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

Date: 09 August 2017

**TRIAL CHAMBER IX**

**Before: Judge Bertram Schmitt, Single Judge**

**SITUATION IN UGANDA**

**IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN***

**Public redacted version of**

**Decision on Prosecution's Request for Variation of Protective Measures for Two Witnesses**

To be notified, in accordance with Regulation 31 of the Regulations of the Court, to:

**The Office of the Prosecutor**

Fatou Bensouda  
James Stewart  
Benjamin Gumpert

**Counsel for the Defence**

Krispus Ayena Odongo

**Legal Representatives of the Victims**

Joseph Akwenyu Manoba  
Francisco Cox  
Paolina Massidda

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparation**

**The Office of Public Counsel for  
Victims**

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

**States Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

Herman von Hebel

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge' and 'Chamber', respectively) of the International Criminal Court ('Court') in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 68(1) of the Rome Statute, Rule 87 of the Rules of Procedures and Evidence ('Rules') and Regulation 42 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Prosecution's Request for Variation of Protective Measures for Two Witnesses'.

1. On 25 July 2017, the Office of the Prosecutor ('Prosecution') filed a request for variation of the protective measures for two of its witnesses ('Request').<sup>1</sup> For the first witness, P-189, it requests that the previously granted protective measures<sup>2</sup> are lifted, since the original reason for granting these measures, [REDACTED], changed. Should questions arise during P-189's testimony which affect the national security interests of the Ugandan government, the Prosecution requests recourse to private session.<sup>3</sup>
2. For the second witness, P-245, the Prosecution requests face distortion and the use of a pseudonym.<sup>4</sup> The Prosecution previously requested protective measures for P-245,<sup>5</sup> which were rejected by the Chamber.<sup>6</sup> In its previous ruling, the Single Judge denied protective measures for P-245 since the request was 'based exclusively on the witness's young age at the time of abduction and a perceived general fear of retaliation'.<sup>7</sup>

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<sup>1</sup> Prosecution's application for variation of protective measures for P-0189 and P-0245, ICC-02/04-01/15-928-Conf, notified on 26 July 2017.

<sup>2</sup> Public redacted version of Decision on the "Prosecution's application for in-court protective and special measures" ('Protective Measures Decision'), 29 November 2016, ICC-02/04-01/15-612-Red, filed on 30 October 2016, paras 34-35.

<sup>3</sup> Request, ICC-02/04-01/15-928-Conf, paras 3-8.

<sup>4</sup> Request, ICC-02/04-01/15-928-Conf, para. 15.

<sup>5</sup> Prosecution's application for in-court protective and special measures, 26 October 2016, ICC-02/04-01/15-578-Red and confidential Annex A to the Prosecution's application for in-court protective and special measures, ICC-02/04-01/15-578-Conf-AnxA.

<sup>6</sup> Protective Measures Decision, ICC-02/04-01/15-612-Red, page 29.

<sup>7</sup> Protective Measures Decision. ICC-02/04-01/15-612-Red, para. 31.

3. The Prosecution submits that there is a change of circumstances which warrants the authorisation of protective measures.<sup>8</sup> [REDACTED].<sup>9</sup> The Prosecution argues that this change in the circumstances justifies protective measures since [REDACTED].<sup>10</sup> The Prosecution further states that, [REDACTED].<sup>11</sup> [REDACTED].<sup>12</sup>
4. On 7 August 2017, the defence for Mr Ongwen ('Defence') filed its response ('Response').<sup>13</sup> It does not oppose the Request, but clarifies that [REDACTED].<sup>14</sup>
5. The Single Judge recalls the applicable law on protective measures as stated in previous decisions.<sup>15</sup> In respect of P-189, the Single Judge finds that the change in the witness's circumstance justifies lifting the previously granted protective measures. He further notes that the witness consents to providing his testimony in public.<sup>16</sup> Should questions arise during his testimony which may affect the national security interests of the Ugandan government, the Single Judge will allow limited recourse to private session.
6. With regard to P-245 – and noting that the Defence does not object to the proposal – the Single Judge finds that a change in P-245's circumstances justify protective measures. Accordingly, in accordance with Rule 87 of the Rules, the Single Judge grants face distortion and the use of a pseudonym for P-245. In respect of the argument put forward by the Defence, that these measures should be reviewed once [REDACTED],<sup>17</sup> the Single Judge notes that any future change

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<sup>8</sup> Request, ICC-02/04-01/15-928-Conf, para. 11.

<sup>9</sup> Request, ICC-02/04-01/15-928-Conf, para. 11.

<sup>10</sup> Request, ICC-02/04-01/15-928-Conf, para. 11.

<sup>11</sup> Request, ICC-02/04-01/15-928-Conf, para. 13.

<sup>12</sup> Request, ICC-02/04-01/15-928-Conf, para. 12.

<sup>13</sup> Defence Response to the Prosecution's Request to vary Protective Measures, ICC-02/04-01/15-935-Conf.

<sup>14</sup> Response, ICC-02/04-01/15-935-Conf, paras 6-7.

<sup>15</sup> Protective Measures Decision, ICC-02/04-01/15-612-Red, paras. 6-8.

<sup>16</sup> Request, ICC-02/04-01/15-928-Conf, para. 6.

<sup>17</sup> Response, ICC-02/04-01/15-935-Conf, para. 8.

ought to be dealt with under the appropriate framework of Regulation 42 of the Regulations

**FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY**

**GRANTS** the Request;

**ORDERS** the lifting of the protective measures for P-189 and grants limited recourse to private session where Uganda's national security interests are implicated; and

**ORDERS** that P-245 be referred, in his capacity as witness in these proceedings, only by his pseudonym in public filings and public sessions of the trial, and provide his testimony before the Chamber with face distortion *vis-à-vis* the public.

Done in both English and French, the English version being authoritative.



**Judge Bertram Schmitt**  
**Single Judge**

Dated 09 August 2017

At The Hague, The Netherlands