

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/04-01/15  
Date: 6 February 2019

**TRIAL CHAMBER IX**

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

**SITUATION IN UGANDA**

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

**Public**

**Decision on Responses to the 'Defects Series' Following Prosecution Request  
for Dismissal**

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 Victims**

Joseph Akwenyu Manoba  
Francisco Cox  
Paolina Massidda

**Legal Representatives of 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**  
Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Others**

**Judge Bertram Schmitt**, acting as Single Judge on behalf of Trial Chamber IX ('Single Judge') of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Regulations 29, 33-35 and 37 of the Regulations of the Court ('Regulations'), issues the following 'Decision on Responses to the "Defects Series" Following Prosecution Request for Dismissal'.

1. On 1 February 2019, the defence for Mr Ongwen ('Defence') filed four motions alleging various defects in the confirmation of charges decision (collectively, 'Defects Series').<sup>1</sup> The Defence indicates that a consolidated submission beyond the standard 20 page limit would result in an 'unwieldy document' and that the series format is adopted 'for clarity and expediency of the proceedings'.<sup>2</sup>
2. On 5 February 2019, the Office of the Prosecutor ('Prosecution') filed a request ('Request')<sup>3</sup> seeking that the Defects Series be dismissed *in limine* because these motions: (i) are manifestly out of time; (ii) have been filed in breach of the applicable page limit; and (iii) repeat arguments that have already been dismissed by the Chamber. If the Chamber decides not to dismiss the Defence submissions *in limine*, the Prosecution requests an extension of time and page limits for a consolidated response.<sup>4</sup>
3. The Single Judge considers that the Request makes clear that the briefing schedule for the Defects Series requires further specification. The Single Judge

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<sup>1</sup> Defence Motion on Defects in the Confirmation of Charges Decision: Defects in Notice and Violations of Fair Trial (Part I of the Defects Series), ICC-02/04-01/15-1430; Defence Motion on Defects in the Confirmation of Charges Decision: Defects in the Modes of Liability (Part II of the Defects Series), ICC-02/04-01/15-1431; Defence Motion on Defects in the Confirmation of Charges Decision: Defects in Notice in Pleading of Command Responsibility under Article 28(a) and Defects in Pleading of Common Purpose Liability under Article 25(3)(d)(i) or (ii) (Part III of the Defects Series), ICC-02/04-01/15-1432; Defence Motion on Defects in the Confirmation of Charges Decision: Defects in the Charged Crimes (Part IV of the Defects Series), ICC-02/04-01/15-1433.

<sup>2</sup> ICC-02/04-01/15-1430, para. 2.

<sup>3</sup> Prosecution request for dismissal, *in limine*, of the "Defence Motion on Defects in the Confirmation of Charges Decision: Defects in Notice and Violations of Fair Trial" dated 1 February 2019, 5 February 2019 (notified 6 February 2019), ICC-02/04-01/15-1436.

<sup>4</sup> Request, ICC-02/04-01/15-1436, paras 2, 4, 22-23.

will do this below, addressing the Prosecution's arguments only to a limited extent at this time.

4. The Single Judge agrees with the Prosecution that the Defects Series is filed in contravention of the page limit set in Regulation 37(1) of the Regulations. As correctly pointed out by the Prosecution, to proceed as the Defence has done with the Defects Series would allow any page limit to be bypassed by splitting submissions into multiple segments.<sup>5</sup> However, the Single Judge observes that this is the first time the Defence has divided submissions in this manner during trial. The Single Judge also notes that the Defence appears to have split up its submissions for the well-intentioned purpose of improving readability. In these circumstances, the Single Judge considers that it would not be in the interests of justice to dismiss the Defects Series alone on grounds that it circumvents the 20 page limit.<sup>6</sup>
5. As for the remainder of the arguments made by the Prosecution, the Single Judge considers that submissions should be received on all aspects of the Defects Series before any ruling is made. These remaining arguments are therefore deferred and will be considered as part of the Prosecution's overall response.
6. As to the Prosecution request for 65 pages to file a consolidated response to the Defects Series, the Single Judge considers this to be warranted in view of having to respond to the content raised across four motions.
7. As to the Prosecution request to file this response within 30 days of notification of the present decision, the Single Judge considers this to be unnecessarily long when the Prosecution itself argues that the Defects Series, at least in part,

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<sup>5</sup> Request, ICC-02/04-01/15-1436, para. 15.

<sup>6</sup> Regulation 29(1) of the Regulations.

repeats arguments raised previously.<sup>7</sup> But the Single Judge does consider that good cause exists under the circumstances for some extension of time. The deadline for the consolidated response is specified in the disposition below.

8. The Single Judge further decides that these extended page and time limits should also apply to any responses filed by the Legal Representatives of Victims ('LRVs').

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

**REJECTS** the Prosecution's request to dismiss the Defects Series *in limine* for circumventing the statutory page limits;

**DEFERS** ruling on the remainder of the arguments in the Request on an understanding that they constitute part of the Prosecution's response to the Defects Series; and

**ORDERS** that any further responses to the Defects Series from the Prosecution or LRVs be filed in consolidated filings of no more than 65 pages by 16:00 on Monday, 25 February 2019.

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

  
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**Judge Bertram Schmitt, Single Judge**

Dated 6 February 2019

At The Hague, The Netherlands

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<sup>7</sup> Request, ICC-02/04-01/15-1436, paras 16-19.