

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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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

**Prosecution's Response to the Defence "Motion for Immediate Ruling on the
Request for Dismissal of the Charge of Enslavement"**

Source: The Office of the Prosecutor

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

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Introduction

1. In its “Motion for Immediate Ruling on the Request for Dismissal of the Charge of Enslavement” (“Defence Motion”),¹ the Defence seeks an immediate decision dismissing the charges of enslavement laid against Mr Ongwen.
2. The Prosecution agrees with the Common Legal Representative of the Victims that the Trial Chamber (“the Chamber”) should dismiss the Defence Motion *in limine*.²

Procedural History

3. In March 2016, the Pre-Trial Chamber confirmed the charges against Mr Ongwen.³ In preparation for trial commencing in December 2016, the Chamber ordered that the Parties file any motions requiring pre-trial resolution by 28 October 2016.⁴
4. Beginning in February 2019, when the Defence was part way through its presentation of evidence, it 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.⁵
5. On 12 December 2019, the Chamber declared that the presentation of evidence in the case was complete.⁶ The Chamber made orders for the Parties to file their closing briefs by 19 February 2020,⁷ and for closing statements to commence on 10 March 2020.⁸

¹ ICC-02/04-01/15-1708.

² ICC-02/04-01/15-1709.

³ ICC-02/04-01/15-422-Red.

⁴ ICC-02/04-01/15-449.

⁵ ICC-02/04-01/15-1476; ICC-02/04-01/15-1630; ICC-02/04-01/15-1562.

⁶ ICC-02/04-01/15-1699.

⁷ ICC-02/04-01/15-1691.

⁸ ICC-02/04-01/15-1645.

6. The Defence Motion was filed on 10 January 2020: over three years after the deadline for such motions, five months after the Appeals Chamber ruled that such motions were untimely, four weeks after the evidence presentation was closed, and less than six weeks before the deadline for filing closing briefs.

Submissions

7. The Defence requests an immediate ruling concerning the legal interpretation of enslavement. It submits that the enslavement charges should be dismissed for the reason that there is “huge overlap” between the charge of enslavement and the charge of sexual slavery.⁹

8. The Chamber has already ruled, in connection with the “defects series,” that “motions challenging the formulation of the charges must be brought in a timely manner after they arise.”¹⁰ As with each of the filings comprising the “defects series,” the Defence Motion makes no showing that the matters addressed could not have been raised earlier. Although the Chamber has discretion under rule 134(2) to entertain late challenges, the Defence does not even attempt to provide adequate explanation as to why the Chamber should exercise its discretion in this instance.

9. Further, the Defence’s assertion that an immediate ruling would aid its preparation for closing argument¹¹ fails to explain why the Chamber should depart from its decision to rule on the legal interpretation of the charged crimes in its final judgment. As the Chamber has held in relation to a similar application,¹² no exceptional circumstances justify consideration of the matters raised in the Defence Motion at this juncture. The mere invocation of Mr Ongwen’s fair trial rights¹³ does

⁹ ICC-02/04-01/15-1708, para. 67.

¹⁰ ICC-02/04-01/15-1476, para. 36.

¹¹ ICC-02/04-01/15-1708, para. 7.

¹² ICC-02/04-01/15-1710.

¹³ ICC-02/04-01/15-1708, para. 6.

not overcome the Chamber's duty to protect the proper administration of justice, including the expeditious conduct of proceedings.

Conclusion

10. For the reasons above, the Defence Motion should be dismissed *in limine*.



Fatou Bensouda, Prosecutor

Dated this 16th day of January 2020

At The Hague, the Netherlands