

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-02/04-01/15**
Date: **11 February 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 Request to Dismiss the Charge of
Enslavement**

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

The Office of the Prosecutor

Fatou Bensouda
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Counsel for the Defence

Krispus Ayena Odongo

Legal Representatives of Victims

Joseph Akwenyu Manoba
Francisco Cox
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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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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 64(2) and (6)(f) of the Rome Statute (the ‘Statute’) issues the following ‘Decision on Defence Request for Ruling on Request to Dismiss the Charge of Enslavement’.

I. Procedural history and submissions

1. On 10 January 2020, the Defence filed a request seeking the Chamber to dismiss the charge of enslavement (the ‘Request’).¹ The Defence submits that the Request is timely, and argues that ‘[a]s a matter of law, no difference exists between the crime of enslavement and the crime of sexual slavery’.² According to the Defence, the accused cannot be charged for enslavement and sexual slavery based on the same conduct since the crimes are the same, the decision on the confirmation of charges does not identify any separate distinctive elements, and the pleading of the crime of enslavement is defective.³
2. On 14 January 2020, the Common Legal Representative of Victims (the ‘CLRV’) filed a response in which she argues that the Request should be rejected *in limine* as untimely⁴ and that it relates to a matter of law which can be addressed in the closing brief and closing statements.⁵
3. The Office of the Prosecutor (the ‘Prosecution’) responded on 16 January 2020, submitting the Request should be rejected *in limine* since no showing is made that it could not have been raised earlier.⁶ The Prosecution also argues that the Defence fails to explain why the Chamber should depart from its previous indication that it would rule on the interpretation of the applicable law in its judgment under Article 74 of the Statute.⁷

¹ Motion for Immediate Ruling on the Request for Dismissal of the Charge of Enslavement, ICC-02/04-01/15-1708.

² Request, ICC-02/04-01/15-1708, para. 8.

³ Request, ICC-02/04-01/15-1708, para. 12.

⁴ CLRV Response to Defence “Motion for Immediate Ruling on the request for Dismissal of the Charge of Enslavement”, ICC-02/04-01/15-1709 (the ‘CLRV Response’), paras 6-8.

⁵ CLRV Response, ICC-02/04-01/15-1709, para. 9.

⁶ Prosecution’s Response to the Defence “Motion for Immediate Ruling on the Request for Dismissal of the Charge of Enslavement”, ICC-02/04-01/15-1711 (the ‘Prosecution Response’), para. 8.

⁷ Prosecution Response, ICC-02/04-01/15-1711, para. 9.

4. On 17 January 2020, the Legal Representatives of Victims (the ‘LRV’) responded also that the Request should be dismissed *in limine*.⁸ They argue that the Request is untimely⁹ and that similar arguments were made in jurisdictional challenges which were dismissed by the Chamber before.¹⁰ The LRV also submit that it has been stated before that interpretations of law are best addressed in the closing statements¹¹ and that the Chamber has consistently ruled that it would make its determinations on the applicable law on the judgment under Article 74 of the Statute.¹²

II. Analysis

5. The Chamber notes that the Defence is in essence requesting a preliminary determination by the Chamber of the question whether the crime of enslavement is properly charged in this case, and whether the crime of enslavement and that of sexual slavery are not in fact to be considered as one and the same crime. It is premature to resolve that question in advance of the judgment, because it assumes that the Chamber will eventually make factual findings that satisfy the elements of both enslavement and sexual slavery for the same conduct.
6. Only recently the Chamber reiterated its position that the appropriate place for the Chamber to provide its interpretations of the applicable law is the judgment to be issued under Article 74 of the Statute.¹³ The Chamber sees no reason to depart from this position, which applies with equal force in disposing of this request by the Defence.¹⁴
7. Accordingly, the Chamber does not consider it warranted to provide further explanations on the substance of the Request at this point in time. The Request is dismissed *in limine*.

⁸ Victims’ Response to Defence “Motion for Immediate Ruling on the Request for Dismissal of the Charge of Enslavement”, ICC-02/04-01/15-1712 (the ‘LRV Response’).

⁹ LRV Response, ICC-02/04-01/15-1712, paras 11-12.

¹⁰ LRV Response, ICC-02/04-01/15-1712, paras 13-16.

¹¹ LRV Response, ICC-02/04-01/15-1712, para. 17.

¹² LRV Response, ICC-02/04-01/15-1712, para. 18.

¹³ Decision on Defence Request for Ruling on Standard to Assess Multiple Charging and Convictions, 16 January 2020, ICC-02/04-01/15-1710, para. 5. *See also* 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-02/04-01/15-1708, para. 7.

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 11 February 2020

At The Hague, The Netherlands