

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-02/04-01/15**
Date: **1 November 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*

Public

**Decision on Defence Request for Leave to Appeal the Decision on Further Defence
Motion Alleging Defects in the Confirmation Decision**

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

Registrar

Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Others

Trial Chamber IX of the International Criminal Court, in the case of *The Prosecutor v. Dominic Ongwen*, having regard to Article 82(1)(d) of the Rome Statute (the ‘Statute’), issues the following ‘Decision on Defence Request for Leave to Appeal the Decision on Further Defence Motion Alleging Defects in the Confirmation Decision’.

I. Procedural history and submissions

1. On 1 February 2019, the Defence filed four motions alleging various defects in the decision on the confirmation of charges.¹ The Defence requested the Chamber to dismiss charges and modes of liability which it argued were facially deficient and violated the fundamental fair trial right of notice to Mr Ongwen.²
2. On 7 March 2019, the Chamber issued a decision on these motions, dismissing them in their entirety (the ‘Defects Series Decision’).³
3. On 14 March 2019, the Defence requested leave to appeal the Defects Series Decision with regard to two issues.⁴ The Chamber granted leave to appeal the first issue presented by the Defence, which concerned whether the dismissal of the Defence requests *in limine*, on grounds of untimeliness, was consistent with the rights of the accused (the ‘Prior Issue’).⁵
4. On 17 July 2019, the Appeals Chamber, unanimously, confirmed the Defects Series Decision (the ‘Appeals Chamber Judgment’).⁶

¹ 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 (the ‘Defects Series Part I’); 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 Charges Crimes (Part IV of the Defects Series), ICC-02/04-01/15-1433.

² Defects Series Part I, ICC-02/04-01/15-1430, para. 59.

³ Decision on Defence Motions Alleging Defects in the Confirmation Decision, 7 March 2019, ICC-02/04-01/15-1476.

⁴ Defence Request for Leave to Appeal ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision (ICC-02/04-01/15-1476), notified 7 March 2019, 14 March 2019, ICC-02/04-01/15-1480.

⁵ Decision on Defence Request for Leave to Appeal a Decision on Motions Alleging Defects in the Confirmation Decision, 1 April 2019, ICC-02/04-01/15-1493.

⁶ Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX’s ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision’, ICC-02/04-01/15-1562, OA 4.

5. On 20 September 2019, the Defence filed a motion alleging further defects in the decision on the confirmation of charges, this time with regard to counts related to sexual and gender based crimes (the ‘Initial Request’).⁷
6. On 8 October 2019, the Chamber dismissed this request for reasons identical to those in the Defects Series Decision (the ‘Impugned Decision’).⁸ In particular, the Chamber noted that the Defence did not provide any reason for which the challenges raised and relief requested in the Initial Request were to be distinguished from those discussed – and dismissed – in the context of the Defects Series Decision.⁹
7. On 14 October 2019, the Defence requested leave to appeal the Impugned Decision (the ‘Request’).¹⁰ In the Request, it seeks leave to appeal the following issue:

Whether the Decision’s application of rule 134 of the Rules, in the instant case, was consistent with the requirements of a fair and expeditious trial and Mr Ongwen’s rights as an accused person (the ‘Issue’).¹¹

8. On 17 October 2019, the Prosecution filed its response to the Request (the ‘Response’).¹² It submits that the Request should be rejected since the Issue is a mere disagreement with the Impugned Decision and does not fulfil the requirements of Article 82(1)(d) of the Statute.¹³

II. Analysis

9. The Chamber recalls the interpretation of Article 82(1)(d) of the Statute as set out in detail previously.¹⁴
10. The Defence submits that the Chamber was unfair in its ruling that the current challenges should have been presented at an earlier point in time. It justifies the timing

⁷ Motions on Defects in the Confirmation Decision Regarding SGBC, ICC-02/04-01/15-1603-Conf. A public-redacted version was filed on 14 October 2019, ICC-02/04-01/15-1603-Red.

⁸ Decision on Further Defence Motion Alleging Defects in the Confirmation Decision, ICC-02/04-01/15-1630.

⁹ Impugned Decision, ICC-02/04-01/15-1630, para. 17.

¹⁰ Defence Request for Leave to Appeal ‘Decision on Further Defence Motion Alleging Defects in the Confirmation Decision’, ICC-02/04-01/15-1636.

¹¹ Request, ICC-02/04-01/15-1636, para. 1.

¹² Prosecution’s Response to the “Defence Request for Leave to Appeal ‘Decision on Further Defence Motion Alleging Defects in the Confirmation Decision’”, ICC-02/04-01/15-1641.

¹³ Response, ICC-02/04-01/15-1641, para. 1.

¹⁴ Decision on Defence Request for Leave to Appeal Decision ICC-02/04-01/15-521, 2 September 2016, ICC-02/04-01/15-529, paras 4-8; Decision on Defence Request for Leave to Appeal the Decision on Prosecution Request to Introduce Evidence of Defence Witnesses via Rule 68(2)(b), 5 September 2018, ICC-02/04-01/15-1331, para. 8.

of its Initial Request with the ‘development of this Court’s jurisprudence and the progress in the Ongwen case’, together with ‘inadequate resources and personnel’ that impaired the Defence to conduct a proper analysis of the decision on the confirmation of charges.¹⁵ The Defence also asserts that ‘it was apparent from the Defects Motion on SGBC that the Defence’s justification for raising the challenges was based on the lack of notice in the SGBC allegations’.¹⁶ It argues that the Chamber failed to consider these arguments, favouring instead the expeditiousness in the trial proceedings.

11. The Defence requests leave to appeal an issue functionally identical to the Prior Issue resolved against it by the Appeals Chamber. It also fails to make any submission on why the Issue raised in the Request would have to be resolved differently from the Prior Issue. Therefore, the Chamber does not consider that granting leave to appeal on this Issue would ‘materially advance the proceedings’ within the meaning of Article 82(1)(d) of the Statute.
12. Accordingly, the Chamber finds that the Issue does not fulfil the requirements of Article 82(1)(d) of the Statute and consequently rejects the Request in its entirety.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

REJECTS the Request.

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



Judge Bertram Schmitt, Presiding Judge



Judge Péter Kovács



Judge Raul C. Pangalangan

Dated 1 November 2019

At The Hague, The Netherlands

¹⁵ Request, ICC-02/04-01/15-1636, para. 9.

¹⁶ Request, ICC-02/04-01/15-1636, para. 11.