

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/04-01/15
Date: 30 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

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

Source: Legal Representatives of Victims

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

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Unrepresented Victims

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**Victims Participation and Reparations
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Other

I. INTRODUCTION

1. The Legal Representatives for Victims (the “LRVs”) respectfully request Trial Chamber IX (the “Chamber”) to dismiss the ‘Defence Motions [sic] on Defects in the Confirmation Decision Regarding SGBC’¹ (the “Defence Motion”) *in limine* as it is made grossly out of time.

II. PROCEDURAL HISTORY

2. On 1 February 2019, the Defence filed its ‘Defects Series’² alleging, *inter alia*, lack of notice to the accused and deficiencies in the decision confirming charges against Mr Ongwen.³ On 5 February 2019, the Prosecution requested the Chamber to dismiss *in limine* the Defects Series.⁴ On 6 February 2019, the Chamber declined to dismiss the Defence’s Defects Series, and instead instructed the Prosecution and Legal Representatives for Victims to file their consolidated responses to the Defence’s submissions by 25 February 2019.⁵ The Prosecution, the LRVs and Office for Public Counsel for Victims (“OPCV”) responded to the ‘Defects Series’ on 25 February 2019.⁶

¹Motions on Defects in the Confirmation Decision Regarding SGBC, ICC-02/04-01/15-Conf, 20 September 2019.

²Defence 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, 1 February 2019; the 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, 1 February 2019; the 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, 1 February 2019; and the 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, 1 February 2019.

³Defence Request for Leave to Appeal ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision (ICC-02/04-01/15-1476)’, ICC-02/04-01/15-1480, 14 March 2019

⁴Prosecution 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’, ICC-02/04-01/15-1436, 6 February 2019.

⁵Decision on Responses to the ‘Defects Series’ Following Prosecution Request for Dismissal, ICC-02/04-01/15-1438, 6 February 2019.

⁶Prosecution Response the ‘Defence Motion on Defects in the Confirmation of Charges Decision: Defects in Notice and Violations of Fair Trial’ dated 1 February 2019”, ICC-02/04-01/15- 1463, 25 February 2019; Corrigendum to the Victims’ Response to ‘Defence Motion on Defects in the Confirmation of Charges Decision’ (Parts I-IV)”, ICC-02/04-01/15-1464-Corr, 25 February 2019 (notified on 26 February 2019; CLRV Response to the Defence’s Four Requests on Defects in the Confirmation of Charges Decision”, ICC-02/04-01/15-1461, 25 February 2019.

3. On 7 March 2019, the Chamber issued its 'Decision on Defence Motions Alleging Defects in the Confirmation Decision'⁷ which the Defence sought leave to appeal.⁸ The Prosecution⁹ and the OPCV¹⁰ responded to the Defence request for leave to appeal on 18 March 2019, and on 1 April 2019, the Chamber granted the Defence leave to appeal one issue.¹¹
4. The Defence filed its Appeal Brief on 11 April 2019,¹² followed by responses by the Prosecution¹³ and the OPCV¹⁴ on 23 April 2019. Following the Appeals Chamber's instructions, the Prosecution¹⁵ and the LRVs¹⁶ made further submissions on 31 May 2019, as well as the Defence¹⁷ and the OPCV.¹⁸ On 27 July 2019, the Appeals Chamber issued its Judgement on the Defence's appeal and confirmed the Chamber's Decision on the Defects Series.¹⁹
5. On 20 September 2019, the Defence submitted the Defence Motion.²⁰

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

⁸ 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, ICC-02/04-01/15-1480, 14 March 2019 (the "Request for leave to appeal").

⁹ Prosecution's Response to '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', ICC-02/04-01/15-1486, 18 March 2019.

¹⁰ CLRV's Response to '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', ICC-02/04-01/15-1484, 18 March 2019.

¹¹ Decision on Defence Request for Leave to Appeal a Decision on Motions Alleging Defects in the Confirmation Decision, ICC-02/04-01/15-1493, 1 April 2019.

¹² Defence's appeal against the 'Decision on Defence Motions Alleging Defects in the Confirmation Decision', ICC-02/04-01/15-1496 OA4, 11 April 2019.

¹³ Prosecution's Response to 'Defence's appeal against the 'Decision on Defence Motion Alleging Defects in the Confirmation Decision', ICC-02/04-01/15-1502 OA4, 23 April 2019.

¹⁴ CLRV's Response to 'Defence's Appeal Against the Decision on Defence Motions Alleging Defects in the Confirmation Decision', ICC-02/04-01/15-1503 OA4, 23 April 2019.

¹⁵ Prosecution's Submission in response to 'Order for Further Submissions' (ICC-02/04-01/15- 1524), ICC-02/04-01/15-1532 OA4, 31 May 2019.

¹⁶ Victims' submissions in response to the Order for Further Submissions, ICC-02/04- 01/15-1531 OA4, 31 May 2019.

¹⁷ Defence's Further Submissions, ICC-02/04-01/15-1536 OA4, 03 June 2019.

¹⁸ CLRV's Further Submissions Pursuant to the Appeals Chamber's Order, ICC-02/04- 01/15-1537 OA4, 03 June 2019.

¹⁹ Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX's 'Decision on Defence Motions Alleging Defects in the Confirmation Decision' (Appeals Chamber), ICC-02/04- 01/15-1562 OA4, 17 July 2019.

²⁰ *Supra* note 1.

III. CONFIDENTIALITY

6. The LRVs' response is filed as confidential pursuant to regulation 23bis (2) of the Regulations of the Court as the Defence Motion was submitted by the Defence as confidential. There is nothing, however, in this document that would require such a classification, and it may be reclassified as public should the Chamber deem it necessary.

IV. SUBMISSIONS

The Defence Motion is patently out of time

7. The Defence seeks the leave of the Chamber, pursuant to rule 134(2) of the Rules of Procedure and Evidence ("RPE") to amend its Defects Series regarding alleged defects in the Confirmation Decision with respect to SGBC ("Sexual and Gender based Crimes"), related to the individual criminal responsibility of Mr Ongwen (Counts 50-60).²¹
8. The Defence contends that the Confirmation Decision is defective because it fails to provide specifics regarding the geographic parameters for the criminal allegations in respect to P-99, P-101, and P-214.²²
9. The Defence argues that the SGBC charges concerned are insufficiently specific in terms of location and time. Consequently, the Defence alleges a lack of the Court's geographic or temporal jurisdiction over these charges.²³
10. The Defence asserts that 'the present Motion is timely because of 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.'²⁴

²¹Defence Motion, para. 2.

²²Defence Motion, para. 18.

²³Defence Motion.

²⁴Defence Motion, para. 2.

11. The Defence fails to provide any clarity as to how Mr. Ongwen's fair trial rights have been affected by the alleged defects in question. Furthermore, the Defence Motion fails to provide any semblance of an explanation as to why the challenge to the geographic scope and jurisdiction over the relevant charges was not brought forward in a timely manner.
12. The confirmation of charges decision in this case was issued in 23 March 2016.²⁵ The Defence failed to both timeously raise the alleged defects when the decision confirming the charges was issued three years ago or during the confirmation of charges hearings.
13. Furthermore, the Defence fails to explain why it did not raise these issues in its original Defects Series, bearing in mind that the Defects Series was also found to be manifestly out of time and lacking in merit.
14. The LRVs submit that the issues raised in the Defence Motion as to the specificity (in terms of time and location) of the charges concerned, fall squarely within the scope of, and reflect the issues that have already been raised by the Defence in the original Defects Series Motions, and have been adjudicated upon by this Chamber and the Appeals Chamber. Therefore, the Defence Motion should be dismissed.
15. The LRVs concur with the Prosecutor that although the Trial Chamber does have the discretion to 'entertain late challenges'²⁶ under rule 134(2), the Defence has failed to demonstrate why 'the Chamber should exercise its discretion in this instance.'²⁷

²⁵ ICC-02/04-01/15-422.

²⁶ Para. 6, ICC-02/04-01/15-1609-Conf.

²⁷ *Ibid.*

IV. RELIEF SOUGHT

16. For the reasons outlined above, the LRVs respectfully request the Chamber dismiss the Defence Motion *in limine*.

Respectfully submitted,



Joseph A. Manoba

Dated this 30th day of September 2019

At Kampala, Uganda and at Santiago, Chile



Francisco Cox