

**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 the Joint Renewed Request for
Protective Measures for P-0097”, filed on 7 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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I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby responds to the "Joint Prosecution and Common Legal Representative of Victims' Request for Protective Measures for Witness P-0097"¹ ('Renewed Request').
2. The Defence sympathises with the Prosecution's and Common Legal Representative of Victims' concern for [REDACTED] abductees. Whilst the Defence does not believe that the Renewed Request meets the standard outlined by the Single Judge,² the Defence nonetheless does not object to the granting of the requested protective measure so long as the private sessions are kept at an absolute minimum.

II. CONFIDENTIALITY

3. Pursuant to Regulation 23 *bis*(2) of the Regulations of the Court, the Defence files this response as confidential. The Defence shall wait until after Trial Chamber IX ('Chamber') issues a decision to file the public redacted version.

III. BACKGROUND

4. On 26 October 2016, the Prosecution requested face and name distortion for P-0097 based on his alleged age during his abduction.³ 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.⁴ On 30 November 2016, the Single Judge rejected the request for face and name distortion for P-0097.⁵
5. On 31 August 2017, the Prosecution and Common Legal Representative for Victims filed the Renew Request.⁶

¹ ICC-02/04-01/15-966-Conf.

² ICC-02/04-01/15-497, para. 34. *See also* ICC-02/04-01/15-612-Red, paras 6-8 and 12.

³ ICC-02/04-01/15-578, para. 28-30. *See also* ICC-02/04-01/15-578-Conf-AnxA, PDF page 4, count 35.

⁴ ICC-02/04-01/15-590-Conf.

⁵ ICC-02/04-01/15-612-Conf, paras 31-32.

⁶ Renewed Request.

IV. SUBMISSIONS

A. Applicable Standard

6. 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.⁷

7. 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.⁸

B. The Defence Position on whether to Grant Protective Measures to P-0097

8. The Defence’s position, as stated above, is that it does not oppose face and name distortion for P-0097 even though it does not believe that the changes outlined in the Renewed Request meet the standard of review delineated by the Chamber.
9. The Defence noted the lack of clarity and specificity in the Prosecution’s original request for protective measures.⁹ In Response 590-Red, the Defence stated:

A request based upon groups like the Prosecution Application is not a case-by-case approach and should be rejected. Without a case-by-case analysis presented by the Prosecution, an assessment of whether the measures (a) address an objective risk and (b) are the least-restrictive and necessary cannot be undertaken. This assessment is further complicated by the Prosecution

⁷ ICC-02/04-01/15-612-Red, para. 8. (internal citations omitted)

⁸ *Ibid.*, para. 12. (internal citations omitted)

⁹ ICC-02/04-01/15-590-Conf, paras. 8-30.

upfront admission that “[m]ost of those witnesses currently face no acute security risk.” The Prosecution seeks to make out objective risks largely to intangible qualities of people. Such an argument merits – at the very least – a more lengthy explanation that the Prosecution has not given.¹⁰

10. Witness P-0097 would have known in October 2016 [REDACTED]. A proper assessment and detailed request, as the Defence demanded, would have contained this information. [REDACTED], and should have been included in the original request in October 2016. The fact that the witness [REDACTED]. Finally, the [REDACTED] is a risk and issue which should have been known to the Prosecution in October 2016. None of these are changed circumstances and do not meet the requirements defined by the Chamber.
11. The Defence highlights that the Renewed Request, while mentioning perceived risks by the witness, does not describe objectively justifiable risks. What the Renewed Request does highlight is that “[w]itness P-0097 experienced personal harm at a very young age as a consequence of his abduction into the LRA and, as a result, [REDACTED].”¹¹
12. The Defence concurs with the Prosecution’s assessment of the harm experienced by those who were abducted at a young age by the LRA, and with [REDACTED].
13. Again, these are issues which a detailed request would have included. The possible [REDACTED] associated with persons abducted at 9, 10, 11 or 12 is apparent to the Defence, and should have been apparent to the Prosecution in October 2016 and included in the October 2016 request.
14. Regardless, the Defence is of the opinion that the Renewed Request outlines [REDACTED] issues which should have been known at the time of the October 2016 request for protective measures. Had such issues been brought to the attention of the Defence then, it might not have argued against the protective measures for this particular witness due to the totality of his circumstances. The witness should not have to endure [REDACTED] due to the mistakes of the Prosecution’s October 2016 request.

¹⁰ ICC-02/04-01/15-590-Red, para. 23. (internal citations omitted)

¹¹ Renewed Request, para. 10.

15. The Defence does not object to the protective measures requested in the Renewed Request so long as there is limited recourse to private sessions.

C. Limited Recourse to Private Sessions

16. The Defence requests limited recourse to private sessions during P-0097's testimony. The Government of Uganda has provided assurances to the Court that P-0097 will not be prosecuted for any alleged crimes he may or may not have committed. The witness also falls outside the jurisdiction of the Court because of his alleged age. The Defence requests that private sessions be reserved only for instances where the witness's identity will be obvious to someone watching the trial.

V. RELIEF

17. The Defence does not oppose the proposed protective measures for P-0097 found in the Renewed Request so long as the private sessions are kept at an absolute minimum.

Respectfully submitted,



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Hon. Krispus Ayena Odongo
On behalf of Dominic Ongwen

Dated this 9th day of September, 2017
At Kampala, Uganda