

BRIEFING PAPER

The Trial of Laurent Gbagbo and Charles Blé Goudé at the ICC

January 2016

Laurent Koudou Gbagbo, former president of Côte d'Ivoire, faces charges at the ICC for crimes against humanity committed in the aftermath of contested presidential elections in 2010. Charles Blé Goudé, Gbagbo's Youth Minister and long-time supporter, is facing similar charges. The two will be tried together before the ICC for allegedly conspiring to keep Gbagbo in office by any means necessary—including by committing crimes against humanity.

The Defendants

Laurent Koudou Gbagbo is the former president of Côte d'Ivoire. Prior to assuming the presidency in 2000, Gbagbo was a historian and a political dissident. After secretly founding the *Front Populaire Ivoirien* (Ivorian Popular Front (FPI)) as an opposition party to President Felix Houphouët-Boigny's one-party rule, Gbagbo spent most of the 1980s in exile in France. Gbagbo returned to Côte d'Ivoire in 1988 to compete against incumbent Houphouët-Boigny in the 1990 presidential race, the country's first multi-party elections. Though defeated for the presidency, Gbagbo later won a seat in the National Assembly. Amid ongoing political and ethnic unrest throughout Côte d'Ivoire, Gbagbo won the highly contentious and violent 2000 Ivorian presidential elections. Gbagbo remained president until 2010, when he was defeated in a highly contentious presidential election by Alassane Ouattara.

Charles Blé Goudé is the former leader of various student groups, including the Fédération Estudiantine et Scolaire de Côte d'Ivoire (Student Federation of Côte d'Ivoire, or FESCI) and the pro-Gbagbo Alliance des Jeunes Patriotes pour le Sursaut National (commonly known as the Young Patriots). Blé Goudé is known for his vehement anti-foreigner rhetoric and was called Gbagbo's "Street General." He was placed on a UN sanctions list in 2006. He allegedly transformed the Young Patriots into a pro-Gbagbo militia, which he used to commit crimes against supporters of Alassane Ouattara. Charles Blé Goudé was named Gbagbo's Youth Minister after the contentious 2010 presidential elections.

The Charges

Gbagbo and Blé Goudé are charged with four counts of crimes against humanity, including murder, rape, other inhumane acts (or, in the alternative, attempted murder), and persecution. The accused allegedly committed these crimes during post-electoral violence in Côte d'Ivoire between December 16, 2010 and April 12, 2011. The prosecution contends that the former president and members of his inner circle, including Blé Goudé, planned a systematic and widespread attack against Alassane Ouattara and his supporters after Ouattara defeated Gbagbo in the presidential race.

Gbagbo is accused of having committed the crimes together with members of his inner circle and through members of the pro-Gbagbo forces under article 25(3)(a) of the Rome Statute. If the trial judges do not find that the evidence is sufficient to convict him according to that mode of liability, they may find him guilty of alternative charges of ordering, soliciting, and inducing the commission of the crimes (under article 25(3)(b)) or for contributing in any other way to their commission (under article 25(3)(d)). In August 2015, the trial chamber notified the parties that, pursuant to Regulation 55(2) of the Regulations of the Court, the chamber might change the legal characterization of the facts to include Gbagbo's liability under article 28(a) or (b). This means the chamber might also consider whether he is liable for command or superior responsibility for the alleged crimes.

Blé Goudé is charged with committing these crimes as an indirect co-perpetrator under article 25(3)(a) of the Rome Statute. That means the prosecution alleges that, together with other members of Gbagbo's inner circle, he committed the crimes according to a joint plan. If the trial judges do not find that the evidence is sufficient to convict him on that charge, they may find him guilty of alternative charges of ordering, soliciting, or inducing the crimes (under article 25(3)(b)); aiding, abetting, or assisting the crimes (under article 25(3)(c)); or otherwise contributing to the commission of the crimes (under article 25(3)(d)).

Jurisdiction

The ICC has jurisdiction over this case because the case involves crimes included in the Rome Statute (crimes against humanity) that were committed after September 19, 2002 on the territory of Côte d'Ivoire by Ivorian nationals.

Côte d'Ivoire signed the Rome Statute on November 30, 1998, and became a party to the Statute on February 15, 2013. Prior to Côte d'Ivoire's ratification of the Rome Statute, the ICC would not normally have had the ability, or jurisdiction, to hear cases involving crimes committed in that country. However, in April 2003, Côte d'Ivoire made a special declaration and accepted the jurisdiction of the ICC over crimes committed there after September 19, 2002. Côte d'Ivoire was the first non-State Party to accept the court's jurisdiction in this way. Since the 2013 ratification, the court's jurisdiction over this case derives from the country's status as a State Party, rather than the special declaration accepting the jurisdiction of the ICC.

Background

Gbagbo's decade-long presidency was characterized by civil war, ethnic violence, and political tumult. After an attempted coup failed to oust Gbagbo's government, several rebel groups aligned under the banner *Forces Nouvelles*, took control of the northern half of the country. By 2002, Côte d'Ivoire erupted into a civil war, with the northern half of the country calling for Gbagbo's removal, while the southern region remained pro-government. Violent armed clashes between government and rebel forces led to mounting civilian deaths, ultimately resulting in the African Union (AU), the UN, the Economic Community of West African States (ECOWAS), and France deploying troops to protect the civilian population.

The 2002 civil war strengthened longstanding ethnic divisions throughout Côte d'Ivoire. First developed under former Ivorian president Henri Konan Bédié, *Ivoirité* or "Ivorianness" had been used as a basis to distinguish Christian Ivorian citizens who inhabited the central and southern regions of the country from Muslim immigrants from Mali and Burkina Faso who predominantly settled in the north. At one point codified in the Ivorian Constitution, *Ivoirité* fueled extreme xenophobia and political exclusion, and became an inseparable component of the country's ongoing political turmoil. Residents of the pro-government south would say that those from the rebel-held north were not true Ivorians because of their lineage in poorer, neighboring Mali or Burkina Faso. By the time the 2010 elections actually occurred, Gbagbo was strongly aligned with the country's southern Christian population, while Ouattara drew his support from Côte d'Ivoire's northern Muslim communities.

Despite numerous peace accords and ceasefires, fighting continued between the predominantly Christian, loyalist south and the largely Muslim rebel-held north until 2007. In March 2007, the *Forces Nouvelles* and the Gbagbo government signed the Ouagadougou Political Agreement (OPA), a power-sharing agreement. Gbagbo declared the war over, and named the leader of the *Forces Nouvelles*, Guillaume Soro, Prime Minister.

Although the situation throughout Côte d'Ivoire remained tense, disarmament began in 2007 and continued into the following year. The government postponed the 2008 national elections seven times, due to voter registration delays, security concerns, and Gbagbo's insistence that conditions outlined in the OPA remained unmet. National elections were finally held in October 2010.

The 2010–2011 Ivorian presidential elections transformed a longstanding ethnic conflict into a violent, political dispute. The presidential race took place on October 31, 2010. In the first round of the elections, more than a dozen candidates vied for the popular vote. After Gbagbo and Ouattara won the highest number of votes, the two candidates progressed to a second round of elections, scheduled for November 28, 2010. UN-certified and internationally endorsed results declared Ouattara the winner, with 54.1 percent of the votes compared to Gbagbo's 45.9 percent. Gbagbo and his supporters refused to accept this outcome.

Gbagbo and Ouattara both claimed victory in the election, both had themselves sworn in as the nation's leader, and both formed opposing governments. Ouattara operated out of the Golf Hotel in Abidjan, which was blockaded by pro-Gbagbo forces. Though Gbagbo maintained control over the country's military, key figures from his government, including his prime minister, stepped down in protest of his refusal to cede power. International organizations, such as ECOWAS and the AU, repeatedly appealed to Gbagbo to step down, ultimately imposing financial restrictions on Gbagbo, his inner circle, and government financial institutions.

Months of growing violence between the two political groups erupted into a full-scale civil war centered on Abidjan. In late February 2011, Guillaume Soro, who became Ouattara's prime minister, launched a military offensive with the Republican Forces, comprised mostly of soldiers from the *Forces Nouvelles*. The conflict mirrored the 2002 hostilities, with the country split into a northern pro-Ouattara region and a southern pro-Gbagbo region. On March 30, 2011, the UN Security Council passed Resolution 1975, which called for an immediate end to the violence and for Gbagbo to relinquish power. In an effort to stop attacks on UN peacekeepers and the civilian population, the United Nations Operation in Côte d'Ivoire (UNOCI) and French forces deployed in the country since 2002 in what was known as Operation Licorne began military operations on April 4, 2011. Nevertheless, two days later, using heavy weapons, pro-Gbagbo forces resumed attacks against Ouattara and his supporters, as well as civilians and UN peacekeepers. On April 9, 2011, pro-Gbagbo forces commenced a concentrated attack on the Golf Hotel.

On April 10, 2011, the UNOCI and French Licorne forces began a military operation in Abidjan against Gbagbo's forces after UN Secretary-General Ban Ki-moon instructed them to use "all necessary means" to prevent Gbagbo forces from continuing its use of heavy weapons in Abidjan. Within a week, Ouattara's forces took control of the presidential palace. Several accounts reported that most of the Ivorian troops deserted, leaving only a couple thousand pro-Gbagbo forces to face the rebels, French army troops and UN peacekeepers. Military operations in Abidjan continued until April 11, 2011, when Gbagbo surrendered and Ouattara's government took him into custody.

Ouattara was sworn in as president of Côte d'Ivoire on May 6, 2011. In September, Côte d'Ivoire launched a Dialogue, Truth, and Reconciliation Commission, hoping to forge unity between the opposition groups. Later that year, Ivorian officials released several Gbagbo supporters who had been detained since the former president's arrest. Nevertheless, many continued to claim that pro-Ouattara militias continued to harass Gbagbo supporters.

Reports estimate that at least 1,000 people were killed during Côte d'Ivoire's post-election crisis, and that another 200,000 fled to avoid the violence.

The Prosecution

The prosecution argues that, before the presidential election of 2010, former president Gbagbo and his supporters jointly designed and implemented a common plan to maintain his presidency by all necessary means, including by committing the alleged crimes against humanity. According to the prosecution, by November 2010, the implementation of the common plan had evolved to include a state or organizational policy to launch a widespread and systematic attack against civilians believed to support Ouattara.

The prosecution also argues that Gbagbo exercised command and control authority over both the country's Defense and Security Forces (FDS) and over the pro-Gbagbo youth, militia members and mercenaries who joined the FDS to support Gbagbo. These pro-Gbagbo forces, according to the prosecution, constituted an organized and hierarchical apparatus of power, which Gbagbo and his inner circle used to implement their plan.

According to the prosecution, Blé Goudé was part of Gbagbo's inner circle and shared the common plan. Blé Goudé allegedly led a pro-Gbagbo youth militia and used them to commit crimes through his powerful speeches and violent, anti-foreigner rhetoric

The prosecution alleges that the crimes were committed during five specific incidents:

- A December 16, 2010 pro-Ouattara march heading to the pro-Gbagbo Radiodiffusion Télévision Ivoirienne (RTI) headquarters;
- An attack in the Yopougon commune of Abidjan in late February 2011 (this incident is only related to charges against Blé Goudé);
- A March 3, 2011 pro-Ouattara women's demonstration in the Abobo commune in Abidjan;
- A March 17, 2011 mortar shelling of a market in Abobo; and
- An April 12, 2011 attack in Yopougon.

The Defense

According to the Gbagbo defense, Gbagbo was not committed to remaining in power, as evidenced by his support of democracy in Côte d'Ivoire; his willingness to integrate rebel leaders into the national government (specifically through nominating Guillaume Soro for prime minister); his lead in the electoral polls; and his insistence on holding elections despite their inherent logistical complications. The Gbagbo defense also contests the existence of a secret hierarchical organization that existed to ensure Gbagbo remained in power, specifically refuting the claim that certain high-ranking officers were promoted within the framework of this power-holding plan. The Gbagbo defense also argues that the prosecution does not have evidence to prove a link between Gbagbo and the alleged crimes.

Blé Goudé has argued that he was a peacemaker and was committed to democracy. According to his defense team, he tried to convince rebels who had taken up weapons to overthrow a democratically elected president—Gbagbo—to lay down their weapons. Blé Goudé denies that he ever called on people to launch attacks against Ouattara supporters or that he hated foreigners, Muslims, or northern Ivorians. He further denies that he was the leader of a pro-Gbagbo youth militia, and argues instead that the pro-Gbagbo youth movements were completely separate with diametrically opposed ideologies and plans of action.

Trial Procedure

In June 2014, Pre-Trial Chamber I determined that there are "substantial grounds to believe" that the prosecutor has enough evidence to prove that Gbagbo committed the charged crimes against humanity, enabling the case to proceed to trial. In December 2014, the pre-trial chamber made the same determination for Blé Goudé.

At trial, the prosecution will first call witnesses to testify against the defendants. The two defense teams will have the opportunity to cross-examine each witness. After the prosecution has closed its case, Gbagbo and Blé Goudé will present their defenses and call witnesses. Following closing statements, the judges will adjourn to evaluate the evidence and deliver a final judgment.

As in previous ICC trials, it is possible that victims may apply to present testimony at some stage of the proceedings. Victims are allowed limited participation in trials before the ICC. They are not considered parties to the case, like the prosecution and defense, but are allowed to have legal representatives question witnesses about issues that concern victims, and are allowed to testify. Pre-Trial Chamber I authorized 199 persons to participate as victims in the proceedings against Gbagbo. As of July 2015, it had authorized 469 persons in the proceedings against Blé Goudé.

Joining the Two Trials

In December 2014, the Office of the Prosecutor requested that Trial Chamber I join the Gbagbo and Blé Goudé cases “in the interest of justice and judicial economy.” Although a pre-trial chamber previously authorized joining the cases against Germain Katanga and Mathieu Ngudjolo Chui in 2008, this was the first time a request for joinder has been filed before a trial chamber.

Trial Chamber I granted the prosecution’s request to join the cases. The judges reasoned that the charges against both Gbagbo and Blé Goudé arise from the same crimes allegedly committed during the same four incidents by the same direct perpetrators who targeted the same victims, and, therefore, are sufficiently linked. The chamber further held that a joint trial would not pose “serious prejudice” to the accused, emphasizing that the chamber has no power to authorize amendments to the facts and has not made any assumptions relating the charges that might lead to their amendment.

The chamber also held that a joint trial would not hinder the interests of justice, but would avoid the duplication of evidence and the risk of inconsistent treatment of evidence. Requiring witnesses to testify twice would pose hardship to witnesses and increase the risk of exposure of protected witnesses. The chamber reasoned that two separate trials would likely require more court hours and resources than one joint trial.

Related Cases

ICC charges against Simone Gbagbo

On February 29, 2012, Pre-Trial Chamber III issued a warrant for the arrest of Simone Gbagbo, the wife of Laurent Gbagbo and the former-first lady of Côte d’Ivoire. The arrest warrant was unsealed on November 22, 2012 and remains outstanding. Simone Gbagbo is charged with individual criminal responsibility, as indirect co-perpetrator, for four counts of crimes against humanity: murder, rape and other sexual violence, persecution, and other inhuman acts, allegedly committed in the context of post-electoral violence in Côte d’Ivoire between December 16, 2010 and April 12, 2011.

Despite a warrant of arrest from the ICC, Côte d’Ivoire officials have refused to transfer Simone Gbagbo to the court. Instead, officials opted to try her in a domestic court on different charges, resulting in her receiving a 20-year prison sentence in March, 2015.

The conduct of the trial was criticized by international human rights groups and by [the UN’s High Commissioner of Human Rights](#), who said it “laid bare structural deficiencies in the judicial system in Côte d’Ivoire that need to be urgently addressed.”

The status of the ICC case against Simone Gbagbo represents a point of contention between the court and officials in Côte d'Ivoire, which has argued that there is no need for her to be transferred to the ICC for trial because she has already been tried in a domestic court. On May 27, 2015, the Appeals Chamber rejected this argument and confirmed that the case against Simone Gbagbo remained active before the ICC.

The ICC prosecution has also indicated that investigations into the post-election violence are continuing, suggesting that it might issue more arrest warrants for related crimes, including those allegedly committed by pro-Ouattara forces. The UN Human Rights Commissioner said on March 11, 2015, that it was “deplorable that some of the alleged perpetrators [of atrocities] continue to hold official positions of responsibility” in Côte d'Ivoire.

Local human rights advocates note that the refusal to transfer Simone Gbagbo to The Hague, may ultimately be aimed at establishing a political precedent for the future, given the possibility of further ICC actions against pro-Ouattara personalities.

National Prosecutions

In addition to the March 2015 conviction of Simon Gbagbo of crimes against humanity, civilian and military prosecutors have together charged more than 150 other people from the Gbagbo camp with crimes committed during the 2010 post-election violence. While a few suspects of crimes committed by the pro-Ouattara forces have been identified, further proceedings against them have yet to develop, reinforcing the perception throughout Côte d'Ivoire of victor's justice.

In October 2012, Côte d'Ivoire's military tribunal completed its first major trial for post-election crimes. Five former Gbagbo military officials, including the former head of the Republican Guard, General Bruno Dogbo Blé, were convicted for abduction and murder. Côte d'Ivoire has issued arrest warrants for other civilian and military leaders from Gbagbo's government who are in exile.

Timeline

April 18, 2003: Though not a State Party to the Rome Statute, Côte d'Ivoire accepts the ICC's jurisdiction “for the purposes of identifying, investigating and trying the perpetrators and accomplices of acts committed on Ivorian territory since the events of 19 September 2002,” the start of the first Ivorian civil war.

October 31, 2010: National elections are held in Côte d'Ivoire with 85 percent voter turnout. However, there is no majority winner and a runoff is required.

November 28, 2010: The presidential runoff election is held. According to UN-certified results announced by the Ivorian Electoral Commission (IEC), Alassane Ouattara of the Rally of Republicans (RDR) wins the election with 54.1 percent of the vote, compared to 45.9 percent for Laurent Gbagbo of the Ivorian Popular Front (FPI). The international community endorses these results. Gbagbo rejects the results and appeals to the IEC. The IEC annuls its results and claims that Gbagbo has won the election with 51.5 percent of the vote against Ouattara's 48.6 percent. The international community, including the UN, African Union, ECOWAS, and the European Union, remains supportive of Ouattara and the initial election results.

November 2010 – February 2011: Both candidates maintain their claims and form opposing governments. Ouattara operates his government out of the Golf Hotel in Abidjan, which is blockaded by pro-Gbagbo forces. International organizations, including ECOWAS and the AU, repeatedly appeal to Gbagbo to step down and impose financial restrictions on Gbagbo, his inner circle, and government financial institutions. Months of growing violence between the two political groups erupts into a full-scale conflict.

December 16, 2010: There is an attack on a pro-Ouattara march heading to the pro-Gbagbo Radiodiffusion Télévision Ivoirienne (RTI) headquarters.

February 2011: Guillaume Soro, Ouattara's Prime Minister, launches a military offensive with the Republican Forces of Côte d'Ivoire, comprised mostly of soldiers from the *Forces Nouvelles*, a former rebel group supportive of Ouattara.

February 25 – 28, 2011: There is an attack in the Yopougon commune of Abidjan in late February 2011.

March 3, 2011: There is an attack on a pro-Ouattara women's demonstration in the Abobo commune in Abidjan.

March 17, 2011: There is a mortar shelling of a market in Abobo.

March 30, 2011: UN Security Council passes resolution 1975 (2011), which calls for Gbagbo to step down and appeals for an immediate end to the violence.

April 4, 2011: UNOCI begins military operations in order to stop attacks on UN peacekeepers and to prevent the use of heavy weapons against the civilian population.

April 6, 2011: Pro-Gbagbo forces resume attacks in Abidjan, employing heavy weapons in attacks against the government, civilians, and UN peacekeepers.

April 9, 2011: Gbagbo forces start a concentrated attack on the Golf Hotel.

April 10, 2011: UNOCI and French Licorne forces begin a military operation in Abidjan against Gbagbo's forces. UNOCI forces receive instructions from UN Secretary-General Ban Ki-moon to use "all necessary means" to prevent Gbagbo forces from continuing the use of heavy weapons in Abidjan.

April 11, 2011: Gbagbo surrenders to Ouattara's forces and Ouattara's government takes him into custody.

April 12, 2011: There is an attack in Yopougon.

May 6, 2011: Ouattara is sworn in as President of Côte d'Ivoire.

May 21, 2011: Ouattara's presidential inauguration is held.

June 23, 2011: The Prosecutor of the ICC submits a request for the authorization of an investigation into crimes allegedly committed in Côte d'Ivoire since November 28, 2010 pursuant to Article 15 of the Rome Statute.

September 2011: A Dialogue, Truth, and Reconciliation Commission is launched with the goal of forging unity between the opposition groups.

October 3, 2011: Pre-Trial Chamber III authorizes the investigation into crimes in Côte d'Ivoire occurring since November 28, 2010.

October 25, 2011: Prosecution applies for an arrest warrant for Gbagbo.

November 23, 2011: Pre-Trial Chamber III issues Gbagbo's arrest warrant, under seal.

November 30, 2011: Gbagbo's arrest warrant is unsealed, and he is transferred to the ICC.

December 5, 2011: Gbagbo makes his initial appearance before the ICC.

December 21, 2011: Pre-Trial Chamber III issues Blé Goudé's arrest warrant, under seal.

February 22, 2012: Pre-Trial Chamber III expands the Prosecution's authority to investigate crimes allegedly committed between September 19, 2002 and November 28, 2010.

February 19-28, 2013: Gbagbo's confirmation of charges hearing is held.

September 30, 2013: Blé Goudé's arrest warrant is unsealed.

March 22, 2014: Blé Goudé is transferred to the ICC.

March 27, 2014: Blé Goudé makes his initial appearance before the ICC.

June 12, 2014: Pre-Trial Chamber I confirmed the charges of crimes against humanity, including murder, rape, and other inhumane acts, against Gbagbo.

September 29 – October 2, 2014: Blé Goudé's confirmation of charges hearing is held.

December 11, 2014: Pre-Trial Chamber I confirms the charges of crimes against humanity, including murder, rape, and other inhumane acts, against Blé Goudé.

December 16 and 22, 2014: The Office of the Prosecutor requests that the trial chamber join the Gbagbo and Blé Goudé cases in the interest of justice and judicial economy because the charges are largely the same, the majority of the witnesses and other evidence in both cases relates to Gbagbo and Blé Goudé, and joinder would not unduly delay proceedings or otherwise prejudice the accused.

March 11, 2015: Trial Chamber I grants the prosecution's request for joinder of the Gbagbo and Blé Goudé cases, reasoning that the charges in both cases were sufficiently similar, that joinder does not pose a serious prejudice to the accused, and that it is in the interest of justice.

March 16, 2015: The Blé Goudé defense requests leave to appeal the decision to join the two cases.

March 17, 2015: The Gbagbo defense requests leave to appeal the decision to join the two cases.

April 22, 2015: Trial Chamber I rejects the requests to appeal the joinder by both the Gbagbo and Blé Goudé defenses.

May 7, 2015: Trial Chamber I set the commencement date for the joint trial on November 10, 2015.

October 28, 2015: Trial Chamber I grants Gbagbo defense motion to postpone the start of trial in order for the chamber to consider medical reports and examine medical experts on Gbagbo's fitness to stand trial. The chamber schedules the start of trial for January 28, 2016.

January 28, 2016: The joint trial of Gbagbo and Blé Goudé is scheduled to begin before ICC Trial Chamber I in The Hague.

CONTACT INFO

To speak to one of our legal officers about this trial, please contact
Jonathan.Birchall@opensocietyfoundations.org

For updates on the progress of this trial, sign up for reports from our International
Justice Monitor website at www.IJMonitor.org/Gbagbo

Twitter: @IJMonitor

Facebook: <https://www.facebook.com/IJMonitor/>

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, Santo Domingo, and Washington, D.C.
