

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/04-01/15**
Date: **16 January 2020**

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 Ruling on Standard to Assess Multiple Charging
and Convictions**

To be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
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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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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 64(2) and (6)(f) of the Rome Statute (the ‘Statute’) issues the following ‘Decision on Defence Request for Ruling on Standard to Assess Multiple Charging and Convictions’.

I. Procedural history and submissions

1. On 9 December 2019, the Defence filed a request seeking the Chamber to clarify the legal standard applicable to assess multiple convictions arising out of the same underlying conduct (the ‘Request’).¹ It argues that ‘[i]n the event that the Court considers multiple convictions for the same conduct, knowledge of the standard to assess them is crucial for organising the closing argument and for applying the law in the brief’.² In substance, the Defence submits that when assessing multiple convictions, a conduct-based test should be applied.³ Alternatively, it argues that if a legal elements-test were to be applied, the contextual elements of crimes should not form part of the analysis.⁴
2. The Office of the Prosecutor (the ‘Prosecution’) responded on 20 December 2019, opposing the Request (the ‘Prosecution Response’).⁵ It submits the Request should be rejected *in limine* as it does not justify why the Chamber should provide an ‘advisory opinion’ and since the issue of multiple convictions should be addressed in the decision under Article 74 of the Statute.⁶ On the substance of the Request, the Prosecution submits that the Request lacks merit,⁷ that the Appeals Chamber has already endorsed a legal elements-test,⁸ and that the Defence is incorrect in arguing that contextual elements should not be taken into account when assessing multiple convictions.⁹

¹ Motion for Immediate Ruling on Standard to Assess Multiple Charging and Convictions, ICC-02/04-01/15-1697, with public annexes A and B.

² Request, ICC-02/04-01/15-1697, para. 1.

³ Request, ICC-02/04-01/15-1697, paras 9-39.

⁴ Request, ICC-02/04-01/15-1697, paras 43-44.

⁵ Prosecution’s Response to Defence’s “Motion for Immediate Ruling on Standard to Assess Multiple Charging and Convictions”, ICC-02/04-01/15-1704.

⁶ Prosecution Response, ICC-02/04-01/15-1704, paras 1 and 6-7.

⁷ Prosecution Response, ICC-02/04-01/15-1704, paras 2-3 and 8-15.

⁸ Prosecution Response, ICC-02/04-01/15-1704, paras 4 and 16-20.

⁹ Prosecution Response, ICC-02/04-01/15-1704, paras 5 and 32-38.

3. The Common Legal Representative of Victims (the ‘CLR V’) equally opposes the Request (the ‘CLR V Response’).¹⁰ It argues that the Request should be rejected *in limine* as untimely.¹¹ With regard to the substance, the CLR V submits that no proper legal basis is identified and that existing jurisprudence is portrayed incorrectly and – in any event – is merely disagreed with.¹²

II. Analysis

4. The Chamber notes that the Defence is in essence requesting an analysis of the Chamber as to which legal standard is applicable in assessing any potential issue of multiple convictions, should any convictions be entered.
5. In the view of the Chamber, and as expressed on prior occasions,¹³ the appropriate place for the Chamber to pronounce itself on interpretations of the applicable law is the judgment to be issued under Article 74 of the Statute. The Chamber sees no justification for treating the current matter any differently, also not on the basis of the Defence’s contention that knowledge of the applicable standard would be necessary for its preparation and formulation of the final brief and closing statements.¹⁴ Therefore, the Chamber does not consider that further explanations on the standard applicable to assessing multiple convictions are warranted at this stage.
6. In light of the above, the Request is dismissed *in limine*.

¹⁰ CLR V Response to Defence “Motion for Immediate Ruling on Standard to Assess Multiple Charging and Convictions”, 20 December 2019, ICC-02/04-01/15-1705.

¹¹ CLR V Response, ICC-02/04-01/15-1705, paras 1 and 10-14.

¹² CLR V Response, ICC-02/04-01/15-1705, paras 2 and 15-25.

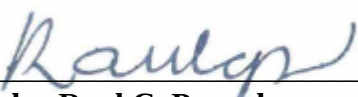
¹³ Decision on Defence Request for Leave to File a No Case to Answer Motion, 18 July 2018, ICC-02/04-01/15-1309, para. 10; Decision on Defence Motions Alleging Defects in the Confirmation Decision, 7 March 2019, ICC-02/04-01/15-1476, para. 35; Decision on Defence Request for the Chamber to Issue an Immediate Ruling Confirming the Burden and Standard of Proof Applicable to Articles 31(1)(a) and (d) of the Rome Statute, 5 April 2019, ICC-02/04-01/15-1494, para. 16.

¹⁴ See Request, ICC-02/04-01/15-1697, para. 1.

FOR THE FOREGOING REASONS, THE CHAMBER HEREBY

DISMISSES the Request *in limine*.

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


Judge Bertram Schmitt, Presiding Judge
Judge Péter Kovács
Judge Raul C. Pangalangan

Dated 16 January 2020

At The Hague, The Netherlands