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No.: ICC-02/04-01/15
Date: 12 January 2017

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

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

Public

Decision on Prosecution Request for Protective Measures for P-3, P-59 and P-339

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

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**Unrepresented Applicants for
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**The Office of Public Counsel for
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**Victims Participation and Reparations
Section**

Other

Judge Bertram Schmitt, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court') in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Articles 64(6)(e) and 68(1), (2) and (6) and 72 of the Rome Statute ('Statute'), Rule 87 of the Rules of Procedure and Evidence and Regulation 94 of the Regulations of the Registry, issues the following 'Decision on Prosecution Request for Protective Measures for P-3, P-59 and P-339'.

I. Background and Submissions

1. On 29 November 2016, the Single Judge issued the 'Decision on the Prosecution's Application for In-Court Protective and Special Measures' ('29 November Decision'), ordering protective measures for a number of witnesses and setting forth the Chamber's jurisprudence on the application of protective measures throughout the proceedings.¹
2. On 20 December 2016, the Office of the Prosecutor ('Prosecution') filed its request for protective measures for three witnesses who intercepted LRA radio communications for the Ugandan government: P-3, P-59 and P-339 ('Request').² Therein it submits that on 19 December 2016, the Ugandan government informed the Prosecution of its need to protect the identity of these witnesses, based primarily on grounds of national security.³ Accordingly, for each above mentioned witness, the Prosecution requests facial distortion, the use of a pseudonym and limited recourse to closed session to elicit identifying information and information related to the witness's current employment.⁴ The

¹ ICC-02/04-01/15-612-Conf (a public redacted version of the Decision was notified on the same day).

² Prosecution's Second Application for In-Court Protective Measures, 20 December 2016, ICC-02/04-01/15-642-Conf, with confidential Annexes A and B (a public redacted version of the Request was notified on the same day).

³ Request, ICC-02/04-01/15-642-Red, para. 2.

⁴ Request, ICC-02/04-01/15-642-Red, para. 2.

Prosecution notes that these are the least restrictive measures to achieve the necessary protection.⁵

3. On 3 January 2017, the Common Legal Representative of Victims ('CLRv') filed its response to the Request ('CLRv Response'), asking that it be granted.⁶ While the CLRv Response was filed as confidential, the CLRv subsequently informed the Chamber that it can be reclassified as public.⁷
4. On 3 January 2017, the defence for Dominic Ongwen ('Defence') filed its response to the Request ('Defence Response'),⁸ submitting that it does not object to the Request, insofar as it is limited to facial distortions, pseudonyms and limited recourse to *private* sessions.⁹ The Defence submits that *closed* sessions do not appear necessary and the relevant information can be elicited during a private session.¹⁰

II. Analysis

5. The Single Judge recalls the applicable law set out in the 29 November Decision.¹¹ The Single Judge notes that Article 68(6) of the Statute permits a State to apply for necessary measures to be taken to protect its servants or agents and the protection of confidential or sensitive information.
6. Noting the participants' submissions, the Single Judge finds that the recourse to facial distortion and the use of a pseudonym for the P-3, P-59 and P-339 is justified to protect these witnesses and to protect the Ugandan government's

⁵ Request, ICC-02/04-01/15-642-Red, para. 2.

⁶ Response to the Prosecution's Second Application for in-court protective measures, ICC-02/04-01/15-646-Conf.

⁷ Email from CLRv to the Chamber on 10 January 2017 at 12.29.

⁸ Defence Response to the Prosecution's Second Request for Protective Measures, ICC-02/04-01/15-647-Conf, (a public redacted version of the same was notified the same day).

⁹ Defence Response, ICC-02/04-01/15-647-Red, para. 1.

¹⁰ Defence Response, ICC-02/04-01/15-647-Red, para. 6.

¹¹ 29 November Decision, ICC-02/04-01/15-612-Red, paras 4-12.

legitimate interest in maintaining the confidentiality of their ongoing radio signalling operations and personnel.

7. As to the Defence's submission that recourse to closed sessions does not appear necessary,¹² the Single Judge notes that both private and closed session prevent witnesses from being seen or from having their testimony heard.¹³ In light of the Prosecution's submission that it seeks the 'least restrictive measures to achieve the necessary protection',¹⁴ the Single Judge finds that the limited recourse to *private* sessions is sufficient.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS the following in-court protective measures for P-3, P-59 and P-339: facial distortion, the use of a pseudonym and limited recourse to private sessions; and

ORDERS the Registry to reclassify the CLRV Response ('ICC-02/04-01/015-646-Conf') as public.

¹² See Defence Response, ICC-02/04-01/15-647-Red, para. 6.

¹³ The difference between private and closed session is described in Regulation 94(d)-(e) of the Regulations of the Registry: '(d) Private sessions, where the hearing is not open to the public and there is no audio-visual stream broadcast outside the Court; (e) Closed sessions, where the hearing is held in camera'. This means that in closed session, the public is excluded from the courtroom, i.e. in this Court, the curtains of the public gallery are closed and the session held *in camera*, while in private session, the curtains remain open but the public in the gallery is unable to hear the court proceedings or see the witness.

¹⁴ Request, ICC-02/04-01/15-642-Red, para. 2.

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



Judge Bertram Schmitt
Single Judge

Dated 12 January 2017

At The Hague, The Netherlands