

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

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

Date: **12 December 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**

**Public Redacted Version of “Defence Request for Redactions to a Rule 68(2)(b)  
Statement”, filed on 6 December 2019**

**Source: Defence for Dominic Ongwen**

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

**The Office of the Prosecutor**

Fatou Bensouda, Prosecutor  
James Stewart, Deputy Prosecutor  
Benjamin Gumpert, QC

**Counsel for the Defence**

Krispus Ayena Odongo  
Chief Charles Achaleke Taku  
Beth Lyons

**Legal Representatives of the Victims**

Joseph Akwenyu Manoba  
Francisco Cox

**Common Legal Representative for Victims**

Paolina Massidda  
Jane Adong

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for Victims**

Paolina Massidda  
Caroline Walter  
Orchlon Narantsetseg

**States' Representatives**

**The Office of Public Counsel for the  
Defence**

Xavier-Jean Keita

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Peter Lewis

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**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations Other  
Section**

## I. INTRODUCTION

1. The Defence for Dominic Ongwen ('Defence') hereby notifies Trial Chamber IX, Prosecution and Legal Representatives of one Rule 68(2)(b) redaction requests from the Defence and Registry mission in September 2019. This request would be applied to the public redacted version of the statement and annexes.
2. Pursuant to ICC-02/04-01/15-1294, page 14, the Defence hereby files the proposed public redacted version of the statement and annexes to UGA-D26-P-0157 ('Witness' or 'D-0157').
3. Pursuant to Regulation 23 *bis*(1) of the Regulations of the Court, this filing is designated confidential as it contains information related to a witness for whom the Defence seeks redactions to its material. A public redacted version is filed concurrently.
4. Annexes A and B are designated confidential as the annexes contain an unredacted witness statement and annexes not yet known to the public with proposed redactions. Public redacted versions of the annexes shall be filed in the record of case after a decision has been rendered on this request.
5. The Defence incorporates by reference paragraphs 6-16 of the "Defence Application for In-Court Protective Measures, Special Measures and Rule 75 Notice", filed on 4 June 2018.<sup>1</sup>

## II. REDACTION REQUESTS

6. The Defence cannot find a compelling reason to redact any of the material submitted into evidence for UGA-OTP-P-0028. The witness has Amnesty and spoken about his experiences to the public on several occasions. As such, the Defence does not propose any redactions to his transcripts which have been submitted into evidence.
7. Witness D-0157 requested to have all identifying material redacted from the public and the Defence supports said request as it is justified.
8. The Witness describes actions which locals took in order to locate him shortly after the attack [REDACTED].<sup>2</sup> He was moved to [REDACTED] for protection purposes,<sup>3</sup> yet the residents of

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<sup>1</sup> ICC-02/04-01/15-1273-Conf.

<sup>2</sup> UGA-D26-0026-0757, para. 35.

the affected communities located him anyway.<sup>4</sup> For his own personal safety, the Witness [REDACTED].<sup>5</sup>

9. Since moving to his current location, the Witness has attempted to keep a low profile by engaging in modest work.<sup>6</sup> Persons from the affected communities actively sought him out and came to his current town.<sup>7</sup> Luckily, the Witness was apprised of the impending danger, fled his home and hid until the danger passed.<sup>8</sup>
10. The Witness admits that the threats have lessened over the years, **but have not stopped**.<sup>9</sup> During its investigations, the Defence spent a few months searching for the Witness, noting that the [REDACTED]. The Defence speculates that this movement is, at the least, partially related to his real fears of the continued harassment and attempted reprisal against the Witness.
11. The Defence argues that the redactions are justified based on objectively justifiable risks and are proportionate to the rights of the accused.<sup>10</sup> Real threats against the Witness have happened, most notably threats against him while [REDACTED].<sup>11</sup> He has moved locations in his current town because of real threats and attempts of acts of violence against him.<sup>12</sup>
12. Furthermore, failure to implement the redactions as requested by the Defence “unduly increases an impermissible danger to...the legitimate interests of [the] witness[] protected under Article 68 of the Statute...”<sup>13</sup> The Defence refers to its arguments above in paragraphs 8-11.
13. The Defence has shown objectively justifiable risks to the Witness should the redactions as requested not be implemented pursuant to settled case law and Article 68 of the Rome Statute. The Defence requests the Chamber to implement the redactions requested in Confidential Annexes A and B.

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<sup>3</sup> *Id.*, para. 34.

<sup>4</sup> *Id.*, para. 35.

<sup>5</sup> *Id.* See also Confidential Annex B, p. 5.

<sup>6</sup> *Id.*, para. 36.

<sup>7</sup> *Id.*, para. 37.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See ICC-02/04-01/15-612, para. 7 and ICC-02/04-01/15-1234, para. 8.

<sup>11</sup> UGA-D26-0026-0757, para. 35 and Confidential Annex B, p. 5.

<sup>12</sup> UGA-D26-0026-0757, para. 37.

<sup>13</sup> ICC-02/04-01/15-612, para. 8.

### III. RELIEF

14. The Defence respectfully requests Trial Chamber IX to approve the redaction requests to the witness statement and annexes of UGA-D26-P-0157 for the public redacted versions in the case.

Respectfully submitted,



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Hon. Krispus Ayena Odongo  
On behalf of Dominic Ongwen

Dated this 12<sup>th</sup> day of December, 2019