

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/15
Date: 7 September 2017

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 “Joint Prosecution and Common Legal Representative of Victims’ Request for Protective Measures for Witness P-0097”, 31 August 2017, ICC-02/04-01/15-966-Conf

Source: The Office of the Prosecutor
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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Introduction

1. The Office of the Prosecutor (“Prosecution”) and the Common Legal Representative of Victims (“CLR”) request the Trial Chamber to order protective measures in the form of use of pseudonym and face distortion for Witness P-0097 in order to protect his psychological well-being and privacy. The request is based on articles 54(3)(f) and 68 of the Rome Statute, rule 87 of the Rules of Procedure and Evidence and regulation 42(3) of the Regulations of the Court (“Regulations”).

Confidentiality

2. The request is filed confidentially pursuant to regulation 23*bis* of the Regulations, as it contains sensitive and personal information relating to Witness P-0097.

Background

3. On 26 October 2016, the Prosecution requested protective measures for Witness P-0097.¹ The Trial Chamber rejected the request; reasoning it was “based exclusively on the witness’s young age at the time of abduction and a perceived general fear of retaliation.”² The Chamber however noted that this was “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. Witness P-0097 is a 23 year old Ugandan national. [REDACTED]. P-0097 was abducted in 2005 at the age of about 12 and spent 9 months with the LRA under the command of the Accused. [REDACTED]. Witness P-0097 is a dual status individual,

¹ ICC-02/04-01/15-578.

² ICC-02/04-01/15-612, para. 31.

³ *Ibid.*

represented in the proceedings by the CLR. He is currently expected to testify around 20 September 2017.

5. The Witness in his recent communication with the Prosecution expressed concerns about testifying in public with his name and face being broadcast across the globe. The Witness is worried about the publicity he will receive. He is particularly concerned since the trial is being aired live in some of the villages in Northern Uganda. Whilst people close to the Witness know that he was abducted into the LRA, this fact is not known broadly in his community.

6. Witness P-0097 further reported to the Prosecution that his parents and wife are distressed about him testifying publicly. They are worried about potential threats, if it is known the Witness had testified against Dominic Ongwen, in particular because [REDACTED].

6. The CLR has met with Witness P-0097 in the past and her Field Counsel met with him last week. During the meetings, the Witness has reiterated his security concerns. Most recently, by reason of the fact that the date of his testimony is approaching, the Witness has shown a degree of anxiety. He has indicated that he is taking a cautious approach in his daily activities and in interactions in his community, out of fear for his security and considering that the interest of the media in the trial may further expose him and his family.

7. Concerned about the well-being of Witness P-0097, the Prosecution informed the Victims and Witnesses Section (“VWS”) about his vulnerability. As per agreed practice, the VWS is in the process of conducting a vulnerability assessment for the Trial Chamber, which may also result in a recommendation for protective and/or special measures. Recommendations have not been shared with the Parties and participants yet. The Prosecution and the CLR therefore invite the Trial Chamber to

consult the VWS about the outcome of the assessment, which may additionally inform the Chamber's decision.

Submissions

8. Witness P-0097 is one of nine witnesses whom the Prosecution alleges were child soldiers in Sinia brigade during the charged period. He is however the only former child soldier who is scheduled to testify publicly, without any protective measures. This is likely to result in increased community and media attention not only from within Uganda but from international media and organisations following the trial. Such attention, even if it were to be entirely benevolent, will disrupt P-0097's family life. [REDACTED]. The witness [REDACTED] and is, in effect, starting a new life. Public testimony and the anticipated resulting attention focused on his time in the bush, which the witness is trying to move past, will disrupt that. The Prosecution and the CLR submit that protective measures are therefore necessary to protect Witness P-0097's privacy and psychological well-being. Use of pseudonym and image distortion (protective measures aimed at protecting a witness's identity) will prevent such disruption and will relieve familial pressures the witness is experiencing as a consequence of his upcoming testimony. This will allow Witness P-0097 to move forward with his life, rather than being reminded by his community and other members of the public about the past after his testimony concludes.

9. The CLR further reiterates that Witness P-0097 experienced personal harm at a very young age as a consequence of his abduction into the LRA [REDACTED]. Protective measures are therefore needed not only to mitigate the risk of being publicly exposed, but also to minimise the effects of re-traumatisation, since the witness will be asked to detail his traumatic experience in the bush. In assessing the need for protective or special measures, different Trial Chambers of this Court have

found that it is appropriate to consider the nature of a witness's victimisation,⁴ and to take into account the nature of the conduct allegedly suffered by the witness.⁵ Indeed, the need for such measures applies even more to a dual status individual. As emphasised by Trial Chamber I in the Lubanga case, "[p]rotective and special measures for victims are often the legal means by which the Court can secure the participation of victims in the proceedings, because they are a necessary step in order to safeguard their safety, physical and psychological well-being, dignity and private life in accordance with article 68(1) of the Statute [and thus] protective measures are not favours but are instead the rights of victims, enshrined in article 68(1) of the Statute"⁶.

10. The measures requested take into consideration the interests of the public, the parties, and the victims, while minimising the risks for P-0097's re-traumatisation, and the dignity, privacy, and well-being of him and his family. They would strike a reasonable balance between the principle of publicity of the proceedings and the responsibility of the Court to protect victims and witnesses. Even with the requested protective measures in place, Witness P-0097 would mostly testify in public, with only a small part of examination conducted in private session.

⁴ ICC-01/04-02/06-1433-Red, para. 5. See also ICC-01/04-02/06-1418-Red2, para. 8.

⁵ ICC-01/05-01/08-1021, para. 22.

⁶ ICC-01/04-01/06-1119, paras. 128 and 129. See also ICC-01/05-01/08-699, para. 24.

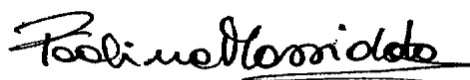
Conclusion and Relief

11. In light of the foregoing, the Prosecution and the CLR request the Trial Chamber to authorise the following protective measures for Witness P-0097:

- Use of pseudonym; and
- Image distortion.



Fatou Bensouda, Prosecutor



Paolina Massidda, Principal Counsel, Office of Public Counsel for Victims

Dated this 7th day of September 2017

At The Hague, The Netherlands