

Day Two 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 opening statements from the victims' legal representatives, the defense's response to the victims' legal representatives, and the beginning of the presentation of charges by the Office of the Prosecutor.

Introduction

On the second day, the court focused on statements from the legal representatives of the victims (LRV) and those made by the defense. Following the opening statements, the prosecutor began to present the charges against Laurent Gbagbo.

Opening Statements by the Legal Representatives of the Victims

Paolina Massidda, the Principal Counsel of the Office of Public Counsel for Victims, described the context in which the crimes were committed against the victims, emphasizing their generalized and systematic nature. She noted that the crimes were systematic due to the regional coverage patterns associated with the crimes. She furthermore defined the crimes as being generalized in nature, in the sense that: (a) the crimes were committed against vulnerable individuals across all age brackets; and (b) the crimes were complex in nature, and included, in particular, indefinite detentions, premeditated murders, attacks in homes and places of worship, persecutions based on identity and geographic location, and attacks on physical integrity.

To this effect, Ms. Massidda noted that crimes even more serious than those listed in the Document Containing the Charges (DCC) were committed in Côte d'Ivoire and that from this perspective, she also hoped that the defense's identification of locations where crimes were committed did not undermine the generalized nature of the victims' suffering, which includes crimes that took place outside of the time limit (April 12, 2011) of the charges included in the amended document of notification of charges. The LRV emphasized that the choice of locations (Grand Bassam, Abobo, and Williamsville) for the commission of crimes presented by the defense did not entirely account for all of the human rights violations.

Ms. Massidda then launched into a chronology of the major historical events preceding the destruction of peace in Côte d'Ivoire beginning on September 19, 2002. She emphasized that the events of 2002 were the culmination of social tensions that had been observed since the death of President Houphouët-Boigny. She then proceeded to highlight a number of prominent events, including the war over Houphouët-Boigny's succession, the reform of the electoral code in 1994, the introduction of the concept of *ivoirité* in August of 1995 by Henri-Konan Bédié, the exclusion of Alassane Ouattara from elections, increasing intolerance in the face of migratory flows, the coup d'état against Bédié in December 1999,

the new Ivorian Constitution in 2000, the invalidation of Ouattara's candidacy, and the massacres of 2000.

She mentioned that the concept of *ivoirité* was used as a banner for the electoral violence committed between February 2010 and early 2011 and that this concept was the foundation of the plan intended to keep Laurent Gbagbo in power. She specified that the electoral campaign slogans used by Gbagbo's party, the Ivorian Popular Front (FPI), reflected a hatred of those who sympathized with Ouattara's party, the Rally of the Republicans of Côte d'Ivoire (RDR). She referenced slogans, such as "We win or we win," to illustrate Gbagbo's determination to stay in power at any cost, and "In front, there is only corn," to demonstrate how RDR sympathizers were denigrated as simple corn vendors.

Returning to the victims, Ms. Massidda emphasized that the victims (1) were traumatized; (2) had lost their means of survival; (3) continue to reside in the areas where the crimes had been committed, often in the same areas as the perpetrators; (4) hold great expectations of the justice system; and (5) have rights, particularly the right to impartial justice, to the truth about the events that took place, and to both collective and individual reparations.

The Defense Criticizes the Partial Prosecution Approach

Defense counsel Emmanuel Altit began by asking why Gbagbo alone was being prosecuted when the prosecutor had stated that all perpetrators would be prosecuted. He added that the crimes committed by those that he called, "The Masters of the North" were well-known, particularly the murder of police officers in Bouaké in 2002, economic pillaging, the killing of civilians in Korhogo during the civil conflict pitting Ibrahim Coulibaly against Guillaume Soro, the bloody conflicts between rebels in 2008, the use of Dozo fighters, the Yopougon massacre of 2011, as well as new crimes in the west. He confirmed that these crimes were documented and, in particular, were included in reports by the UN, Amnesty International, Human Rights Watch, Crisis Group, and Global Witness. He then questioned the widespread impunity and rewards that Ouattara granted to the individuals presumed to have committed the crimes, by means of nominations to positions such as Prefect and members of the Republican Guard and Special Forces. He emphasized that there was no reason that former rebels who became top tier politicians should not be prosecuted and no reason for the prosecutor to believe that Gbagbo was the only criminal.

Altit found it unjustifiable that the prosecutor had not made any attempt to contact Gbagbo since November of 2010 but was in contact with Ouattara and that

throughout the post-electoral crisis, the prosecutor did not once issue any warnings against Ouattara's troops.

Altit mentioned that the defense planned to contest the charges against Gbagbo that were based on testimony from rebel leaders and articles in media engaged against Gbagbo. He also criticized the charges as a selective use of the NGO reports and other investigations by the Office of the Prosecutor (OTP). He criticized the OTP, claiming that there was no trace of any investigation, whether corroborating or exculpatory in nature. He emphasized that the facts in the allegations were limited, vague, and contradictory. He maligned the fact that in the charges made by the prosecution, there were no interviews with either Gbagbo or leaders in his military regime to corroborate the facts.

The defense added that nothing supported the prosecution's accounts. The confusion of events and protagonists, and the reduction in the mode of liability used against Gbagbo demonstrated the prosecution's weakness. The defense also stated that there were no substantial reasons to believe that the four events highlighted by the prosecution actually occurred as they were described and that there was no factual underpinning or reason that these charges should be attributed to Gbagbo. The defense continued to emphasize that there was no substantial reason to believe that Gbagbo acted as an indirect perpetrator or a contributor, particularly as the prosecution did not connect Gbagbo to the events at any time.

Notably, the defense put forth a thesis that the prosecution's accounts were incomplete and biased in the sense that they (1) sought to cover up a significant misalignment between the events leading to the violent post-electoral protests; (2) adhered to the framework to de-legitimize Gbagbo, concocted with the assistance of a number of powerful international actors; (3) fell into the cliché of pitting a good group against a bad group, resulting in the adoption of Resolution 1975 of the UN Security Council, the foundation for ground operations by the United Nations Operation in Côte d'Ivoire (UNOCI) and French forces and the grounds used to legitimize Ouattara's takeover; (4) demonstrated that the OTP did not carry out credible investigations and instead proceeded with a distorted interpretation of the available evidence; and (5) demoralized victims, particularly the Duekoué victims, and others who ultimately left Côte d'Ivoire.

Altit then ceded the floor to Counsel Agathe Bahi Baroan, who described an alternate context for the electoral campaign slogans that the LRVs had presented as part of Gbagbo's plan to remain in power. She noted that the slogan "We win or we win" is a popular phrase in Côte d'Ivoire and was co-authored by Antoinette Allany, who campaigned for Ouattara and that "In front, there is only corn" was not a discriminatory statement, but rather that it referred to a common food that was perceived as soft.

Baroan continued by saying that the Office of Public Counsel for Victims would have a better understanding of the victims' conditions if they had included someone from Côte d'Ivoire in their staff.

Furthermore, she scorned the fact that the OTP focused exclusively on the period from 2010 to early 2011, while the International Criminal Court (ICC) extended the scope of the situation in Côte d'Ivoire to include events that took place as early as 2002. She asked why the cries from victims in 2002 were unrecognized by the ICC. She noted that killings occurred not only in mosques, but in churches as well.

She then took issue with the approximate number of victims put forth by the OTP (3,000), saying that this number was unrealistic. She then attempted to dismantle the LRV's thesis of a rupture between the North and the Southwest, saying that the complexity of the crisis surpassed the simple question of ethnicity. Finally, she criticized the option allowing the victims to participate collectively in the proceedings, which, she said is insulting to the victims.

The Presentation of Charges by the Prosecutor: The Existence of a Shared Plan

Silvia Fernández de Gurmendi, the Presiding Judge of the Pre-Trial Chamber I (PC), asked the prosecutor to begin presenting the charges attributed to Gbagbo. The senior prosecuting trial lawyer, Eric MacDonald, announced that for the reasons cited by the OTP, the prosecution would be focused on the most representative elements of the charges to establish substantial grounds to believe that Gbagbo committed the crimes of which he is accused. The OTP then rotated through its team to successively address the following points: (1) the generalized and systematic nature of the crimes; (2) the existence of a common plan, which the organizational structure was to follow, the authority of the individual in question to the creation of the moral component; (3) evidence from the four incidents selected by the OTP; and (4) modes of liability and related facts.

To begin, the OTP requested a private session to discuss the identity of the prosecution's witnesses and the pseudonyms they would be using.

Gilles Dutertre of the OTP gave an account of the generalized and systematic nature of the attacks perpetrated against civilians between November 2010 and May 2011. He stated that, in an attempt to hold on to power at any cost, numerous attacks were carried out by Gbagbo supporters, resulting in 700 deaths, 40 rapes, and nearly 500 detainments. He listed 45 incidents. The victims of these attacks include the militants supporting Ouattara, including members of the RHDP platform (Rally of Houphouëtistes for Democracy and Peace), which

encompassed the RDR, the Democratic Party of Côte d'Ivoire (PDCI), and other political parties. The victims were primarily of ethnicities from the north of Côte d'Ivoire and nationals of certain countries in the Economic Community of West African States (ECOWAS), including Burkina Faso, Mali, and Guinea. A significant number of the targeted victims were also Muslims. The majority lived in areas in Abidjan that were seen as bastions for Ouattara, particularly Abobo, Adjamé, Koumassi, and Treichville. Other victims were located in the southwest of Côte d'Ivoire and in the coastal area. The attacks were committed by elements of the Defense and Security Forces (FDS), made up of five branches, specifically the armed forces (FANCI), the National Gendarmerie, the Republican Guard (GR), the Security Operations Command Center (CeCOS), and the police. Attacks were also perpetrated by the Young Patriots and other pro-Gbagbo forces, including mercenaries. Heavy weapons were at times used against civilians.

The OTP then demonstrated the existence of a common plan, which was a policy from Gbagbo and his inner circle intended to preserve power at any cost. The existence of this plan seems to be grounded in a speech Gbagbo made in Divo on August 27, 2010, in which he is reported to have said, "When the moment arrives, the arms will strike." The prosecution argued that Gbagbo did indeed strike out against Ouattara supporters. The common plan would materialize with attacks against civilian populations who belonged to anti-Gbagbo political parties. Four prominent events from these attacks that the prosecution highlighted were: (1) the attacks related to protests in front of the Radiodiffusion Télévision Ivoirienne (RTI) headquarters from December 16-19, 2010; (2) the attack launched during a women's protest in Abobo on March 3, 2011; (3) the bombardment of the market in Abobo and surrounding areas on March 17, 2011, and (4) the Yopougon massacre of April 12, 2011.

To corroborate these allegations, the OTP referred to witness testimony, played video clips, and cited evidence, including documents obtained from Gbagbo's residence and reports from the UN and other international organizations such as Human Rights Watch and Amnesty International. He characterized the moral predispositions of Gbagbo and his camp as desperate to hold on to power, particularly through taking control of the FDS and appointing members of his inner circle, including General Mangou. He then demonstrated that material preparations were made, including the purchase of arms, the recruitment of mercenaries, and the training and distribution of arms to Blé Goudé's young militants.

The prosecution alleged that members of Gbagbo's inner circle who followed the plan included, among others, (1) Simone Gbagbo, Abobo elected Member of Parliament and alleged leader of the death squad; (2) Bertrand Kadet, Gbagbo's nephew (3) the military leaders appointed by Gbagbo who pledged their

allegiance; and (4) Blé Goudé, also known as the “Street General,” the leader of the Patriotic Galaxy and the Young Patriots.

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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