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Date: 21 October 2014

PRE-TRIAL CHAMBER I

Before:

Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Ekaterina Trendafilova
Judge Christina Van den Wyngaert

SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE

THE PROSECUTOR V. CHARLES BLÉ GOUDÉ

Public Document

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

Source: Defence for Charles Blé Goudé

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

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I. Introduction

1. On behalf of Charles Blé Goudé (the "**Suspect**") and pursuant to its admissibility challenge filed on 27 September 2014¹ (the "**Challenge**"), the Defence hereby requests that the Pre-Trial Chamber strike out the Annex to the "*Observations on behalf of victims on the 'Defence application pursuant to Articles 19(4) and 17(1)(d) of the Rome Statute'*" submitted by the Common Legal Representative on 20 October 2014² (the "**Observations**").

II. Submissions

2. The Observations include an Annex³ (the "**Annex**") submitted to the Pre-Trial Chamber in order to testify to "the unspeakable nature of the crimes they [the victims] suffered from and the cruel means whereby the crimes were committed".⁴ Needless to say, none of these "unspeakable" crimes are any more unspeakable than any incident of rape or murder wherever it may occur. Nor are these allegedly "unspeakable" crimes demonstrably connected to the five incidents in respect of which the Suspect's criminal liability is allegedly engaged.

3. Indeed, the Annex includes substantive assertions that ought to have been made, if at all, by the Common Legal Representative in her own final submissions⁵ or in the numerous applications made by the individual victims. Making such emotive allegations on issues unconnected with the Suspect's individual responsibility at this late stage is highly prejudicial, breaches the Suspect's right to

¹ ICC-02/11-02/11-171.

² ICC-02/11-02/11-180.

³ ICC-02/11-02/11-180-Anx-Red.

⁴ ICC-02/11-02/11-180 at para. 54.

⁵ The Defence notes that the Common Legal Representative provided no such submissions, despite being permitted to do so by the Chamber by 10 October 2014.

the last word and impacts negatively on his entitlement to a fair trial pursuant to Article 67 of the Statute.

4. It is well established that the Pre-Trial Chamber must not entertain any arguments at the jurisdictional phase that “*relate to the substantive merits of th[e] case as opposed to the issue of whether the Court has subject-matter jurisdiction to consider such questions*”.⁶

5. The comments included in the Annex, for the most part, cover topics completely unrelated to gravity; what the Suspect allegedly said in Yopougon,⁷ whether the Suspect is a “war criminal”,⁸ the Suspect’s participation in violent student movements,⁹ the Suspect’s role in Laurent Gbagbo’s “system”,¹⁰ whether the Suspect is a racist xenophobe,¹¹ questions which ought to be posed to the Defence,¹² the Suspect’s alleged presence in Camp Gallieni,¹³ the Suspect’s alleged presence at meetings with Laurent Gbagbo,¹⁴ *et cetera*.

6. The Annex is, therefore, nothing more than a brazen attempt to besmirch the Suspect, to re-litigate the substantive merits of the case and to adduce speculative and highly prejudicial evidence.

7. Such a flagrant abuse of the framework of an admissibility challenge is to be regretted.

⁶ *Ibid.* at para. 30.

⁷ Annex, p.1, third paragraph.

⁸ Annex, p.1, last paragraph.

⁹ Annex, p.2, first paragraph.

¹⁰ Annex, p.2, second paragraph.

¹¹ Annex, p.2, third paragraph.

¹² Annex, p.2, fourth paragraph.

¹³ Annex, p.2, fifth paragraph.

¹⁴ Annex, p.2, last full paragraph.

III. Relief Sought

8. In light of all the aforementioned, the learned Pre-Trial Chamber is respectfully requested to reject the Annex and to strike it from the record.



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21 October 2014