

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

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

Date: 24 September 2019

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

Confidential

**Prosecution's Response to the Defence "Motions on Defects in the Confirmation
Decision Regarding SGBC"**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms Fatou Bensouda
Mr James Stewart
Mr Benjamin Gumpert

Counsel for Dominic Ongwen

Mr Krispus Ayena Odongo
Mr Charles Taku
Ms Beth Lyons

Legal Representatives of Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox
Ms 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

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Section

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. The Defence “Motions [*sic*] on Defects in the Confirmation Decision Regarding SGBC” (“Defence Request”)¹ should be rejected *in limine*. Like the prior “defects series” which it purports to amend, the Defence Request raises issues which could and should have been raised prior to the start of trial, and offers no explanation for the delay. Accordingly, this Defence Request should be rejected for the same reasons.

Confidentiality

2. This document is filed confidentially because it responds to a confidential filing. The Prosecution submits that none of the material contained in this Response is of a confidential nature and it should be reclassified as public as soon as a public redacted version of the Defence Request is filed.

Procedural Background

3. The Trial Chamber is intimately familiar with the procedural history of the Defence’s “defects series.” It is also set out in detail in the Appeals Chamber’s “Judgement on the appeal of Mr Dominic Ongwen against Trial Chamber IX’s ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision’” (“Appeals Judgment”)² of 17 July 2019. For present purposes, suffice it to say that the Accused has had multiple opportunities since 2015 to challenge the form or content of the charges against him. Nevertheless, three and a half years after the Confirmation Decision, nearly three years after the commencement of trial, and just two months after the Appeals Judgment confirming the dismissal *in limine* of the

¹ ICC-02/04-01/15-1603-Conf (“Defence Request”).

² ICC-02/04-01/15-1562 OA4, para. 12-34 (“Appeals Judgment”).

“defects series” for untimeliness, the Defence seeks now to raise yet another allegation of insufficient notice in the charges.

Submissions

4. The Defence Request purports, initially at least, to seek leave from the Trial Chamber under rule 134(2) of the Rules of Procedure and Evidence (“Rules”) to amend its “defects series.”³ However, the Defence Request offers no explanation for the delay in challenging the geographic scope of parts of the Confirmation Decision, nor does it address why these new arguments were not included in the original “defects series.” The Defence merely suggests that “the lack of specificity in the allegations continues to impact on Mr Ongwen’s fair trial rights and the conduct of the Defence presentation of evidence.” However, any alleged “continuing impact” does not address the Defence’s delay in raising the issue until now, and the request for leave should be denied.

5. The Defence Request does not restrict itself to a request for leave, however, but directly addresses the substance of the Defence’s submissions and requests that counts 50 to 60 of the Document Containing the Charges (“DCC”) be dismissed⁴ because the “Confirmation Decision [...] fails to provide specifics regarding the geographic parameters for criminal allegations in respect to P-99, P-101, and P-214.”⁵

6. These are precisely the kinds of allegations raised, considered, and properly dismissed *in limine* in the original defects series.⁶ Just as before, the Defence has made no showing that the matters raised in the Defence Request could not reasonably have been raised earlier. Merely invoking Mr Ongwen’s fair trial rights

³ Defence Request, para. 2.

⁴ Defence Request, para. 58.

⁵ Defence Request, para. 18.

⁶ Appeals Judgment, para. 142.

does not automatically overcome the Trial Chamber's duty to safeguard the proper administration of justice, including the expeditious conduct of the proceedings.⁷ Although the Trial Chamber retains discretion under rule 134(2) to entertain late challenges, the Defence has offered no reason why the Chamber should exercise such discretion in this instance. For this reason alone, the Defence Request should be dismissed *in limine*.⁸

Conclusion

7. For the reasons stated above, the Defence Request should be rejected *in limine*.



Fatou Bensouda, Prosecutor

Dated this 24th day of September 2019

At The Hague, the Netherlands

⁷ Appeals Judgment, para. 131, 145; ICC-02/04-01/15-1476, para. 25.

⁸ Appeals Judgment, para. 127, 130; ICC-02/04-01/15-1476, para. 23-25.