



Original: English

No.: ICC-02/11-01/11

Date: 15 April 2014

PRE-TRIAL CHAMBER I

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

SITUATION IN CÔTE D'IVOIRE

**IN THE CASE OF
*THE PROSECUTOR v. LAURENT GBAGBO***

Public Document

**Redacted version of the final written submissions of the Common Legal
Representative of Victims in response to the Defence's observations
on the Prosecutor's evidence**

Source: Office of Public Counsel for Victims

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

The Office of the Prosecutor

Ms. Fatou Bensouda

Mr. James Stewart

Mr. Eric MacDonald

Counsel for the Defence

Mr. Emmanuel Altit

Ms. Agathe Bahi Baron

Ms. Natacha Fauveau Ivanovic

Legal Representatives of the Victims

Ms. Paolina Massidda

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massidda

Mr. Enrique Carnero Rojo

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

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

I. PROCEDURAL BACKGROUND

1. On 3 June 2013, the majority of Pre-Trial Chamber I (the “Chamber”) issued the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (the “Adjournment Decision”).¹
2. On 20 January 2014, the Prosecutor filed a second corrected version of the *Document amendé de notification des charges* (the “Amended DCC”).²
3. On 24 March 2014, the Chamber ordered the Defence to file confidential redacted versions of the annexes to its observations by 25 March 2014, and extended the deadline for the Common Legal Representative’s response to the Defence’s observations until 4 April 2014 (the “Decision on Re-Classification and Extension of Time”).³ On 25 March 2014, the Defence filed *inter alia* the confidential redacted version of its written observations on the Prosecution’s evidence (the “Defence’s Observations”).⁴
4. The Principal Counsel of the OPCV, acting as Common Legal Representative of Victims (the “Common Legal Representative”),⁵ hereby responds to the Defence’s Observations.
5. The Common Legal Representative reiterates all her previous submissions

¹ See the “Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute” (Pre-Trial Chamber I), No. ICC-02/11-01/11-432, 3 June 2013 (the “Adjournment Decision”).

² See the «Version publique expurgée du Document amendé de notification des charges du 13 janvier 2014, ICC-02/11-01/11-Conf-Anx2-Corr2, notifié le 20 janvier 2014 », No. ICC-02/11-01/11-592-Anx2-Corr2-Red, 4 February 2014 (the “Amended DCC”).

³ See the “Decision on the OPCV’s ‘Request for re-classification and extension of time to file the final written submissions’”, No. ICC-02/11-01/11-639, 24 March 2014.

⁴ See the « Version publique expurgée du second corrigendum concernant les observations écrites de la défense sur la preuve du Procureur », No. ICC-02/11-01/11-637-Anx2-Corr2-Red, 4 April 2014 (the “Defence’s Observations”).

⁵ See the “Decision on Victims’ Participation and Victims’ Common Legal Representation at the Confirmation of Charges Hearing and in the Related Proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138, 4 June 2012, pp. 25-26. See also the “Second decision on victims’ participation at the confirmation of charges hearing and in the related proceedings” (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-384-Corr, 6 February 2013, pp. 22-23.

presented during the entire phase of the confirmation of charges.

II. COMMON LEGAL REPRESENTATIVE'S RESPONSE

1. Role of victims in the proceedings before the Court

6. As a preliminary matter, and in light of the continuous allegations by the Defence in relation to the role of victims in the proceedings, the Common Legal Representative finds it appropriate to underline that, contrary to the Defence's assertion,⁶ said role cannot be either compared or confused with the role of the Prosecution.

7. In this regard, article 68(3) of the Rome Statute provides victims in a clear and non-ambiguous manner with the right to participate through their legal representative in proceedings before the Court when their personal interests are affected. The analysis of the preparatory works of said provision leaves no doubt as to the possibility for victims to participate at all stages of the proceedings before the Court, including the confirmation of charges hearing and related proceedings.⁷

8. Indeed, *"that the personal interests of a victim are affected in respect of proceedings relating to the very crime in which that victim was allegedly involved seems entirely in line with the nature of the Court as a judicial institution with a mission to end impunity for the most serious crimes. This was evident throughout the negotiations leading up to the adoption of the Statute, during which most delegates 'doubtless thought it morally right to provide to persons who have suffered serious violations of humanitarian law, the right to participate in the trial of the perpetrators of those violations and to ensure, during the course of the*

⁶ See the Defence's Observations, *supra* note 4, par. 150.

⁷ See, for instance, the Proposal submitted by France, UN Doc. PCNICC/1999/DP.2, 1 February 1999, p. 7; the Proposal submitted by Costa Rica, UN Doc. PCNICC/1999/WGRPE/DP.3, 24 February 1999; and the Proposal submitted by Colombia, UN Doc. PCNICC/1999/WGRPE/DP.37, 10 August 1999. See also BITTI (G.) and FRIMAN (H.), "Participation of Victims in the Proceedings", in LEE (R.S.) (ed.), *The International Criminal Court: Element of Crimes and Rules of Procedure and Evidence*, Transnational Publishers, Inc. New York, 2001, pp. 456-474.

proceedings, that the Court is fully apprised [sic] of their personal sufferings”.⁸

9. In accordance with the constant jurisprudence of the Court, *“the personal interests of victims are affected by the outcome of the pre-trial stage of the case insofar as this is an essential stage of the proceedings which aims to determine whether there is sufficient evidence providing substantial grounds to believe that the suspect is responsible for the crimes with which he has been charged by the Prosecution”*.⁹ In particular, *“the victims have a personal interest in the Pre-Trial Chamber’s decision to either (i) confirm the charges against those responsible for perpetrating the crimes which cause them to suffer harm; or (ii) decline to confirm the charges for those not responsible for such crimes, so that the search for those who are criminally liable can continue”*.¹⁰

10. While victims’ interests are to some extent common with the ones of the Prosecutor, victims undoubtedly have an independent role and voice in the Court’s proceedings, including *vis-à-vis* the Prosecutor,¹¹ and, accordingly, their role is unique.¹²

11. Indeed, the very interest of the Prosecutor in the proceedings before the Court is to bring evidence with the aim to prove that the suspect/accused is criminally

⁸ See the “Decision on victims’ applications for participation a/0010/06, a/0064/06 to a/0070/06, a/0081/06 to a/0104/06 and a/0111/06 to a/0127/06” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-101, 10 August 2007, par. 10.

⁹ See the “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-02/09-121, 29 September 2009, par. 4. See also, the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-01/07-474, 13 May 2008, par. 45; the “Decision on the Prosecution, OPCD and OPCV Requests for Leave to Appeal the Decision on the Applications for Participation of Victims in the Proceedings in the Situation” (Pre-Trial Chamber I, Single Judge), No. ICC-01/04-444, 6 February 2008, pp. 8 and 10; and the “Decision on the Requests for Leave to Appeal the Decision on the Application for Participation of Victims in the Proceedings in the Situation” (Pre-Trial Chamber I, Single Judge), No. ICC-02/05-121, 6 February 2008, p. 6.

¹⁰ *Idem*.

¹¹ See the “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” (Pre-Trial Chamber I), No. ICC-01/04-101-tEN-Corr, 17 January 2006, par. 51; and the “Decision on “Prosecutor’s Application to attend 12 February hearing”” (Pre-Trial Chamber II, Single Judge), No. ICC-02/04-01/05-155, 9 February 2007, p. 4.

¹² See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled ‘Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo’” (Appeals Chamber), No. ICC-01/04-01/06-824 OA7, 13 February 2007, par. 55.

responsible under the Rome Statute for the crimes charged.¹³ In contrast, besides the interest to receive reparations,¹⁴ which is far from being the sole motivation of victims,¹⁵ the core interest of victims in the proceedings is to effectively exercise their rights to truth and justice; these rights having been generally recognised by international human rights law,¹⁶ doctrine¹⁷ and the constant jurisprudence of the Court as essential for the persons directly affected by the crimes committed.¹⁸

12. In particular, Trial Chamber II held that “[a]s a matter of general principle, [the participation of victims through their legal representative] *must have as its main aim the ascertainment of the truth. The victims are not parties to the trial and certainly have no role to support the case of the Prosecution. Nevertheless, their participation may be an*

¹³ See “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), No. ICC-01/04-01/06-1432 OA9 OA10, 11 July 2008, par. 93.

¹⁴ In this sense, see AMBOS (K.), “El Marco Jurídico de la Justicia de Transición”, Tenus, Bogotá, 2008, notes 107-112. See also the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly of the United Nations in its resolution No. 60/147 in the 64th plenary meeting, UN Doc. A/RES/60/147, 16 December 2005, par. 21.

¹⁵ See the Note prepared by the former Special Rapporteur of the Sub-Commission, Mr. Theo van Boven, in accordance with paragraph 2 of Sub-Commission resolution 1996/28, UN Doc. E/CN.4/1997/104, 16 January 1997, pp. 2-5. See also the Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, Question of the impunity of perpetrators of human rights violations (civil and political), UN Doc. E/CN.4/Sub.2/1997/20, 26 June 1997, pp. 3-31. See also the “Decision on victims’ participation” (Trial Chamber I), 18 January 2008, No. ICC-01/04-01/06-1119, par. 98.

¹⁶ See IACHR, *La Cantuta v. Peru*, Judgment of 29 November 2006, Series C, No. 162, par. 222 ; *Vargas-Areco v. Paraguay*, Judgment of 26 September 2006, Series C, No. 155, paras. 153; *Almohacid-Arellano et al v. Chile*, Judgment of 26 September 2006, Series C, No. 154, par. 148; *Moiwana Community v. Suriname*, Judgment of 15 June 2005, Series C, No. 124, par. 204 ; and *Velasquez-Rodriguez v. Honduras*, Judgment of 29 July 1988, Series C, No. 7, paras. 162-166 and 174. See also ECHR, *Hugh Jordan v. UK*, Application No. 24746/94, 4 May 2001, paras. 16, 23, 157 and 160; *Selmouni v. France*, Application No. 25803/94, 28 July 1999, par. 79; *Kurt v. Turkey*, Application No. 24276/94, 25 May 1998, par. 140; *Selcuk and Asker v. Turkey*, Application No. 23184/94, 24 April 1998, par. 96; *Aydin v. Turkey*, Application No. 23178/94, 25 September 1997, par. 103; and *Aksoy v. Turkey*, Application No. 21987/93, 18 December 1996, par. 98.

¹⁷ See DONAT-CATTIN (D.), “Article 68”, in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers’ Notes, Article by Article*, Nomos, 1999, pp. 876-877; NAQVI (Y.), “The Right to the Truth in International Law: Fact or Fiction?”, in (2006) *ICRC International Review*, No. 88, pp. 267-268; MENDEZ (J.), “The Right to Truth”, in JOYNER (Ch.) (ed.), *Reigning in Impunity for International Crimes and Serious Violations of Fundamental Human Rights’ Proceedings of the Siracusa Conference*, 17-21 September 1998, Eres, Toulouse, 1998, pp. 257; and AMBOS (K.), “El Marco Jurídico de la Justicia de Transición”, *op. cit. supra* note 14, pp. 42-44.

¹⁸ See, for instance, the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 9, paras. 31-44.

*important factor in helping the Chamber to better understand the contentious issues of the case in light of their local knowledge and socio-cultural background”.*¹⁹

13. In addition, “[t]he object and purpose of article 68(3) of the Statute and rules 91 and 92 of the Rules [of Procedure and Evidence] is to provide victims with a meaningful role in the criminal proceedings before the Court (including at the pre-trial stage of a case) so that they can have a substantial impact in the proceedings”.²⁰ Accordingly, the participation of victims in the proceedings before the Court shall be “effective and significant as opposed to purely symbolic”.²¹

14. The “fair trial” guarantees shall apply throughout the proceedings and in respect to all the parties and participants, including victims.²² In the same vein, the requirements of the integrity of the proceedings shall apply to all the parties and the participants in the proceedings before the Court, and not only to the suspect/accused.²³

¹⁹ See the “Corrigendum Directions for the conduct of the proceedings and testimony in accordance with rule 140” (Trial Chamber II), No. ICC-01/04-01/07-1665-Corr, 1 December 2009, paras. 82-91.

²⁰ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 9, par. 157.

²¹ See the “Judgment on the Appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, *supra* note 13, par. 97; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-01/11-460, 3 October 2012, par. 10; the “Decision on victims’ representation and participation” (Trial Chamber V), No. ICC-01/09-02/11-498, 3 October 2012, par. 9; the “Decision on common legal representation of victims for the purpose of trial” (Trial Chamber III), No. ICC-01/05-01/08-1005, 1st December 2010 (dated 10 November 2010), par. 9(a).

²² In this regard, the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General Assembly on 29 November 1985 calls for enabling victims to access to Justice and to obtain redress and for providing them with fair treatment in this regard. See the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General Assembly on its 96th plenary meeting, UN Doc. A/RES/40/34, 29 November 1985, Principles 4 to 7. The document is available at the following address:

<http://www.un.org/documents/ga/res/40/a40r034.htm>.

²³ See the “Decision on the admission of material from the ‘bar table’” (Trial Chamber I), No. ICC-01/04-01/06-1981, 24 June 2009, par. 42. See also in the same sense TRAPP (K.), *Excluding Evidence: The Timing of a Remedy*, non-published manuscript (1998), Faculty of Law, McGill University, Canada, p. 21; quoted in TRIFFTERER (O.), *Commentary on the Rome Statute of the International Criminal Court – Observer’s Notes, Article by Article*, Verlag C.H. Beck, Munich, 2008, p. 1335, footnote 139. See also the “Decision on the Prosecution’s Application for Leave to Appeal the Chamber’s Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” (Pre-Trial Chamber I), No. ICC-01/04-135-tEN, 20 April 2006 (dated 31 March 2006), par. 38.

15. Accordingly, as far as victims' participation constitutes an integral part of the concept of fair and impartial proceedings before the Court, the balance of said proceedings cannot be affected by the participation of victims. On the contrary, taking victims' interests into consideration is one of the factors that help to balance the proceedings, particularly when the violations of the fundamental rights of the victims themselves are at stake. Thus, the participation of victims in the proceedings before the Court cannot prejudice the interests of the Defence.²⁴

16. The participation of victims in the proceedings before the Court in an effective and efficient manner is a necessary mechanism to implement their right to justice and is an essential element of the full realisation of the other elements of that right, namely to know the truth and to obtain reparations.²⁵ Such participation can only be deemed meaningful, rather than purely symbolic, if victims are entitled to positively contribute to the search for the truth – which may, in turn, eventually lead to the punishment of given individuals and the reparation of the harm caused. In this respect, any form of positive contribution from victims appears indispensable for the accomplishment of the Court's function.²⁶

17. The Common Legal Representative submits that the possibility to tell their story and to share their difficult and painful experience with the judges constitutes one of the ways whereby the victims can positively contribute to the search for the truth. For the absolute majority of victims, except a very limited number of them enjoying the dual status of victim and witness, or appearing in person to present their views and concerns, the process of application for participation appears to be

²⁴ See DONAT-CATTIN (D.), "Article 68", *op. cit. supra* note 17, pp. 876-877: "*The victims' genuine wish is that the truth be established and the case solved. [...] The second [concept of due process for defendant] is fair trial, which is comprehensive of, but not limited to, the respect for all the rights of the suspect/accused; it means equitable justice for defendants, victims and international society as such, the foundation of all procedural norms of the Statute.*"

²⁵ See DONAT-CATTIN (D.), "Article 68", in TRIFFTERER (O.) (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article*, Second Edition, 2008, p. 1279, 1290 and 1291.

²⁶ *Idem*, p. 1280.

the only way to provide an account of their experience which might be of relevance for the search for the truth.

18. Under the Rome Statute, victims have the right not only to tell their story but also to have their story heard by the judges. Indeed, “[i]n the light of the core content of the right to be heard set out in article 68(3) of the Statute, [...] [said provision] imposes an obligation on the Court vis-à-vis victims. The use of the present tense in the French version of the text (“la Cour permet”) makes it quite clear that the victims’ guaranteed right of access to the Court entails a positive obligation for the Court to enable them to exercise that right concretely and effectively. It follows that the Chamber has a dual obligation: on the one hand, to allow victims to present their views and concerns, and, on the other, to examine them”.²⁷

19. Moreover, pursuant to the legal texts of the Court victims enjoy the possibility to present their views and concerns with regard to any submission filed by the parties in order to defend their interests in the proceedings,²⁸ regardless of whether the victims’ views and concerns are supportive or contrary to the submissions made by either party to the proceedings. The possibility for victims to present their views and concerns with regard to any submission filed by the parties does not *per se* affect the rights of the suspect/accused. Victims participate with their own interests in the proceedings, in particular regarding the events occurred and the harm they suffered.

20. Accordingly, the abiding Defence’s argument that the Common Legal Representative behaves as a “*second Procureur*” has no merit and the one in relation to the fact that she seeks the confirmation of the charges filed by the Prosecution against Mr. Gbagbo is frivolous, insofar it is obvious that victims wish that the charges are confirmed.²⁹ Throughout the proceedings, victims have communicated to the Common Legal Representative their personal interests in getting to know what

²⁷ See the “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6”, *supra* note 11, par. 71.

²⁸ See regulation 24(2) of the Regulations of the Court.

²⁹ See the Defence’s Observations, *supra* note 4, paras. 148 and 150.

happened in Côte d'Ivoire during the post-electoral violence, seeing those responsible for their harm punished, and eventually receiving reparations for said harm. As indicated above,³⁰ the legal instruments of the Court grant an autonomous role to the victims in the proceedings and support the victims' exercise of their internationally recognised rights to truth, justice and reparation. The fact that victims exercise the rights afforded to them cannot be held against them.

21. Regrettably, the Defence's misunderstanding of the autonomous role afforded to victims in the proceedings before the Court has resulted in important difficulties for the victims in this case to exercise their participatory rights. The Defence has occasionally [REDACTED],³¹ and regularly refuses to communicate its submissions to the Common Legal Representative on the ground that they address confidential evidence, although said evidence is known to her, and even after having been reminded by the Chamber of its obligations towards victims.³² In fact, the current response has been made possible only after the Chamber found that the Defence was "[e]ffectively preventing the OPCV to properly exercise its right to respond", and consequently ordered the Defence to disclose to the Common Legal Representative a confidential redacted version of its observations.³³

22. The Common Legal Representative submits that the limited number of redactions contained in the Defence's Observations compared with the length of said document is inconsistent with the Defence's delay in communicating the document to the Common Legal Representative.³⁴ In fact, some of these redactions are unnecessary because they refer either to documents that the Defence must have known the Prosecution had made available to the Common Legal Representative

³⁰ See *supra* paras. 9 and 12-13.

³¹ See the transcript of the hearing of 9 October 2013, No. ICC-02/11-01/11-T-22-CONF-ENG ET, p. 13, line 16 to p. 18, line 5 (submissions presented in private session).

³² See the "Request for re-classification and extension of time to file the final written submissions", No. ICC-02/11-01/11-638, 21 March 2014, footnote 22.

³³ See the Decision on Re-Classification and Extension of Time, *supra* note 3, par. 11 and p. 8.

³⁴ See the Defence's Observations, *supra* note 4, paras. 186-187, 190-198, 595, 1166, 1169, and footnotes 273, 1277, 1654, 1695, 1741, 1743, 1745, 1746-1747, 1824, 1842-1843, 1850.

before the confirmation hearing held in February 2013,³⁵ or to submissions made during confidential sessions of the confirmation hearing attended by the Common Legal Representative.³⁶

23. The limited number, questionable necessity, and delay of the redactions in the Defence's Observations have led to the tardy communication to the Common Legal Representative of the Defence's Observations, and have eventually resulted in a significant limitation in the time available for her to prepare this response.³⁷

24. This particular instance shows once again the Defence's persistent disagreement with the possibility for victims to express their views and concerns as envisaged in the Rome Statute. The Defence blatantly disregards the participatory rights granted by the Chamber to the victims participating in these proceedings and attempts to limit them in practice by any means. The Defence only brings forward the participation of victims in the proceedings when it seeks entitlements from the Chamber which have not been afforded to the Prosecution or the victims.³⁸ This reiterated behaviour is not only preventing victims from exercising fully their rights, but it might also be inconsistent with the obligations of counsel under the Code of Professional Conduct to act towards colleagues fairly, in good faith and courteously.³⁹

25. In conclusion, the Common Legal Representative reiterates that, contrary to the Defence's express and implied contentions, participating victims are entitled to

³⁵ See the Defence's Observations, *supra* note 4, paras. 186-187 and 190-191, references to [REDACTED], and to [REDACTED]. The Prosecution agreed to transmit all its confidential submissions to the OPCV, as reported by the latter to the Chamber and the Defence in 2012. See the "Information as to the agreement between the Common Legal Representative and the Prosecution on access to documents and Requests in relation to the schedule of the confirmation of the charges hearing", No. ICC-02/11-01/11-143, 7 June 2012, paras. 5-6.

³⁶ See the Defence's Observations, *supra* note 4, footnote 273.

³⁷ See the "Decision on the 'Requête aux fins de prorogation du délai de dépôt des soumissions finales de la défense et d'obtention de pages additionnelles'" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-645, 2 April 2014, par. 13.

³⁸ See the « Version publique expurgée de la requête aux fins de prorogation du délai de dépôt des soumissions finales de la défense et d'obtention de pages additionnelles », No. ICC-02/11-01/11-643-Red, 1 April 2014, paras. 22-23.

³⁹ See article 27 of the Code of Professional Conduct for Counsel.

express their views and concerns in order to defend their personal interests in the current proceedings (e.g. by supporting the confirmation of the charges against the person(s) who caused them harm), and that the defence of said interests by the Common Legal Representative must be allowed and considered by the Chamber regardless of whether it supports or undermines the views of one or several parties to the proceedings.

2. The Prosecutor has provided additional and substantive evidence on all issues suggested by the Chamber

26. Contrary to the Defence's contentions,⁴⁰ the Common Legal Representative submits that the Prosecution has not amended the charges pursuant to article 61(7)(c)(ii) of the Rome Statute by changing the incidents constituting the contextual element of the alleged crimes against humanity or amending the alleged forms of criminal liability attributed to Mr. Gbagbo.

27. The Defence filed the same submissions in the past,⁴¹ and fails to notice that the Chamber already found that "[c]ontrary to the Defence assertion, the facts and circumstances underpinning the contextual elements of the crimes charged as described in the charges in the Amended DCC do not exceed the facts and circumstances alleged to the same effect in the DCC of 17 January 2013".⁴² Similarly, the Chamber recognised that "[t]he modes of liability under the Statute may significantly overlap in certain cases and does not discard that such an overlap of applicable modes of liability, if any, may be supported by the evidence provided for the instant case, including the additional evidence collected after the adjournment".⁴³

28. Consequently, the Defence's contentions that the Amended DCC constitutes

⁴⁰ See the Defence's Observations, *supra* note 4, paras. 5-7 and 15.

⁴¹ See the « Requête urgente aux fins d'organisation d'une Conférence de mise en état », No. ICC-02/11-01/11-597, 30 January 2014, paras. 43 and 48; and the « Requête aux fins d'augmentation du nombre de pages autorisé en vue du dépôt par la défense d'observations écrites sur la preuve du Procureur (Norme 37(1)) », No. ICC-02/11-01/11-607, 6 February 2014, paras. 22-23 and 54.

⁴² See the "Decision on Defence requests related to the continuation of the confirmation proceedings" (Pre-Trial Chamber I), No. ICC-02/11-01/11-619, 14 February 2014, par. 16.

⁴³ *Idem*, par. 19.

an amendment to the charges pursuant to article 61(7)(c)(ii) of the Rome Statute must be dismissed as *res judicata*, especially since the deadline for requesting leave to appeal has long elapsed.⁴⁴

29. Furthermore, contrary to the Defence's contention,⁴⁵ the Common Legal Representative considers that the Prosecution has submitted additional evidence pursuant to article 61(7)(c)(i) of the Rome Statute in order to further substantiate all issues suggested by the Chamber in the Adjournment Decision beyond the standard of proof required by article 61(5) of the Statute.

30. In particular, pursuant to the Chamber's suggestions, the Amended DCC and the additional evidence provide more detailed support for the alleged organizational structure of the "pro-Gbagbo forces",⁴⁶ and prove the alleged attacks and gender violence suffered by the victims to the standard required by article 61(7) of the Rome Statute.⁴⁷

31. The Common Legal Representative provides below the views and concerns of victims regarding the additional evidence submitted by the Prosecution for each issue identified by the Chamber in the Adjournment Decision, in response to the Defence's Observations.

a. On the position and activities of armed groups opposed to the "pro-Gbagbo forces"

32. Victims participating in the case have expressed their concerns about the Defence's contention that the additional evidence submitted by the Prosecution on the movements and confrontations of the *Commando Invisible* and the *Forces Nouvelles* disproves the widespread and systematic character of the violence suffered by the

⁴⁴ See for instance the "Decision on the 'Request by the Government of Kenya in respect of the Confirmation of Charges Proceedings'" (Pre-Trial Chamber II, Single Judge), No. ICC-01/09-01/11-313, 1 September 2011, par. 8.

⁴⁵ See the Defence's Observations, *supra* note 4, par. 37.

⁴⁶ See the Adjournment Decision, *supra* note 1, par. 44(2).

⁴⁷ *Idem*, paras. 44(4)(c) and 44(5).

civilian population.⁴⁸

33. The Common Legal Representative submits that the additional evidence presented by the Prosecution confirms the existence of a thoroughly organized attack directed against a substantial number of victims, namely the so-called “pro-Ouattara civilian population”.⁴⁹ In this regard, the Common Legal Representative points out that said attack was directed not only against civilians of Dioula and Baoulé ethnic origin,⁵⁰ but also against Mossi, Malinké and Senofu civilians.⁵¹ Similarly, victims perceived by the perpetrators as supporters of Mr. Ouattara did not only belong to the opposition,⁵² but also to a different number of associations or political parties.⁵³

34. Contrary to the Defence’s contention,⁵⁴ the additional evidence submitted by the Prosecution also shows that said attack was carried out on a large scale, followed a regular pattern, and involved the use of substantial public and private resources.⁵⁵

35. The additional evidence on the position and activities of “armed groups” opposed to the “pro-Gbagbo forces” does not disclose the existence of an armed conflict in Côte d’Ivoire prior to 23 February 2011, as reiterated by the Defence.⁵⁶ The Common Legal Representative submits that the additional evidence does not show that before said date there was “protracted” violence “reach[ing] a certain level of intensity which exceeds that of internal disturbances and tensions, such as riots, isolated and

⁴⁸ See the Defence’s Observations, *supra* note 4, paras. 1005 and 1007.

⁴⁹ See *infra* notes 89, 99, 107 and 117 on the number of victims of each incident.

⁵⁰ See the Amended DCC, *supra* note 2, par. 220.

⁵¹ See for instance victims a/20042/13, a/20044/13, a/20047/13, a/20048/13 and a/20049/13, a/20089/12, and a/20183/12.

⁵² See the Amended DCC, *supra* note 2, par. 62.

⁵³ *Idem*, par. 65.

⁵⁴ See the Defence’s Observations, *supra* note 4, paras. 1009-1010.

⁵⁵ See for instance the statement of witness P-0189 (CIV-OTP-0042-0508-R01) at 0544-0546; the statement of witness P-0217 (CIV-OTP-0040-0372-R01) at 0405, paras. 164-166; the statement of witness P-0234 (CIV-OTP-0041-0534-R01) at 0546, par. 44; the transcribed statement of witness P-0321 (CIV-OTP-0046-0814-R01) at 0816-0817, lines 63-97; and the French translation of the statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2923-2927.

⁵⁶ See the Defence’s Observations, *supra* note 4, par. 227.

sporadic acts of violence or other acts of a similar nature”⁵⁷ between a State and “*organized armed groups*”.⁵⁸

36. At most, the additional evidence discloses the existence of intentions and/or plans to carry out attacks against the “pro-Ouattara civilian population” before 23 February 2011.⁵⁹ As shown by the Prosecution’s additional evidence, an internal armed conflict did not start until 23 February 2011.⁶⁰

37. Furthermore, the Common Legal Representative submits that the additional evidence discloses that the confrontations between the “pro-Gbagbo forces” and the groups opposing the latter did not affect the continued implementation of the organizational policy against the “pro-Ouattara civilian population” beyond 23 February 2011.⁶¹ Contrary to the Defence’s contentions,⁶² the additional evidence confirms that the victims participating in the present case were not combatants in any armed conflict that may have been raging in Côte d’Ivoire during the timeframe referred to in the charges.⁶³

⁵⁷ See the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo” (Pre-Trial Chamber II), No. ICC-01/05-01/08-424, 15 June 2009 (the “Bemba Confirmation Decision”), paras. 225, 231 and 235. See also the “Decision on the confirmation of charges” (Pre-Trial Chamber I), No. ICC-01/04-01/06-803-tENG (the “Lubanga Confirmation Decision”), par. 232; and the “Decision on the confirmation of charges” (Pre-Trial Chamber I), No. ICC-01/04-01/10-465-Red, 16 December 2011 (the “Mbarushimana Confirmation Decision”), par. 103.

⁵⁸ See the Bemba Confirmation Decision, *supra* note 57, paras. 233-234 and 236. See also the “Decision on the confirmation of charges” (Pre-Trial Chamber I), No. ICC-01/04-01/07-717, 30 September 2008 (the “Katanga and Ngudjolo Confirmation Decision”), par. 239; and the Mbarushimana Confirmation Decision, *supra* note 57, par. 103.

⁵⁹ See the Amended DCC, *supra* note 2, paras. 28-29, 31, 34-35 and 37.

⁶⁰ *Idem*, par. 49.

⁶¹ See for instance the statement of witness P-0217 (CIV-OTP-0040-0372-R01) at 0383, par. 56; the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0155-0156, paras. 45-46; the statement of witness P-0234 (CIV-OTP-0041-0534-R01) at 0573, par. 144; the statement of witness P-0239 (CIV-OTP-0037-0425-R01) at 0432-0433, paras. 43-47; the transcribed statement of witness P-0321 (CIV-OTP-0046-0839-R01) at 0855-0857, lines 585-670; and the French translation of the statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2931-2932, par. 273.

⁶² See the Defence’s Observations, *supra* note 4, par. 1003.

⁶³ See for instance the statement of witness P-0189 (CIV-OTP-0042-0508-R01) at 0519, paras. 66 and 68; the transcribed statement of witness P-0330 (CIV-OTP-0049-2192-R01) at 2213-2214, lines 752-766, at 2224, lines 1136-1140; the transcribed statement of witness P-0330 (CIV-OTP-0049-2359-R01) at 2360-2361, lines 36-54; the statement of witness P-0344 (CIV-OTP-0044-2614-R01) at 2618, par. 15; the French translation of the statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2896, par. 122, at 2901-2902,

38. Therefore, the Common Legal Representative is of the view that the additional evidence provided by the Prosecution on the position(s), movements, activities and confrontations of all “armed groups” opposed to the “pro-Gbagbo forces” in Côte d’Ivoire between November 2010 and May 2011, confirms the existence of a widespread and systematic attack against the “pro-Ouattara civilian population”, as argued by the Prosecution.

b. On the organizational structure and interaction of the “pro-Gbagbo forces”

39. The Common Legal Representative submits that the additional evidence presented by the Prosecution on the composition and activities of Mr. Gbagbo’s “inner circle” suffices to reach the threshold for confirming the allegation that the “pro-Gbagbo forces” were coordinated, funded and supported by Mr. Gbagbo and his closest associates.⁶⁴ The Common Legal Representative supports the Prosecutor’s response in this regard.⁶⁵

40. Contrary to the Defence’s contentions,⁶⁶ the statements of several additional witnesses provide substantial grounds to believe that Mr. Gbagbo relied on the support provided by FDS members loyal to him,⁶⁷ and that Mr. Gbagbo himself had established some armed governmental bodies that received orders directly and/or indirectly from him.⁶⁸ Said bodies were given State and private resources for the

paras. 143-145, at 2915, par. 200, at 2924, par. 242, at 2927, par. 255; and the statement of witness P-0398 (CIV-OTP-0049-2842-R01) at 2860, paras. 69-70.

⁶⁴ See the Adjournment Decision, *supra* note 1, par. 44(2).

⁶⁵ See the “[REDACTED]”, No. ICC-02/11-01/11-642-Conf, 31 March 2014, paras. 54, 56, 60.

⁶⁶ See the Defence’s Observations, *supra* note 4, paras. 1014 and 1020.

⁶⁷ See for instance the statement of witness P-0239 (CIV-OTP-0037-0425-R01) at 0432, paras. 43-49, at 0433, par. 48, at 0442, paras. 109, 114-115; and the transcribed statement of witness P-0321 (CIV-OTP-0046-0814-R01) at 0834-0835, lines 737-752.

⁶⁸ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0151, par. 36, at 0152-0153, par. 38; the statement of witness P-0234 (CIV-OTP-0041-0534-R01) at 0560, par. 98; the statement of witness P-0238 (CIV-OTP-0048-1503-R01) at 1510-1511, paras. 27-30; and the statement of witness P-0239 (CIV-OTP-0037-0425-R01) at 0432, par. 38.

conduct of their activities.⁶⁹

41. The Common Legal Representative highlights that additional witness statements indicate that Mr. Gbagbo supported his close associates in recruiting, funding and training members of the *Galaxie Patriotique* and mercenaries.⁷⁰ Similarly, several of said statements show that Mr. Gbagbo and his close associates gave orders to the FDS that eventually led to the commission of the crimes.⁷¹

42. In conclusion, the Common Legal Representative submits that the additional evidence provided by the Prosecution on the interaction between Mr. Gbagbo and his inner circle confirms that the former established and made use of an “organization” within the meaning of article 7(2) of the Rome Statute between November 2010 and May 2011.

c. On the adoption and distribution of the alleged policy/plan to attack the “pro-Ouattara” civilian population

43. Victims participating in the case are of the view that the plan to attack them was adopted and made known by Mr. Gbagbo and members of his inner circle before the 2010 elections, as argued by the Prosecution.

44. In this regard, the Common Legal Representative submits that the additional evidence presented by the Prosecution proves to the standard applicable at this stage of the proceedings that Mr. Gbagbo and his inner circle elaborated and communicated a policy/plan for the “pro-Gbagbo forces” to attack the “pro-Ouattara civilian population”, as required by article 7(2)(a) of the Rome Statute.⁷²

45. Mr. Gbagbo’s actions to limit the rights of the civilian population opposed to

⁶⁹ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0172, par. 94; and the transcribed statement of witness P-0321 (CIV-OTP-0046-1121-R01) at 1129, lines 289-306, at 1132, lines 400-409.

⁷⁰ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0153-0154, par. 40, at 0161-0164, paras. 60 and 62-66, at 0187, par. 132; and the French translation of the statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2939-2940, paras. 300-303 and 305.

⁷¹ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 165-167, paras. 73 and 78; and the statement of witness P-0234 (CIV-OTP-0041-0534-R01) at 0560, par. 98.

⁷² See the Adjournment Decision, *supra* note 1, par. 44(3).

him in previous similar instances,⁷³ the reports that victims of the post-electoral violence were faking the harm they had actually suffered,⁷⁴ and the statements of several additional witnesses on attacks directly or indirectly carried out against the civilian opposition⁷⁵ disclose the existence of a policy distinguishing between those in favour and against Mr. Gbagbo, and leading to violence against the latter.⁷⁶

46. In this regard, the Common Legal Representative highlights the relevance of the reports prepared by the [REDACTED] and the [REDACTED], demonstrating that specific areas of Abidjan and other parts of Côte d'Ivoire were targeted between December 2010 and April 2011 based on ethnic criteria and the perceived political support of the population for Mr. Ouattara. These documents are evidence that almost 200 Burkinabés and 150 Malians were killed during the post-election violence in Abidjan and other parts of the country, and that almost a 100 Burkinabés and Malians were injured during the same period of time for their assumed political allegiance to Mr. Gbagbo's opposition.⁷⁷

47. Moreover, the Prosecution has provided an important amount of additional documentary evidence supporting the existence of the policy to attack the "pro-Ouattara civilian population".⁷⁸ In this regard, the Common Legal Representative points out that Chambers have relied on this type of evidence to confirm the charges in past cases of a similar nature.

⁷³ See for instance the videos « Gbagbo appel les patriotes à prendre la rue » (CIV-OTP-0052-0522); and « [REDACTED], Laurent Gbagbo la nouvelle constitution pour exclure Ouattara » (CIV-OTP-0052-0523).

⁷⁴ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02), at 0177, par. 110.

⁷⁵ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02), at 0176, paras. 108-109; the statement of witness P-0234 (CIV-OTP-0041-0534-R01) at 0552, par. 68; and the statement of witness P-0238 (CIV-OTP-0048-1503-R01) at 1529-1530, paras. 125 and 128.

⁷⁶ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0155-0156, paras. 45-46; the statement of witness P-0239 (CIV-OTP-0037-0425-R01) at 0433, par. 46; and the French translation of statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2934-2935, paras. 282-284.

⁷⁷ See the « [REDACTED] » (CIV-OTP-0052-0386-R01), referred to in the Amended DCC, *supra* note 2, paras. 55-56, 68, 99, 104 and 113; and the « [REDACTED] » (CIV-OTP-0052-0292-R01), referred to in the Amended DCC, *supra* note 2, paras. 55-56, 65-66 and 68.

⁷⁸ See for instance the « [REDACTED] » (CIV-OTP-0037-0138); the « [REDACTED] » (CIV-OTP-0044-0392); the « Rapport [REDACTED] » (CIV-OTP-0044-0700); and the « [REDACTED] » (CIV-OTP-0044-2441).

48. For instance, in the *Katanga and Ngudjolo Chui* case, Pre-Trial Chamber I confirmed under article 61(7) of the Rome Statute the existence of the contextual elements of the crimes against humanity alleged by the Prosecution by referring exclusively to reports prepared by international governmental and non-governmental organizations on incidents in Nyakunde, Kilo, Tchomia, Katoto, Bunia, Drodoro and Mandro.⁷⁹ By contrast, witness statements were the basis for the Pre-Trial Chamber to find substantial grounds to believe the existence of the specific incidents in Bogoro for which the suspects were allegedly responsible.⁸⁰

49. In the present case, the Common Legal Representative contends that the additional evidence provided by the Prosecution on the adoption and distribution of the policy/plan to attack the “pro-Ouattara civilian population” confirms that said policy/plan was sanctioned by Mr. Gbagbo and his inner circle, and was communicated to and implemented by the pro-Gbagbo forces under the control of the latter since at least 27 November 2010. The Prosecution has also provided sufficient evidence to establish substantial grounds to believe that said policy/plan connected the four particular incidents addressed by the Prosecution, as discussed below.

d. On the incidents allegedly constituting the attack against the “pro-Ouattara civilian population”

50. The Common Legal Representative submits that the additional evidence presented by the Prosecution for the particular incidents constituting the alleged attack against the civilian population meets the evidentiary threshold for the confirmation of the charges. As mentioned above,⁸¹ the victims share the view that the nature and content of the additional evidence presented by the Prosecution underscores that the incidents referred to in the Amended DCC addressing the harm they suffered are connected with an organizational policy to attack the “pro-Ouattara

⁷⁹ See the *Katanga and Ngudjolo* Confirmation Decision, *supra* note 58, paras. 408-411.

⁸⁰ *Idem*, paras. 413-416.

⁸¹ See *supra* paras. 32-34.

civilian population”.⁸²

51. In particular, the Common Legal Representative notes that in the Amended DCC the Prosecution does not rely exclusively on documentary, anonymous or hearsay evidence. The statements of over thirty reliable witnesses have been submitted in relation to the attacks and gender violence suffered by the victims.

52. As suggested by the Chamber,⁸³ the additional evidence provides information on the connection of the incidents mentioned by the Prosecution and a policy to attack the “pro-Ouattara civilian population”. Several pieces of additional evidence reveal the common motivation behind the violence during and after the demonstrations before the seat of the RTI between 16 and 19 December 2010, the attack against the women’s demonstration in Abobo on 3 March 2011, the shelling of Abobo on 17 March 2011, and the Yopougon incidents around 12 April 2011.⁸⁴

53. Moreover, contrary to the Defence’s contentions⁸⁵ and pursuant to the Chamber’s recommendation,⁸⁶ the additional evidence also provides information on the alleged physical perpetrators,⁸⁷ the victims of the alleged crimes and the harm suffered as a consequence of said crimes. The Common Legal Representative addresses below the Prosecutor’s evidence of the victimisation that took place during these incidents.

⁸² See the Adjournment Decision, *supra* note 1, par. 44(4)(a).

⁸³ *Idem*.

⁸⁴ Regarding the RTI incidents, see for instance the statement of witness P-0344 (CIV-OTP-0044-2614-R01) at 2618-2619, paras. 16-18; regarding the women’s march incident, see for instance the transcribed statement of witness P-0330 (CIV-OTP-0049-2269-R01) at 2288, lines 647-653, at 2290, lines 714-720; regarding the shelling of Abobo, see for instance the statement of witness P-0360 (CIV-OTP-0046-1203-R01) at 1207, par. 16, at 1208, paras. 20-22; and regarding the Yopougon incidents, see for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0184-0185, par. 126.

⁸⁵ See the Defence’s Observations, *supra* note 4, paras. 232 and 1004.

⁸⁶ See the Adjournment Decision, *supra* note 1, par. 44(4)(b) and (c).

⁸⁷ Regarding the RTI incidents, see for instance the statement of witness P-0363 (CIV-OTP-0046-0275-R01) at 0284, paras. 39-41; regarding the women’s march incident, see for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0174-0175, paras. 105-106; regarding the shelling of Abobo, see for instance the statement of witness P-0239 (CIV-OTP-0037-0425-R01) at 0442, paras. 107-110, at 0444, paras. 127-131; and regarding the Yopougon incidents, see for instance the French translation of the statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2927, par. 255, at 2929, par. 265.

i. The RTI incidents

54. Pursuant to the Chamber's suggestion,⁸⁸ the Prosecution has submitted additional evidence on murder and sexual violence suffered by victims during the "RTI incidents", identifying the number of victims and their particular affiliation, as well as the harm they suffered from.⁸⁹

55. Contrary to the Defence's contentions,⁹⁰ the medical evidence of the harm suffered by the victims of these attacks does not appear to be forged. Victims participating in these proceedings have informed the Common Legal Representative of their difficulty to obtain official certificates in Côte d'Ivoire at the time of events, and of their fear to seek medical treatment for the injuries they suffered from.⁹¹

56. The Common Legal Representative also notes that the Defence only reiterates the alleged lack of credibility of two witnesses regarding the sexual violence perpetrated during the 16 December 2010 march whose testimony was already submitted before the February 2013 hearing.⁹² The Defence does not challenge the credibility of the additional evidence presented by the Prosecutor in this regard.⁹³ The Defence's contention that this evidence does not point at the responsibility of pro-Gbagbo forces for the crimes committed does not stand a mere reading of the evidence.⁹⁴

57. Moreover, the Common Legal Representative reiterates her submissions during the oral phase of the confirmation hearing that it is notorious that several

⁸⁸ See the Adjournment Decision, *supra* note 1, par. 44(5).

⁸⁹ See for instance the statement of witness P-0226 (CIV-OTP-0039-0143-R02) at 0176, par. 109; and the French translation of the statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2899-2901, paras. 133-142. See also the death certificates submitted by the Prosecution (CIV-OTP-0044-2657, CIV-OTP-0044-2658 and CIV-OTP-0044-2659).

⁹⁰ See the Defence's Observations, *supra* note 4, paras. 336 and 417.

⁹¹ See for instance victims a/20068/13 and a/20069/13. However, some other victims succeeded in producing medical certificates. See for instance the ones attached to the application form of victim a/20031/12.

⁹² See the Defence's Observations, *supra* note 4, par. 360.

⁹³ See for instance the statement of witness P-0344 (CIV-OTP-0044-2614-R01) at 2618-2619, paras. 18-19.

⁹⁴ Cf. the Defence's Observations, *supra* note 4, paras. 416 and 420 with the statement of witness P-0344 (CIV-OTP-0044-2614-R01) at 2620, par. 19 (« [REDACTED] »).

mosques were the object of attacks between 17 and 18 December 2010 for religious reasons.⁹⁵ Contrary to the Defence's contentions,⁹⁶ the Prosecution has provided credible evidence detailing which mosques were attacked, by whom and how many persons were victimised as a result of said attacks.⁹⁷

58. Lastly, the Common Legal Representative disagrees with the Defence's submission that the Prosecutor's additional evidence does not support any allegations concerning the RTI incidents, and especially, that the civilian population was not the target of the attack comprising said incidents.⁹⁸ The statements of several witnesses and additional documentary evidence show that the Prosecutor's allegations in this regard are well founded.

ii. The women's march incident

59. The Prosecution has also submitted a number of additional witness statements concerning the violence suffered by women during the "women's march", identifying the harm inflicted on them, as well as their number and particular ethnic, religious and/or national allegiance where possible.⁹⁹

60. Contrary to the Defence's contention,¹⁰⁰ the medical certificates submitted by the Prosecutor prove that several women opposing Mr. Gbagbo's stay in power were shot dead while they were marching in Abobo on 3 March 2011.¹⁰¹ In particular, witness P-0172, who is also a victim participating in the proceedings, explains [REDACTED].¹⁰² The number of victims killed or injured during the 3 March 2011

⁹⁵ See the transcript of the confirmation of charges hearing session held on 20 February 2013, No. ICC-02/11-01/11-T-15-CONF-ENG, p. 5, lines 1-9 (submissions presented in open session).

⁹⁶ See the Defence's Observations, *supra* note 4, paras. 387-389 and 393-395.

⁹⁷ See the Amended DCC, *supra* note 2, par. 113, footnote 364.

⁹⁸ See the Defence's Observations, *supra* note 4, paras. 430-431.

⁹⁹ See for instance the statement of witness P-0169 (CIV-OTP-0029-0323-R01) at 0333, par. 61; Annex 4 to the statement of witness P-0189 ([REDACTED]) (CIV-OTP-0042-0587); [REDACTED] (« [REDACTED] ») (CIV-OTP-0042-0590); and the French translation of the statement of witness P-0369 (CIV-OTP-0049-2866-R01) at 2915, paras. 202-203, at 2916, par. 206.

¹⁰⁰ See the Defence's Observations, *supra* note 4, par. 116.

¹⁰¹ See for instance the death certificates CIV-OTP-0028-0573, CIV-OTP-0028-0575, and CIV-OTP-0039-0055.

¹⁰² See the statement of witness P-0172 (CIV-OTP-0028-0550-R01) at 0563, par. 73.

march is also clearly established by other pieces of evidence.¹⁰³

61. Moreover, in addition to noting the meagreness of the Defence's arguments on the lack of evidence regarding the crimes committed during the women's march,¹⁰⁴ the Common Legal Representative submits that the "conspiracy" or "alternative" theories put forward by the Defence to explain the damaging result on the victims participating in said march and currently taking part in these proceedings is an insult to said victims.¹⁰⁵ Sadly, the victims of the march were too many for all them to be identified, but it is clear from the additional evidence submitted by the Prosecutor that they were attacked by pro-Gbagbo forces not because of their violent behaviour but because of their perceived affiliation with the political opposition to Mr. Gbagbo.¹⁰⁶

iii. The shelling of Abobo incident

62. Similarly, the Common Legal Representative submits that the additional evidence on the "shelling of Abobo" presented by the Prosecution following the Chamber's recommendation is sufficiently compelling to find substantial grounds to believe that civilians were the target of this incident. The Prosecution has submitted additional evidence identifying the number of victims and their particular affiliation, as well as the harm they suffered from.¹⁰⁷

63. Contrary to the Defence's contentions,¹⁰⁸ the additional death certificates pertaining to victims who died in the Abobo market on 17 March 2011 allow to conclude that the harm they suffered from was the consequence of the shelling of the

¹⁰³ See for instance Annex 12 to the statement of witness P-0184 (CIV-OTP-0032-0054-0001-R01) at 0090.

¹⁰⁴ See the Defence's Observations, *supra* note 4, paras. 520-521, 526, 531, 543 and 604.

¹⁰⁵ *Idem*, paras. 484, 572, 575, 584, 586, 588 and 593-595.

¹⁰⁶ See for instance the statement of witness P-0217 (CIV-OTP-0040-0372-R01) at 0395, paras. 113 and 116; and the statement of witness P-0189 (CIV-OTP-0042-0508-R01) at 0519, paras. 65-67.

¹⁰⁷ See for instance [REDACTED], 17 March 2011 (CIV-OTP-0044-1617) at 1617, par. 5; the statement of witness P-0169 (CIV-OTP-0029-0323) at 0334, par. 62; the statement of witness P-0189 (CIV-OTP-0042-0508-R01) at 0538-0539, paras. 118-129; the statement of witness P-0217 (CIV-OTP-0040-0372-R01) at 0408-0409, paras. 180-184, 186-187; and the statement of witness P-0362 (CIV-OTP-0046-1271-R01) at 1276, paras. 20-26, at 1277, paras. 30-32, at 1277-1278, paras. 36-42.

¹⁰⁸ See the Defence's Observations, *supra* note 4, paras. 118 and 660.

market where they were present, together with other civilians, on that day.¹⁰⁹ Moreover, the Common Legal Representative reiterates, in response to the Defence's complaint about the scarcity of medical certificates submitted into evidence,¹¹⁰ that the circumstances in Côte d'Ivoire at the time of events made it very difficult for victims participating in these proceedings to obtain official certificates.¹¹¹

64. Furthermore, the Common Legal Representative submits that the additional evidence discloses the execution of an attack against a civilian population under article 7(1) of the Rome Statute, and does not support the "alternative hypotheses" put forward by the Defence to explain the cause of the harm suffered by the victims of the attack against the Abobo market on 17 March 2011, such as the attack being made to "*« couvrir » un bombardement de civils effectué par les rebelles*" or as "*un règlement de comptes entre rebelles*".¹¹²

65. Contrary to the Defence's contentions,¹¹³ several statements support the allegation that the Abobo market was targeted and shelled on 17 March 2011 by the FDS, regardless of the purpose behind this attack.¹¹⁴ The Common Legal Representative submits that, even if the market were a legitimate military objective in a situation of internal armed conflict, as the Defence appears to argue,¹¹⁵ the attack on the market was obviously disproportionate considering the type of weapons used and, therefore, must be considered as an attack directed against the civilian population.¹¹⁶

iv. The Yopougon incidents

66. Lastly, additional evidence has been submitted detailing the harm inflicted

¹⁰⁹ See for instance CIV-OTP-0041-0409-R01, expressly referring to « [REDACTED] ».

¹¹⁰ See the Defence's Observations, *supra* note 4, par. 673

¹¹¹ See *supra* par. 55.

¹¹² See the Defence's Observations, *supra* note 4, paras. 747 and 750-751.

¹¹³ *Idem*, par. 74.

¹¹⁴ See for instance the statement of witness P-0238 (CIV-OTP-0048-1503-R01) at 1534, par. 145.

¹¹⁵ See the Defence's Observations, *supra* note 4, paras. 74, 734-744 and 760.

¹¹⁶ See ICTY, *The Prosecutor v. Galić*, IT-98-29-A, Appeals Judgment, 30 November 2006, par. 132 ("[a] direct attack [against the civilian population pursuant to Article 5 of the ICTY Statute] can be inferred from the indiscriminate character of the weapon used").

upon victims during the “Yopougon incidents”. The evidence provides the affiliation and number of victims who suffered and continue to suffer physical and psychological harm, including harm resulting from sexual violence.¹¹⁷

67. In light of this evidence, the Common Legal Representative disagrees with the Defence’s contention that the Prosecution has failed to “*déterminer précisément les conséquences de l’attaque alléguée*”, in particular regarding the allegations of sexual violence.¹¹⁸ It must be borne in mind that during the post-electoral period in Côte d’Ivoire, many victims did not enjoy the possibility to secure medical evidence of the abuses they had suffered because they did not have money for that purpose, could not reach a doctor after they were raped, nor could they present an official complaint because there was no police in their neighbourhood at the time and everything was closed.¹¹⁹ Moreover, many victims were simply ashamed or afraid of what had happened to them and therefore did not look for medical treatment.¹²⁰

68. In these circumstances, the Common Legal Representative submits that the additional evidence introduced by the Prosecution does satisfy the material elements of the crime against humanity of rape, contrary to the arguments of the Defence.¹²¹

69. Therefore, the Common Legal Representative contends that the further evidence submitted by the Prosecution provides sufficient information on the attacks and gender violence suffered by the victims to confirm the existence of substantial grounds to believe that the incidents identified by the Prosecution constitute an “attack” against a “civilian population” under article 7(2)(a) of the Rome Statute, namely an attack against the “pro-Ouattara civilian population”.

¹¹⁷ See for instance the statement of witness P-0398 (CIV-OTP-0049-2842-R01) at 2857-2860, paras. 56, 60-61, 63, 69-70; and the statement of witness P-0404 (CIV-OTP-0051-0236-R01) at 0246, par. 41, at 0247, paras. 43-45, at 0249, par. 53.

¹¹⁸ See the Defence’s Observations, *supra* note 4, par. 808.

¹¹⁹ See for instance the statement of witness P-0398 (CIV-OTP-0049-2842-R01) at 2859, paras. 66-67.

¹²⁰ See for instance victims a/20002/12 and a/20045/13.

¹²¹ See the Defence’s Observations, *supra* note 4, par. 1037.

3. The Prosecutor's additional evidence confirms the Common Legal Representative's observations before the adjournment of the hearing

70. The Common Legal Representative contends that the additional evidence presented by the Prosecution supports the submissions made by the Common Legal Representative during and following the confirmation of charges hearing.¹²² In particular, the additional evidence supports the relevance and probative value of the evidence previously submitted by the Prosecution. Thereby the additional evidence provides substantial grounds to believe that Mr. Gbagbo is criminally responsible under more than one mode of liability, and that a widespread and systematic attack against the "pro-Ouattara civilian population" took place in Côte d'Ivoire between November 2010 and May 2011.

a. Relevance and probative value of the additional evidence submitted by the Prosecution

71. Contrary to the Defence's contentions,¹²³ the additional evidence relied upon by the Prosecutor is relevant to the charges filed against Mr. Gbagbo and is credible.¹²⁴ In particular, three of the Prosecutor's additional witnesses are victims participating in the proceedings (P-0297, P-0398 and P-0404). The Common Legal Representative submits that the evidence provided by these victims is also credible and has probative value.

72. Regarding witness P-0398, the Defence disputes the lack of probative value of her testimony, arguing that the statement of this witness is vague and imprecise because it only refers to her victimisers as "*gens de Gbagbo*", without identifying these persons.¹²⁵ The Defence further argues that witness P-0398 does not even identify or

¹²² See the "Final written submissions of the Common Legal Representative of Victims following the confirmation of charges hearing", No. ICC-02/11-01/11-419, 14 March 2013.

¹²³ See the Defence's Observations, *supra* note 4, paras. 26, 30, 34, 74, 77, 79, 81, 414, 416-417, 544-545, 639 and 799.

¹²⁴ See *supra* notes 55, 61, 63, 67-71, 74-78, 84, 87, 89, 97, 99, 101, 106-107 and 117, referring to additional witnesses P-0169, P-0189, P-0217, P-0226, P-0234, P-0238, P-0239, P-0321, P-0330, P-0344, P-0360, P-0362, P-0363, P-0369, P-0398, and P-0404 relied upon by the Prosecution.

¹²⁵ See the Defence's Observations, *supra* note 4, par. 67.

describe the perpetrators in a precise manner.¹²⁶

73. In this regard, the Common Legal Representative submits that the testimony of witness P-0398 is not vague and confirms that the perpetrators belonged in fact to a pro-Gbagbo group because they made reference to witness P-0398's political allegiance while raping her (« [REDACTED] », ¹²⁷ « [REDACTED] » ¹²⁸).

74. Moreover, bearing in mind the evidentiary threshold required by article 61(5) of the Rome Statute, the Chambers have already stated that it may be impractical to insist on a high degree of specificity in case of mass crimes.¹²⁹

75. The Common Legal Representative also disagrees with the Defence's contention that the additional evidence submitted by the Prosecutor contradicts each other or is contrary to the evidence submitted by the Prosecutor in February 2013.¹³⁰ In particular, the Defence's contention that the statement of witness P-0398 is inherently inconsistent and contradicts the statement of witness P-0404 is unfounded.¹³¹

76. Witness P-0398 indicates in her very statement that the only perpetrator who spoke in French [REDACTED],¹³² [REDACTED]. Whereas witness P-0398 makes reference to [REDACTED],¹³³ witness P-0404 refers to [REDACTED].¹³⁴

77. Furthermore, the Common Legal Representative notes that when pointing out the hearsay character of some witness statements or their reference to anonymous witnesses,¹³⁵ the Defence seems to forget about the pre-trial character of the

¹²⁶ *Idem*, paras. 790 and 814.

¹²⁷ See the statement of witness P-0398 (CIV-OTP-0049-2842-R01) at 2857, par. 53.

¹²⁸ *Idem*, at 2859, par. 63.

¹²⁹ See for instance the Bemba Confirmation Decision, *supra* note 57, par. 134.

¹³⁰ See the Defence's Observations, *supra* note 4, paras. 23, 61, 79 and 812.

¹³¹ *Idem*, paras. 813-814 and 1008.

¹³² See the statement of witness P-0398 (CIV-OTP-0049-2842-R01) at 2856, par. 51.

¹³³ *Idem*, at 2852, par. 37.

¹³⁴ See the statement of witness P-0404 (CIV-OTP-0051-0236-R01) at 0245, paras. 35-36.

¹³⁵ See the Defence's Observations, *supra* note 4, paras. 66 and 554.

confirmation proceedings and the implications thereof for the type of evidence that can be considered by the Chamber.

78. Article 61(5) of the Rome Statute provides that at the confirmation hearing “[t]he Prosecutor may rely on documentary or summary evidence and need not call the witnesses expected to testify at the trial”. Consistently with this provision, Chambers have ruled that the use of this type of evidence by the Prosecutor may be sufficient to reach the threshold required for the confirmation of the charges,¹³⁶ even if it concerns anonymous witnesses.¹³⁷

79. Consequently, the Common Legal Representative submits that the statements provided by witnesses P-0172 and P-0297, who are also victims participating in the proceedings, must be considered by the Chamber even if they contain hearsay evidence related respectively to the taking of corpses from Abobo-Sud hospital following the shooting [REDACTED] during the women’s march in Abobo on 3 March 2011,¹³⁸ and the killing [REDACTED] during the shelling of Abobo on 17 March 2011.¹³⁹

80. Moreover, the Common Legal Representative contends that several additional statements submitted by the Prosecution provide quite an accurate picture of the victimisation suffered during the post-electoral violence by victims admitted to participate in the current proceedings. In particular, witness P-0369, whose

¹³⁶ See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (Appeals Chamber), No. ICC-01/04-01/06-773 OA5, 14 December 2006, paras. 43 and 47. See also the “Corrigendum of the ‘Decision on the Confirmation of Charges’” (Pre-Trial Chamber I), No. ICC-02/05-03/09-121-Corr-Red, 8 March 2011, par. 41.

¹³⁷ See the “Public Redacted Version of the Decision on the Confirmation of Charges” (Pre-Trial Chamber I), No. ICC-02/05-02/09-243-Red, 8 February 2010, paras. 51-52; the “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (Pre-Trial Chamber II), No. ICC-01/09-01/11-373, 23 January 2012 (the “Ruto Confirmation Decision”), par. 78; and the “Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute” (Pre-Trial Chamber II), No. ICC-01/09-02/11-382-Red, 26 January 2012, par. 90.

¹³⁸ See the statement of witness P-0172 (CIV-OTP-0028-0550-R01) at 0563, par. 104.

¹³⁹ See the statement of witness P-0297 (CIV-OTP-0046-1236-R01) at 1239, par. 9.

credibility is challenged by the Defence,¹⁴⁰ provides very detailed information on the harm suffered by victims of the crimes, obtained from the very victims shortly after the crimes were committed.¹⁴¹

81. In turn, the additional documentary evidence submitted by the Prosecution has sufficient probative value because it is not only “*des articles de journaux, des rapports d’ONG et des ouï-dire*” without corroboration,¹⁴² or official documents “*qui pourraient avoir été établi [sic] pour les besoins de la cause*”.¹⁴³

82. In general, the Common Legal Representative disagrees with the Defence that the Adjournment Decision disallowed the Prosecutor to submit further documentary evidence in support of her allegations against Mr. Gbagbo. The Majority of the Chamber only suggested the Prosecutor to provide “*further evidence*” with respect to a given number of issues, but did not rule out the submission of further documentary evidence.¹⁴⁴ As ruled by the Appeals Chamber, this type of evidence may be sufficient for the Prosecutor to reach the lower standard of proof required at the confirmation hearing *vis-à-vis* the standard demanded for conviction at trial.¹⁴⁵

83. In particular, regarding the death certificates collected by witness P-0172, who is also a victim participating in the proceedings, the Common Legal Representative disagrees with the Defence’s contention that they do not have probative value.¹⁴⁶ Witness P-0172 explains in his statement that the death certificates of several women who were shot during the women’s march in Abobo were issued on the day of

¹⁴⁰ See the Defence’s Observations, *supra* note 4, par. 81.

¹⁴¹ See the statement of witness P-0369 (CIV-OTP-0048-1396-R01) at 1422, par. 98, at 1427, par. 113, at 1446, par. 182, at 1450, par. 199, at 1460-1461, paras. 235-236, at 1465, paras. 254-255.

¹⁴² See the Defence’s Observations, *supra* note 4, paras. 83, 406 and 826.

¹⁴³ *Idem*, paras. 336 and 660.

¹⁴⁴ See the Adjournment Decision, *supra* note 1, par. 44.

¹⁴⁵ See the “Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81” (Appeals Chamber), No. ICC-01/04-01/06-774 OA6, 14 December 2006, par. 47.

¹⁴⁶ See the Defence’s Observations, *supra* note 4, paras. 116 and 565.

events, namely on 3 March 2011, [REDACTED].¹⁴⁷

84. In this regard, the victims participating in the case have indicated that their difficulty to obtain official documents during the post-electoral crisis in Côte d'Ivoire should not prejudice their rights to truth, justice and reparation. For most of them it was not feasible to obtain official documents regarding the crimes on the place and time where they suffered harm.

85. The Chamber has already recognised that many victims admitted to participate in these proceedings had difficulty in being attended at hospitals at the time of events,¹⁴⁸ or could not find doctors to help them because they had fled the area.¹⁴⁹

86. Against this background, the Common Legal Representative submits that the Defence must similarly be aware of the difficult situation faced by many victims during the post-electoral crisis in Côte d'Ivoire to obtain evidence of their harm, especially considering that the Defence conducted investigations on the ground.¹⁵⁰ Therefore the Defence's argument that it is unreasonable for witness P-0172 to report that [REDACTED] must be dismissed.¹⁵¹ The same approach must be adopted concerning other medical certificates submitted by the Prosecution and challenged by the Defence.¹⁵²

87. Moreover, the Common Legal Representative notes a recurrent inconsistency

¹⁴⁷ See the statement of witness P-0172 (CIV-OTP-0028-0550-R01) at 0559, par. 73.

¹⁴⁸ See the "[REDACTED]" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-138-Conf-AnxB, 4 June 2012, pp. 17 and 31 (group form numbers a/20030/12 and a/20046/12).

¹⁴⁹ *Idem*, p. 51 (group form number a/20067/12).

¹⁵⁰ See for instance the "Demande de prorogation des délais fixés par la Chambre préliminaire le 17 décembre 2013 afin de permettre à la défense de déposer des observations écrites sur la preuve du Procureur", No. ICC-02/11-01/11-603, 4 February 2014, par. 56(4), and the « Requête aux fins d'augmentation du nombre de pages autorisé en vue du dépôt par la défense d'observations écrites sur la preuve du Procureur (Norme 37(1)) », *supra* note 41, par. 36, ruled favourably by the Chamber in the "Decision on Defence requests related to the continuation of the confirmation proceedings", *supra* note 42, paras. 24-25.

¹⁵¹ See the Defence's Observations, *supra* note 4, par. 568.

¹⁵² *Idem*, par. 114.

on the side of the Defence, which denies the probative value of several documents submitted by the Prosecutor and thereafter relies on the same documents in order to sustain its arguments against the Prosecutor's allegations.¹⁵³ In this regard, the Common Legal Representative observes that many victims participating in these proceedings, contrary to the Defence's contentions,¹⁵⁴ could not report the crimes they suffered from to the public authorities because it was the latter who arrested them and took them to detention facilities where they suffered the crimes.¹⁵⁵

88. The Common Legal Representative also submits that, contrary to the Defence's contentions,¹⁵⁶ the fact that the reports provided by the [REDACTED] and the [REDACTED] (documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01, respectively) were collected and transmitted to the Prosecutor by the OPCV does not undermine the admissibility, relevance and probative value of said evidence.

89. The Defence reiterates its arguments against the admissibility of the abovementioned documents.¹⁵⁷ In this regard, the Common Legal Representative submits that the Defence's arguments are *res judicata*, since the Chamber already ruled that victims have a right to collect and transmit this information to the Prosecution: "[t]he present situation is not one concerning investigation and presentation of evidence by the victims. The two documents concerned were transmitted to the Prosecutor in the course of her investigation and it is the Prosecutor who seeks to rely on this evidence for the purposes of the confirmation of charges proceedings. The Single Judge is of the view that there is nothing in the applicable law preventing the Prosecutor from receiving evidence from victims".¹⁵⁸

¹⁵³ *Ibid.*, paras. 122-123 and 415.

¹⁵⁴ *Ibid.*, par. 125.

¹⁵⁵ See the "[REDACTED]", *supra* note 148, par. 91 (group form number a/20101/12). See also victim a/20115/12, who provided [REDACTED] attesting his detention.

¹⁵⁶ See the Defence's Observations, *supra* note 4, part 1, section 5.3.7.

¹⁵⁷ *Idem*, paras. 145, 147 and 149.

¹⁵⁸ See the "Decision on the 'Prosecution's request for an extension of time to apply for redactions pursuant to Regulation 35 and for redactions to two documents pursuant to Rule 81(4)'" (Pre-Trial Chamber I, Single Judge), No. ICC-02/11-01/11-577, 18 December 2013, par. 34.

90. Other Chambers have also found that participating victims are not prevented from passing information to the Prosecutor, even if said information does not exclusively concern crimes they have suffered from.¹⁵⁹ Documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01 are therefore admissible, contrary to the Defence's suggestions.¹⁶⁰

91. Moreover, the Chamber clarified that “[t]he provenance of the documents in question [CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01] is not a matter of disclosure, but rather relates to the probative value of the evidence” at hand.¹⁶¹ In this regard, addressing the concerns raised by the Defence on the transmission of the documents by the victims to the OPCV,¹⁶² the Common Legal Representative submits that in cases where a counsel from the OPCV is representing victims participating in the proceedings, it is certainly easier for him or her than for the Prosecutor to get information from the communities affected by the crimes.

92. The relation of trust and confidence established between the Common Legal Representative and the victims she represents usually makes the victims more comfortable with sharing sensitive information with their legal representative(s) than with the Prosecutor. However, sharing this information with the Common Legal Representative does not turn the OPCV into an investigator of the Office of the Prosecutor, as argued by the Defence.¹⁶³

93. Moreover, the allegation according to which said documents could have been produced and/or manipulated by the OPCV, as the Defence appears to suggest,¹⁶⁴ is so ludicrous that it is not even necessary to respond. Notwithstanding, the Common

¹⁵⁹ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 9, par. 83.

¹⁶⁰ See the Defence's Observations, *supra* note 4, par. 149.

¹⁶¹ See the “Decision on the ‘Prosecution's request for an extension of time to apply for redactions pursuant to Regulation 35 and for redactions to two documents pursuant to Rule 81(4)’”, *supra* note 158, par. 37.

¹⁶² See the Defence's Observations, *supra* note 4, paras. 139 and 141.

¹⁶³ *Idem*, paras. 147 and 162.

¹⁶⁴ *Ibid.*, paras. 142-144.

Legal Representative clarifies that she simply received documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01 from the [REDACTED] and the [REDACTED], and transmitted them to the Prosecutor. She was not involved in the drafting or in compiling said documents which, by the way, are dated at the time the events occurred. Consequently, the mere fact that the Prosecutor only gained access to these documents through the OPCV cannot alter their probative value.

94. Furthermore, the Common Legal Representative submits that it is within the legal mandate of the OPCV to transmit to the Prosecutor relevant information received from participating victims because said victims have an interest in the confirmation of the charges.¹⁶⁵ As argued above,¹⁶⁶ victims participating in proceedings before the Court have an interest in making effective their internationally recognised rights to truth, justice and reparations. The confirmation of charges is a means for the satisfaction of these rights.¹⁶⁷

95. In this regard, the Appeals Chamber found that “[t]here is ample scope within the statutory scheme of the Statute for victims and anyone else with relevant information to pass it on to the Prosecutor”.¹⁶⁸ The Appeals Chamber also clarified that there is no obligation on participating victims to disclose evidence to the Defence, considering their more limited role in the proceedings.¹⁶⁹

96. The Common Legal Representative also disagrees with the Defence about the existence of an obligation on the victims to check the accuracy of the information

¹⁶⁵ Cf. regulation 81 of the Regulations of the Court with the Defence’s Observations, *supra* note 4, par. 148.

¹⁶⁶ See *supra* paras. 11-12 and 16.

¹⁶⁷ See the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case”, *supra* note 9, paras. 35 and 42.

¹⁶⁸ See the “Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial” (Appeals Chamber), No. ICC-01/04-556 OA4 OA5 OA6, 19 December 2008, par. 53.

¹⁶⁹ See the “Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled ‘Decision on the Modalities of Victim Participation at Trial’” (Appeals Chamber), No. ICC-01/04-01/07-2288 OA11, 16 July 2010, par. 75.

they convey to the Prosecutor.¹⁷⁰ Only the Prosecutor has an obligation in this regard by virtue of article 54(1) of the Rome Statute.

97. As previously found by the Chamber, “[t]he Prosecutor remains at liberty to use the evidence she receives, irrespective of the source of such evidence”.¹⁷¹ In this regard, the Appeals Chamber also admitted the possibility for victims to be allowed to lead evidence pertaining to the guilt or innocence of a suspect/accused.¹⁷² Nonetheless, the Common Legal Representative emphasizes that this is not the scenario in the present instance. Contrary to the Defence’s suggestion,¹⁷³ it was the Prosecutor and not the victims who filed documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01 into the record of the case.

98. In these circumstances, the Common Legal Representative strongly disagrees with the Defence’s contention that the transmission by the OPCV of documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01 to the Prosecutor has had a negative impact on Mr. Gbagbo’s rights to examine and challenge said evidence pursuant to article 61(3) and (6) of the Rome Statute.¹⁷⁴

99. The Prosecutor has properly disclosed this evidence to the Defence and the metadata of these documents reflect their chain of custody, as required for any other evidence and material entered into the record of the situation and/or case and eventually disclosed between the parties.¹⁷⁵ The Defence, contrary to its contentions,¹⁷⁶ is therefore in a position to challenge the relevance and probative

¹⁷⁰ See the Defence’s Observations, *supra* note 4, par. 151.

¹⁷¹ See the “Decision on the ‘Prosecution’s request for an extension of time to apply for redactions pursuant to Regulation 35 and for redactions to two documents pursuant to Rule 81(4)’”, *supra* note 158, par. 35.

¹⁷² See “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008”, *supra* note 13, paras. 104-105.

¹⁷³ See the Defence’s Observations, *supra* note 4, par. 146.

¹⁷⁴ *Idem*, paras. 153-154.

¹⁷⁵ See the “Submission of the Generic eCourt Protocol - Annex 1” (Pre-Trial Chamber III, Single Judge), No. ICC-02/11-01/11-18, 16 December 2011, p. 17.

¹⁷⁶ See the Defence’s Observations, *supra* note 4, par. 158.

value of these documents.¹⁷⁷

100. In conclusion, the Common Legal Representative submits that the fact that participating victims are not “parties” to the proceedings does not prevent them from transmitting to the Prosecutor any information they deem relevant, and that the eventual transmission of information to the Prosecution does not turn participating victims into “parties” with disclosure obligations *vis-à-vis* the Defence. It falls within the Prosecutor’s sole discretion what to do with any information received from the victims or anybody else. In this case, the Prosecutor decided to introduce documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01 into the proceedings and complied with the corresponding obligation to disclose them to the Defence.

101. The Chamber may therefore consider documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01 for the purposes of its decision under article 61 of the Rome Statute, and the Defence may exercise its right to examine and challenge this evidence. The mere fact that these documents were transmitted to the Prosecutor by the Common Legal Representative is not sufficient to argue that these documents lack probative value or that their consideration prejudices Mr. Gbagbo’s statutory rights. In fact, the Defence appears to raise concerns about the OPCV only because documents CIV-OTP-0052-0292-R01 and CIV-OTP-0052-0386-R01 “[p]orteraient précisément sur des questions soulevées par [REDACTED]”.¹⁷⁸ By contrast, the Defence does not raise similar concerns about witness [REDACTED], a victim participating in the proceedings, who transmitted to the Prosecutor other type of documentary evidence, namely the death certificates of other victims.¹⁷⁹

b. Admissibility of cumulative charging of different modes of liability

102. Regarding the Prosecutor’s cumulative charging of different modes of liability,¹⁸⁰ the Common Legal Representative cannot share the concern raised by the

¹⁷⁷ For a similar instance, see the “Judgment pursuant to article 74 of the Statute” (Trial Chamber II), No. ICC-01/04-02/12-3-tENG, 12 April 2013, par. 146.

¹⁷⁸ See the Defence’s Observations, *supra* note 4, par. 140.

¹⁷⁹ *Idem*, par. 565.

¹⁸⁰ See the Amended DCC, *supra* note 2, par. 129.

Defence concerning the undefined character of the Prosecutor's allegations in this regard.¹⁸¹

103. As already ruled by the Chamber, the Amended DCC is not required to contain the Prosecutor's legal interpretation of the charged modes of liability.¹⁸² Article 67(1)(a) of the Rome Statute, rule 121(3) of the Rules of Procedure and Evidence, and regulation 52 of the Regulations of the Court only provide that the document containing the charges must identify in detail the nature, cause and content of the charges against Mr. Gbagbo, namely the relevant facts and their proposed legal characterisation. According to these legal provisions, the Prosecutor's proposed interpretation of the applicable law for the purposes of the confirmation proceedings *may* be included in the Amended DCC, but is not required.¹⁸³

104. This requirement is "[a]lso consistent with the fundamental principle of *iura novit curia*, which places the responsibility to interpret the applicable law on the Judges rather than the parties".¹⁸⁴ Consequently, the Common Legal Representative disagrees with the Defence's submission that the Prosecutor should have elaborated in the Amended DCC on the legal elements of articles 25(3)(b), (d) and 28 of the Rome Statute.¹⁸⁵

105. Similarly, the Common Legal Representative does not share the Defence's concerns on the alleged incompatibility of allegations under article 25(3)(a) and article 25(3)(d) of the Statute.¹⁸⁶ As already established by the Chambers, these

¹⁸¹ See the Defence's Observations, *supra* note 4, paras. 44 and 51.

¹⁸² See the "Decision on Defence requests related to the continuation of the confirmation proceedings", *supra* note 42, par. 14.

¹⁸³ *Idem*.

¹⁸⁴ *Ibid*.

¹⁸⁵ See the Defence's Observations, *supra* note 4, paras. 47 and 1205-1206.

¹⁸⁶ See the Defence's Observations, *supra* note 4, paras. 1207-1208. See also the transcript of the confirmation of charges hearing session held on 27 February 2013, No. ICC-02/11-01/11-T-20-CONF-ENG, p. 39, lines 20-25 and p. 40, lines 1-16 (submissions presented in open session); the « Requête urgente aux fins d'organisation d'une Conférence de mise en état », No. ICC-02/11-01/11-597, 30 January 2014, paras. 43 and 48; and the « Requête aux fins d'augmentation du nombre de pages autorisé en vue du dépôt par la défense d'observations écrites sur la preuve du Procureur (Norme 37(1)) », *supra* note 41, par. 22.

articles respectively refer to principals and accessories to a crime.¹⁸⁷ Consequently, no difficulty arises if both modes of liability are considered in the alternative. In fact, the Chamber already confirmed the validity of this approach.¹⁸⁸

106. In this regard, the Common Legal Representative reiterates that the legal texts of the Court do not oblige the Prosecution to choose a single mode of liability where the evidence suggests that the suspect may be responsible under more than one mode of liability *for a conduct comprising several incidents*.¹⁸⁹ Accordingly, the Common Legal Representative submits that charges under articles 25 and 28 of the Rome Statute are not *per se* mutually exclusive.

107. As clarified by the Prosecution,¹⁹⁰ the reference made to modes of liability other than indirect co-perpetration under article 25(3)(a) of the Rome Statute is subsidiary and provided for the purpose of ensuring Mr. Gbagbo's rights under article 67(1)(a) of the Statute.

108. Against this background, the Common Legal Representative observes that some of the victims she represents consider that Mr. Gbagbo's responsibility regarding some incidents may better be described as that of a person who "[o]rders, solicits or induces the commission of such a crime" under article 25(3)(b) of the Rome Statute, in particular with reference to the shelling of Abobo incident and the Yopougon incidents.

¹⁸⁷ See the Lubanga Confirmation Decision, *supra* note 57, par. 320; the Katanga and Ngudjolo Confirmation Decision, *supra* note 58, paras. 466-467 and 471; the Bemba Confirmation Decision, *supra* note 57, paras. 346-347; the Ruto Confirmation Decision, *supra* note 137, par. 284; and the "Judgment pursuant to Article 74 of the Statute" (Trial Chamber I), No. ICC-01/04-01/06-2842, 14 March 2012 (the "Lubanga Judgment"), par. 999.

¹⁸⁸ See the "Decision on Defence requests related to the continuation of the confirmation proceedings", *supra* note 42, paras. 22-23.

¹⁸⁹ See the "Redacted version of the 'Response to the 'Corrigendum de la « Requête afin que soit déclaré irrecevable au fond le Document Contenant les Charges (ICC-02/11-01/11-592-Conf-Anx2-Corr2) déposé par le Procureur le 20 janvier 2014 »'", No. ICC-02/11-01/11-611-Red, 19 February 2014, paras. 43-45.

¹⁹⁰ See the transcript of the hearing of 22 February 2013, No. ICC-02/11-01/11-T-17-CONF-ENG ET, p. 27, lines 9-10 (submissions presented in open session); and the transcript of the hearing of 28 February 2013, ICC-02/11-01/11-T-21-ENG ET, p. 16, lines 10-17.

109. Accordingly, the Common Legal Representative submits that Mr. Gbagbo's responsibility for the harm suffered by the victims is mainly encapsulated by articles 25(3)(a) and (b) of the Rome Statute. Considering the seriousness of Mr. Gbagbo's contribution to the crimes and his corresponding principal liability for the same, the Common Legal Representative submits that Mr. Gbagbo's responsibility may be legally qualified pursuant to articles 25(3)(d) and 28 of the Statute only as an alternative.¹⁹¹

c. Existence of a widespread and systematic attack against the civilian population

110. Consistently with her previous arguments¹⁹² and contrary to the views of the Defence,¹⁹³ the Common Legal Representative contends that the additional evidence submitted by the Prosecution does not support the existence of an armed conflict before 23 February 2011, but reinforces the existence of a widespread and systematic attack directed against the civilian population.

111. The additional evidence submitted by the Prosecution on the movements and confrontations of the "pro-Gbagbo forces" is probative of the widespread and systematic character of the violence against the "pro-Ouattara civilian population".¹⁹⁴ In this regard, the Common Legal Representative submits that the victims participating in the case were not active in any armed conflict raging in Côte d'Ivoire during the timeframe referred to in the charges. The victims were not "combatants"

¹⁹¹ See the Lubanga Confirmation Decision, *supra* note 57, paras. 320-321; the Katanga and Ngudjolo Confirmation Decision, *supra* note 58, paras. 471, 517; the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir" (Pre-Trial Chamber I), No. ICC-02/05-01/09-3, 4 March 2009, par. 27; the Ruto Confirmation Decision, *supra* note 137, par. 354; the Lubanga Judgment, *supra* note 187, par. 999; and the "Decision on the Prosecutor's Application under Article 58" (Pre-Trial Chamber II), No. ICC-01/04-01/12-1-Red, 13 July 2012, par. 63. See also DIARRA (F.D.) and D'HUART (P.), « Article 25 : responsabilité pénale individuelle », in FERNANDEZ (J.) and PACREAU (X.) (dirs.), *Statut de Rome de la Cour Pénale Internationale: commentaire article par article*, vol 1, Pedone, 2012, pp. 810-11, 825, 827-828.

¹⁹² See the "Final written submissions of the Common Legal Representative of Victims following the confirmation of charges hearing", *supra* note 122, paras. 9-11.

¹⁹³ See the Defence's Observations, *supra* note 4, paras. 515-516 and 726. See also the « Requête aux fins d'augmentation du nombre de pages autorisé en vue du dépôt par la défense d'observations écrites sur la preuve du Procureur (Norme 37(1)) », *supra* note 41, paras. 40-46.

¹⁹⁴ See *supra* paras. 32-34.

because they were not involved in any hostilities. The victims participating in the case were instead part of a “civilian population” and not members of the armed forces or other legitimate combatants. This is true for all the victims currently participating in the proceedings.

112. The victims’ account of events provided in their applications for participation reveals that they were unarmed men, women and children who were attacked by pro-Gbagbo forces in different neighbourhoods of Abidjan (Abobo, Yopougon, etc.).¹⁹⁵

113. All of 199 victims participating in the present case are civilians who were arrested whilst they were on their way to peaceful marches, were abducted, tortured or detained without reason for weeks in police stations or detention centres, were raped, saw their loved ones killed during attacks against them in public places, in places of worship or in their houses and properties, or were persecuted because of their family name, their country of origin or their neighbourhood of residence. In fact, their attackers identified them as Ouattara supporters, or perceived Ouattara supporters, by virtue of their nationality (citizens from West African States such as Mali, Burkina Faso and Niger), ethnic group (Dioulas, Mossis, Senoufous, Baoulés), religious belief (Muslims) or place of residence, or according to the perception that their attackers had of their nationality, ethnic group, religion, etc.

114. The victims’ account of events reveals that the crimes they suffered from were not spontaneous or isolated acts of violence, but were rather part of a planned, directed and organised attack against them, on the basis of their perceived political affiliation.¹⁹⁶ The description of events provided by participating victims corroborates the additional evidence presented by the Prosecution since they were attacked for the sole reason that they were perceived as supporting Mr. Ouattara.

¹⁹⁵ See the “[REDACTED]”, *supra* note 148.

¹⁹⁶ *Idem*, referring to victims a/20006/12-a/20021/12, a/20031/12-a/20052/12, a/20055/12-a/20065/12, a/20068/12-a/20070/12, a/20072/12-a/20084/12, a/20086/12-a/20088/12, a/20090/12-a/20093/12, a/20086/12, a/20095/12-a/20100/12, a/20105/12, a/20107/12-a/20120/12.

115. The Common Legal Representative reiterates that this reality is notably evident with regards to the recurrent attacks on mosques and rapes often perpetrated with the threat of a weapon in very violent, humiliating and disturbing circumstances, sometimes before family members who were incapable of coming to their aid.¹⁹⁷ The Defence has presented no concrete, objective and serious evidence that would somehow explain the large-scale victimisation amongst the civilian population who supported Mr. Ouattara and lived at the localities and during the period within the charges.

FOR THE FOREGOING REASONS, the Common Legal Representative respectfully requests the Pre-Trial Chamber to confirm all the charges against Mr. Laurent Gbagbo, and commit him for trial.

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 15th day of April 2014

At The Hague, The Netherlands

¹⁹⁷ *Ibid.*, referring to victims a/20086/12-a/20088/12, a/20090/12-a/20098/12.