition, be adopted. This protocol has also been prepared by the VWU and is based upon protocols adopted in previous trials,⁴ with minor amendments.
6. The Prosecution requests the addition of a single sentence at the end of paragraph 9 of the Vulnerability Protocol as proposed by the Registry.
7. Currently the last sentence of paragraph 9 reads: "Following the preparatory assessment, the VWU, in consultation with the party calling the witness, determines appropriate measures to prepare the vulnerable witness for trial."
8. The Prosecution submits that the following sentence should be added: "In the event that the calling party, following consultation, considers that the appropriate measures should differ from those determined by the VWU, it may separately inform the Chamber of its concerns."
9. The Prosecution submits that rule 88 leaves it open to the parties to make such submissions. If the calling party feels strongly, even after consultation with VWU, that the special measures proposed by VWU are insufficient (or

⁴ Registry, "Victims and Witnesses Unit's additional observations on protective measures for vulnerable witnesses", dated 25 October 2010, ICC-01/05-01/08-974-Anx 2; Registry, "Victims and Witnesses Unit's information report on the preparation and familiarisation of *viva voce* witnesses in the field", dated 29 August 2011 and registered on 30 August 2011, ICC-01/09-01/11-303-Conf-Exp-Anx; Trial Chamber VI, "Decision adopting the Protocol on dual status witnesses and the Protocol on vulnerable witnesses", dated 18 February 2015, ICC-01/04-02/06-464; Trial Chamber I, "Decision on Protocol on vulnerable witnesses", dated 4 December 2015, ICC-02/11-01/15-357.

excessive), they must have an opportunity to say so. This opportunity should be acknowledged in the protocol.



Fatou Bensouda
Prosecutor

Dated this 17th day of June 2016
At The Hague, The Netherlands