

# Conclusion 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 concluding remarks from all parties and orders from the Pre-Trial Chamber I.

## Concluding Remarks from the Prosecution

Senior prosecuting trial lawyer Eric MacDonald began by supporting the request to refer Laurent Gbagbo to trial, based on the demonstration of Gbagbo's liability as evidenced by the Document Containing the Charges (DCC), incriminating documentation, and the various presentations made by the Office of the Prosecutor (OTP).

The prosecution then turned its attention to addressing a number of claims made by the defense, including: (1) incidents surrounding the protest in front of Radiodiffusion Télévision Ivoirienne (RTI): the prosecution placed special emphasis on the video presented by the defense in which Guillaume Soro was shown ordering troops to occupy RTI headquarters on Thursday, December 16, 2010 for the installation of RTI's new director general. The prosecution emphasized that Guillaume Soro and Alassane Ouattara gave orders in their respective capacities as the Prime Minister and President of the Republic, to disrupt the hateful messages being spread by the pro-Gbagbo RTI; (2) the non-violent nature of the "parliaments" in Yopougon: the prosecution emphasized that the mood at the "parliaments" in Yopougon was so tremendously heated that it served as the impetus for the recruitment of Young Patriot volunteers and, according to testimony from witness P108, the president of the "parliaments" in Yopougon, Berti, distributed arms; (3) citations from the book *Le commandant invisible raconte la bataille d'Abidjan* (*The Invisible Commander Recounts the Battle of Abidjan*): the prosecution mentioned that the defense invoked a chapter from the book pertaining to the "Abobo war;" however, the prosecution speculated that the author of that book was one of Gbagbo's propagandists as they were unable to verify the names to which the book was attributed; and (4) regarding the critique of a single witness (*testis unus testis nullus*): the prosecution responded to the defense's critique that corroboration is not required for sexual crimes under Rule 63 of the Rules of Procedure and Evidence.

The prosecution then demonstrated the connections between the various structures for the execution of the common plan, per Judge Christine Van den Wyngaert's request. The prosecution used a PowerPoint presentation to illustrate that: (1) the Young Patriots were linked to Gbagbo through Blé Goudé, who was the leader of the Patriotic Galaxy; the National Congress for the Resistance of Democracy (CNRD) was incorporated into the Patriotic Galaxy and was presided over by Simone Gbagbo; Goudé was a member; all decisions were made in consultation with Gbagbo; (2) there were parallel control structures for the Young Patriots that sometimes crossed into the five branches of the Ivorian Defense and Security Forces (FDS); and (3) mercenaries were integrated into the FDS.

As for the coordination of the commission of crimes, the prosecution emphasized that Gbagbo gave the orders to deploy the army against civilians, particularly by

ordering the army to remain strong in Abobo, and that there was a diary book attributed to Simone Gbagbo that contained incentives for the FDS to respond with arms.

In terms of Gbagbo's mode of liability, the prosecution emphasized that indirect co-perpetration and contribution more accurately defined Gbagbo's criminal conduct. Regarding the pre-trial chamber's question about prosecuting Gbagbo through command responsibility mode, the prosecution agreed that this method could also be taken into consideration. The prosecution also recognized the incompatibility of the co-existence of the indirect co-perpetration and contribution modes of liability, given that one cannot simultaneously be a co-author and an accomplice. However, the prosecution added that it was the trial chamber's duty and not the duty of the pre-trial chamber to rule on the guilt or innocence of the person in question. The prosecution then added that an examination of the modes of liability was possible throughout the proceedings and that re-categorization was an option. To ensure a fair trial, the prosecution suggested that the pre-trial chamber inform the defense that all modes of liability would be explored.

To conclude, the prosecution announced that they would submit their written conclusions and asked if the pre-trial chamber would accept a document exceeding 20 pages in length. The prosecution asked the chamber to confirm the charges against Gbagbo as the indirect co-perpetrator of 166 murders, 34 rapes, 94 serious abuses, and, subsidiarily, of attempted murder. The prosecution also requested that the chamber confirm charges against Gbagbo for crimes against humanity involving the victimization of 294 individuals for political and religious reasons. The prosecution then restated that - in terms of the numbers - they were using the low end of their estimate. The prosecution finished by mentioning that its depositions were based on the testimony from insiders, victims, eyewitnesses, documentary excerpts, video recordings, reports from NGOs and the United Nations Operation in Côte d'Ivoire (ONUCI), and evidence in the form of documents seized from Gbagbo's residence. The prosecution stated that the defense could claim insufficient evidence, but the prosecution felt that the quality of the evidence was sufficient to accommodate for the quantity of evidence.

## Concluding Remarks from the Legal Representative of the Victims (LRV)

The LRV began with a reminder that Gbagbo is suspected of being the indirect author of four counts of crimes against humanity, including murder, rape, persecution, and other inhuman actions that were committed during the post-electoral violence of 2010-2011. She insisted that Gbagbo's refusal to accept the election of Alassane Ouattara and step down after ten years of power provoked the conflict that claimed the lives of close to 3,000 individuals. She then

expressed that it was unimpressed by the defense's insistence that Gbagbo had introduced multi-party democracy in Côte d'Ivoire, given the systematic and generalized plan to attack ethnic and religious groups. She emphasized the ethnic stigmatization in Simone Gbagbo's language, particularly in references to Ouattara: "chief of the bandits," "the chief of the bandits did not win the elections," "the homeland is calling you," and even, "ADO should be sent back to SINDOU, in Burkina Faso, where he comes from." The LRV expressed her perspective that (1) the evidence was sufficient to demonstrate Gbagbo's desire to remain in power; (2) the common plan was meticulously organized; (3) all of the victims represented were civilians - uprooted, raped, persecuted, or killed because of their names or their origins.

Then, the LRV criticized the defense arguments, according to which there was no conflict between the North, South, and West of Cote d'Ivoire, confirming that victims were persecuted according to their ethnic membership, assimilation, or perceptions.

The LRV insisted that the victims knew the identity of their attackers and found the defense's trivializing strategy to be intolerable.

She emphasized that the prosecution had shown that Gbagbo gave orders to the army, instructions to Blé Goudé, directives to the Ministry of Defense to purchase arms, and gave instructions to commandants to implement the common plan.

She stated that the victims suffered both material and moral damages.

## Concluding Remarks from the Defense

The defense began by stating that the prosecution had used its speaking time to address points made during their arguments. The defense argued that the burden of proof lies with the prosecution and not the defense. The defense also used its speaking time to respond to issues raised by the prosecution, particularly the question of *testis unus, testis nullus*; the defense acknowledged that the law has undoubtedly changed but argued that common sense should be preserved. The defense also criticized the prosecution's inability to clearly identify a mode of liability, and then noted that the LRV was behaving as though it was a subset of the prosecution.

The defense, represented by Counsel Emmanuel Altit, said that after ten days in court for the confirmation of charges, the claims made by the prosecution did not align with the truth, and - in light of the contradictions -the pre-trial chamber could not properly appreciate the evidence. Furthermore, Altit stated that the prosecution's initial arguments had crumbled due to its false premises.

The defense then summarized the pillars of the prosecution argument, which were: (1) the issues surrounding the 2010 election; (2) Gbagbo's refusal to recognize the indisputable winner of the elections; and (3) the existence of a common plan. According to the defense, the theories used in the accusations did not hold up to scrutiny, as the prosecution: (a) ignored problems existing prior to 2010; and (b) had an overly simplistic perspective of the elections and resulting conflict.

The defense then launched into a denial that Gbagbo intended to remain in power at any price. The defense noted that this intent should be considered as the key element behind the commission of crimes and the establishment of Gbagbo's liability and that consequently, if the prosecution fails to prove this intent, Gbagbo cannot be held responsible. The defense emphasized that he had no intention to remain in power at all cost, given: (1) his support of democracy in Côte d'Ivoire; (2) his willingness to integrate rebel leaders into the national government, particularly through the nomination of Guillaume Soro as Prime Minister; (3) his lead in electoral polls; and (4) his insistence on holding elections under circumstances that made holding elections difficult.

The defense then explained the weaknesses in the prosecution's attempts to demonstrate Gbagbo's intent to remain in power: (a) the slogans "we win or we win" couldn't possibly be used to demonstrate any negative intention, as it is a common slogan used throughout Côte d'Ivoire, even as the slogan for the national football team; and (b) the speech in Divo: the defense emphasized that the prosecution took this speech out of context, and that Gbagbo's speech at the occasion of the launch of an elite unit of the police (the CRS), was a warning to the delinquents responsible for violence against civilians, particularly in the context of cocoa campaigns.

The defense also rejected the existence of a secret, hierarchical organization created to execute a common plan to retain power. The defense refuted the claim that certain high-ranking officers were promoted within the context of a plan, as (a) the hierarchy of the army was never changed, (b) the generals who were promoted came from diverse backgrounds, including rebel camps, (c) the generals were promoted with the approval of Prime Minister Guillaume Soro, and (d) the generals in question were all rewarded by Alassane Ouattara after he came into power.

The defense rejected the notion that Simone Gbagbo belonged to a secret organization as she engaged in political actions. The defense noted that she was: (a) a politician in Côte d'Ivoire; (b) a political militant before ever meeting Laurent Gbagbo; and (c) already an elected official, as a representative of Abobo, prior to his election. Her awareness about Abobo could thus only be expected after the massacres that occurred there.

Regarding the orders that Laurent Gbagbo allegedly gave, the defense insisted that: (1) the orders for the military hierarchy were all defensive and not offensive; and (2) the prosecution was attempting to establish implicit orders as no clear orders could be identified.

The defense thereby introduced the idea that the prosecution could not prove the existence of any organization, let alone illegitimate orders. To illustrate this point, the defense noted that the prosecution emphasized the crimes to gloss over the absence of evidence, and as a result the thesis of their prosecution was fabricated. Regarding the RTI incidents, the defense insisted that the videos showed Guillaume Soro and Zone Commander “Wattaou” giving orders to occupy the RTI headquarters. Regarding the repression of the women's protest in Abobo, the defense - finding the video to have been manipulated to show women pretending to be dead - questioned the credibility of the pre-trial chamber if it accepted such pieces of evidence. Regarding the shells fired at Abobo, particularly in the Siaka Koné market, the defense again criticized the prosecution's lack of evidence, the absence of ballistic expertise and the prevalence of problems in Abobo related to the “Invisible Commando” guerrilla operations. Regarding the Yopougon atrocities, the defense insisted that the Republican Forces of Côte d'Ivoire (FRCI) had difficulties accessing Yopougon due to youth resistance and that following negotiations, the resistance ceased, the FRCI entered Yopougon and attacked its inhabitants, particularly the elderly. The defense was astonished that the prosecution attributed the FRCI crimes to Gbagbo.

The defense also criticized the fact that the prosecution: (1) never established any link between Gbagbo and the crimes committed; (2) did not present sufficient proof of his alleged liability, basing their case primarily on NGO reports and press clippings; (3) did not investigate exonerating circumstances; and (4) did not communicate their evidence to the defense within a reasonable time frame.

The defense lodged the opinion that the prosecution presented a fabricated reality of Ivorian drama, omitting any reference to the division of the country, the pillaging and murders committed by rebels, Ouattara's various attempts at a coup, and the massive frauds committed on his behalf in the North during the presidential elections.

Altit asked the judges to focus their attention on facts based in reality, follow the facts to their conclusions, and to not confirm the charges against Gbagbo so that justice is upheld and that the reconciliation process in Côte d'Ivoire can progress.

Counsel Agathe Baroan asked the LRV to have the decency not to exploit the victims and also criticized the logic used by the LRV and the prosecution whereby the victims of the Ivorian conflict were members of a single group. Baroan expressed alarm that after 30 hours in the courtroom, the Ivorian and

African public would be saddened by the deformation of the recent history of Cote d'Ivoire and the caricature presented by the prosecution which would prevent the court from understanding the issues at stake.

## Laurent Gbagbo Speaks

Gbagbo noted that in listening to the debates presented in the courtroom, he at times felt like he was in Côte d'Ivoire and at times felt very far away. He reported being shocked that the prosecution, the LRV, and the pre-trial chamber never approached him to ask his opinion. To illustrate his point, he mentioned the debate over his alleged control of the FDS, saying that recourse to a FDS mobilization order was a practice that dated back to 1961, and General Mangou briefed him on the situation and demanded that he sign the order.

Gbagbo also declared that he did not run Côte d'Ivoire with his family and that Bertrand Kadet was not his nephew, he was the Delegate Defense Minister.

He then described his quest for democracy as the key characteristic of his political life, noting that his publications would attest to that fact.

Gbagbo reported being shocked by the statements made by the public prosecutor, according to which the court was not convened to discuss the elections or who won; he emphasized that it was not possible to discuss an electoral crisis without understanding how the elections took place, as - in his words - the one who did not win the elections was responsible for causing trouble. From this perspective, the elections would be essential to the debate.

Gbagbo then discussed his belief that negotiation, and not war, would help pull Côte d'Ivoire out of the crisis following the 2002 attacks.

Gbagbo shared his personal thoughts on the fragility of African States, whose salvation, in his opinion, resides in democracy. He also shared his belief that democracy is not limited to votes alone and also includes respect for polls and the constitution. Gbagbo asked rhetorically if he might have found himself before the International Criminal Court for respecting the constitution. He concluded by saying that he was counting on the judges.

## Closing Directives from the Pre-trial Chamber

Judge Silvia Fernández de Gurmendi thanked both parties for their remarks. She asked the prosecution and the LRV to submit their written observations by or before March 14, 2013 and authorized the prosecution to submit a 40-page

document. She subsequently asked the defense to submit its written observations on March 28, 2013.

Judge Fernández de Gurmendi announced that the Pre-trial Chamber would issue its decision 60 days after receipt of the written observations from the defense.

*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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