

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-02/04-01/15
Date: 17 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
**Victims' Response to Defence "Motion for Immediate Ruling on the Request for
Dismissal of the Charge of Enslavement"**

Source: Legal Representatives of Victims

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 Benjamin Gumpert

Counsel for the Defence

Mr Krispus Ayena Odongo
Mr Charles Achaleke Taku

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms Paolina Massidda

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. INTRODUCTION

1. The Defence requests an immediate ruling on its motion for dismissal of the charge of enslavement (“Defence Motion”)¹. The Legal Representative for Victims (LRVs), like the Prosecution and the Office of Public Counsel for Victims (“OPCV”), submit that the Defence request should be dismissed in *limine* because it was brought manifestly out of time and re-litigates a matter that has already been addressed by the Trial Chamber.

II. PROCEDURAL HISTORY

2. On 23 March 2016, Pre-Trial Chamber II confirmed the charges against Dominic Ongwen, including in respect of the crime of enslavement.²
3. On 16 January 2017, the trial proceedings began.
4. On 13 April 2018, the presiding Judge of Trial Chamber IX (“the Chamber”) issued it “Directions on Closing Submissions.”³
5. During 2019, the Defence filed a series of motions alleging defects in the Confirmation Decision and requesting that the Chamber dismiss various charges (the “defects series”). The Chamber and the Appeals Chamber found that the motions were untimely.⁴
6. On 6 December 2019 the Defence of Mr. Dominic Ongwen filed a notification of the closure of presentation of its case.⁵
7. On 12 December 2019, the Chamber declared that the presentation of evidence in the case was complete.⁶

¹ ICC-02/04-01/15-1708.

² ICC-02/04-01/15-422.

³ ICC-02/04-01/15-1226.

⁴ ICC-02/04-01/15-1476; ICC-02/04-01/15-1630; ICC-02/04-01/15-1562.

⁵ ICC-02/04-01/15-1694.

⁶ ICC-02/04-01/15-1699.

8. On the 10 January 2020 the Defence filed its motion (“Defence Motion”) requesting an immediate ruling on the charge of enslavement.⁷

III. SUBMISSIONS

9. The Defence contends that has a right under Articles 67 (1)(e) and 21(2)(3) to make submissions on the proper legal interpretation of the charged crimes and modes of liability to enable the Chamber take into consideration the accused views prior to determining the issue.⁸
10. The LRVs submit that the Defence submission is misconceived and is an attempt to re-litigate the scope of charges and jurisdictional challenges which have both been settled by the Trial Chamber previously.

Timeliness

11. Questions regarding the legal interpretation of enslavement, as presented by the Defence in its Defence Motion, should have been raised at the confirmation of charges hearing at the earliest opportunity. An accused person’s right to raise an issue relating to the charges must be raised before the commencement of trial. Further argument on these issues is otherwise foreclosed.⁹
12. Whilst the Defence may, under Rule 134 (2), be granted leave to raise late issues, proper justification must be provided by the Defence for its lack of timeliness.¹⁰ In the present case the Defence raises challenges as to charges related to enslavement close to four years after the confirmation of charges decision and more than three years after the commencement of trial.

⁷ Defence Motion on requests an immediate ruling on the charge of enslavement, 10th January 2020, ICC-02/04-01/15-1708

⁸ *Ibid*, para. 6

⁹ Decision on Defence Motions Alleging Defects in the Confirmation Decision, ICC-02/04-1/15-1476, 7 March 2019, para. 17 – 20.

¹⁰ *Ibid*, para. 24.

Jurisdictional challenges

13. The Trial Chamber in its decision on the Defence Series, observed that jurisdictional challenges are those, if successful, would render the charges preferred by the Prosecution without legal basis.¹¹
14. The Defence Motion as presented repeats similar arguments to those made already in the Defects Series.¹²
15. The Trial Chamber, when dismissing the jurisdictional challenges mounted by the Defence, unequivocally determined that such challenges, must in accordance with Article 19(4), be brought prior to the commencement of the trial¹³.
16. The LRVs submit that the Defence motion amounts to raising jurisdictional challenges to charges 61-67 as set out in the Defence Motion and therefore cannot be raised at this time after the closure of its case, and accordingly invite the chamber to reject the Defence Motion.
17. The LRVs further observe that the Trial Chamber noted in its Decision on the Defects Series that the issues where the defence wishes to offer its interpretation of the existing law are best suited to being addressed in its closing submissions.¹⁴
18. Moreover the trial Chamber has consistently ruled that it will make determinations of applicable law when deliberating its judgment.¹⁵

RELIEF SOUGHT

19. The LRVs respectfully request that the Defence Motion be dismissed in *limine*.

¹¹*Ibid*, para. 33

¹² Defects in the Charged Crimes (Part IV of the Defects Series), ICC-02/04-01/15-1433, 1 February 2019, para. 54-60.

¹³ Decision on Defence Motion Alleging Defects, *Ibid*, para. 34

¹⁴ *Ibid*, para. 35.

¹⁵ *Ibid*.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Manoba', with a stylized flourish at the end.

Joseph A. Manoba

A handwritten signature in blue ink, appearing to read 'Francisco Cox', with a stylized flourish at the end.

Francisco Cox

Dated this 17th day of January 2020

At Kampala, Uganda and at Santiago, Chile