

Day Four of the ICC Confirmation of Charges Hearing in the Case against Laurent Gbagbo

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Olivier Kambala wa Kambala, an international law expert who is following events at The Hague in this case, reports on the conclusions of the Office of the Prosecutor, substantial questions from Pre-trial Chamber I for the prosecution, and the beginning of the defense response.

Judge Silvia Fernández de Gurmendi convened the session by acknowledging Laurent Gbagbo's return to the courtroom after his indisposition the previous afternoon.

Conclusions of the Office of the Prosecutor: Links between the Alleged Facts and Gbagbo's Individual Criminal Responsibility

In light of the contents of the Document Containing the Charges (DCC), the prosecution declared its plan to establish the individual criminal responsibility of Gbagbo as the indirect co-perpetrator as defined in Article 25(3)(a) and as a contributor as defined in Article 25(3)(d) of the Rome Statute. The prosecution based its conclusions on six elements, namely that Gbagbo: (1) created and adopted a common plan; (2) created a structure to execute the plan; (3) equipped the structure with means of action; (4) instructed the members of this structure to commit crimes; (5) encouraged the members of this structure to commit crimes; and (6) controlled the structure to execute the plan.

The prosecution emphasized that Gbagbo, with the support of his inner circle, developed and created a common plan to use disproportionate violence against his political adversaries, by way of systematic attacks, illustrated by the four salient events, to remain in power. Without the intent to remain in power, these crimes would not have been committed.

The prosecution asserted that the common plan was consolidated both before and immediately after the elections, as evidenced by actions, such as (a) the appointment of Blé Goudé as the Minister of Youth, thereby legitimizing his actions with the Young Patriots and allowing him to retain control over the Young Patriots; (b) the recruitment of 2,000 elements, their training and incorporation in the army; (c) the recruitment and incorporation of Young Patriots into the Ivorian Defense and Security Forces (FDS); (d) the recruitment of mercenaries that Gbagbo himself supervised, according to an email recovered from Gbagbo's residence, in which Anselme Seka inquired about the conditions for the recruitment of mercenaries; (e) and the reinforcement of the FDS to ensure a security presence in Abidjan, particularly through the recruitment of 50 mercenaries.

The prosecution also noted that Gbagbo provided arms and other resources to enable the crimes. The prosecution argued that Gbagbo controlled a stock of arms in the basement of the presidential palace, which he used to equip military camps, and that Gbagbo instructed the Minister of Defense to acquire additional arms. In

a February 23, 2011 correspondence, an Ivorian diplomat contacted the President of the Democratic Republic of the Congo to requisition military equipment. This requisition was in addition to the purchase of a great number of arms following the second round of elections in December 2010.

The prosecution also demonstrated that Gbagbo was the coordinator of the common plan, convening and directing numerous meetings. There were as many as two to three emergency meetings per week with Simone Gbagbo and Blé Goudé, daily meetings with FDS commandants, and meetings with the leader of the Patriotic Galaxy, providing further evidence of the close connections Gbagbo maintained with Blé Goudé, and meetings with FDS staff. The prosecution also alleged that Simone Gbagbo held *Congrès national de la résistance pour la démocratie* (CNRD) meetings at the presidential palace with Gbagbo's consent and that no decisions were made without informing or consulting Gbagbo.

The prosecution then demonstrated that Gbagbo instructed members of his inner circle and even incited them to commit crimes. He would therefore have given the order to deploy the army in response to the situation. He was also responsible for authorizing the blockade at the Golf Hotel. Gbagbo would also have been responsible for incitements leading to the commission of crimes in Abobo; particularly in saying that one should "stand firm," and that he "did not want to lose Abobo;" he is also alleged to have said "cleanse Abobo and turn it into a graveyard." Furthermore, he was attributed with arguing that those who remained in Abobo were foreigners.

The prosecution recognized that the pro-Ouattara "Invisible Commando" operated in Abobo but argued that this did not justify the attacks made on women engaged in peaceful protests.

Orders from Gbagbo were also allegedly issued at times through Blé Goudé during his multiple visits to "*parlements*" in Yopougon, or through various press representatives. Even when he was under siege in the presidential palace on April 9, 2011, his last message was to "continue to resist, continue to fight against Alassane Ouattara and his terrorists." According to the prosecution, the last messages from Gbagbo culminated in the crimes committed in Yopougon on April 12, 2011.

The prosecution also alleged that Gbagbo encouraged the members of his inner circle to commit crimes. In an encounter with police officers in Divo, Gbagbo is said to have urged them not to discuss the legality of orders emanating from the chain of command. Gbagbo also encouraged the commission of crimes in refusing to take any punitive measures against their perpetrators. Gbagbo additionally motivated members of his inner circle to commit crimes, particularly by

promising young recruits integration into the FDS and by ensuring that Young Patriots received a monthly salary.

The prosecution concluded by affirming that Gbagbo controlled the structure for the execution of the common plan and placed him at the top of this structure. The prosecution argued that the structure for the execution of the plan was composed of the five branches of the FDS. Young recruits and party supporters were connected to the FDS. The Patriotic Galaxy controlled the Young Patriots. The prosecutor argued that the number of Young Patriots under Blé Goudé's authority reached approximately 7,000. The prosecution maintained that the leaders of the Young Patriots were incorporated into the FDS. As for the mercenaries, they operated both with the FDS and with the Young Patriots. Bertrand Kadet was responsible for recruiting the mercenaries and Pastor Mori was responsible for supplying their weapons.

According to the prosecution, Gbagbo held *de jure* and *de facto* control over the structure for the execution of the common plan and the members of his inner circle as the supreme commander of the FDS. Various authorities within the structures reported to Gbagbo. He controlled the Young Patriots through Blé Goudé. He was in contact with the mercenaries, through the individuals cited above who recruited the mercenaries and through members of Gbagbo's inner circle who oversaw joint field operations with the mercenaries.

Modes of Responsibility

The prosecution believed that the elements presented were more than sufficient to establish Gbagbo's responsibility as an indirect co-perpetrator of the crimes presented through the four salient events, as defined in Article 25(3)(a).

Furthermore, the prosecution noted its satisfaction with the fact that all of the material elements, if they failed to convince the pre-trial chamber of Gbagbo's responsibility as an indirect co-perpetrator, could also be used to engage his responsibility as a contributor as defined in Article 25(3)(d). The prosecution justified this logic on grounds that: (1) the stated crimes fell under the competence of the court and were enough to demonstrate criminal intent; and (2) the group of individuals who adhered to the common plan as defined in Article 25(3)(a) met the criteria for Article 25(3)(d); whereas for the latter, the notion of a common plan was not essential.

The prosecution concluded its presentation by mentioning that more elements would be examined in closing remarks.

Questions from Judge Hans-Peter Kaul Regarding Consideration for the Mode of Responsibility Defined in Article 28

Judge Kaul thanked the prosecution for its presentation and for demonstrating Gbagbo's responsibility as an indirect co-perpetrator and a contributor, while recognizing that it was the prosecution's prerogative to consider all modes of liability. However, Judge Kaul asked the Office of the Prosecutor (OTP) if it had also considered aligning Gbagbo's responsibility with the framework of Article 28, pertaining to the command responsibility. He mentioned that he did not expect an immediate response from the OTP and that the latter would have time to reflect and respond at a later date.

The OTP's Response to Judge Hans-Peter Kaul's Question

The prosecution responded that in the warrant of arrest issued by the pre-trial chamber, the chamber noted that the modes of responsibility for Gbagbo would be examined in due time. For this reason, the OTP took it upon them to explore the various modes of responsibility that applied to Gbagbo, except for the direct perpetrator mode of responsibility. The OTP recognized that they did not conduct an analysis aligned with the framework of Article 28 but believed that this mode could also apply to Gbagbo in the sense that Gbagbo: (1) was regularly informed of events; (2) coordinated events through the FDS chain of command; (3) was the supreme commander; and (4) took no punitive actions against those who committed the crimes.

The prosecution emphasized that they would build on this mode of responsibility in their final depositions.

Question from Judge Christine Van den Wyngaert

The Judge asked the prosecution to clarify the organizational structure of the common plan, particularly the lines of command for the Young Patriots and mercenaries and how the prosecution established the relationships with Gbagbo and the FDS.

The OTP's Response to the Question from Judge Christine Van den Wyngaert

The OTP recognized the pertinence of this question and offered to reply to the question in a written deposition.

The Senior Prosecuting Trial Lawyer, Eric MacDonald, concluded by asking the Pre-trial Chamber to keep the footnotes of the annotated DCC confidential to protect the identity of the prosecution's witnesses.

The Defense's Response to the Prosecution's Allegations

Defense Counsel Emmanuel Altit announced that Ms. Jennifer Naouri would conduct the initial portion of the presentation and would continue through Monday.

The defense began by criticizing the presentation of facts by the prosecution, which the defense categorized as fragmented, and omitting significant recent historical facts in Côte d'Ivoire. The events leading to the electoral crisis, and of which a critical understanding was essential to situating the facts in context, were concealed by the prosecution. The defense began by retracing the political upheaval in Côte d'Ivoire back to 1999, highlighting the attempted coups d'état by Ibrahim Coulibaly (called General IB), the long-time right-hand man and bodyguard of Alassane Ouattara, General Guei's takeover, the presidential elections of October 2000 won by Laurent Gbagbo, the preparations of rebels in Burkina Faso to launch destabilizing activities against Côte d'Ivoire, the failed attempt coup d'état in January 2001, and other activities intended to delegitimize Laurent Gbagbo that pre-dated the beginning of the hostilities on September 19, 2002.

The defense emphasized that the events leading to the rebellion of September 19, 2002, which cast a shadow over Côte d'Ivoire and led to the country's de facto division, suggested the complicity and involvement of Alassane Ouattara. In fact, rebel leaders, including Zakaria Koné, and Abdoulaye Traoré told troops in training camps that their enlistment and pay were made possible by monthly contributions of 25 million CFA francs from Ouattara.

The defense attempted to demonstrate that the group of rebels, who committed serious human rights violations and economic crimes in northern Côte d'Ivoire, were allies of Ouattara, benefited from foreign support, particularly from Burkina

Faso and France, and they operated in the same locations where the crimes for which Gbagbo was accused were committed.

The defense also attempted to demonstrate that the prosecution's opening statements, particularly Gbagbo's refusal to accept Ouattara's electoral victory, was selective and did not take into account the conditions of fraud and the manipulation of results that characterized the electoral process. The defense then tried to demonstrate that the results of the presidential elections as reported by the Independent Electoral Commission and the oath taken by Ouattara were unconstitutional.

The defense maintained that the prosecution carried out biased investigations against Gbagbo's camp, ignoring the Pre-trial Chamber's request from October 3, 2011 for information about crimes that took place between 2002 and 2010.

The defense requested a private session to exchange confidential information about the identity of its witnesses.

The defense's presentation were interrupted and scheduled to resume on Monday, February 25.

Coverage of the confirmation of charges hearing of former Côte d'Ivoire President Laurent Gbagbo is part of the Open Society Justice Initiative's [war crimes trial monitoring project](#) . In partnership with the [International Senior Lawyers Project \(ISLP\)](#), the Open Society Justice Initiative is monitoring the proceedings of the first former head of state to be brought to the International Criminal Court (ICC). Our monitor, Olivier Kambala wa Kambla, is an international lawyer with 15 years' experience and is an expert in international criminal law, transitional justice, human rights, peace processes, and capacity building of civil society. He will be monitoring the hearing from the ICC in The Hague, the Netherlands.

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