



Original: English

No.: ICC-02/04-01/15
Date: 29 November 2016

TRIAL CHAMBER IX

Before: Judge Bertram Schmitt, Single Judge

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

Public Redacted

Decision on the 'Prosecution's application for in-court protective and special measures'

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

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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 Articles 64(6)(e) and 68(1) and (2) of the Rome Statute ('Statute') and Rules 87 and 88 of the Rules of Procedure and Evidence ('Rules'), issues the following Decision on the 'Prosecution's application for in-court protective and special measures'.

1. On 13 July 2016, in the Initial Directions on the Conduct of the Proceedings, the Single Judge, acting as Presiding Judge of the Chamber, indicated the Chamber's intention to rule on applications for in-court protective measures in advance of trial whenever possible, with any such advance rulings subject to further information being provided by the Victims and Witnesses Unit ('VWU').¹ He therefore ordered the Office of the Prosecutor ('Prosecution') to file by 28 October 2016 any application with respect to its witnesses 'for whom it is reasonably foreseeable that protective or special measures are required'.²
2. On 26 October 2016, the Prosecution filed the 'Prosecution's application for in-court protective and special measures' ('Application'), whereby it requests protective measures under Rule 87 of the Rules for a total of 48 witnesses and special measures under Rule 88 of the Rules intended to provide psychological support to a total of 44 witnesses.³
3. On 11 November 2016,⁴ the Chamber received the responses to the Application from the Defence of Mr Ongwen⁵ and from the common legal representative of a

¹ ICC-02/04-01/15-497, para. 34.

² ICC-02/04-01/15-497, para. 35.

³ ICC-02/04-01/15-578-Conf and its confidential annex. A public redacted version, dated 11 November 2016, is also available (ICC-02/04-01/15-578-Red).

⁴ By email dated 27 October 2016, the Chamber set at 11 November 2016 the time limit for any response to the Application.

⁵ ICC-02/04-01/15-590-Conf. A public redacted version was filed on the same day (ICC-02/04-01/15-590-Red) ('Defence Response').

number of victims participating in the case,⁶ including 12 witnesses subject to the Application.⁷ The legal representatives of the other participating victims, including seven witnesses subject to the Application,⁸ did not file a response.

I. IN-COURT PROTECTIVE MEASURES

4. In the Application, the Prosecution requests that the identity of a number of witnesses in the trial be withheld from the public and that this be enforced through the in-court protective measures of use of a pseudonym and face (and for two witnesses also voice) distortion during the testimony of the witnesses concerned.
5. The Single Judge emphasises, at the outset, that the publicity of proceedings is a fundamental right of the accused and a necessary component of a fair and transparent trial.⁹ At the same time, this general principle is not absolute and is subject to certain exceptions, one of which is indeed the protection of victims and witnesses.
6. Article 68(1) of the Statute requires the Chamber to ‘take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses’. Importantly, protection of victims and witnesses is not limited to their physical safety and security, but extends to their psychological well-being, privacy and dignity. Article 68(2) provides an express exception to the general principle of publicity in order to protect, *inter alia*, victims and witnesses. In particular, it authorises the Chamber to ‘conduct any part of the proceedings *in camera* or allow the presentation of evidence by electronic or other special means’. According to the same provision, the implementation of

⁶ ICC-02/04-01/15-589 (‘CLR V Response’).

⁷ Witnesses P-6, P-97, P-119, P-249, P-250, P-275, P-314, P-330, P-352, P-366, P-374 and P-396.

⁸ Witnesses P-24, P-119, P-187, P-252, P-269, P-280 and P-286.

⁹ Articles 64(7) and 67(1) of the Statute.

these measures is presumed warranted 'in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court'.

7. Rule 87 of the Rules provides for the procedure for the request and approval of protective measures based on Article 68(1) and (2) of the Statute, and specifies that measures to protect the identity of a victim or witness from the public may include, *inter alia*, that: (i) the participants in the proceedings be prohibited from disclosing to third parties the identity of a victim or a witness or any other identifying information; (ii) pseudonyms be used for a victim or a witness; (iii) testimony be provided with technical alteration of pictures or voice and/or by video link; and (iv) part of the proceedings be conducted in private or closed session.
8. 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.¹⁰ While the Single Judge understands that the concept of 'risk' necessarily involves a certain level of speculation and prediction,¹¹ 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.¹²

¹⁰ See also Trial Chamber VII, Decision on the Prosecution Request for In-Court Protective Measures, 28 September 2015, ICC-01/05-01/13-1306, para. 3.

¹¹ Similarly, on the notion of 'risk' within the meaning of Article 56 of the Statute, see 'Decision on Request to Admit Evidence Preserved Under Article 56 of the Statute', ICC-02/04-01/15-520, para. 9.

¹² The understanding that the relevant protected interests go beyond physical security is also evidenced, in addition to the explicit language of Article 68(1) of the Statute, by the text of Article 68(2), which establishes a presumption in favour of protective measures for victims of sexual violence and child victims on the basis of such circumstances alone, which ordinarily do not concern the witnesses' security, but their dignity, privacy and psychological well-being.

9. This need for protective measures must be assessed on a case-by-case basis. This entails consideration of the specific circumstances of each of the witnesses concerned. However, more than one witness may share, in full or in part, these relevant circumstances. The Chamber may thus identify factual circumstances in principle warranting the provision of protective measures for specific categories of witnesses. Unless there are other circumstances warranting further differentiation, the protective measures can then be applied for the witnesses falling into the relevant category. The Defence argument that the Application is deficient because witnesses are grouped on the basis of shared circumstances and should be rejected as this 'is not a case-by-case approach'¹³ is excessively formalistic and unpersuasive. The fact that the Prosecution elected to make its submissions by grouping the witnesses concerned in light of shared characteristics does not make such submissions – and the Chamber's analysis – any less 'case-by-case'.
10. In this regard, the Single Judge also notes the Defence argument that the Prosecution bears the burden of proof to justify in-court protective measures for witnesses as they constitute exceptions to the rights of the accused to a public trial and to witnesses testifying in open session with their identities disclosed to the public.¹⁴ However, independently from the burden of any moving party to sufficiently substantiate any motion to the Chamber, the Single Judge emphasises that the safeguarding of the legitimate protected interests of witnesses, victims and other persons otherwise at risk on account of the testimony of a witness is a duty placed on the Court as a whole, including on the Chamber.
11. In the present decision, the Single Judge provides an advance ruling on the in-court protective measures under Rule 87 of the Rules requested in the

¹³ Defence Response, ICC-02/04-01/15-590-Red, para. 23.

¹⁴ Defence Response, ICC-02/04-01/15-590-Red, para. 21. See also para. 29.

Application. As already indicated in the Initial Directions on the Conduct of the Proceedings, '[a]dvance rulings give more certainty to upcoming witnesses on what to expect during court proceedings, reduce the need for protective measures litigation during trial, and provide sufficient time for a second motion to be filed where protective measures may be warranted if/when additional supporting information subsequently becomes available'.¹⁵ More specifically, in the present decision, the Single Judge will dispose of the Application in light of the information currently in the Chamber's possession. Nonetheless, and as submitted by all participants,¹⁶ the Single Judge clarifies that these advance rulings are without prejudice to their reconsideration at a later time should any such reconsideration be warranted.

12. In particular, also in light of the text of Rule 87(1) of the Rules, any in-court protective measure granted by the present decision is any case subject to: (i) the concerned witness confirming the desire for or consenting to in-court protective measures;¹⁷ (ii) the VWU – which by design is not yet involved at this point in time and will only be at a time closer to each witness's appearance at trial¹⁸ – supporting the need for these measures;¹⁹ and (iii) the absence of any further information made available to the Chamber in the meantime²⁰ which would negate the basis on which such measures are granted in the present decision. Conversely, any rejection of requests for protective measures in the present decision is without prejudice to the Chamber, on its own motion or upon

¹⁵ ICC-02/04-01/15-497, para. 34.

¹⁶ Application, ICC-02/04-01/15-578-Red, paras 56-60; Defence Response, ICC-02/04-01/15-590-Red, paras 8-10; CLRV Response, ICC-02/04-01/15-589, para. 28.

¹⁷ Rule 87(1) of the Rules, *inter alia*, provides that '[t]he Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure'.

¹⁸ See Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial, 22 July 2016, ICC-02/04-01/15-504-Anx1.

¹⁹ Rule 87(1) of the Rules also mandates that the Chamber's orders for protective measures be taken 'after having consulted with the Victims and Witnesses Unit, as appropriate'.

²⁰ The participants are expected to bring to the attention of the Chamber any new or additional relevant information.

request,²¹ reconsidering the need for an order under Rule 87 of the Rules should new or additional information be made available to it at a later stage.

13. In the Application, the Prosecution requests in-court protective measures, in the form of use of a pseudonym and face distortion during testimony for a total of 48 witnesses – as well as voice distortion for two of these witnesses (Witnesses P-6 and P-269).²² The Single Judge observes that the requested protective measures exclusively concern the withholding of the witnesses' identity from the public and that these measures would have no impact on the Defence's ability to question the witnesses at trial. Furthermore, the impact on the public nature of the proceedings ensuing from these measures would in any case be limited because, as submitted by the Prosecution,²³ even when the identities of the witnesses would not be known to the public, most of their testimony could in any case be given in public session.²⁴
14. More specifically, the Prosecution requests in-court protective measures for:
- (i) two witnesses on the ground that they were victims of sexual violence (Witnesses P-187 and P-269);
 - (ii) seven witnesses on the ground that they were victims of sexual violence and were also victimised as children (Witnesses P-6, P-199, P-351, P-352, P-366, P-374 and P-396);

²¹ Rule 87(1) of the Rules clarifies that motions for protective measures may be filed by the Prosecution and the Defence as well as by the witness or victim concerned or his or her legal representative.

²² Application, ICC-02/04-01/15-578-Red, paras 21 and 36.

²³ Application, ICC-02/04-01/15-578-Red, para. 54.

²⁴ The Single Judge notes that the Prosecution also refers to its intention to request orally at the time of the testimony targeted private or closed session for limited portions of some witnesses' testimony, in particular when the questioning may reveal the witnesses' identity (for witnesses whose identity is withheld from the public) or will address facts which are particularly private or sensitive (Application, ICC-02/04-01/15-578-Red, paras 22-24). The Defence submits that 'it is already a practice of trial chambers that where it can be anticipated that a question may reveal a protected "witness's name or other identifying information" that a closed or private session is adopted', but contests the logic of having in-court protective measures, such as pseudonym and face distortion, and at the same time address private or sensitive matter in private or closed session (Defence Response, ICC-02/04-01/15-590-Red, paras 38-39). With the exception of Witness P-200 (see below para. 44), the Single Judge does not consider it necessary to address in the present decision the issue of whether private or closed sessions are warranted for questioning certain witnesses on matters other than those that may disclose their identity or be otherwise identifying.

- (iii) 34 witnesses on the ground that they were victimised as children (Witnesses P-16, P-18, P-19, P-54, P-70, P-85, P-97, P-105, P-119, P-138, P-142, P-144, P-145, P-146, P-205, P-209, P-224, P-231, P-233, P-245, P-250, P-252, P-258, P-264, P-275, P-307, P-309, P-314, P-330, P-340, P-372, P-379, P-406 and P-410);
- (iv) two witnesses on account of their professional circumstances (Witnesses P-189 and P-403); and
- (v) three witnesses on account of other personal circumstances (Witnesses P-24, P-200 and P-249).

A. Witnesses for whom protective measures are requested in whole or in part on the ground that they were victims of sexual violence

15. The Prosecution intends to call ten witnesses to testify at trial about sexual violence and gender-based crimes perpetrated upon them by members of the Lord's Resistance Army ('LRA'). In the Application, it requests that for nine of these witnesses in-court protective measures be ordered in the form of withholding of their identity from the public by the use of a pseudonym and conduct of the testimony with face distortion.
16. As recalled above, in accordance with Article 68(2) of the Statute, protective measures which constitute exceptions to the principle of publicity shall be implemented in the case of a victim of sexual violence unless otherwise ordered by the Court. In other words, the Statute provides a presumption that protection of the legitimate interests of victims of sexual violence, due to the inherent nature of such crimes and the regrettable but persisting associated stigma, constitutes in and of itself a proportionate and justified exception to the principle of publicity of the proceedings.²⁵ This presumption is however not absolute as

²⁵ In this regard, see also ICTY, Trial Chamber, *Prosecutor v. Duško Tadić*, Decision on the Prosecutor's motion requesting protective measures for victims and witnesses, IT-94-1-T, 10 August 1995, para. 46 (It has been noted

the Chamber, 'having regard to all the circumstances, particularly the views of the victim or witness', may still order otherwise.

17. With respect to these nine witnesses, the Defence appears not to object to the measures requested for Witnesses P-6 and P-269, but submits that with respect to the remaining seven witnesses 'the Prosecution does not explain why targeted closed sessions are not appropriate'.²⁶ At the same time, it however submits that, given that the Prosecution proposed unredacted accounts of sexual violence in the transcripts of the testimonies of seven witnesses taken under Article 56 of the Statute, 'the Prosecution cannot argue that episodes of alleged sexual violence should be kept in closed or private session'.²⁷
18. The Single Judge recalls that, in the present case, seven witnesses who testified, *inter alia*, about sexual violence have already been accorded the protective measure of having their identities withheld from public disclosure – in fact, their names are expunged from the public version of the charges against Dominic Ongwen and replaced with pseudonyms,²⁸ and their identities or otherwise identifying information are redacted in the public records of their testimonies.²⁹ The Prosecution and the Defence have both agreed to make public the content of the testimonies, including the details of the episodes of sexual violence, and to maintain the withholding of the witnesses' identities from the public.³⁰ The

that rape and sexual assault often have particularly devastating consequences which, in certain instances, may have a permanent detrimental impact on the victim. [...] It has been noted further that testifying about the event is often difficult, particularly in public, and can result in rejection by the victim's family and community. [...] In addition, traditional court practice and procedures have been known to exacerbate the victim's ordeal during trial. Women who have been raped and have sought justice in the legal system commonly compare this experience to being raped a second time.')

²⁶ Defence Response, ICC-02/04-01/15-590-Red, para. 34. The Defence makes this argument following the Prosecution's submission that it will in any case seek private sessions to discuss the alleged sexual violence.

²⁷ Defence Response, ICC-02/04-01/15-590-Red, para. 44.

²⁸ Decision on the confirmation of charges against Dominic Ongwen, ICC-02/04-01/15-422-Red, confirmed charges, pages 71-101, paras 66-117 and Counts 50 to 60.

²⁹ ICC-02/04-01/15-T-8-Red-ENG, ICC-02/04-01/15-T-9-Red-ENG, ICC-02/04-01/15-T-10-Red-ENG, ICC-02/04-01/15-T-11-Red-ENG, ICC-02/04-01/15-T-13-Red-ENG, ICC-02/04-01/15-T-14-Red-ENG, ICC-02/04-01/15-T-16-Red-ENG, ICC-02/04-01/15-T-17-Red-ENG.

³⁰ See Prosecution's consolidated filing of proposed redactions to the transcripts of Article 56 witnesses' testimonies with confidential Annexes 1 to 12 (ICC-02/04-01/15-547), ICC-02/04-01/15-567 and its confidential

Single Judge has agreed with this proposal.³¹ A similar approach may, in principle, be adopted also with respect to the other nine victims of sexual violence who are yet to testify and who are subject to the Application.³²

19. In relation to these nine witnesses, the Single Judge in fact considers that, together with the shared characteristics of being victims of sexual violence, a number of other circumstances exist that are relevant to the decision on whether to order 'otherwise' within the meaning of Article 68(2) of the Statute.
20. In particular, the Single Judge notes that seven of these nine witnesses (Witnesses P-6, P-199, P-351, P-352, P-366, P-374 and P-396) report that they were abducted and subjected to sexual violence when they were children, which adds to their, already presumed, vulnerability as victims of sexual crimes. In addition, Witnesses P-269, P-351, P-352 and P-366 are expected to testify also about being forced to directly kill civilians which, together with being a traumatic experience in itself, may, if the witnesses' identity is publicly revealed, likely result in further stigmatisation from the communities to which they have returned after captivity. In this regard, the Single Judge notes that Witness P-396 has already reported stigmatisation on account of her association with the LRA. Witness P-6, in addition to reporting having been abducted by the LRA at a young age and having experienced rapes (as a result of which [REDACTED]) by an LRA member to whom she was forcibly 'married', also reports that her [REDACTED]. Witness P-269, who reports having been abducted and distributed as a forced 'wife' by the LRA, has indicated that [REDACTED]

annexes, and Defence Submissions on Proposed Redactions to the Article 56 Transcripts, 20 October 2016, ICC-02/04-01/15-570 and its two confidential annexes.

³¹ See Order to the Registry to File Public Redacted Versions of the Transcripts of Testimonies Obtained under Article 56 of the Statute, 4 November 2016, ICC-02/04-01/15-584-Red.

³² The Single Judge in fact does not see the need at this point in time to envisage discussion of episodes of sexual violence in closed session if the witness's identity is not revealed to the public and the details of such episodes are not in themselves identifying. These matters are however better addressed in the course of the trial itself.

██████████. Also, the Single Judge has not identified any circumstance which would speak against the envisaged protective measures for the nine witnesses.

21. In light of the available information, the Single Judge is of the view that the nature of the crimes suffered, compounded by the individual circumstances of the witnesses concerned and the absence of circumstances otherwise negating the basis for the requested protective measures, make it appropriate that the identity of Witnesses P-6, P-187, P-199, P-269, P-351, P-352, P-366, P-374 and P-396 be withheld from the public. Accordingly, the Single Judge orders that they be referred in public sessions of the trial and in public filings only by their pseudonyms and that their testimony be given with face distortion. In addition, in order to withhold the identity of Witnesses P-6 and P-269 also from their own families, the measure of voice distortion during their testimony at trial shall also be implemented as requested by the Prosecution.
22. The Single Judge recalls that the need for these measures may be reconsidered at a later stage. Article 68(2) of the Statute expressly states that the Chamber may order that victims of sexual violence testify fully in open session having regard to all circumstances and in particular the views of the victims themselves. This is particularly important in this case as the in-court protective measures are taken with a view to protecting primarily the witnesses' state of mind and dignity. The implementation of these measures is therefore subject to each witness explicitly confirming the desire to conceal their identities to the public. The VWU and the legal representatives of these witnesses³³ shall ensure that the witnesses are properly informed of the possibility to testify publicly – with their identity

³³ The Single Judge observes that the nine witnesses concerned are all also victims participating in the case. Witnesses P-6, P-199, P-351, P-352, P-366, P-374 and P-396 are represented by Paolina Massidda; and Witnesses P-187 and P-269 by Joseph Manoba and Francisco Cox.

revealed – and that they are aware of all possible beneficial and adverse consequences that such public testimony could bring.

B. Witnesses for whom protective measures are requested on the ground that they were victimised as children

23. The Prosecution requests protective measures, in the form of withholding identity from the public and face alteration during their testimony, for 34 witnesses on the grounds that they were victimised by the LRA before the age of 18, and that they were victims of crimes – typically abduction or being forced to participate in atrocities³⁴ – at a young age.³⁵ According to the Prosecution, there are objectively justifiable risks to their psychological well-being, dignity, and privacy which call for special protection.³⁶ The Prosecution submits that its decision to request that the identities of these witnesses be protected from public disclosure has been taken ‘[a]fter careful consideration and internal consultations, including with its Gender and Children Unit (GCU)’.³⁷
24. In this context, it is opportune to clarify, at first, that the presumption in favour of an exception to the principle of publicity stipulated in Article 68(2) of the Statute is applicable to children who appear as witnesses before the Court, and not more broadly to all witnesses who testify to facts which occurred when they were children. Therefore, while the Single Judge acknowledges that victimisation at a young age is a factor of vulnerability even of adult witnesses, the applicable regime for protective measures is the general one which requires a case-by-case determination of the existence of an objectively justifiable risk to any legitimate interest protected under Article 68(1) of the Statute.

³⁴ The particular circumstance of those witnesses who report having been victims of sexual violence has been considered separately above.

³⁵ Application, ICC-02/04-01/15-578-Red, para. 28.

³⁶ Application, ICC-02/04-01/15-578-Red, para. 28.

³⁷ Application, ICC-02/04-01/15-578-Red, para. 28.

25. The Single Judge is sympathetic to the arguments that the witnesses concerned may face further re-traumatisation in having to recount their painful experiences again when returning to their community after their public testimony before the Court.³⁸ At the same time, it must be recognised that this is a not an unknown dynamic in criminal proceedings, in particular before this Court in which victims would regularly testify about heinous crimes which they have experienced. It is also true that victimisation suffered by witnesses during their formative years makes them particularly vulnerable, but in the Single Judge's view this is not sufficient, in and of itself, to grant in-court protective measures. It is therefore necessary to examine the question whether there other relevant factors exist.
26. The Single Judge notes that the Prosecution identifies as a circumstance of relevance the fact that a witness is personally known by Mr Ongwen.³⁹ Nonetheless, without further explanation on the part of the Prosecution, the Single Judge considers that the fact that Mr Ongwen personally knows certain witnesses, some of whom served under his command, is irrelevant to the question of whether it is warranted that the witnesses' identities be withheld from the public.
27. Conversely, the Single Judge considers that a concrete risk of considerable stigmatisation from the communities to which witnesses returned after captivity with the LRA justifies that the identities of a number of witnesses, who are already vulnerable on account of their victimisation at a young age, be concealed to the public. This is the case for witnesses who report already experiencing

³⁸ In this regard, the Prosecution's argument is that 'testifying will force these witnesses to recount painful facts in court, an experience which may cause them discomfort or even distress. Withholding their identities from the public will at least allow them to avoid recounting their experiences again (or facing questions, remarks, condolences, or even derision or abuse) to members of the public, friends, colleagues, or even family members, who learn about those experiences as a result of the witnesses' testimony.' (Application, ICC-02/04-01/15-578-Red, para. 29).

³⁹ This circumstance is referred to with respect to Witnesses P-54, P-97, P-105, P-119, P-138, P-189, P-231, P-275 and P-330.

stigmatisation as former LRA members by their communities (Witnesses P-18, P-145, P-264, P-307 and P-410) with the tangible risk of this stigmatisation radicalising, heightening or extending in scope, or when such stigmatisation is likely to arise, and be of considerable degree, as the witnesses are expected to testify about having directly committed, or participated in the commission of crimes against civilians from the communities to which they returned after captivity (Witnesses P-16, P-70, P-85, P-119, P-142, P-144, P-146, P-205, P-209, P-233, P-250, P-252, P-258, P-309, P-314, P-340, P-372, P-379 and P-406, as well as Witnesses P-54, P-105, P-138, P-231, P-275 and P-330⁴⁰).

28. The Single Judge is of the view that these witnesses, who were abducted and victimised as children and for whom there exists a concrete risks of (further) community stigmatisation as former LRA members in light of their expected testimony at trial, in-court protective measures in the form of the prevention of public disclosure of their identities appear, at this point in time, justified, proportionate and adequate for the protection of the witnesses under Article 68 of the Statute. As the Single Judge is of the view that this is sufficient to grant protective measures for the witnesses concerned, it is unnecessary to provide additional differentiation on account of their individual experiences which may further militate in favour of these measures. At the same time, and also in light of Rule 87 of the Rules, the need for these protective measures may be reconsidered at a later stage following discussion with the witnesses themselves. In particular, the VWU – and, if applicable, also the witnesses’ legal representatives⁴¹ – shall discuss with the witnesses concerned the possibility that

⁴⁰ The Single Judge notes that for these six witnesses the Prosecution does not explicitly refer to their participation in crimes/attacks. Nonetheless, the information provided by these witnesses in their statements – which are available to the Single Judge – suggests that also these witnesses are likely to testify about their participation in crimes against civilians. Given the Chamber’s own responsibility to provide for protective measures when warranted (see above para. 10), the Single Judge does not consider dispositive the absence of mention of these relevant facts in the Application or its annex.

⁴¹ Witnesses P-250 and P-314 are represented by the common legal representative of victims, Paolina Massidda, and Witness P-252 by the legal representatives of the other victims, Joseph Manoba and Francisco Cox.

testifying publicly about the details of their experiences within the LRA may possibly be conducive to removing the stigma and suspicion associated therewith, rather than increasing it.

29. The Single Judge notes that for a number of witnesses, the Prosecution grounds the request for in-court protective measures also on the witnesses' fear of retaliation from Mr Ongwen's family, associates or supporters, should their status of witnesses against him be publicly revealed.⁴² The Single Judge agrees that retaliation on account of testimony before the Court is in fact a risk from which, in accordance with Article 68 of the Statute, witnesses shall be protected from. Any such risk shall however be objectively justified and, ordinarily, cannot be exclusively based on the witnesses' own subjective perception. While a direct threat is not required,⁴³ there must however exist factual circumstances which make the Chamber believe that public disclosure of the witness's identity would impermissibly risk an undue infringement his or her legitimate interests protected under Article 68 of the Statute.
30. In this particular case, the Prosecution has not provided any information as to whether these fears of retaliation are actually justified – nor is this otherwise evident to the Single Judge in light of the information in his possession. Information as to the current security situation in northern Uganda and the extent of any risk of the alleged possible retaliation against individuals who will testify against Mr Ongwen – or, in general, the LRA – is notably missing. The Prosecution's own submission is in fact that '[m]ost of th[e] witnesses currently face no acute security risk'.⁴⁴

⁴² This circumstance is referred to with respect to Witnesses P-145, P-224, P-233, P-245, P-250, P-264 and P-309.

⁴³ See also Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on 'Prosecution's First Request for In-Court Protective Measures for Trial Witnesses', September 2013, ICC-01/09-01/11-902-Red2, para. 14.

⁴⁴ Application, ICC-02/04-01/15-578-Red, para. 23.

31. A notable exception is Witness P-224 who reports [REDACTED] and whose fear of possible retaliation for his choice to still testify before the Court appears therefore justified. In-court protective measures in the form of withholding his identity from the public are thus justified, adequate and proportionate at this point in time. Conversely, in the absence of any further information, the Single Judge rejects at this time the Prosecution's request for in-court protective measures for Witnesses P-19,⁴⁵ P-97,⁴⁶ and P-245⁴⁷ which is based exclusively on the witness's young age at the time of abduction and a perceived general fear of retaliation. This is, in any case, 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.
32. In conclusion, with respect to this category of witnesses for whom protective in-court measures are requested on the ground that they were victimised as children, the Single Judge grants the requests with respect to Witnesses P-16, P-18, P-54, P-70, P-85, P-105, P-119, P-138, P-142, P-144, P-145, P-146, P-205, P-209, P-224, P-231, P-233, P-250, P-252, P-258, P-264, P-275, P-307, P-309, P-314,

⁴⁵ With respect to Witness P-19, the Prosecution refers only to the fact that the witness was abducted by the LRA at age 12 and again at age 14 and that the witness 'has expressed concern about community reaction if he testifies public'. The Single Judge is unable at this point in time and in the absence of further information, to identify the reasons for the witness's concern and the basis for any 'community reaction', including on whether any such 'reaction' would be for the witness's association with the LRA or for his participation as a prosecution witness in the proceedings before the Court. Therefore, the limited available information does not allow the Single Judge to positively ascertain 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 protected legitimate interests of witness P-19.

⁴⁶ With respect to Witness P-97, the Prosecution, in addition to the fact that the witness was 12 years-old at the time of abduction and served under Mr Ongwen's command, only submits that the witness 'has expressed concerns about testifying'. Similarly to the situation of Witness P-19, the Single Judge, in the absence of further information, is unable to determine the nature of these concerns and what they are based on.

⁴⁷ The Single Judge notes that Witness P-245 appears in a video documentary, registered on eCourt as UGA-OTP-0263-2652 and publicly available [REDACTED], in which the witness provides details of his experience with the LRA. The public availability of this video, to which the witness participated voluntarily, defeats the purpose of any protective measures intended to prevent the possible social stigma ensuing from public disclosure of the witness's association with the LRA. Concerning any risk associated with public disclosure of the witness's cooperation with the Court, the only information provided by the Prosecution in this regard is that the witness 'has expressed concerns that supporters or associates of the Accused might retaliate against him or his family', without further detail.

P-330, P-340, P-372, P-379, P-406 and P-410, and rejects the requests concerning Witnesses P-19, P-97 and P-245.

C. Witnesses for whom protective measures are requested on account of their professional circumstances

33. The Prosecution requests protective measures for two witnesses based on their professional circumstances: Witnesses P-189 and P-403.

34. Witness P-189 is [REDACTED] who is expected to testify about meeting Mr Ongwen during peace talks in 2006, and who [REDACTED]

[REDACTED]. The Prosecution requests that Witness P-189 be allowed to testify using a pseudonym and with face distortion, as the witness's cooperation with the Court should not be publicly known '[b]ecause of [REDACTED]

[REDACTED]'.⁴⁸ The Defence objects to the requested protective measures on the grounds that '[REDACTED] [REDACTED] are purely speculative'.⁴⁹

35. The Single Judge recalls that the determination of whether a risk exists is an exercise of prognosis necessarily involving a degree of prediction and speculation. In the present case, it is reasonable to conclude on the basis of the witness's professional circumstances that the public disclosure of his identity and cooperation with the Court may have adverse consequences for the witness, including his security. In these circumstances, the in-court protective measures requested by the Prosecution are, in the Single Judge's view, justified.

⁴⁸ Application, ICC-02/04-01/15-578-Conf, para. 49.

⁴⁹ Defence Response, ICC-02/04-01/15-590-Conf, para. 49.

36. The Prosecution requests that Witness P-403, who is an analyst in the Office of the Prosecutor, be also allowed to testify using a pseudonym and face distortion, in order to protect the witness himself and those whom he meets when he travels to the field as part of his professional duties, as well the Prosecution's investigative ability.⁵⁰ The Defence argues that Witness P-403 is an analyst and not a field operative while '[t]he Prosecution basis for its request is to protect his investigative ability'.⁵¹
37. The Single Judge notes, first, that the protective measures are requested not only to safeguard the investigative ability of the Office of the Prosecutor, but also with a view to protecting the witness himself as well as the persons he is in direct contact with during his missions on the field.⁵² Second, and contrary to the Defence submission, the Single Judge considers that there exists no reason to believe that the Prosecution intends to mislead the Chamber in its submission that Witness P-403's professional duties, regardless of his job title, include travelling to the field. The Single Judge considers that the requested in-court protective measures for Witness P-403 are justified with a view to avoiding an impermissible risk to the safety and security of the witness and the person he interacts with on behalf of the Office of the Prosecutor during missions on the field (including witnesses, potential witnesses, representatives of the governments, international organisations and NGOs), considering, *inter alia*, that the witness, according to the information provided by the Prosecution, is required to travel to countries in which the security situation is less stable than in Uganda. The Single Judge is also satisfied that there exists no identifiable prejudice to Mr Ongwen's rights ensuing from the non-disclosure of the identity of the analyst within the Office of the Prosecutor who will testify about the processing of the evidence of the LRA radio communications. Accordingly, the

⁵⁰ Application, ICC-02/04-01/15-578-Red, paras 50-51.

⁵¹ Defence Response, ICC-02/04-01/15-590-Conf, para. 51.

⁵² Application, ICC-02/04-01/15-578-Red, para. 51.

Prosecution's request for in-court protective measures for Witness P-403 is justified.

D. Witnesses for whom protective measures are requested on account of other personal circumstances

38. The Prosecution requests in-court protective measures for Witnesses P-24 and P-200 on account of their status as vulnerable witnesses, as well as for Witness P-249 with a view to protecting a third person at risk on account of the activities of the Court.
39. With respect to Witness P-24, the Prosecution submits that she suffers from ongoing grief and mental distress as a result of the experiences when, during the attack on Lukodi IDP camp in May 2004, she witnessed her four-year-old daughter be burned to death by LRA soldiers, and was forced to abandon her other baby in the bush during her own abduction.⁵³ On this ground the Prosecution requests that Witness P-24 testifies using a pseudonym and with face distortion.⁵⁴ In response to this request, the Defence only submits that '[i]f [Witness P-24's] community does not know of her cooperation, then testifying publicly about this cannot cause traumatisation in the way described since she will not be identified'.⁵⁵ From this submission it appears that the Defence does not object to the withholding of the witness's identity, but only argues that it is unnecessary to discuss any matter in closed session as the anonymity of the witness *vis-à-vis* the public effectively protects her from the risk alleged by the Prosecution.⁵⁶

⁵³ Application, ICC-02/04-01/15-578-Red, paras 38-39.

⁵⁴ Application, ICC-02/04-01/15-578-Red, para. 39.

⁵⁵ Defence Response, ICC-02/04-01/15-590-Conf, para. 52.

⁵⁶ The Single Judge however notes that it is not apparent from the Application that the Prosecution intends to request that any part of Witness P-24's testimony at trial – beyond what might reveal the witness's name or other identifying information – be conducted in closed or private session.

40. The Single Judge agrees with the Prosecution⁵⁷ that the public dissemination of Witness P-24's testimony without her identity concealed to the public may likely result in the witness being forced to repeatedly discuss her traumatic experiences after she returns home from testifying, or at least live with the anxiety of possibly having to do so. In the Single Judge's view this would create an objectively justifiable risk of further traumatising of a witness who appears already vulnerable on account of the traumatic experiences she suffered. The requested in-court protective measures (*i.e.* use of a pseudonym in the proceedings and testimony with face distortion) are therefore justified.
41. Concerning Witness P-200, the Prosecution refers to the fact that during his abduction and time with the LRA, the witness was subjected to intense trauma, including by being allegedly forced to kill and [REDACTED] and being made believe that Mr Ongwen was going to kill him while people next to him were in fact killed.⁵⁸ According to the Prosecution, these experiences have left the witness traumatised and highly vulnerable and justify, given the abuse he suffered and his psychological state, that he testifies using a pseudonym and with face distortion.⁵⁹ The Prosecution also submits that the witness should be allowed to testify in private session about the incidents in which he was forced to kill and to [REDACTED].⁶⁰
42. In its Response, the Defence – while disputing the veracity of Witness P-200's testimony – concedes that [REDACTED] is an extreme example of reasons of stigmatisation,⁶¹ and, in doing so, it appears to accept that the witness's identity be withheld from the public. At the same time, the Defence submits that 'such a sensational claim should not be made in private' and that

⁵⁷ Application, ICC-02/04-01/15-578-Red, para. 39.

⁵⁸ Application, ICC-02/04-01/15-578-Conf, para. 42.

⁵⁹ Application, ICC-02/04-01/15-578-Red, paras 42-43.

⁶⁰ Application, ICC-02/04-01/15-578-Conf, para. 43.

⁶¹ Defence Response, ICC-02/04-01/15-590-Conf, para. 27.

'[f]airness demands that it be possible to dispense with such an allegation publicly so that Mr Ongwen does not have to carry it with him, whatever the outcome of his case.'

43. The Single Judge agrees with the Prosecution that the apparent vulnerability of Witness P-200 and the experiences that he alleges to have suffered while with the LRA and on which he is expected to testify at trial justify the conclusion that, if his identity is revealed to the public, there exists a risk of re-traumatisation both during his testimony and when he returns to his family and community, including a significant level of stigmatisation. In-court protective measures in the form of use of a pseudonym in the proceedings and testimony with face distortion are therefore warranted and can be granted.
44. At the same time, and in light of the information currently available, the Single Judge agrees with the Defence that there exists no overriding reason demanding that the part of the witness's testimony concerning the alleged ██████████ ██████████ be received in closed session, in particular considering that the non-disclosure of the witness's identity sufficiently protects him from the associated stigma and the risk of re-traumatisation upon return to his community after the testimony. On the contrary, the Single Judge considers, as argued by the Defence, that fairness *vis-à-vis* Mr Ongwen indeed demands that allegations of ██████████ be discussed in open session. The associated stigma that the Prosecution identifies as possibly arising against Witness P-200 may equally apply to Mr Ongwen himself who is alleged to have engaged in and ordered ██████████. The Prosecution has in fact elected to make publicly these allegations against Mr Ongwen and to publicly identify their source in Witness P-200.⁶² In these circumstances, and subject to any countervailing information at a later stage, the Defence submission that such an allegation must

⁶² Prosecution's Pre-Trial Brief, ICC-02/04-01/15-533, para. ██████. This allegation was already made in the Pre-confirmation brief, ICC-02/04-01/15-375-AnxC-Red2, para. ██████.

be dispensed with publicly 'so that Mr Ongwen does not have to carry it with him' appears reasonable at this point in time.

45. Finally, the Single Judge addresses the Prosecution's request that the identity of Witness P-249 be also withheld from the public. The Prosecution submits that this measure is required by the fact that [REDACTED]

[REDACTED].⁶³ According to the Prosecution, any public disclosure that this witness has testified against Dominic Ongwen would create an objectively justifiable risk to [REDACTED] safety and physical and psychological well-being.⁶⁴ The Prosecution therefore requests that P-249 testify using a pseudonym and with face distortion, and that he be allowed to testify in private session whenever referring to [REDACTED] or to any facts which might identify either of them or their family.⁶⁵

46. The Single Judge notes that Article 68(1), read in conjunction with Rule 87(1) of the Rules, provides for protective measures the protection of a third person (in this case [REDACTED]) from risks to his or her safety, physical and psychological well-being, dignity and privacy on account of testimony given by a witness. With respect to the Defence argument that 'the Prosecution has failed to point to [...] evidence to substantiate its point',⁶⁶ the Single Judge recalls that a positive determination of a 'risk' does not require certainty, as this notion necessarily involves a degree of prognosis and prediction, and that the Chamber is not dispensed from its own responsibility to adequately protect witnesses, victims and third persons on account of testimony before the Court even if the entity requesting protective measures 'fails' to meet any purported 'burden of proof'. The Single Judge notes that Witness P-249, in his written statement taken

⁶³ Application, ICC-02/04-01/15-578-Conf, para. 44.

⁶⁴ Application, ICC-02/04-01/15-578-Conf, para. 44.

⁶⁵ Application, ICC-02/04-01/15-578-Red, para. 45.

⁶⁶ Defence Response, ICC-02/04-01/15-590-Conf, para. 50.

in [REDACTED], states: '[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]'.⁶⁷ While the witness' statement is not evidence for the purpose of the trial, the information contained therein – as any other information provided by witnesses or otherwise available – is of relevance to the Chamber's determination of whether there exists a risk warranting in-court protective measures.

47. In light of the information available to him at this stage, the Single Judge is satisfied that the in-court protective measures requested by the Prosecution for Witness P-249 are justified by the existence of a risk to the safety and physical and psychological well-being of Witness P-249's [REDACTED]
[REDACTED] should his identity as a witness against Mr Ongwen in the present trial be publicly revealed. The protective measures requested by the Prosecution are therefore granted. As any other rulings in the present decision, the need for these measures may be reconsidered should new or additional information which negates their basis become available at a later time.

⁶⁷ UGA-OTP-0238-0771 at 0773, para. 13.

II. SPECIAL MEASURES FOR VULNERABLE WITNESSES

48. Together with in-court protective measures under Rule 87 of the Rules, the Prosecution also requests that the Chamber, acting under Rule 88, orders measures intended to provide psychological support to a number of witnesses, such as the presence of a support person during their testimony and the availability of mental health care before, during and after the testimony.⁶⁸
49. Rule 88 of the Rules, entitled ‘Special measures’, provides that the Chamber, upon request or on its own motion, may ‘order special measures such as, but not limited to, measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2’. As indicated in Rule 88(2) of the Rules, an example of a ‘special measure’ within the meaning of this provision is the attendance of a psychologist or another support person in court during the witness’s testimony.
50. The Prosecution requests special support measures for 40 of the 48 witnesses for whom it also seeks in-court protective measures in the Application,⁶⁹ in addition to four other witnesses for whom only these special measures under Rule 88 are requested (Witnesses P-45, P-67, P-280, P-286). As possible measures to minimise the impact of testimony the Prosecution mentions the presence of a support person during the witness’s testimony and the availability of mental health care before, during and after the witness’s testimony.⁷⁰ Importantly, the Prosecution – recognising that ‘the Registry is in some ways best positioned to determine when supportive special measures are necessary, and which measures are most appropriate’ – clarifies that, in the Application, it ‘limits itself [...] to identifying

⁶⁸ Application, ICC-02/04-01/15-578-Red, para. 26.

⁶⁹ Witnesses P-6, P-18, P-24, P-54, P-70, P-97, P-105, P-119, P-138, P-142, P-144, P-145, P-146, P-187, P-199, P-200, P-205, P-209, P-224, P-231, P-233, P-250, P-252, P-258, P-264, P-269, P-275, P-307, P-309, P-314, P-330, P-340, P-351, P-352, P-366, P-372, P-374, P-379, P-396 and P-410.

⁷⁰ Application, ICC-02/04-01/15-578-Red, para. 26.

witnesses whom it believes, based on the information currently available to it, may benefit from additional support'.⁷¹ The common legal representative of victims – also acting on behalf of 11 dual status witnesses for whom support measures are requested by the Prosecution – agrees with the Prosecution that the VWU is best placed to assess the need for measures of psychological support for a witness.⁷²

51. Similarly, the Defence argues that 'the VWU conducts psychological assessments of all witnesses in any case before the ICC' and that the support measures identified by the Prosecution are 'routine'.⁷³ The Defence submits that 'there is no reason to oppose the "[m]easures intended to provide psychological support to a witness" provided that a support person is not someone whose presence would be likely to impact upon the substance of the testimony of the individual'.⁷⁴ For these reasons, the Defence requests provision of a summary of the relationship between the support person and the witness.⁷⁵
52. The Single Judge agrees with the participants' submission that the VWU is best placed to determine the appropriateness of special measures intended to provide psychological support to a witness. The 'Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial' adopted in the present case provides that the VWU makes a determination of the vulnerability of witnesses based on the information provided by the calling entity and/or its own assessment, including by the VWU psychologist.⁷⁶ The same protocol specifies that 'witnesses are considered to be vulnerable if they face an increased risk to suffer psychological harm through the process of testifying, and/or to experience psychosocial or physical difficulties which affect their ability to

⁷¹ Application, ICC-02/04-01/15-578-Red, para. 27.

⁷² CLRV Response, ICC-02/04-01/15-589, para. 23.

⁷³ Defence Response, ICC-02/04-01/15-590-Red, paras 45 and 48.

⁷⁴ Defence Response, ICC-02/04-01/15-590-Red, para. 47.

⁷⁵ Defence Response, ICC-02/04-01/15-590-Red, paras 47 and 60(b).

⁷⁶ ICC-02/04-01/15-504-Anx1, paras 19-20 and 41-46.

testify' – factors related to the person (such as age, trauma-related problems or lack of social support), the nature of the crime (in particular, having been a victim of sexual or gender-based violence, violence against children or other crimes involving excessive violence) and to particular circumstances (such as fear of retaliation) may all be relevant to determine the vulnerability of a witness.⁷⁷

53. According to the Single Judge, the so-determined vulnerability of a witness may indeed warrant that special measures, in the form of provision of psychological and emotional support, be taken to minimise the impact of the witness's testimony before the Chamber. This possibly applies to those witnesses who are victims of sexual violence (including Witness P-45, for whom in-court protective measures have not been requested by the Prosecution), who were victimised at a young age,⁷⁸ or are otherwise psychologically vulnerable⁷⁹ – including, as submitted by the Prosecution,⁸⁰ Witnesses P-67, P-280 and P-286.
54. Within this context, and noting that the requested measures do not appear to be opposed, the Single Judge decides as a general proposition to grant special measures intended to provide psychological support for witnesses in the manner to be determined by the VWU. This order is subject to any countervailing considerations which may justify a revised assessment. Therefore, the VWU, in light of its vulnerability assessment of each witness, is to make the determination of whether support measures are necessary for each individual witness and, if so, which measures are the most appropriate. In making its determination, the VWU shall take into account all relevant information, particularly the information provided to it by the calling entity. The

⁷⁷ ICC-02/04-01/15-504-Anx1, footnote 1. See also Regulation 94 *bis*(2) of the Regulations of the Registry.

⁷⁸ This is irrespective of whether in-court protective measures are granted in the present decision. At the same time, the Single Judge notes that the Prosecution, at present, does not envisage the need for support measures for Witnesses P-16, P-19, P-85, P-245 and P-406 (Annex to the Application, ICC-02/04-01/15-578-Conf-AnxA).

⁷⁹ Like it is the case for Witnesses P-24 and P-200 (see above paras 39-44).

⁸⁰ Application, ICC-02/04-01/15-578-Conf, paras. 40-41, 46-47 and its annex.

VWU shall then inform the Chamber and the participants prior to the commencement of the testimony of the witness concerned about the support measures applied – or as soon as the need for support measures (including in addition to those already taken) arises, should it become evident only after the commencement of the testimony. In particular, the VWU shall inform the Chamber and the participants of the function and/or role of any support person and, as suggested by the Defence, provide a summary of the relationship between the witness concerned and the support person as appropriate.

III. CONCLUSION

55. In conclusion, the Single Judge grants the request for in-court protective measures for a total of 45 witnesses, and rejects the request related to the other three witnesses. As recalled above,⁸¹ these rulings may all be reconsidered in light of additional information or should relevant circumstances otherwise change. Special measures under Rule 88 of the Rules intended to provide psychological support to the witnesses are granted, in principle, in the manner to be determined by the VWU.
56. The Single Judge notes that both the Application and the Defence Response are confidential filings with a corresponding public redacted version. The public version of the Defence Response is heavily redacted, including with respect to information which has been later made public in the public redacted version of the Application, or in the present decision.⁸² Is it therefore appropriate that the Defence reviews the public version of its Response and removes the redactions which have in the meantime become unwarranted.

⁸¹ See above paras 11-12 and 22.

⁸² See, for example, paras 51 and 52 of the public redacted version of the Defence Response, ICC02/04-01/15-590-Red.

57. Finally, the Single Judge recalls that the Chamber has recently rejected the Prosecution's request to introduce under Rule 68(2)(b) of the Rules the prior recorded testimonies of Witnesses P-28, P-38, P-47, P-242 and P-256.⁸³ The Prosecution is directed to file by Friday, 9 December 2016 any request for protective or special measure for any of these witnesses whom it intends to call to testify at trial.

FOR THE FOREGOING REASONS, THE SINGLE JUDGE HEREBY

ORDERS, in accordance with Rule 87 of the Rules, that the following witnesses be referred, in their capacity as witnesses in these proceedings, only by their respective pseudonyms in public filings and public sessions of the trial, and provide their testimony before the Chamber with face distortion *vis-à-vis* the public: Witnesses P-6, P-16, P-18, P-24, P-54, P-70, P-85, P-105, P-119, P-138, P-142, P-144, P-145, P-146, P-187, P-189, P-199, P-200, P-205, P-209, P-224, P-231, P-233, P-249, P-250, P-252, P-258, P-264, P-269, P-275, P-307, P-309, P-314, P-330, P-340, P-351, P-352, P-366, P-372, P-374, P-379, P-396, P-403, P-406 and P-410;

ORDERS that, during their testimony at trial, the voices of Witnesses P-6 and P-269 be distorted *vis-à-vis* the public;

REJECTS the Prosecution's request for in-court protective measures for Witnesses P-19, P-97 and P-245;

ORDERS that special measures for psychological support be given, in accordance with the Victims and Witnesses Unit's determination and subject to any countervailing considerations, to Witnesses P-6, P-18, P-24, P-45, P-54, P-67, P-70, P-97, P-105, P-119, P-138, P-142, P-144, P-145, P-146, P-187, P-199, P-200, P-205, P-209,

⁸³ Decision on the Prosecution's Applications for Introduction of Prior Recorded Testimony under Rule 68(2)(b) of the Rules, 18 November 2016, ICC-02/04-01/15-596-Red.

P-224, P-231, P-233, P-250, P-252, P-258, P-264, P-269, P-275, P-280, P-286, P-307, P-309, P-314, P-330, P-340, P-351, P-352, P-366, P-372, P-374, P-379, P-396 and P-410;

ORDERS the Victims and Witnesses Unit, should it consider it appropriate to provide for the presence of a support person during the testimony of a witness at trial, to provide the Chamber and the participants with a summary of the relationship between the witness concerned and the support person;

ORDERS the Defence to file a lesser redacted public version of its Response (ICC-02/04-01/15-590-Red) within 14 days of notification of the present decision; and

ORDERS the Prosecution to file any request for in-court protective measures under Rule 87 of the Rules for Witnesses P-28, P-38, P-47, P-242 and P-256, should it intend to call any of them to testify at trial, by Friday, 9 December 2016.

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



Judge Bertram Schmitt
Single Judge

Dated 29 November 2016

At The Hague, The Netherlands