



# Laurent Gbagbo and the International Criminal Court

## Questions and Answers February 2013

### 1. Who is Laurent Gbagbo and what are the charges against him?

Laurent Gbagbo is the former President of Côte d'Ivoire. He has been charged by the International Criminal Court (ICC) with four counts of crimes against humanity: murder, rape and other forms of sexual violence, other inhumane acts, and persecution. The crimes were allegedly committed by forces under his control during post-election violence in Côte d'Ivoire, between November 28, 2010 and mid-May 2011. He has been charged as being responsible for these crimes as an indirect co-perpetrator or, in the alternative, because he contributed to the commission or attempted commission of crimes “by a group of persons acting with a common purpose.”

Gbagbo was captured by Ivorian authorities on April 11, 2011. He remained in custody in Côte d'Ivoire until he was transferred to The Hague, the seat of the ICC, on November 29, 2011, following the issuance of an arrest warrant by the court.

### 2. What happened in Côte d'Ivoire?

Gbagbo refused to step down when the Independent Electoral Commission and international observers proclaimed his rival, Alassane Ouattara, the winner of the November 28, 2010 presidential runoff—setting off five months of violence. At least 3,000 people were killed and more than 150 women raped during the crisis, often in targeted acts by armed forces on both sides along political, ethnic, and religious lines.

The 2010-2011 post-election violence [capped a decade](#) of [human rights violations](#) and [impunity in Côte d'Ivoire](#)—most notably in the 2002-2003 armed conflict, which left the country split between the rebel-controlled north and the Gbagbo-government-controlled south through the 2010 presidential election. Many of the same military and political

leaders implicated in serious international crimes in 2010-2011 were implicated in similar crimes during the 2002-2003 armed conflict and its aftermath. During this earlier period, Human Rights Watch [documented](#) massacres, summary executions, sexual violence, and the recruitment of child soldiers. No one has been brought to account for these crimes. In a decision in early 2012, the ICC's [judges](#) made it clear that the prosecutor's investigation could include ICC crimes dating back to September 2002.

Beginning in December 2010, elite security force units closely linked to Gbagbo abducted neighborhood political leaders associated with Ouattara's coalition, dragging them away from restaurants or out of their homes into waiting vehicles. Family members later found the victims' bodies in morgues, riddled with bullets. Pro-Gbagbo militias at informal checkpoints throughout Abidjan murdered scores of real or perceived Ouattara supporters, beating them to death with bricks, executing them by gunshot at point-blank range, or burning them alive. Women active in mobilizing voters—or who merely wore pro-Ouattara t-shirts—were targeted and often gang raped by pro-Gbagbo security forces and militia groups.

As international pressure increased on Gbagbo to step down, the violence intensified. The Gbagbo government-controlled state television station, *Radiodiffusion Télévision Ivoirienne* (RTI), incited violence against pro-Ouattara groups and exhorted followers to set up roadblocks and “denounce foreigners,” many of whom were subsequently murdered. This marked, in many ways, the culmination of a decade of the Gbagbo government's manipulation of ethnicity and citizenship, in which northern Ivorians were treated as second-class citizens and West African immigrants as unwelcome interlopers. Hundreds of people from both groups were killed in Abidjan and the far west of the country between February and April 2011, sometimes solely on the basis of their name or dress. Mosques and Muslim religious leaders were likewise targeted.

Abuses by pro-Ouattara forces reached a comparable level after they began a military offensive in March 2011 aimed at taking control of the country. In village after village in the far west, members of the Republican Forces loyal to Ouattara killed civilians from ethnic groups associated with Gbagbo, including elderly people who were unable to flee; raped women; and burned villages to the ground. In Duékoué, Republican Forces soldiers and allied militias massacred several hundred people, pulling unarmed men from ethnic groups associated with pro-Gbagbo militias out of their homes and executing them. Later,

during the military campaign to take over and consolidate control of Abidjan, the Republican Forces again executed scores of men from ethnic groups aligned with Gbagbo—at times in detention sites—and tortured others.

By the conflict's end, Human Rights Watch had documented war crimes and likely crimes against humanity by [both sides](#). [A United Nations-mandated international commission of inquiry presented a report to the Human Rights Council](#) in mid-June that likewise found that both pro-Gbagbo and pro-Ouattara forces committed war crimes and likely crimes against humanity. The [Office of the High Commissioner for Human Rights](#), the [United Nations Operations in Côte d'Ivoire](#), the [International Federation of Human Rights](#), and [Amnesty International](#) and an [Ivorian coalition of human rights organizations](#) known as the *Regroupement des Acteurs Ivoiriens des Droits de l'Homme* (Group of Ivorian Actors for Human Rights) have all released similar findings. In August 2012, a national commission established by President Ouattara released a report that [also documented](#) grave crimes committed by forces on both sides, including torture and hundreds of summary executions.

### **3. How did the ICC get the authority to investigate in Côte d'Ivoire?**

Côte d'Ivoire is not a party to the International Criminal Court. However, in April 2003 the government of Côte d'Ivoire under then-President Gbagbo submitted a declaration under article 12(3) of the Rome Statute, the ICC's founding treaty, accepting the court's jurisdiction beginning on September 19, 2002. President Ouattara confirmed Côte d'Ivoire's acceptance of jurisdiction in December 2010 and again in May 2011. In October 2011, the court's judges authorized the prosecutor to open an investigation in Côte d'Ivoire for crimes committed since November 28, 2010. In February 2012 the court extended this authorization to crimes committed in Côte d'Ivoire since September 19, 2002.

### **4. Why is the confirmation of charges hearing significant? Is this a trial?**

The confirmation of charges hearing against Gbagbo—the first former head of state to be in ICC custody—brings victims one step closer to learning the truth behind his role in the post-election violence. It also reinforces the message that those who commit atrocity crimes from a position of apparent strength can be held to account, regardless of their official position. Gbagbo's hearing comes almost a year after former Liberian president, Charles Taylor, was convicted by the Special Court for Sierra Leone for aiding and abetting war crimes and crimes against humanity and sentenced to 50 years' imprisonment. Human

Rights Watch said in a July 2012 [report](#) that the Charles Taylor trial shows that credible prosecutions of the highest-level suspects for the gravest crimes are achievable.

The hearing is not a trial or even a mini-trial; rather, it is a pre-trial hearing that will allow the judges to evaluate whether the prosecutor has enough evidence to move ahead with a trial on the charges alleged. The prosecutor does not have to put forward all of his evidence, only enough to satisfy the judges that there are “substantial grounds to believe” that Gbagbo committed the crimes alleged. Gbagbo, through his defense counsel, can object to the charges and challenge the prosecution's evidence. His counsel can also put forward exculpatory evidence on his behalf.

Victims can also participate in the hearing—so far the court’s judges have authorized 199 victims to participate in the hearing through a common legal representative. Among other rights, the common legal representative can attend the public sessions of the confirmation of charges hearing and make brief opening and closing statements.

## **5. Hasn’t the defense challenged whether the ICC has jurisdiction?**

Yes. Gbagbo’s defense team challenged the ICC’s jurisdiction to hear the case, but it was rejected by the Pre-Trial Chamber. The appeals chamber confirmed that the ICC has jurisdiction to hear the case.

## **6. Who is paying for Gbagbo’s defense?**

Since coming into ICC custody, Gbagbo has indicated that he was indigent. The registrar of the ICC, the court’s chief administrator, has granted him provisional legal aid during the pre-trial phase to safeguard his rights and ensure the proper conduct of the proceedings. However, this decision can be revisited at any time if it is found Gbagbo can bear the cost of his defense.

It is essential for countries to cooperate with the ICC in its efforts to identify a suspect’s assets so that the registry can accurately determine his or her ability to pay for legal representation. State cooperation is especially important because the ICC’s budget, particularly for legal aid, has come under increased scrutiny by its member countries. Assistance in identifying a suspect’s assets may also be important in the event a

defendant is convicted and the court determines that his or her victims are eligible for reparations.

Gbagbo has been subject to various measures aimed at freezing his assets, including by the European Union and the United Nations Security Council. Indeed, there are media reports that some states, including the United States and Switzerland, have frozen some of Gbagbo's assets, reportedly in the millions of dollars.

## **7. Wasn't the hearing supposed to start earlier?**

Yes, the hearing has been delayed twice. The hearing was supposed to begin on June 18, 2012, but was postponed on June 12 so Gbagbo's legal team could better prepare for the hearing with the additional funds the registry granted it shortly before the hearing. The hearing was rescheduled for August 13, but on August 2 was postponed again to assess Gbagbo's fitness to stand trial based on a motion of the defense.

On November 2, the ICC's judges decided Gbagbo was fit to participate in the hearing, although special allowance (such as shorter sessions and allowing Gbagbo to participate via video link if needed) could be made as needed to accommodate his health. Gbagbo's defense team has argued for his conditional release so he could seek treatment for his medical condition, but the ICC's judges decided Gbagbo should remain in detention, where they determined he has access to adequate medical care.

## **8. Will there be other cases from Côte d'Ivoire before the ICC?**

Yes. In late November 2012, the ICC unsealed an arrest warrant—originally issued in February 2012—against the former first lady, Simone Gbagbo. She has also been charged with four counts of crimes against humanity allegedly committed during the same period. She remains in custody in Côte d'Ivoire, where she is charged with genocide, among other crimes, for acts committed during the post-election crisis. The government has indicated that it is "looking closely" at the ICC request for her arrest and surrender. Human Rights Watch strongly urges the Ivorian government to comply with its obligations under the Rome Statute to cooperate with the court by surrendering Simone Gbagbo to The Hague. The Ivorian authorities also have the option of challenging the ICC's jurisdiction over her case if they want to try her domestically for crimes in the ICC's arrest warrant. It would then be up to the ICC judges to determine whether national proceedings meet the criteria for a successful admissibility challenge.

Former ICC [prosecutor](#) Luis Moreno Ocampo stated publicly that the ICC’s investigations are ongoing, and that the Office of the Prosecutor “will collect evidence impartially and independently, and bring further cases before the Judges, irrespective of political affiliation.” The fact that only Gbagbo has been transferred to the ICC, while a positive step, reinforces the perception in Côte d’Ivoire of victor’s justice.

In meetings with Human Rights Watch, Ivorian civil society activists and UN officials have expressed concern that progress in prosecutions against only the Gbagbo camp may stoke further tensions and damage the ICC’s credibility in the country. There have been long delays in investigations against suspects from the Ouattara side. Human Rights Watch believes it is essential for the new ICC prosecutor, Fatou Bensouda, and her office to move swiftly with investigations into crimes committed by pro-Ouattara forces and—evidence permitting—to pursue arrest warrants.

It is essential for the Ivorian government to cooperate fully with the ICC, including with ongoing investigations and potential future arrest warrants.

## **9. Are there cases being tried in Côte d’Ivoire resulting from the post-election crimes?**

Civilian and military prosecutors have together charged more than 150 people from the Gbagbo camp with crimes committed during the post-election crisis. No member of the pro-Ouattara forces has been charged with such crimes.

Many defendants from the Gbagbo camp have been in detention for nearly two years. Côte d’Ivoire’s civilian prosecutor initially charged the civilian detainees—primarily the political elite from the Gbagbo camp, including Gbagbo’s wife, Simone— with economic crimes and crimes against the state.

Violent crimes (*crimes de sang*) have been added to the charge sheets of at least 55 defendants, including a number of people, among them Simone, who have been charged with genocide. The Ivorian government has indicated that other civilian defendants will likewise face charges of violent crimes related to the post-election crisis.

The military tribunal completed its first major trial for post-election crimes in October 2012. Five former Gbagbo military officials, including General Bruno Dogbo Blé, the former head of the Republican Guard, were convicted for abduction and murder. Dogbo Blé was sentenced to 15 years' imprisonment. In addition to the ongoing domestic trials, Côte d'Ivoire has issued arrest warrants for other civilian and military leaders on the Gbagbo side who are in exile. On January 17, Ghanaian authorities arrested Gbagbo's youth minister during the crisis, Charles Blé Goudé, pursuant to one of these arrest warrants. Blé Goudé was extradited to Côte d'Ivoire the following day, where he has since been charged with war crimes and murder, among other alleged offenses.

In contrast to the progress in prosecutions against Gbagbo officials, the Ivorian justice system has yet to charge anyone from the pro-Ouattara forces with post-election crimes, despite extensive documentation by independent international and national institutions of atrocity crimes. President Ouattara has repeatedly promised impartial justice for these crimes, but the reality is instead that only one side is currently being held to account. Prominent members of Ivorian civil society have stated frequently in meetings with Human Rights Watch that they do not see this justice process as credible or independent.

Ivorian government officials, including President Ouattara, have said that investigations of all sides are ongoing, citing the work of a special investigative cell assigned to investigate the post-election crisis. However, almost two years after Ouattara took effective control of the country, progress in these investigations is long overdue.

Human Rights Watch believes it is essential for the Ivorian government to ensure that pro-Ouattara forces implicated in serious crimes are prosecuted, and without further delay. The government's failure to prosecute people within its own camp reinforces the perception among many Ivorians that those in power are above the law. This belief has long stoked division in Côte d'Ivoire, resulting in vigilantism to resolve conflicts over land or political power.

Key international partners, including France, the European Union, the United States, the African Union, and the United Nations, have an important role to play in ensuring that the Ivorian justice system performs its work impartially, pursuing people without regard to political affiliation or military rank. The rule of law will only be restored, and the threats to

national and regional stability reduced, when victims on both sides see justice for post-election crimes.

## 10. Is the ICC targeting Africa?

The ICC is actively investigating situations in eight countries—Uganda, Democratic Republic of Congo, Central African Republic, the Darfur region of Sudan, Kenya, Libya, Côte d'Ivoire, and Mali. The prosecutor's office is analyzing situations in Colombia, Afghanistan, Georgia, Nigeria, Guinea, Honduras, and the Republic of Korea, including monitoring national proceedings. But no new investigations have been opened outside of the African continent. Unfortunately, the court's exclusive focus on Africa has led to criticism that the court is "targeting" Africans— despite the fact that the ICC is working on behalf of countless African victims who have suffered unspeakable crimes.

A number of objective factors undermine accusations that the ICC is biased, including:

- 33 of the ICC's 121 states parties are African countries, indicating widespread support for the ICC across the continent;
- Four of the countries under investigation by the ICC invited the prosecutor to investigate: Uganda, DRC, Central African Republic, and Mali. Darfur and Libya were referred to the ICC by the United Nations Security Council. The prosecutor opened two investigations on his own initiative: in Kenya and in Côte d'Ivoire. In Kenya, the prosecutor opened an investigation after extensive engagement with Kenyan authorities to encourage them to open national investigations into the crimes committed during the 2007-2008 post-electoral violence. In Côte d'Ivoire, the decision was made following the filing of a declaration by Ivorian authorities under article 12 of the ICC Statute, as it is not a member of the Rome Statute of the ICC.
- The ICC can only investigate crimes committed after July 1, 2002, where it has jurisdiction, which means that many situations are beyond the court's reach.
- A number of countries, including the United States, Russia, and China, do not automatically come under the ICC's jurisdiction because they are not parties to the Rome Statute. The Security Council can refer non-states-parties to the ICC—as



demonstrated with the referrals of Darfur and Libya. However, the Security Council is a highly politicized body and has not demonstrated consistency and even-handedness in its referrals. As a practical matter, countries protected or supported by the veto power of permanent Security Council members over resolutions—including Israel and Sri Lanka—are not likely to be referred to the ICC.

The reality is that the reach of international justice and of the ICC has been uneven and limited, and countries with political power or powerful allies have been shielded from the court. However, it is not the ICC but international politics and states' perceived political interests that are to blame. Important efforts are being made to increase ratification of the ICC statute, and other efforts should continue to expose this unevenness and work toward enlarging the reach of international justice and limiting impunity.