

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **10 August 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 "Prosecution's application for variation of protective measures for P-0189 and P-0245", 25 July 2017, ICC-02/04-01/15-928-Conf

Source: The Office of the Prosecutor

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”) requests the Chamber to vary the protective measures ordered for Witnesses P-0189 and P-0245, pursuant to regulation 42(3) of the Regulations of the Court (“Regulations”), articles 54(3)(f), 68(6) and 72 of the Rome Statute (“Statute”) and rule 87 of the Rules of Procedure and Evidence (“Rules”). The Prosecution requests that the Chamber vary the protective measures that it ordered:

- a. for Witness P-0189, by lifting the requirement for a pseudonym and face distortion and instead allowing limited recourse to private sessions if necessary to protect national security interests.
- b. for Witness P-0245, by authorising the use of a pseudonym and face distortion.

Confidentiality

2. The Prosecution files this application confidentially pursuant to regulation 23*bis* of the Regulations of the Court, as it contains sensitive or security-related information regarding Prosecution witnesses.

P-0189

3. On 26 October 2016, the Prosecution sought protective measures for Witness P-0189 requesting that the witness be allowed to testify using a pseudonym and with face distortion, [REDACTED].¹ On 30 November 2016, the Single Judge found that the requested protective measures were justified, concluding that on account of his professional circumstances the public disclosure of Witness P-0189’s identity and

¹ Prosecution’s application for in-court protective and special measures, ICC-02/04-01/15-578-Conf, para. 49; ICC-02/04-01/15-578-Red, para. 49.

cooperation with the Court may have adverse consequences for him and his security.²

4. On 19 July 2017, Witness P-0189 informed the Prosecution that he [REDACTED].

5. The [REDACTED] therefore no longer justifies protective measures. Accordingly the Prosecution requests the Chamber to vary, and in effect remove, the protective measures it ordered for Witness P-0189.

6. Considering these developments, the Prosecution also now considers it relatively unlikely that the witness will need [REDACTED].³ Finally, Witness P-0189 now consents to giving his testimony in public session, save where this may adversely affect the national security interests of the Ugandan government. In the event that specific questions are put to him which might adversely affect the national security interests of the Ugandan government, the witness or the Prosecution may request limited recourse to private session.

7. In light of the above the Prosecution submits that the in-court protective measures, of use of a pseudonym and face distortion, granted to Witness P-0189 are no longer justified.

P-0245

8. The Prosecution applied for use of a pseudonym and face distortion for Witness P-0245.⁴ The Prosecution justified the request with the fact that P-0245:

² Decision on the 'Prosecution's application for in-court protective and special measures', ICC-02/04-01/15-612-Conf, paras. 34-35; ICC-02/04-01/15-612-Red, paras. 34-35.

³ ICC-02/04-01/15-612-Conf, paras. 34-35; ICC-02/04-01/15-612-Red, paras. 34-35.

⁴ ICC-02/04-01/15-578-Conf-AnxA, page 5.

- [REDACTED].⁵

9. The Single Judge rejected the above request, along with similar requests relating to P-0019 and P-0097, noting that the request was “based exclusively on the witness’s young age at the time of abduction and a perceived general fear of retaliation.”⁶ However, the Single Judge added the caveat that 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.”⁷

10. The Prosecution now seeks variation of the above finding, pursuant to regulation 42(3), in light of new and additional information.

11. The Prosecution learned in February 2017 that Witness P-0245 [REDACTED].⁸ This in itself is an important change in his circumstances as [REDACTED].

12. Additionally, in July 2017, during a meeting with the Prosecution, Witness P-0245 raised a number of security concerns. Witness P-0245 informed the Prosecution that he is very concerned about his security [REDACTED]. [REDACTED]. Consequently, Witness P-0245 believes that [REDACTED].⁹

13. Witness P-0245 requested that his identity be concealed from the public during his testimony because [REDACTED].¹⁰ [REDACTED].¹¹

⁵ *Ibid.*

⁶ ICC-02/04-01/15-612-Red, para. 31.

⁷ ICC-02/04-01/15-612-Red, para. 31.

⁸ See investigation note UGA-OTP-0276-3096, disclosed on 22 February 2017.

⁹ UGA-OTP-0278-0044, disclosed on 13 July 2017, page 1.

¹⁰ UGA-OTP-0278-0044, disclosed on 13 July 2017, pages 1, 2.

¹¹ UGA-OTP-0278-0044, disclosed on 13 July 2017, page 2.

14. The Prosecution believes that [REDACTED] viewed in the light of the concerns raised by Witness P-0245 regarding his safety, amount to “new or additional relevant information”. The Prosecution notes that an analogous approach was taken regarding [REDACTED].¹² Hence the Prosecution requests, regarding P-0245, authorisation for the use of a pseudonym and face distortion.

¹² See email from the Chamber sent on 30 January 2017 at 10:14 in response to an email from VWS ([REDACTED]) sent on 27 January 2017 at 15:20.

Conclusion and relief

15. In light of the foregoing, the Prosecution requests the Chamber to vary the protective measures that it ordered:

- a. for Witness P-0189, by lifting the requirement for a pseudonym and face distortion and instead allowing limited recourse to private sessions if necessary to protect national security interests.
- b. for witness P-0245, by authorising the use of a pseudonym and face distortion.



Fatou Bensouda, Prosecutor

Dated this 10th day of August 2017
At The Hague, The Netherlands