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No.: ICC-02/11-02/11
Date: 22 October 2014

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekaterina Trendafilova
Judge Christine Van den Wyngaert

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. CHARLES BLÉ GOUDÉ***

Public Document

**Response to the "Defence request to strike out the Annex
to the OPCV's observations on the Defence application pursuant to
Articles 19(4) and 17(1)(d) of the Rome Statute"**

Source: Office of Public Counsel for Victims

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

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I. PROCEDURAL BACKGROUND

1. On 29 September 2014, the Defence submitted the “Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute” (the “Admissibility Challenge”), challenging the admissibility of the case against Mr. Blé Goudé for lack of gravity.¹

2. On 20 October 2014, the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV”), acting as Common Legal Representative of the victims (the “Common Legal Representative”),² filed the observations on behalf of victims to the Admissibility Challenge (the “Victims’ Observations”).³

3. On 21 October 2014, the Defence filed the “Defence request to strike out the Annex to OPCV’s observations on the Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute” (the “Defence Request”),⁴ requesting the Chamber to reject the Annex to the Victims’ Observations and to strike it out from the record of the case.

4. Pursuant to regulation 24(2) of the Regulations of the Court, the Common Legal Representative provides a response to the Defence Request.

¹ See the “Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute”, No. ICC-02/11-02/11-171, 29 September 2014 (dated 27 September 2014) (the “Admissibility Challenge”).

² See the “Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-83, 11 June 2014, pp. 19-21; and the “Second Decision on victims’ participation in the pre-trial proceedings and related issues” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-02/11-111, 1 August 2014, pp. 13-15.

³ See the “Observations on behalf of victims on the ‘Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute’”, No. ICC-02/11-02/11-180, 20 October 2014 (the “Victims’ Observations”).

⁴ See the “Defence request to strike out the Annex to OPCV’s observations on the Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute”, No. ICC-02/11-02/11-182, 21 October 2014 (the “Defence Request”).

II. SUBMISSIONS

5. The Common Legal Representative strongly opposes the Defence Request and appeals the Chamber to consider the Annex to the Victims' Observations in the framework of the Admissibility Challenge. The Defence fails to consider the victims' right to submit observations on admissibility proceedings, the extensive practice of the Court regarding the victims' exercise of said right and the actual nature of the victims' observations collated by the Common Legal Representative in this case.

6. Firstly, the Common Legal Representative disagrees with the Defence complaint that the Annex is a "*flagrant abuse of the framework of an admissibility challenge*".⁵ The Common Legal Representative submits that the Rome Statute and the Rules of Procedure and Evidence are clear in affording victims participating in this case and victims who have communicated with the Court in connection with the case a right to provide observations in proceedings with respect to jurisdiction or admissibility.⁶

7. The right to provide observations on admissibility proceedings gives victims the possibility to communicate their views on an issue of capital importance to them, namely whether Justice will be done and the harm they allegedly suffered from will be addressed by the Court or not. The submission by victims of their views on the Admissibility Challenge makes them feel part of the proceedings before the Court. At the same time, the victims' observations allow the Court to perceive how the victims' interests are affected by the Admissibility Challenge.

⁵ See the Defence Request, *supra* note 4, par. 7.

⁶ See Rome Statute, article 19(3) and Rules of Procedure and Evidence, rule 59. See also the transcript of the confirmation of charges hearing session held on 29 September 2014, No. ICC-02/11-02/11-T-5-CONF-ENG ET, p. 5, lines 10 to 14, and p. 61, lines 15 to 24 (decisions issued in open session).

8. Secondly, the Common Legal Representative submits that she received the concrete views on the Admissibility Challenge from some victims and transmitted them *verbatim* to the Chamber pursuant to her duty as legal representative and consistently with the past practice of the Court.

9. Indeed, the Code of Professional Conduct for Counsel imposes an obligation on the Common Legal Representative to “consult the client on the means by which the objectives of his or her representation are to be pursued”.⁷ And in the *Kony et al., Katanga, Bemba, Ruto and Sang* and *Simone Gbagbo* cases, the Chamber accepted the *verbatim* observations by the victims collected by the OPCV relevant to the respective admissibility proceedings.⁸

10. Lastly, the Common Legal Representative submits that the Defence complaint that the Annex is a “brazen attempt to besmirch the Suspect, to re-litigate the substantive merits of the case and to adduce speculative and highly prejudicial evidence”⁹ may only arise from a misunderstanding or misreading by the Defence of the Victims’ Observations.

11. As the Defence may be aware, victims normally refer to what they saw and/or heard in non-legal terms. Accordingly, victims, in the majority of the cases, cannot appreciate the difference between substantive allegations and admissibility

⁷ See the Code of Professional Conduct for Counsel, article 14(2)(b).

⁸ See *e.g.* the public redacted Annexes 9 and 40-B to the “Observations on behalf of victims pursuant to article 19 (1) of the Rome Statute with 55 Public Annexes and 45 Redacted Annexes”, No. ICC-02/04-01/05-349, 18 November 2008; the public Annexes 2, 3 and 4 to the “Observations of the OPCV on the Defence for Germain Katanga’s Motion Challenging the Admissibility of the Case with one confidential *ex parte* OPCV only Annex and three Public Annexes”, No. ICC-01/04-01/07-1082, 29 April 2009; the public redacted annexes 1, 8, 9, 10, 17, 18, 21-28, 36, 42, 43, 75, 76, 78-88, 90, 91, and 93-95 to the “Response by the Legal Representative of Victims to the Defence’s Challenge on Admissibility of the Case pursuant to articles 17 et 19 (2) (a) of the Rome Statute with 102 Annexes Confidential *ex parte* OPCV only and same Annexes Public Redacted”, No. ICC-01/05-01/08-742, 1 April 2010; the public Annex 2 to the “Observations on behalf of victims on the Government of Kenya’s Application under Article 19 of the Rome Statute With Public Annexes 1 and 2”, No. ICC-01/09-01/11-70, 28 April 2011; and the public redacted Annexes 4, 12 and 40 to the “Version publique expurgée, Observations des victimes sur la « Requête de la République de Côte d’Ivoire sur la recevabilité de l’affaire le Procureur c. Simone Gbagbo et demande de sursis à exécution en vertu des articles 17, 19 et 95 du Statut de Rome »”, No. ICC-02/11-01/12-40-Red, 9 April 2014.

⁹ See the Defence Request, *supra* note 4, par. 6.

arguments referred to by the Defence.¹⁰

12. In these circumstances, the Common Legal Representative screened the Annex received and only referred in her submissions to those observations, limited as they may be,¹¹ that are related to factors which, as rightly argued by the Defence,¹² are relevant to determine the quantitative and qualitative gravity of the case pursuant to rule 145(1)(c) and (2)(b)(iv).

13. In particular, the Common Legal Representative singled out the victims' observations contained in the Annex that are related to (i) the scale of the alleged crimes (*i.e.* the large scope of victimisation in this case),¹³ (ii) the nature of the alleged crimes (*i.e.* the particular seriousness of the sexual violence in this case),¹⁴ (iii) the employed means for the execution of the crimes (*i.e.* the discrimination used to select the targets of the crimes and the brutal manner of executing some crimes in this case),¹⁵ and (iv) the impact of the alleged crimes and the harm caused to victims and their families (*i.e.* the long-lasting consequences of the crimes on the victims in this case).¹⁶

14. Consequently, contrary to the Defence's contention, the Common Legal Representative did not refer to any observations made by the victims on the substantive merits of the case.

¹⁰ *Idem*, paras. 3-4.

¹¹ *Ibid.*, par. 5 ("*The comments included in the Annex, for the most part, cover topics completely unrelated to gravity*") (emphasis added).

¹² See the Admissibility Challenge, *supra* note 1, par. 24.

¹³ See the Victims' Observations, *supra* note 3, footnote 55.

¹⁴ *Idem*, footnote 56.

¹⁵ *Ibid.*, footnotes 57-58.

¹⁶ *Ibid.*, footnotes 59-61.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Pre-Trial Chamber to reject the Defence Request and to consider the Annex to the Victims' Observations in the framework of the Admissibility Challenge.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 22nd day of October 2014

At The Hague, The Netherlands