

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: 20 March 2019

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 Redacted version of document ICC-02/04-01/15-740-Conf

**Request for Rule 74 Assurances for Witnesses P-0006, P-0097, P-0199, P-0275,
P-0314, P-0330, P-0352, P-0366, P-0374, and P-396**

Source: Office of Public Counsel for Victims

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

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I. INTRODUCTION

1. The Common Legal Representative¹ requests the Trial Chamber (the Chamber) to provide assurances in accordance with Rule 74 of the Rules of Procedure and Evidence (the “Rules”) to P-0006 (victim a/3074/10), P-0097 (victim a/02116/16), P-0199 (victim a/02106/16), P-0275 (victim a/01233/16), P-0314 (victim a/02100/16), P-0330 (victim a/02099/16), P-0352 (victim a/02120/16), P-0366 (victim a/02117/16), P-0374 (victim a/02111/16) and P-0396 (victim a/02103/16) (jointly the “dual status juvenile witnesses”). Said witnesses are dual status individuals represented by the Common Legal Representative.

2. The Common Legal Representative submits that the [REDACTED] justifies the need for providing assurance under Rule 74 (2) and (3) of the Rules. Moreover, the provision of said assurances will also facilitate proper elicitation of their evidence and shall eventually assist the Chamber in the ascertainment of the truth.

II. PROCEDURAL HISTORY

3. On 19 January 2017, the Prosecution informed the Chamber, the Defence, the Common Legal Representative and the Legal Representatives of Victims (jointly the “Counsel”), via email, of the fact that (i) several Prosecution’s witnesses, who were under the age of 18 at the time they were in the LRA (referred to as the “juvenile witnesses”) – will give potentially self-incriminating evidence; (ii) none of said

¹ See the “Decision on contested victims’ applications for participation, legal representation of victims and their procedural rights” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-350, 27 November 2015, p.19; the “Decision on issues concerning victims’ participation” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-369, 15 December 2015, pp. 10-11; the “Second decision on contested victims’ applications for participation and legal representation of victims” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/15-384, 24 December 2015, pp. 20-22, “Decision concerning 300 Victim Applications and the Deadline for Submitting Further Applications”, (Trial Chamber IX, Single Judge), No. ICC-02/04-01/15-543, 26 September 2016, para. 8 and p. 5, and the “Decision Concerning 610 Victim Applications (Registry Report ICC-02/04-01/15-544) and 1183 Victim Applications (Registry Report ICC-02/04-01/15-556)”, No. ICC-02/04-01/15-586, 04 November 2016, p. 8, paras. 9, 15 and 16.

juvenile witnesses is at risk of prosecution at the ICC, by virtue of article 26 of the Rome Statute which prevents the prosecution of persons who were under 18 at the time of the alleged crime; (iii) while there seems to be no prospect of the juvenile witnesses being prosecuted in Uganda for any crimes which might be alleged to have been committed while they were members of the LRA, [REDACTED]; and (iv) if said written undertaking is received, the Prosecution intends to treat the juvenile witnesses as not falling within the parameters of Rule 74 of the Rules.²

4. On 28 February 2017, the Prosecution informed Counsel, via email, that [REDACTED]. After agreement by Counsel, the Prosecution proceeded accordingly.³

5. On 8 March 2016, the Prosecution, via email, informed the Chamber, the Defence and Counsel that [REDACTED]. Thus, the Prosecution indicated that, in the circumstances, it will request for each of the juvenile witnesses to benefit from legal representation.⁴

III. CONFIDENTIALITY

10. Pursuant to regulation 23bis(2) of the Regulations of the Court, this submission is filed confidentially because it makes reference to information not available to the public. A public redacted version will be filed in due course.

IV. SUBMISSIONS

6. The Common Legal Representative submits that because of the nature of their testimony and the kind of details they will provide in relation to their period of

² See email sent by the Prosecution on 19 January 2017 at 17:35.

³ See email sent by the Prosecution on 27 February 2017 at 09:20. See also email sent by the Common Legal Representative on 28 February 2017 at 20:38

⁴ See email sent by the Prosecution on 08 March 2017 at 09:23.

captivity, the dual status juvenile witnesses may self-incriminate themselves when providing evidence in court.

7. The relevant provisions of the Ugandan Law provide in Part II Section 2 of the Children Act of 1997 that “[a] *child is a person below the age of eighteen years*”⁵. However, Part X Section 88 of the same Act states that “[t]he *minimum age of criminal responsibility shall be twelve years*”.⁶ Moreover, the Supreme Court of Uganda, in interpreting the provision of the Amnesty Act of 2000⁷ as to whether the latter is inconsistent with Uganda’s international law obligations in that it grants blanket amnesty, ruled that said Act does not grant amnesty for all crimes⁸. Therefore, the Uganda Geneva Conventions Act of 1964 still applies and Ugandan citizens may be prosecuted for crimes falling under said Act which includes crimes against humanity and war crimes.⁹

8. Consequently, the Common Legal Representative posits that there exists at least a theoretical possibility that testimony given by the dual status juvenile witnesses might be used against them in any subsequent criminal proceedings before Ugandan courts.

9. The Common Legal Representative has met the dual status juvenile witnesses in the field and, as recently as on 8 March 2017 at the premises of the Court, with P-0330 whose testimony is imminent. During these meetings, the issue of self-incrimination and explanation of the provisions of Rule 74 of the Rules was discussed in Acholi, the language the witnesses fully understand and speak. Thus,

⁵ See the Children Act 1997, Part II, Section 2, available at <http://www.ulii.org/ug/legislation/consolidated-act/59> (last consulted on 8 March 2017).

⁶ *Idem*, Part X, Section 88.

⁷ See the Amnesty Act 2000, available at <http://www.ulii.org/node/23788> (last consulted on 8 March 2017).

⁸ See *Uganda v. Thomas Kwoyelo*, Constitutional Appeal No. 01 of 2012, Supreme Court of Uganda, 8 April 2012, at page 34, available at <https://www.ijmonitor.org/2015/04/supreme-court-of-uganda-rules-on-the-application-of-the-amnesty-act/> (last consulted on 8 March 2017).

⁹ *Idem*, pages 65 and 66. See also the Geneva Conventions Act of 1964, available at <http://www.ulii.org/ug/legislation/consolidated-act/363> (last consulted on 8 March 2017).

the witnesses understand the implications of their testimony and the relevant provisions of the Rules. However, the Common Legal Representative will further discuss the matter with the concerned individuals in the imminence of their appearance before the Court.

10. While [REDACTED], assurances under Rule 74 of the Rules should still be provided to them, since this is the only available legal mean to close any jurisdictional gap concerning their testimonies.

11. The Common Legal Representative also submit that giving assurances under Rule 74 to the dual status juvenile witnesses will facilitate proper elicitation of their evidence and shall eventually assist the Chamber in the ascertainment of the truth.

V. CONCLUSION

12. For the foregoing reasons, the Common Legal Representative respectfully requests the Chamber to provide assurances to dual status juvenile witnesses P-0006, P-0097, P-0199, P-0275, P-0314, P-0330, P-0352, P-0366, P-0374, and P-0396 in accordance with Rule 74 (2) and (3) of the Rules.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 20th day of March 2019

At The Hague, The Netherlands