

ICC Confirmation of Charges Hearing for Laurent Gbagbo

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THIS BRIEFING PAPER sets out the background to the pre-trial confirmation of charges hearings at the International Criminal Court against Laurent Gbagbo, former president of Côte d'Ivoire, who is accused of crimes against humanity arising from the post-election violence of 2010-2011.

What are the Issues in this Case?

From November 2010 to May 2011, supporters of opposing political leaders in Côte d'Ivoire besieged one another along political, ethnic, and religious lines in the aftermath of the presidential election between then incumbent Laurent Gbagbo, head of the *Front Populaire Ivoirien* (Ivorian Popular Front, FPI) and Alassane Ouattara, leader of the opposition *Rassemblement de Republicains* (Rally of Republicans, RDR). Despite the Independent Electoral Commission (IEC) declaration that Ouattara had won the presidential election, Gbagbo refused to step down. It is estimated that over 3,000 civilians were killed during the crisis.

This case developed from allegations that Gbagbo and members of his inner circle adopted a policy to attack Ouattara, his political group, and his civilian supporters. Pro-Gbagbo forces, allegedly under the control and authority of Gbagbo and his inner circle, carried out widespread and systematic attacks on civilians including murder, rape, persecution, and other inhuman acts.

In issuing its arrest warrant, Pre-Trial Chamber III of the ICC found reasonable grounds to believe Gbagbo is responsible for crimes against humanity committed in the months following the election, specifically between December 16, 2010 and April 12, 2011. The indictment alleges that the crimes were committed by the “Ivorian Defense and Security Forces (FDS), reinforced by the pro-Gbagbo youth militia and mercenaries, in Abidjan, including around the Golf Hotel, and elsewhere in the country.” Pro-Gbagbo forces “targeted civilians who they believed were supporters of Mr. Ouattara, and the attacks were often directed at specific ethnic or religious communities.”

After months of delay, due in part to the defendant's ill-health, Pre-Trial Chamber I will hold the Confirmation of Charges Hearing for Gbagbo from February 19 to February 28. It is the first time a former head of state has been brought before the ICC since the Court's establishment in 2002. Gbagbo is also the first suspect to appear before ICC judges from the Côte d'Ivoire investigation, a country in which the ICC has been active in since 2003. On November 22 2012, the Court issued an arrest warrant for Gbagbo's wife, Simone Gbagbo and the prosecutor has indicated that her investigations will continue in Cote d'Ivoire.

Who is the Accused?

Laurent Koudou Gbagbo is the former President of the Côte d'Ivoire. Gbagbo founded the *Front Populaire Ivoirien* (Ivorian Popular Front, FPI) political party in 1982. He spent most of the 1980s living in exile in France, returning to the Ivory Coast in 1990 to compete in the country's first multi-party elections against incumbent Félix Houphouët-Boigny. Gbagbo lost that election but later won a seat in the National Assembly. After a decade of political turmoil that included a coup d'état by General Robert Guei, Gbagbo took over the Presidency after contested and violent elections in 2000.

Gbagbo's decade of rule was marked by civil war, ethnic violence, and repression. After a failed *coup d'état* to topple the government in Abidjan in 2002, rebels known as the *Forces Nouvelles* (New Forces) captured the northern half of the country and thousands would be killed in the following months. Despite multiple peace accords and ceasefires, fighting continued between the loyalists south, comprised mainly of Christians, and rebel-controlled north, which was predominantly Muslim, until a power-sharing agreement was signed in 2007.

Presidential elections had been postponed several times since 2005. In the first election since 2000, Gbagbo was challenged by Alassane Ouattara in late 2010. Gbagbo lost that election to Ouattara but refused to step down. Six months of violence ensued, with forces loyal to both Ouattara and Gbagbo allegedly committing atrocities. On April 11, 2011, Gbagbo was arrested and detained in Côte d'Ivoire. On November 30, 2011 the ICC unsealed his arrest warrant and he was transferred to The Hague.

Gbagbo is on trial at the ICC for four counts of crimes against humanity. He is allegedly responsible, as an indirect co-perpetrator, for four counts of crimes against humanity, allegedly committed in the context of post-electoral violence in the territory of Côte d'Ivoire between December 16, 2010 and April 12, 2011. In the alternative, acting as part of a "common purpose," he is alleged to have contributed to the commission of crimes by a group of persons. The charges include:

- Murder;
- Rape and Other Sexual Violence;
- Persecution; and
- Other Inhuman Acts.

What is this hearing for?

During a confirmation of charges hearing, the Pre-Trial Chamber determines whether there are “substantial grounds” to believe that the suspect committed each of the crimes with which he has been charged. The confirmation of charges hearing is not a trial, and it exists to protect persons against wrongful or unfounded charges and to commit to trial only those persons against whom sufficiently compelling charges beyond mere theory or suspicion have been brought. In other words, the hearing distinguishes between those cases that should go to trial and those that should not.

What can we expect from the hearing?

The hearing is scheduled to take place from February 19 – 28 , 2013. The central element of the hearing will be for the Prosecutor to present evidence on crimes against humanity and on the individual liability Gbagbo. The Prosecution bears the burden of establishing substantial grounds to believe that Gbagbo committed the alleged crimes. The Prosecution must establish only a prima facie case, and will not be presenting evidence in full, which is reserved for the actual trial.

At the confirmation of charges hearing, the Prosecution has indicated that its presentation will focus on “the widespread and systematic nature of the charges, the organizational policy, the common plan and structure of the organization, the authority of the accused and his contribution to the crimes and *mens rea*.” The prosecution has indicated further that it will rely on “a limited number of video evidence and maps” in the presentation of its case.

The Prosecution has indicated it will utilize a total of seven hours to make its opening and closing statements and to present its evidence.

The defense plans to address the Pre-Trial Chamber on the admissibility of the case against Gbagbo and the irregularity of the proceedings prior to the confirmation of charges hearing. The defense has indicated that it will undertake a critical examination of the Documents Containing the Charges (DCC) against Mr. Gbagbo, will analyze the components of crimes against humanity, will examine the Prosecution evidence, will assess the weight of that evidence, will present defense evidence, and discuss the modes of liability chosen by the Prosecutor.

The defense has indicated that it will utilize a total of 16 hours to make its opening and closing statements, respond to the evidence of the prosecution, the statement of the legal representative for victims, and to present its own evidence.

Mr. Gbagbo might also utilize his right to make an unsworn statement before the Pre-Trial Chamber.

Additionally, the legal representative of victims will have an opportunity to render both an opening and a closing statement.

What happens after the hearing?

According to the Rules of the Court, the judges of the Pre-Trial Chamber have 60 days to make a determination of whether sufficient grounds exist for a case to go to trial. If the judges are satisfied that substantial grounds exist, the Pre-Trial Chamber will authorize a trial against Gbagbo, to be conducted by a Trial Chamber. If the Pre-Trial Chamber determines that substantial grounds do not exist, Gbagbo is exonerated of the charges and the case will not go to trial.

Timeline of Events

April 18, 2003

The Government of Côte d'Ivoire, though not a state party to the Rome Statute of the ICC, accepted the jurisdiction of the Court, pursuant to Article 12 (13) of the Rome Statute, for the purposes of identifying, investigating, and trying the perpetrators and accomplices of acts committed on Ivorian territory since the events of September 19, 2002.

October 31, 2010

National elections are held, 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 the Ivorian Electoral Commission (IEC), Ouattara wins the election with 54.1 percent of the vote, compared to 45.9 percent for Gbagbo. The international community endorses these results. Gbagbo rejects the results and appeals to the Constitutional Council, the final arbiter on electoral disputes. Shortly thereafter, the Constitutional Council annuls the results announced by the IEC and declares 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 as announced by the IEC.

December 14, 2010

The Presidency of Côte d'Ivoire, under Ouattara, [reconfirms the country's acceptance](#) of ICC jurisdiction.

November 2010 – February 2011

Both candidates maintain their claims of an election victory and form opposing governments. Ouattara operates his government out of the Golf Hotel in Abidjan, which was protected by the *Forces Nouvelles* rebels and UN security. 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.

February 2011

Guillaume Soro, and Ouattara's Prime Minister, launches a military offensive with the Republican Forces, comprised mostly of soldiers from the *Forces Nouvelles*.

March 30, 2011

UN Security Council passes resolution 1975 (2011), 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. Throughout April, fighting and attacks continue with crimes documented on both sides - Ouattara's Republican Forces and pro-Gbagbo militias and mercenaries.

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.

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.

July 13, 2011

A Dialogue, Truth and Reconciliation Commission is established with the goal of forging unity between the opposition groups. The Commission is officially inaugurated on September 28, 2011.

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 turned over to the ICC.

December 5, 2011

Gbagbo makes his initial appearance before the ICC.

February 22 2012

Pre-Trial Chamber III authorizes the prosecutor to expand investigations into crimes within the ICC's jurisdiction allegedly committed from September 19 2002 when the conflict commenced in Cote d'Ivoire.

February 19, 2013

Confirmation of charges hearing begins at the ICC.

Our Trial Monitoring Partnership with International Senior Lawyers Project

Daily reports on the Gbagbo confirmation of charges hearing will be published on the Open Society Foundations website through a partnership with the [International Senior Lawyers Project](#) (ISLP). ISLP is comprised of nonprofit organizations that provide volunteer legal services from highly experienced lawyers to promote the rule of law, access to justice, and equitable economic development worldwide. The Justice Initiative's [war crimes trial monitoring project](#) provides background, reports, and analysis on ongoing international trials at the ICC. It seeks to explain what goes on in the courtrooms in The Hague to the widest possible audience

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