

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: **ICC-02/04-01/15**
Date: **9 September 2017**

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

**Public Redacted Version of ‘Defence Response to “Application on behalf of P-0340”’,
filed on 9 September 2017**

Source: Defence for Dominic Ongwen

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

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James Stewart, Deputy Prosecutor
Benjamin Gumpert, QC

Counsel for the Defence

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Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Detention Section

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Other

Mary Poku, Duty Counsel for P-0340

I. INTRODUCTION

1. The Defence for Dominic Ongwen (‘Defence’) hereby responds to the “Application on behalf of Witness P-0340” (‘Application’).¹
2. The Defence does not oppose:
 - a. Rule 74 assurances;
 - b. Limited recourse to private sessions as requested by Duty Counsel; and
 - c. [REDACTED].
3. The Defence opposes voice distortion for P-0340.

II. BACKGROUND

4. On 26 October 2016, the Prosecution requested face and name distortion for P-0340.² On 11 November 2016, the Defence responded, largely arguing on the lack of specificity, generalisations and the “group method” in which the Prosecution requested protective measures.³ On 30 November 2016, the Single Judge granted the request for face and name distortion for P-0340.⁴
5. On 8 September 2017, Trial Chamber IX (‘Chamber’), the Parties and Legal Representatives for Victims were notified of the Application.⁵

III. CONFIDENTIALITY

6. Pursuant to Regulation 23 *bis*(2) of the Regulations of the Court, the Defence files this response as confidential. The Defence will file a contemporaneous public redacted version.

¹ ICC-02/04-01/15-976-Conf.

² ICC-02/04-01/15-578.

³ ICC-02/04-01/15-590-Conf.

⁴ ICC-02/04-01/15-612-Conf.

⁵ ICC-02/04-01/15-976-Conf.

IV. SUBMISSIONS

A. Applicable Standard for Review

7. In determining applications for protective measures, the Chamber stated, through the Single Judge, that:

In determining whether in-court protective measures are warranted, the Chamber must ensure that any such measure is demanded by an ‘objectively justifiable risk’ and is proportionate to the rights of the accused. While the Single Judge understands that the concept of ‘risk’ necessarily involves a certain level of speculation and prediction, the available information must still indicate the existence of circumstances for which in-court testimony, in the absence of adequate protective measures under Rule 87 of the Rules, creates or unduly increases an impermissible danger to any of the legitimate interests of witnesses protected under Article 68 of the Statute – be it their physical security and safety or their psychological well-being, privacy and dignity.⁶

8. The Chamber further elaborated on the standard of review for witnesses that were denied in Decision 612. It stated:

[A]ny rejections of requests for protective measures in the present decision is without prejudice to the Chamber, on its own motion or upon request, reconsidering the need for an order under Rule 87 of the Rule should new or additional information be made available to it at a later stage.⁷

B. Defence non-Oppositions in the Application

9. The Defence does not oppose Rule 74 assurances for witness P-0340.
10. The Defence does not oppose limited recourse to private sessions for P-0340’s testimony so long as it is restricted to the time frame outlined by Duty Counsel⁸ or information which may concretely lead to the identification of the witness.
11. The Defence does not oppose [REDACTED].⁹ [REDACTED].¹⁰
12. The Defence only requests [REDACTED].

⁶ ICC-02/04-01/15-612-Red, para. 8. (internal citations omitted)

⁷ *Ibid.*, para. 12. (internal citations omitted)

⁸ Application, para. 10.

⁹ Application, paras 2 and 13.

¹⁰ [REDACTED].

C. Defence Opposition in the Application

13. The Defence opposes the use of voice distortion during P-0340's testimony.
14. The Defence takes note of the VWU's recommendation emailed on 7 September 2017.¹¹ After conducting its interview with P-0340, it determined that it "does not have any further recommendations to add to the measures that were granted to the witness in the Trial Chamber's Decision of 30 November 2016."¹²
15. The Defence also takes note of the Application where Duty Counsel reported that P-0340 "REDACTED."¹³ Desirable does not equate to necessary.
16. The Defence argues that there have been no changed circumstances since the Prosecution's original application on 26 October 2016. This request is merely a personal request based on witness anxiety. No objectively justifiable risks have been explained that would outweigh Mr Ongwen's right to a public trial. Neither the Application nor VWU have "indicate[d] the existence of circumstances for which in-court testimony, in the absence of [...] [voice distortion] under Rule 87 of the Rules, creates or unduly increases an impermissible danger to any of the legitimate interests of witnesses protected under Article 68 of the Statute."¹⁴
17. The Defence avers that there are no changed circumstances and no objectifiable risks to P-0340 by testifying without voice distortion, and thus should be rejected by the Chamber.

V. RELIEF

18. The Defence does not object to:
 - a. Rule 74 assurances;
 - b. Limited recourse to private sessions as requested by Duty Counsel; and

¹¹ Email received from VWU by the Chamber, Parties and Participants on 7 September 2017 at 14h45 CET entitled "In-court protective measures for UGA-OTP-P-0340".

¹² *Ibid.*

¹³ Application, para. 8. [emphasis added]

¹⁴ ICC-02/04-01/15-612-Red, para. 8. (internal citations omitted)

c. [REDACTED].

19. The Defence opposes granting voice distortion for P-0340.

Respectfully submitted,



.....
Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 9th day of September, 2017

At Kampala, Uganda