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

Date: 18 June 2020

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 the “Registry’s Submissions concerning the “Motion to rescind the in-court protection measures of witness UGA-OTP-P-0440”, filed by the Defence for Mr Dominic Ongwen on 12 May 2020, ICC-02/04-01/15-1735-Conf”, filed on 26 May 2020 [ICC-02/04-01/15-1738-Conf]

Source: Registry

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

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I. Introduction

1. Pursuant to the email from Trial Chamber IX (“Chamber”) received on 12 May 2020,¹ the Victims and Witnesses Unit (“VWU”) submits its views in relation to the “Motion to rescind the in-court protective measures of witness UGA-OTP-P-0440” filed by the Defence for Mr Dominic Ongwen (“Ongwen Defence”) on 12 May 2020.²

II. Classification

2. In accordance with regulation 23 *bis* (1) of the RoC, the present submissions are classified confidential as they contain protected witnesses’ information.

III. Background Information

3. On 29 November 2016, the Chamber issued its “Decision on the ‘Prosecution’s request for in-court protective measures” whereby it decided that “[c]onversly in the absence of any further information, the Single Judge rejects at this time, the Prosecution’s request for in-court protective measures [REDACTED]. This, is in any case, is without prejudice to a possible reconsideration of the matter if new or additional relevant information is brought to the Chamber’s attention in this regard”.³
4. [REDACTED], as part of the familiarisation process and for the purpose of in-court protection measures assessment, the VWU interviewed the witness and explained the process of in-court protection measures. In this interview, the witness informed the VWU that he was concerned for the safety and wellbeing of himself and his family [REDACTED].

¹ Email from the Chamber to the parties, participants and the VWU dated 12 May 2020 at 17:16.

² Defence for Mr Dominic Ongwen, “Motion to rescind the in-court protective measures of UGA-OTP-P-0440”, 12 May 2020, ICC-02/04-01/15-1735-Conf.

³ Trial Chamber IX, “Decision on the ‘Prosecution’s request for in-court protective measures””, 29 November 2016, ICC-02/04-01/15-612-Red, [REDACTED].

5. On the same day, following this interview, the VWU transmitted the assessment report to the Chamber *via* email, where the parties and participants are in copy. In this report, the VWU recommended that the Chamber consider granting the witness in-court protection measures in the form of voice and image distortion, use of pseudonyms, use of closed and/or private session when required, and redaction of any identifying information from any record that may be disseminated to the public.⁴
6. [REDACTED].⁵
7. [REDACTED].⁶ [REDACTED].
8. [REDACTED].⁷ [REDACTED].⁸
9. On 31 January 2017, the VWU transmitted its assessment of the situation to the Chamber. In its assessments, the VWU considered that [REDACTED].⁹
10. On 31 January 2017, the Chamber issued its “Decision on Further Requests [REDACTED] Protective Measures [REDACTED]” (“Further Decision”) in which it stated that, *inter alia*, “[A]s for the VWU’s renewed recommendation, the Chamber is persuaded at this point that [REDACTED] identity from the public. It is noted in this regard that, [REDACTED] was previously proposed by the VWU, the Prosecution supported this measure and the Defence did not oppose it. In addition to the protective measures previously granted, the Chamber also grants [REDACTED]’”¹⁰

⁴ Email from the VWU to the Chamber dated 27 January 2017 at 15:20.

⁵ Email from the Chamber to the parties, participants and the VWU dated 30 January 2017 at 10:14

⁶ Email from the Chamber to the parties, participants and the VWU dated 31 January 2017 at 09:37.

⁷ [REDACTED].

⁸ Email from the Chamber to the parties, participants and the VWU dated 31 January 2017 at 09:37.

⁹ Email from the VWU to the Chamber, parties and participants dated 31 January 2017 at 11:02.

¹⁰ Email from the Chamber to the parties, participants and the VWU dated 31 January 2017 at 14:08.

11. [REDACTED].¹¹ [REDACTED].¹² [REDACTED].¹³

12. The witness completed his testimony [REDACTED]. Subsequently, after conducting the necessary post-testimony assessment, [REDACTED].

13. On 12 May 2020, the Ongwen Defence submitted a motion requesting the Chamber to lift the in-court protection measures afforded to P-440 for the measures have never been warranted by an “objectively justifiable risk” to his safety, neither are they warranted now.

IV. Submissions

A. General Information

14. [REDACTED].

15. Based on the information collected, the VWU conducts an analysis to assess the level of risk faced by the witness. The outcome of this assessment assists in determining which procedural protective measures the VWU considers most adequately assist in reducing the risk associated with their testimony.

16. The VWU [REDACTED] assess whether there is any change in risks levels. After the witness has concluded his testimony, [REDACTED].

17. [REDACTED]. Subsequent to this and in the event a threat materialises the VWU is seized by the calling party to assess the situation and implement the necessary measures. The established VWU safeguards provide ample information to properly monitor the security situation of the witnesses in case an incident arises.

¹¹ Email from the Prosecution to the Chamber, Defence, the participants and the VWU dated 31 January 2017 at 19:21.

¹² Email from the Chamber to the parties, participants and the VWU dated 1 February 2017 at 09:04.

¹³ Email from the Prosecution to the Chamber, Defence, the participants and the VWU dated 1 February 2017 at 10:26.

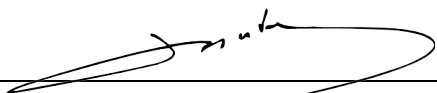
18. The VWU provides the below assessment in order to determine whether these protection measures are still necessary based on the reasons supporting the recommended measures, the monitoring of their security situation and further contacts with the witnesses.

B. VWU's Assessment

19. The VWU refers to its in-court protection measures report sent on 27 January 2017, detailing the information it received from the witness regarding the possible retaliation. Prior to meeting the witness, [REDACTED].
20. When the VWU met with him [REDACTED], he reported concerns for the safety and wellbeing of himself and his family [REDACTED].¹⁴ The VWU considered these concerns as valid [REDACTED].
21. [REDACTED].
22. It is the VWU's opinion that the recommended in-court protection measures were and are still essential considering [REDACTED].
23. [REDACTED], the VWU has not received any report of any harm befalling him or his dependents that can be attributed to his testimony before the Court. The VWU considers that this may be consequent to the stringent in-court protection measures which the Chamber granted for P-440 [REDACTED].
24. The VWU [REDACTED]. Therefore, it is the VWU's view that any rescission of the granted in-court protection measures has the potential of increasing the risk to the witness and his family.
25. Consequently, the VWU considers that these in-court protection measures should be maintained to ensure that the witness or his dependents do not suffer harm as a result of his testimony before the Court.

¹⁴ Email from the VWU to the Chamber dated 27 January 2017 at 15:20.

26. [REDACTED].



Marc Dubuisson, Director Division of Judicial Services

on behalf of Peter Lewis, Registrar

Dated this 18 June 2020

At The Hague, the Netherlands