

**Cour
Pénale
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**International
Criminal
Court**

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Date: 3 June 2013

PRE-TRIAL CHAMBER I

Before: Judge Silvia Fernández de Gurmendi, Presiding Judge
Judge Hans-Peter Kaul
Judge Christine Van den Wyngaert

**SITUATION IN THE REPUBLIC OF CÔTE D'IVOIRE
IN THE CASE OF
*THE PROSECUTOR V. LAURENT GBAGBO***

Public

**Decision adjourning the hearing on the confirmation of charges pursuant to
article 61(7)(c)(i) of the Rome Statute**

Decision to be notified, in accordance with regulation 31 of the Regulations of the Court, to:

The Office of the Prosecutor
 Fatou Bensouda, Prosecutor
 Eric Macdonald, Senior Trial Lawyer

Counsel for the Defence
 Emmanuel Altit
 Agathe Bahi Baroan

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
 Participation/Reparation**

**The Office of Public Counsel for
 Victims**
 Paolina Massidda

**The Office of Public Counsel for the
 Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar & Deputy Registrar
 Herman von Hebel, Registrar
 Didier Preira, Deputy Registrar

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
 Section**

Other

Pre-Trial Chamber I (the “Chamber”) of the International Criminal Court (the “Court”) issues the following decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute (the “Statute”).

I. PROCEDURAL HISTORY

1. On 3 October 2011, Pre-Trial Chamber III, by majority, authorised the commencement of an investigation in the Republic of Côte d'Ivoire (“Côte d'Ivoire”) with respect to crimes within the jurisdiction of the Court committed since 28 November 2010.¹ On 22 February 2012, Pre-Trial Chamber III expanded the authorisation for the investigation to encompass crimes within the jurisdiction of the Court allegedly committed between 19 September 2002 and 28 November 2010.²
2. On 23 November 2011, Pre-Trial Chamber III issued a warrant of arrest for Laurent Gbagbo (“Mr Gbagbo”), having found reasonable grounds to believe that he was criminally responsible as an “indirect co-perpetrator” pursuant to article 25(3)(a) of the Statute for the crimes against humanity of murder, rape and other forms of sexual violence, other inhumane acts and persecution, committed in Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011.³ The decision on the

¹ Pre-Trial Chamber III, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, ICC-02/11-14, and corrigendum, ICC-02/11-14-Corr, filed on 15 November 2011. Judge Fernández de Gurmendi issued a separate and partially dissenting opinion on the decision (Judge Fernandez de Gurmendi's separate and partially dissenting opinion to the Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire, 3 October 2011, ICC-02/11-15, and corrigendum, ICC-02/11-15-Corr, with Annex 1, filed on 5 October 2011).

² Pre-Trial Chamber III, Decision on the “Prosecution’s provision of further information regarding potentially relevant crimes committed between 2002 and 2010”, 22 February 2012, ICC-02/11-36.

³ Pre-Trial Chamber III, Warrant of Arrest for Laurent Koudou Gbagbo, 23 November 2011, ICC-02/11-01/11-1.

Prosecutor's application for the warrant of arrest was issued on 30 November 2011.⁴ Mr Gbagbo was surrendered to the Court on 30 November 2011.

3. On 5 December 2011, Mr Gbagbo made his initial appearance before the Court. During the hearing, Pre-Trial Chamber III satisfied itself that Mr Gbagbo had been informed of the crimes he was alleged to have committed and of his relevant rights and scheduled the confirmation of charges hearing (the "Hearing") for 18 June 2012.⁵

4. On 15 March 2012, the situation in Côte d'Ivoire was reassigned to Pre-Trial Chamber I.⁶

5. On 12 June 2012, following a Defence request for postponement on the grounds, *inter alia*, that their resources were insufficient to properly prepare for the Hearing,⁷ the Single Judge⁸ issued a decision postponing the Hearing to 13 August 2012.⁹

6. On 2 August 2012, the Single Judge issued a decision postponing the Hearing pending the resolution of the issue of Mr Gbagbo's fitness to take part in the proceedings.¹⁰

⁴ Pre-Trial Chamber III, Decision on the Prosecutor's Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo, 30 November 2011, ICC-02/11-01/11-9-US-Exp, and public redacted version, ICC-02/11-01/11-9-Red, filed on 20 December 2011.

⁵ Pre-Trial Chamber III, Transcript of Hearing, 5 December 2011, ICC-02/11-01/11-T-1-ENG, p. 8.

⁶ Presidency, Decision on the constitution of Pre-Trial Chambers and on the assignment of the Democratic Republic of the Congo, Darfur, Sudan and Côte d'Ivoire situations, 15 March 2012, ICC-02/11-01/11-59.

⁷ Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012, 5 June 2012, ICC-02/11-01/11-140-Conf, and public redacted version, ICC-02/11-01/11-140-Red.

⁸ Pre-Trial Chamber I, Décision portant désignation d'un juge unique, 16 March 2012, ICC-02/11-01/11-61.

⁹ Pre-Trial Chamber I, Decision on the "Requête de la Défense en report de l'audience de confirmation des charges prévue le 18 juin 2012", 12 June 2012, ICC-02/11-01/11-152-Conf, and public redacted version ICC-02/11-01/11-152-Red.

¹⁰ Pre-Trial Chamber I, Decision on issues related to the proceedings under rule 135 of the Rules of Procedure and Evidence and postponing the date of the confirmation of charges hearing, 2 August 2012, ICC-02/11-01/11-201, with annex.

7. On 2 November 2012, the Chamber issued the “Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court”, finding that Mr Gbagbo was fit to take part in the proceedings.¹¹ On 29 November 2012, the Chamber rejected the Defence application for leave to appeal this decision.¹²

8. On 14 December 2012, the Chamber issued the “Decision on the date of the confirmation of charges hearing and proceedings leading thereto”, setting 19 February 2013 as the date for the commencement of the Hearing and establishing, *inter alia*, the time limits for the disclosure and presentation of evidence.¹³

9. On 17 January 2013, the Prosecutor filed the amended document containing the charges (the “Amended DCC”), list of evidence and consolidated Elements Based Chart.¹⁴ In the Amended DCC, the Prosecutor alleges that Mr Gbagbo is criminally responsible for crimes against humanity committed in Côte d’Ivoire between 16 December 2010 and 12 April 2011.¹⁵

10. On 1 February 2013, the Defence filed the list of evidence that it intended to present at the Hearing.¹⁶

11. The Hearing was held from 19 until 28 February 2013.¹⁷ The final written submissions of the Prosecutor¹⁸ and the Office of Public Counsel for victims¹⁹ were

¹¹ Pre-Trial Chamber I, Decision on the fitness of Laurent Gbagbo to take part in the proceedings before this Court, 2 November 2012, ICC-02/11-01/11-286-Conf and public redacted version, ICC-02/11-01/11-286-Red.

¹² Pre-Trial Chamber I, Decision on three applications for leave to appeal, 29 November 2012, ICC-02/11-01/11-307.

¹³ Pre-Trial Chamber I, Decision on the date of the confirmation of charges hearing and proceedings leading thereto, 14 December 2012, ICC-02/11-01/11-325.

¹⁴ Soumission de l’Accusation du Document amendé de notification des charges, de l’Inventaire amendé des éléments de preuve à charge et des Tableaux amendés des éléments constitutifs des crimes, 17 January 2013, ICC-02/11-01/11-357, with confidential annexes 1-3; and public redacted version, ICC-02/11-01/11-357-Anx1-Red.

¹⁵ Amended DCC, paras 92-108.

¹⁶ Communication de l’inventaire des éléments de preuve à décharge de la Défense, 1 February 2013, ICC-02/11-01/11-381, with confidential annex.

¹⁷ Pre-Trial Chamber I, Transcript of Hearing, 19 February 2013, ICC-02/11-01/11-T-14-ENG; *id.*, Transcript of Hearing, 20 February 2013, ICC-02/11-01/11-T-15-ENG, and public redacted version

filed on 14 March 2013, and the final written submissions of the Defence were filed on 28 March 2013.²⁰ The Chamber announced on the last day of the Hearing that the decision would be issued within 60 days after the final written submissions of the Defence.²¹

II. THE APPLICABLE LAW

12. The Chamber notes articles 21, 61 and 67 of the Statute. Article 61(7) of the Statute provides:

The Pre-Trial Chamber shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged. Based on its determination, the Pre-Trial Chamber shall:

- (a) Confirm those charges in relation to which it has determined that there is sufficient evidence, and commit the person to a Trial Chamber for trial on the charges as confirmed;
- (b) Decline to confirm those charges in relation to which it has determined that there is insufficient evidence;
- (c) Adjourn the hearing and request the Prosecutor to consider:
 - (i) Providing further evidence or conducting further investigation with respect to a particular charge; or
 - (ii) Amending a charge because the evidence submitted appears to establish a different crime within the jurisdiction of the Court.

ICC-02/11-01/11-T-15-Red-ENG; *id.*, Transcript of Hearing, 21 February 2013, ICC-02/11-01/11-T-16-ENG, and public redacted version ICC-02/11-01/11-T-16-Red-ENG; *id.*, Transcript of Hearing, 22 February 2013, ICC-02/11-01/11-T-17-ENG, and public redacted version ICC-02/11-01/11-T-17-Red-ENG; *id.*, Transcript of Hearing, 25 February 2013, ICC-02/11-01/11-T-18-ENG, and public redacted version ICC-02/11-01/11-T-18-Red-ENG; *id.*, Transcript of Hearing, 26 February 2013, ICC-02/11-01/11-T-19-ENG, and public redacted version ICC-02/11-01/11-T-19-Red-ENG; *id.*, Transcript of Hearing, 27 February 2013, ICC-02/11-01/11-T-20-ENG, and public redacted version ICC-02/11-01/11-T-20-Red-ENG; *id.*, Transcript of Hearing, 28 February 2013, ICC-02/11-01/11-T-21-ENG.

¹⁸ Prosecution's submission on issues discussed during the Confirmation Hearing, 14 March 2013, ICC-02/11-01/11-420-Conf, with Annex A, and public redacted version ICC-02/11-01/11-420-Red, filed on 21 March 2013.

¹⁹ Final written submissions of the Common Legal Representative of Victims following the confirmation of charges hearing, 14 March 2013, ICC-02/11-01/11-419.

²⁰ Soumissions écrites de la défense portant sur un certain nombre de questions discutées lors de l'audience de confirmation des charges, 28 March 2013, ICC-02/11-01/11-429-Conf, with confidential annex, and public redacted version, ICC-02/11-01/11-429-Red, filed on 3 April 2013.

²¹ Pre-Trial Chamber I, Transcript of Hearing, 28 February 2013, ICC-02/11-01/11-T-21-ENG, p. 51, lines 5-9.

13. The Chamber notes that Pre-Trial Chamber III previously issued a decision pursuant to article 61(7)(c) of the Statute and agrees with its determination that an adjournment of the Hearing may take place “subsequent to the oral sessions and as long as the Chamber has not made its final determination on the merits and issued a decision whether or not to confirm the charges”.²² In the same decision, Pre-Trial Chamber III assessed article 61(7)(c)(i) of the Statute as follows:

Under sub-paragraph (i), the Chamber makes an evaluation of the evidence presented and its sufficiency to reach the “substantial grounds to believe” threshold of the chapeau in article 61(7) of the Statute. In its determination, pursuant to article 61(7)(c)(i) of the Statute, the Chamber adjourns the hearing because the evidence presented does not meet the required threshold for confirming the charges as required by article 61(7)(a) of the Statute, and because such evidence is not irrelevant and insufficient to a degree that merits declining to confirm the charges under article 61(7)(b) of the Statute. In this case the Chamber decides that some further evidence is needed. Only after this evidence is provided will the Chamber be in a position to make its final determination on the merits. This process requires analysis and evaluation of the evidence and related documents already before the Chamber in order to justify the request for further evidence.²³

14. As to the phrase “with respect to a particular charge” in article 61(7)(c)(i) of the Statute, the Chamber considers that this phrase does allow for the Chamber to adjourn the Hearing with respect to one or more charges, including any element within the charge(s) in question. This interpretation also reconciles article 61(7)(c)(i) of the Statute with rule 127 of the Rules of Procedure and Evidence (the “Rules”), which contemplates the possibility of adjourning the Hearing under article 61(7)(c) of the Statute with respect to multiple charges.²⁴

III. ANALYSIS

15. As developed further below, the Chamber considers that the Prosecutor’s evidence, viewed as a whole, although apparently insufficient, does not appear to be so lacking in relevance and probative value that it leaves the Chamber with no

²² Pre-Trial Chamber III, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Adjourning the Hearing pursuant to Article 61(7)(c)(ii) of the Rome Statute, 3 March 2009, ICC-01/05-01/08-388, para. 37.

²³ *Ibid.*, para. 16.

²⁴ Rule 127 of the Rules provides, in relevant part and with emphasis added: “[i]f the Pre-Trial Chamber is ready to confirm some charges but adjourns the hearing *on other charges under article 61, paragraph 7 (c) [...]*”.

choice but to decline to confirm the charges under article 61(7)(b) of the Statute. Rather than making a final determination on the merits at this time, the Chamber considers it appropriate in this case to adjourn the Hearing pursuant to article 61(7)(c)(i) of the Statute.

1. Evidentiary threshold

16. Pursuant to article 61(7) of the Statute, the Chamber “shall, on the basis of the hearing, determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed each of the crimes charged”.

17. It is recalled that the drafters of the Statute established progressively higher evidentiary thresholds applicable in the course of the different stages of the proceedings.²⁵ The evidentiary threshold of “substantial grounds to believe” required for the confirmation of charges is higher than the threshold required for the issuance of a warrant of arrest (“reasonable grounds to believe”)²⁶ but lower than the threshold required for the conviction of an accused (“beyond reasonable doubt”).²⁷ With a view to giving concrete meaning to the term “substantial grounds”, Pre-Trial Chamber I emphasized that “[a]fter an exacting scrutiny of all the evidence, the Chamber will determine whether it is *thoroughly satisfied* that the [Prosecutor’s] allegations are *sufficiently strong* to commit [the person] to trial” (emphasis added).²⁸ Pre-Trial Chamber II understood the term “substantial” to mean “significant”,

²⁵ Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, ICC-01/09-19-Corr, para. 28; Appeals Chamber, *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Judgment on the appeal of the Prosecutor against the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, 3 February 2010, ICC-02/05-01/09-73, para. 30; Pre-Trial Chamber II, *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-01/11-373, para. 40.

²⁶ Article 58(1) of the Statute.

²⁷ Article 66(3) of the Statute.

²⁸ Pre-Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-803-tEN, para. 39.

“solid”, “material”, “well built”, “real” rather than “imaginary”.²⁹ Pre-Trial Chambers have consistently held that to meet the evidentiary burden of “substantial grounds to believe”, the Prosecutor must “offer concrete and tangible proof demonstrating a clear line of reasoning underpinning [the] specific allegations”.³⁰

18. The higher evidentiary threshold at this juncture of the proceedings accords with the gatekeeper function of the Pre-Trial Chamber according to which (i) only those cases proceed to trial for which the Prosecutor has presented sufficiently compelling evidence going beyond mere theory or suspicion; (ii) the suspect is protected against wrongful prosecution; (iii) and judicial economy is ensured by distinguishing between cases that should go to trial and those that should not.³¹

²⁹ Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, para. 29.

³⁰ Pre-Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-803-tEN, para. 39; Pre-Trial Chamber I, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, 30 September 2008, ICC-01/04-01/07-717, para. 65; Pre-Trial Chamber I, *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, para. 37; Pre-Trial Chamber I, *Prosecutor v. Callixte Mbarushimana*, Decision on the confirmation of charges, 16 December 2011, ICC-01/04-01/10-465-Red, para. 40; Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, para. 29; Pre-Trial Chamber II, *Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-01/11-373, para. 40.

³¹ Appeals Chamber, *Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”, 30 May 2012, ICC-01/04-01/10-514 (OA 4), para. 39; Pre-Trial Chamber II, *Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the Confirmation of Charges Pursuant to Articles 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-02/11-382-Red, para. 52; Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, para. 28; Pre-Trial Chamber I, *Prosecutor v. Callixte Mbarushimana*, Decision on the confirmation of charges, 16 December 2011, ICC-01/04-01/10-465-Red, para. 41; Pre-Trial Chamber I, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, 30 September 2008, ICC-01/04-01/07-717, para. 63; Pre-Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-803-tENG, para. 37.

2. *Evidentiary threshold applicable to all “facts and circumstances”*

19. As has been repeatedly held, the proposed charges are composed of the “facts and circumstances”³² and their legal characterization.³³ It is incumbent on the Prosecutor to clearly define in the document containing the charges all the facts and circumstances and to propose therein their legal characterization.³⁴ At the present stage of the proceedings, it is the Chamber’s duty to evaluate whether there is sufficient evidence for each of the “facts and circumstances” advanced by the Prosecutor in order to satisfy all of the legal elements of the crime(s) and mode(s) of liability charged. The standard by which the Chamber scrutinizes the evidence is the same for all factual allegations, whether they pertain to the individual crimes charged, contextual elements of the crimes or the criminal responsibility of the suspect.

20. Article 74(2) of the Statute mentions the “facts and circumstances as described in the charges”, which clearly refers to “the charges as confirmed” in the article 61(7)(a) decision. Any other general background information, albeit informative or helpful, will not be central to the charges³⁵ as it will not “support the legal elements of the crime charged”.³⁶

21. For example, the individual incidents alleged by the Prosecutor in support of her allegation that there was an “attack directed against any civilian population” are

³² Article 74(2) of the Statute.

³³ Pre-Trial Chamber II, *Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the Confirmation of Charges Pursuant to Articles 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-02/11-382-Red, para. 56.

³⁴ Regulation 52 of the Regulations of the Court dictates that the document containing the charges include a “statement of the facts” and a “legal characterisation of the facts”.

³⁵ Trial Chamber V, *Prosecutor v. Uhuru Muigai Kenyatta*, Order regarding the content of the charges, 20 November 2012, ICC-01/09-02/11-536, para. 13; Pre-Trial Chamber I, *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the confirmation of charges, 29 January 2007, ICC-01/04-01/06-803-tEN, para. 152.

³⁶ Appeals Chamber, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled “Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulations 55(2) of the Regulations of the Court”, 8 December 2009, ICC-01/04-01/06-2205, footnote 163.

part of the facts and circumstances for the purposes of article 74(2) of the Statute and therefore must be proved to the requisite threshold of “substantial grounds to believe”. This is especially so in this case in which the Prosecutor identifies particular incidents that *constitute* the attack against the civilian population. In other words, the incidents are “facts” which “support the [contextual] legal elements of the crime charged”.

22. Taking into consideration that contextual elements form part of the substantive merits of the case,³⁷ the Chamber sees no reason to apply a more lenient standard in relation to the incidents purportedly constituting the contextual element of an “attack” for the purposes of establishing the existence of crimes against humanity than the standard applied in relation to other alleged facts and circumstances in the case. Accordingly, each incident underlying the contextual elements must be proved to the same threshold that is applicable to all other facts. This is not to say that there is no difference between crimes that underlie a suspect’s individual criminal responsibility and crimes being committed as part of incidents which only establish the relevant context. The crimes which are alleged to prove the suspect’s individual criminal responsibility must be linked to the suspect personally, whereas incidents proving the contextual circumstances do not require such an individualised link. As such, the former set of crimes will inevitably need to be proven in greater detail than the latter. Indeed, in order to be considered relevant as proof of the contextual elements, the information needed may be less specific than what is needed for the crimes charged but is still required to be sufficiently probative and specific so as to support the existence of an “attack” against a civilian population. The information needed must include, for example, details such as the identity of the perpetrators, or at least information as to the group they belonged to, as well as the identity of the

³⁷ Appeals Chamber, *Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the appeal of Mr Francis Kirimi Muthaura and Mr Uhuru Muigai Kenyatta against the decision of Pre-Trial Chamber II of 23 January 2012 entitled “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 24 May 2012, ICC-01/09-02/11-425, paras 33-36.

victims, or at least information as to their real or perceived political, ethnic, religious or national allegiance(s).

23. When alleging the existence of an “attack directed against any civilian population” by way of describing a series of incidents, the Prosecutor must establish to the requisite threshold that a sufficient number of incidents relevant to the establishment of the alleged “attack” took place. This is all the more so in case none of the incidents, taken on their own, could establish the existence of such an “attack”.

3. Chamber’s Approach to Evidence

24. The Chamber notes article 61(5) of the Statute, which provides that “the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. The Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial”.

25. Even though article 61(5) of the Statute only requires the Prosecutor to support each charge with “sufficient” evidence at the confirmation hearing, the Chamber must assume that the Prosecutor has presented her strongest possible case based on a largely completed investigation. As the Appeals Chamber highlighted, “the investigation should largely be completed at the stage of the confirmation of charges hearing. Most of the evidence should therefore be available, and it is up to the Prosecutor to submit this evidence to the Pre-Trial Chamber”.³⁸ This approach ensures continuity in the presentation of the case and safeguards the rights of the Defence, which should not be presented with a wholly different evidentiary case at trial.³⁹ It also ensures that the commencement of the trial is not unduly delayed and

³⁸ Appeals Chamber, *Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”, 30 May 2012, ICC-01/04-01/10-514 (OA 4), para. 44.

³⁹ See also Trial Chamber V, *Prosecutor v. Uhuru Muigai Kenyatta*, Decision on defence application pursuant to Article 64(4) and related requests, 26 April 2013, ICC-01/09-02/11-728, paras 118-123.

conforms with the right of the Defence to be tried without undue delay pursuant to article 67(1)(c) of the Statute.

26. In relation to the quality of individual items of evidence, the Chamber considers that it would be unhelpful to formulate rigid formal rules, as each exhibit and every witness is unique and must be evaluated on its own merits. Nevertheless, the Chamber does consider it useful to express its general disposition towards certain types of evidence.

27. As a general matter, it is preferable for the Chamber to have as much forensic and other material evidence as possible. Such evidence should be duly authenticated and have clear and unbroken chains of custody. Whenever testimonial evidence is offered, it should, to the extent possible, be based on the first-hand and personal observations of the witness.

28. Although there is no general rule against hearsay evidence before this Court, it goes without saying that hearsay statements in the Prosecutor's documentary evidence will usually have less probative value. Reliance upon such evidence should thus be avoided wherever possible. This is all the more so when the hearsay in question is anonymous, in the sense that insufficient information is available about who made the observation being reported or from whom the source (irrespective of whether the source is a witness interviewed by the Prosecutor or a documentary item of evidence) obtained the information.

29. Heavy reliance upon anonymous hearsay, as is often the basis of information contained in reports of nongovernmental organizations ("NGO reports") and press articles, is problematic for the following reasons. Proving allegations solely through anonymous hearsay puts the Defence in a difficult position⁴⁰ because it is not able to

⁴⁰ See, for example, Pre-Trial Chamber I, Transcript of Hearing, 27 February 2013, ICC-02/11-01/11-T-20-Red-ENG, p. 48 lines 17-25 and p. 49, lines 1-17 and p. 60, lines 16-25; *id.*, Transcript of Hearing, 25 February 2013, ICC-02/11-01/11-T-18-Red-ENG, p. 31, lines 1-25.

investigate and challenge the trustworthiness of the source(s) of the information, thereby unduly limiting the right of the Defence under article 61(6)(b) of the Statute to challenge the Prosecutor's evidence, a right to which the Appeals Chamber attached "considerable significance".⁴¹ Further, it is highly problematic when the Chamber itself does not know the source of the information and is deprived of vital information about the source of the evidence. In such cases, the Chamber is unable to assess the trustworthiness of the source, making it all but impossible to determine what probative value to attribute to the information.⁴²

30. In relation to corroboration, it should be noted that it will often be difficult, if not impossible, to determine whether and to what extent anonymous hearsay in documentary evidence corroborates other evidence of the same kind. This is because it will usually be too difficult to determine whether two or more unknown sources are truly independent of each other, and the Chamber is not allowed to speculate in this regard. The Chamber does not exclude the possibility that in exceptional cases it may be apparent from the evidence that two or more anonymous hearsay sources in documentary evidence corroborate each other because they are clearly based on independent sources. However, since even in such cases the Chamber may still not have enough information about the trustworthiness of these sources, it will be extremely cautious in attributing the appropriate level of probative value.

31. The Chamber is mindful of the Prosecutor's right to "rely on documentary or summary evidence and [that she] need not call the witness expected to testify at the trial".⁴³ However, the fact that during the confirmation process the Prosecutor is

⁴¹ Appeals Chamber, *Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", 30 May 2012, ICC-01/04-01/10-514 (OA 4), para. 40.

⁴² The Chamber observes, in this regard, that the problem with anonymous hearsay may not necessarily be resolved by the fact that the Chamber has some generic information about the source. What matters is that enough information about the trustworthiness of the source of the information is available in order to allow the Chamber to attribute the appropriate level of probative value to the information.

⁴³ Article 61(5) of the Statute.

allowed to present most, if not all, of her evidence in documentary form, does not diminish the intrinsic shortcomings of the type of evidence discussed in the previous paragraphs.

32. The Chamber notes, in this regard, that the presentation of anonymous hearsay evidence that is contained in documentary evidence, such as press articles and NGO reports, must be clearly distinguished from the presentation by the Prosecutor of anonymous or summary witness statements at the confirmation hearing. In relation to the former, unless the Prosecutor conducts further investigations, there is no prospect of more information becoming available about the source of the evidence. However, in relation to the latter, the situation is different because the Chamber knows the identity of the witness and it may also be assumed that the witness will later be called at trial.

33. As stated by the Appeals Chamber, the “Prosecutor’s reliance on documentary or summary evidence in lieu of in-person testimony will limit the Pre-Trial Chamber’s ability to evaluate the credibility of the witness”,⁴⁴ and therefore any such evaluation will “necessarily be presumptive”.⁴⁵ The Appeals Chamber took pains to warn that Pre-Trial Chambers should “take great care in finding that a witness [whose statement was presented in summary or anonymous form] is or is not credible.”⁴⁶

34. Moreover, in relation to (anonymous) summaries of witness statements, the Chamber must be sensitive to the fact that the Defence will regularly not be in a position to exercise its right to challenge such evidence, in particular its probative

⁴⁴ Appeals Chamber, *Prosecutor v. Callixte Mbarushimana*, “Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”, 30 May 2012, ICC-01/04-01/10-514 (OA 4), para. 48.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

value.⁴⁷ In this regard, the Chamber adopts a similar position to the one held by other Pre-Trial Chambers, according to which the Chamber may, in order to counterbalance the disadvantageous position of the Defence, decline to confirm allegations that are supported only by anonymous or summary witness statements.⁴⁸

35. In light of the above considerations, the Chamber notes with serious concern that in this case the Prosecutor relied heavily on NGO reports and press articles with regard to key elements of the case, including the contextual elements of crimes against humanity. Such pieces of evidence cannot in any way be presented as the fruits of a full and proper investigation by the Prosecutor in accordance with article 54(1)(a) of the Statute. Even though NGO reports and press articles may be a useful introduction to the historical context of a conflict situation, they do not usually constitute a valid substitute for the type of evidence that is required to meet the evidentiary threshold for the confirmation of charges.

4. *The Evidentiary Record of the Prosecutor in the Present Case*

36. During the Hearing, the Prosecutor made clear that besides the four charged incidents,⁴⁹ she is relying upon further 41 incidents to establish her allegation for the existence of an “attack directed against any civilian population” under article 7 of

⁴⁷ Pre-Trial Chamber II, *Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the Confirmation of Charges Pursuant to Articles 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-02/11-382-Red, para. 90.

⁴⁸ Pre-Trial Chamber II, *Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the Confirmation of Charges Pursuant to Articles 61(7)(a) and (b) of the Rome Statute, 23 January 2012, ICC-01/09-02/11-382-Red, para. 90; Pre-Trial Chamber II, *Prosecutor v. Jean-Pierre Bemba Gombo*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, para. 50; Pre-Trial Chamber I, *Prosecutor v. Callixte Mbarushimana*, Decision on the confirmation of charges, 16 December 2011, ICC-01/04-01/10-465-Red, para. 49; Pre-Trial Chamber I, *Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus*, Corrigendum of the “Decision on the Confirmation of Charges”, 7 March 2011, ICC-02/05-03/09-121-Corr-Red, para. 41; Pre-Trial Chamber I, *Prosecutor v. Bahar Idriss Abu Garda*, Decision on the Confirmation of Charges, 8 February 2010, ICC-02/05-02/09-243-Red, para. 52; Pre-Trial Chamber I, *Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on the confirmation of charges, 30 September 2008, ICC-01/04-01/07-717, para. 160.

⁴⁹ The Chamber notes the Prosecutor’s contention that the four charged incidents alone, in and of themselves, are sufficient to establish the existence of a widespread or systematic attack, see ICC-02/11-01/11-420-Red, para. 30.

the Statute.⁵⁰ Of these 45 incidents, the majority of them are proven solely with anonymous hearsay from NGO Reports, United Nations reports and press articles. As explained above, the Chamber is unable to attribute much probative value to these materials. Moreover, many of these incidents are described in very summary fashion, making it difficult for the Chamber to determine whether the perpetrators acted pursuant to or in furtherance of a policy to attack a civilian population as required by article 7(2)(a) of the Statute. The Chamber is also presented with an incomplete picture as to: (i) the structural connections between the so-called “pro-Gbagbo forces” acting across the incidents; and (ii) the presence and activities of the armed forces opposing them. Ultimately, the Chamber is asked by the Prosecutor to draw numerous inferences from actions or conduct of Mr Gbagbo, his inner circle and the “pro-Gbagbo forces”, but the Chamber does not have enough information to determine whether these inferences are sufficiently supported by the evidence in order to meet the required threshold for confirmation.

37. Despite these difficulties in the evidentiary record of the Prosecutor, the Chamber considers that this does not automatically have to lead to the immediate refusal to confirm the charges. Although the Chamber is not prepared to accept allegations proven solely through anonymous hearsay in documentary evidence, the Chamber notes that past jurisprudence, which predates the abovementioned decisions of the Appeals Chamber,⁵¹ may have appeared more forgiving in this regard. Therefore, the Prosecutor in this case may not have deemed it necessary to present all her evidence or largely complete her investigation, following all relevant incriminating and exonerating lines of investigation in order to establish the truth.

⁵⁰ See Pre-Trial Chamber I, Transcript of Hearing, 20 February 2013, ICC-02/11-01/11-T-15-Red-ENG, pp. 38-45.

⁵¹ Appeals Chamber, *Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”, 30 May 2012, ICC-01/04-01/10-514 (OA 4), para. 44; Appeals Chamber, *Prosecutor v. Uhuru Muigai Kenyatta*, Decision on the appeal of Mr Francis Kirimi Muthaura and Mr Uhuru Muigai Kenyatta against the decision of Pre-Trial Chamber II of 23 January 2012 entitled “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute”, 24 May 2012, ICC-01/09-02/11-425, paras 33-36.

The Chamber does not exclude that the Prosecutor might be able to present or collect further evidence and is therefore, out of fairness, prepared to give her a limited amount of additional time to do so. As the Appeals Chamber noted when discussing summary evidence, when the evidence is insufficient the “Pre-Trial Chamber need not reject the charges but may adjourn the hearing and request the Prosecutor to provide further evidence”.⁵²

5. Rights of the Defence

38. In deciding whether or not to activate article 61(7)(c)(i) of the Statute, the Chamber considered the effect of this decision on the right of Mr Gbagbo “to be tried without undue delay” pursuant to article 67(1)(c) of the Statute. In the present case, the relevant period⁵³ began to run as soon as Mr Gbagbo was first notified of the warrant of arrest on 29 November 2011 and subsequently surrendered to the Court on 30 November 2011.⁵⁴

39. Whether or not the activation of article 61(7)(c)(i) of the Statute unduly infringes the right of the suspect to be tried without undue delay must be determined on a case-by-case basis, taking into account the particularities of the case and in accordance with internationally recognized human rights.⁵⁵

⁵² Appeals Chamber, *Prosecutor v. Callixte Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”, 30 May 2012, ICC-01/04-01/10-514 (OA 4), para. 48.

⁵³ According to the jurisprudence of the European Court of Human Rights (“ECtHR”), the beginning of the relevant period starts at the moment a suspect is notified that he/she is charged with a criminal offence, ECtHR, *Case of Eckle v Germany*, Judgment, 15 July 1982, Series A No. 51, p. 33, para. 73; *id.*, *Case of Metzger v Germany*, Judgment of 31 May 2001, Application no. 37591/97, para. 31; *id.*, *Case of Corigliano v Italy*, Judgment of 10 December 1982, Application no. 8304/78, para. 34. In a similar vein, Inter-American Court of Human Rights (“IACtHR”), *Case of Suarez-Rosero v Ecuador*, Judgment of 12 November 1997, Series C No. 35, para. 70.

⁵⁴ ICC-02/011-01/11-12-Conf-Exp, pp. 4-5.

⁵⁵ In this regard, the Chamber pays heed to the criteria established by the ECtHR including the complexity of the case and the conduct of the applicant and the relevant authorities. See, for example, ECtHR, *Case of Philis v Greece (No 2)*, Judgment of 27 June 1997, Application no. 19773/92, para. 35; *id.*, *Case of Gast and Popp v Germany*, Judgment of 25 February 2000, Application no. 29357/95, para. 70; *id.*, *Case of Lukenda v Slovenia*, Judgment of 6 October 2005, Application no. 23032/02, para. 74; See also

40. The Chamber is aware of the fact that the pre-trial proceedings in this case have already lasted approximately one and a half years before this Court. In this respect, the Chamber recalls that during that time it was requested by the Defence to examine the question of Mr Gbagbo's fitness to take part in the proceedings which involved, *inter alia*, the appointment of three medical experts and a hearing for this purpose.

41. At the same time, the Chamber is also attentive to the following: first, the seriousness of the charges presented against Mr Gbagbo; second, the complexity of the case which involves a myriad of incidents allegedly committed by a multitude of perpetrators over several months, necessitating a complex investigation; and third, the fact that requesting further evidence under article 61(7)(c)(i) is a procedural avenue which is explicitly provided for in the Statute and which has been recalled by the Appeals Chamber as an appropriate one.⁵⁶

42. In light of the foregoing, the Chamber is of the view that allowing the Prosecutor to provide more evidence or conduct further investigation for a limited period of time will not unduly infringe the right of the Defence to be tried without undue delay.

43. The Chamber also highlights that this procedural avenue does not affect any of the rights of the Defence under article 61(6) of the Statute, since the Defence will be given appropriate time to respond to the new evidence presented by the Prosecutor.

Human Rights Committee, General Comment No. 32, 23 August 2007, CCPR/C/GC/32, para. 35; IACtHR, *Case of Genie-Lacayo v Nicaragua*, Judgment of 29 January 1997, Series C No. 30, para. 77; *id.*, *Case of Valle Jaramillo v Colombia*, Judgment of 27 November 2008, Series C No. 192, para. 155.

⁵⁶ Appeals Chamber, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", 30 May 2012, ICC-01/04-01/10-514 (OA 4), para. 48

IV. CONCLUSIONS OF THE CHAMBER

44. For these reasons, the Chamber, by majority, decides to adjourn this hearing pursuant to article 61(7)(c)(i) of the Statute. Accordingly, the Chamber requests the Prosecutor to consider providing, to the extent possible, further evidence or conducting further investigation with respect to the following issues:

1. The position(s), movements and activities of all armed groups opposed to the “pro-Gbagbo forces” (for example *Commando Invisible* and *Forces Nouvelles*) in Côte d’Ivoire (including particularly in and around Abidjan) between November 2010 and May 2011, including specific information about confrontations between those armed groups and the “pro-Gbagbo forces” between November 2010 and May 2011.
2. The organizational structure of the “pro-Gbagbo forces”, including how the different sub-groups interacted within the overall structure and especially how the “inner circle” coordinated, funded and supplied the means for the activities of the different sub-groups; any changes or evolution in the aforementioned structure and/or operating methods, taking place between November 2010 and May 2011.
3. How, when and by whom the alleged policy/plan to attack the “pro-Ouattara civilian population” was adopted, including specific information about meetings at which this policy/plan was allegedly adopted as well as how the existence and content of this policy/plan was communicated or made known to members of the “pro-Gbagbo forces” once it was adopted.
4. For each of the incidents allegedly constituting the attack against the “pro-Ouattara civilian population”:
 - a. whether the alleged physical perpetrators were acting pursuant to or in furtherance of the alleged policy.
 - b. to which sub-group(s) of the “pro-Gbagbo forces” the several alleged physical perpetrators belonged. If different sub-groups were involved in the same incident, identify to which of these the alleged physical perpetrators belonged and to what extent they are alleged to have cooperated in the perpetration of the crimes.
 - c. information as to the number of victims, the harm they suffered as well as their real or perceived political, ethnic, religious or national allegiance(s).
 - d. information as to the links between the several incidents inside and outside⁵⁷ Abidjan.
5. In relation to the alleged compound incidents taking place on 16-19 December 2010 (“RTI incidents”) and 12 April 2011 (“Yopougon incidents”), more specific evidence for each of the sub-incidents, including more detailed evidence for the alleged cases of sexual violence.

⁵⁷ With regard to events in the West, see Amended DCC, para. 27; with regard to the events in Agboville, see Pre-Trial Chamber I, Transcript of Hearing, 20 February 2013, ICC-02/11-01/11-T-15-Red-ENG, p. 43, lines 1-2.

6. In relation to the alleged incidents taking place on 3 March 2011 (“Women’s march”) and 17 March 2011 (“Shelling of Abobo”), any forensic or other evidence⁵⁸ indicating who fired the ammunitions and what their alleged target was.

45. With a view to informing the Defence in detail of the content of the charges,⁵⁹ the Chamber considers it appropriate that the Prosecutor submit a new Amended DCC setting out in detail and with precision⁶⁰ the facts of the case, including all incidents forming the contextual elements of crimes against humanity. Together with the Amended DCC, the Prosecutor is instructed to submit a new list of evidence setting out the entirety of the evidence on which she intends to rely for the purposes of the confirmation of charges⁶¹ and an updated consolidated Elements Based Chart covering the entirety of the charges.⁶² In this context, the Chamber makes reference to its “Decision establishing a disclosure system and a calendar for disclosure”⁶³ which specifies the details of the system of disclosure, the procedure related to the requests for redactions and protective measures, and the registration procedure. With a view to expediting the proceedings, the Chamber wishes to add that the evidence must be made available to the Chamber the moment it is disclosed between the parties. In this context, the Chamber puts special emphasis on the necessity that the Prosecutor comply with her disclosure obligations without waiting for the deadlines to expire.⁶⁴

46. The Defence will have the right to object to the charges, challenge the new evidence presented by the Prosecutor and present new evidence in response to the further evidence submitted by the Prosecutor.

⁵⁸ The Chamber is led to believe that there exists at least one UN report in this regard, see Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Côte d’Ivoire, 14 June 2011, CIV-OTP-0002-0598 at 0604, para. 16.

⁵⁹ Article 67(1)(a) of the Statute and regulation 52 of the Regulations of the Court.

⁶⁰ Special reference is made to regulation 52(b) of the Regulations of the Court.

⁶¹ The Chamber suggests that the Prosecutor highlight the new pieces of evidence so as to make easier their identification in the list of evidence.

⁶² The Chamber suggests that the Prosecutor highlight the new pieces of evidence so as to make easier their identification in the Element Based Chart.

⁶³ Pre-Trial Chamber I, Decision establishing a disclosure system and a calendar for disclosure, 24 January 2012, ICC-02/11-01/11-30 with Annexes I-III.

⁶⁴ *Ibid.*, para. 38.

47. Upon receipt of all submissions and evidence of the parties and participants, the Chamber will issue a final decision determining whether there is sufficient evidence to establish substantial grounds to believe that Mr Gbagbo committed each of the crimes charged. The calendar established hereunder is subject to any further decision of the Chamber to resume the hearing on the confirmation of charges at the request of the participants or on its own motion if there is a need to hear further oral submissions or *viva voce* testimony of one or more witnesses.

FOR THESE REASONS, THE CHAMBER, BY MAJORITY

- a) **Decides** to adjourn the Hearing;
- b) **Requests** the Prosecutor to consider providing further evidence or conducting further investigation with respect to all charges, mindful of the questions in paragraph 44 of the present decision;
- c) **Adopts** the following calendar for disclosure of evidence and submissions. To this end, the Chamber orders the Prosecutor
 - (i) to disclose to the Defence by no later than **Friday, 5 July 2013** all evidence in her possession for which she does not intend to present any requests for redactions to the Chamber;
 - (ii) to submit to the Chamber **as soon as practicable** and no later than **Friday, 5 July 2013** any requests for redactions with regard to the evidence which is in her possession and on which she intends to rely for the purposes of the confirmation of charges;
 - (iii) to agree with the Defence on a location and time to permit the inspection of any material within the meaning of rule 77 of the Rules which is in the Prosecutor's possession starting **as soon as practicable** and by no later than **Friday, 5 July 2013**;

- (iv) to disclose to the Defence by no later than **Tuesday, 15 October 2013** the first batch of evidence she has collected in the course of her further investigation and for which she does not intend to present any requests for redactions to the Chamber;
- (v) to submit to the Chamber **as soon as practicable** and no later than **Tuesday, 15 October 2013** any requests for redactions with regard to the evidence she has collected in the course of her further investigation and on which she intends to rely for the purposes of the confirmation of charges;
- (vi) to agree with the Defence on a location and time to permit the inspection of any material within the meaning of rule 77 of the Rules which is in the Prosecutor's possession starting **as soon as practicable** and by no later than, **Tuesday, 15 October 2013**;
- (vii) to disclose to the Defence any evidence for which authorization for redactions is sought, as soon as practicable and **no later than 5 days** after the notification of the Chamber's decision on said request(s) for redactions;
- (viii) to disclose to the Defence by no later than **Friday, 15 November 2013** the second batch of evidence she collected in the course of her further investigation and for which she does not intend to present any requests for redactions to the Chamber; and
- (ix) to submit by no later than **Friday, 15 November 2013** the Amended DCC, amended list of evidence and updated consolidated Element Based Chart.

With regard to the Defence, the Chamber orders it

- (x) to submit justified proposals for redactions, if any, pursuant to rule 81 of the Rules **as soon as practicable and by no later than Friday, 15 November 2013;**
 - (xi) to agree with the Prosecutor on a location and time to permit the inspection of any material within the meaning of rule 78 of the Rules starting **as soon as practicable** and by no later than **Monday, 9 December 2013;**
 - (xii) to submit its observations on the Prosecutor's evidence and to disclose to the Prosecutor the evidence it intends to present, if any, and to file its amended list of evidence by no later than **Monday, 16 December 2013;**
 - (xiii) to submit to the Prosecutor its requests, if any, for the lifting of redactions to material covered by article 67(2) of the Statute or rule 77 of the Rules **as soon as practicable** following the disclosure of the relevant materials; and
 - (xiv) to submit its requests, if any, for a ruling of the Chamber on any disagreement with the Prosecutor on the lifting of redactions applied to materials covered by article 67(2) of the Statute or rule 77 of the Rules **no later than 5 days** after the Prosecutor's response thereon;
- d) Orders** the Registry to make available the evidence to the Chamber at the moment it is disclosed between the parties;
- e) Decides** that the Prosecutor and the victims may file final written submissions in response to the Defence by no later than **Friday, 24 January 2014;**
- f) Decides** that the Defence may submit final written submissions in response to the Prosecutor's and victims' observations by no later than **7 February 2014;**
- g) Decides** that the 60-day period required for the issuance of the decision on the confirmation of charges will start running anew as of the date of receipt of the last written submission.

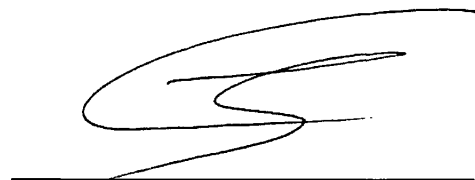
Judge Silvia Fernández de Gurmendi attaches a dissenting opinion to this decision.

Done in both English and French, the English version being authoritative.

Judge Silvia Fernández de Gurmendi
Presiding Judge



Judge Hans-Peter Kaul



Judge Christine Van den Wyngaert

Dated this Monday, 3 June 2013

At The Hague, The Netherlands