



Study Guide of International Criminal Court

The Beginning **NEMESIS**

COURT SIMULATIONS

THE BEGINNING 2024

ISTANBUL/BESIKTAS

BORN WITH LOVE SPREAD SO THROUGH
HEARTS FROM THE BOSPHORUS BY
BAUMUN.

#TILJUSTICE

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LETTER FROM SECRETARY-GENERAL

Dear Participants,

As the secretary general of the conference, it is my pleasure to greet you. We are proud to already feel the excitement of hosting one of Turkey's most sought-after legal conferences in our first event of the year. Alongside our experienced team, who have been striving to create privileged events for law students in interactive settings for years, we eagerly await your presence.

The main aim of our conference is to create a shared and broad vision with law students and to provide them with the opportunity to experience professional activities within the context of the legal field during their academic lives. In our courtroom simulation, which is designed to prepare you for the profession by providing educational and instructive experiences in competition with many others interested in the field, you will find a rewarding experience.

Furthermore, I would like to emphasize that both the academic and organisational teams of the conference are working in harmony to provide you with a wonderful experience. On this occasion, I extend my thanks to my esteemed colleague and our esteemed General Director, Irmak Gül, for her incredible efforts and commitment to perfection with her teams, and I also extend the love and greetings of our valuable companion on our academic journey, Atanur Duman, to you.

Finally, on behalf of the conference, I would like to thank you for joining us in establishing the tradition of "Nemesis Court Simulations". We are proud to be with curious and distinguished law students who are passionate about their profession.

Best Regards,

Salim Can ESER

Secretary General of Nemesis Court Simulations '24

LETTER FROM UNDER SECRETARIES-GENERAL

Most esteemed participants,

It is our utmost pleasure to welcome all of you to the first-ever edition of the Nemesis Court Simulations 2024. We are Ece KOÇ, senior law student at Kadir Has University and Simge ERDEM, senior law student at Bilgi University.

We have the privilege of serving you as the Under-Secretaries General responsible for the International Criminal Court. As the academic team of the International Criminal Court, we picked the case of Simone GBAGBO, the first lady of Ivory Coast, where you can discuss one of the main crimes of the ICC, crimes against humanity. We hope that you can examine the case and all the details carefully which will hopefully lead you to notice the significant points of the prosecutor and defense side.

The Study Guide is created by the academic team of ICC to help you comprehend the greatest crimes which is why we would like to thank our lovely Academic Assistant Defne TANRIVERDİ for her great effort and dedication in this process.

Before concluding our words, we would like to express our gratitude to our Secretary General Salim Can Eser and his deputy Hakkı Atanur Duman for being so incredibly supportive and trusting us to be a part of the academic team. In addition, we would like to express our appreciation to our Director General Irmak Gül, her deputy Zeynep Haseki and the whole organization team, for all their hard work to make this conference unforgettable.

This guide is expected to be read and understood by all the participants before the conference. Having fruitful debates and serving justice needs exertion. We are looking forward to meeting you at the conference.

If you have any questions, please do not hesitate to contact us via our email addresses:

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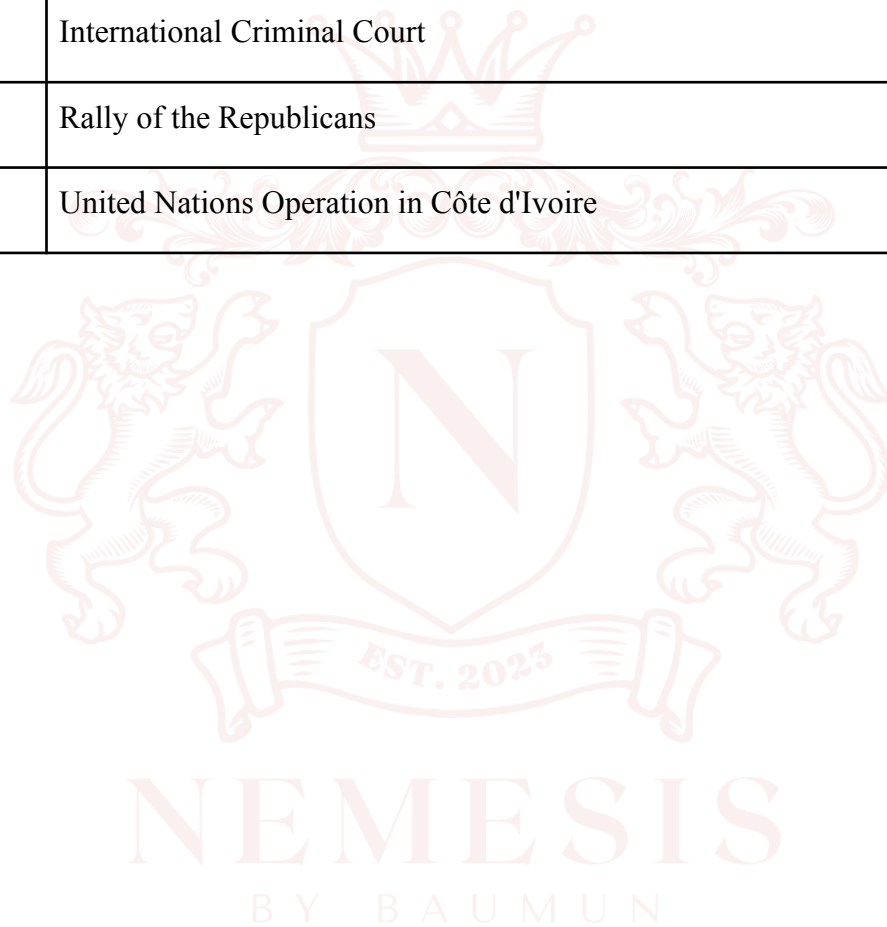
Best regards,

Ece KOÇ & Simge ERDEM

Under Secretaries General Responsible for International Criminal Court

LIST OF ABBREVIATIONS

CC	Constitutional Council
EC	Electoral Commission
FNCI	Forces Nouvelles de Côte d'Ivoire
FPI	Ivorian Popular Front
ICC	International Criminal Court
RDR	Rally of the Republicans
UNOCI	United Nations Operation in Côte d'Ivoire



I. GENERAL PRINCIPLES OF INTERNATIONAL CRIMINAL LAW

1. **Principle of Legality:** Also known as the principle of legality, this principle, which is enshrined, for example, in Article 15 of the International Covenant on Civil and Political Rights, provides that no one may be convicted or punished for an act or omission that did not constitute a criminal offense, under national or international law, at the time it was committed. It further provides that no heavier penalty may be imposed than applicable at the time the criminal offense was committed. The purpose of this principle is to ensure that legislation is specific and predictable so that individuals may reasonably foresee the legal consequences of their actions. The ICC Statute contains a similar provision on the principle of legality
2. **Ne Bis In Idem:** No person should be tried or punished more than once for the same offense. It ensures fairness for defendants since they can be sure that the judgment will be final and protects against arbitrary or malicious prosecution at both domestic and international level. Further, this principle endeavors to ensure that investigations and prosecutions are scrupulously initiated and carried out.
3. **Individual Criminal Responsibility:** International criminal law allows for individuals to be held criminally responsible not only for committing war crimes, crimes against humanity and genocide, but also for attempting, assisting in, facilitating or aiding and abetting the commission of such crimes. Individuals may also be held criminally responsible for planning, instigating or ordering the commission of such crimes.
4. **Command Responsibility:** Violations of international criminal law can also result from a failure to act. Armed forces or groups are generally placed under a command that is responsible for the conduct of its subordinates. As a result, in order to make the system effective, hierarchical superiors may be held to account when they fail to take proper measures to prevent their subordinates from committing serious violations of international humanitarian law.
5. **Non-retroactivity Ratione Personae:** No person shall be criminally responsible under the Rome Statute for conduct prior to the entry into force of the Statute. In the event of a change in the law applicable to a given case prior to a final judgment, the law more favorable to the person being investigated, prosecuted or convicted shall apply.

II. INTRODUCTION TO THE COURT

A. Establishment of International Criminal Court

The ICC, also known as the International Criminal Court, is a permanent international court seated in Hague, Netherlands as specified by the Rome Statute. Nonetheless, the Court is allowed by the statute to meet in other places if the judges think it is suitable. For practical reasons, the Court has also opened offices in the areas that are the subject of the investigation.

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B. Organizational Structure

The International Criminal Court is governed by the Assembly of States Parties, which is made up of nations that have accepted the Rome Statute (ICC). This body reviews changes to the Rome Statute, appoints Court personnel, and approves the Court's budget. The Office of the Prosecutor, the Registry, the Judicial Divisions, and the Presidency are the four main parts of the ICC.

The presidency of the International Criminal Court (ICC) consists of three judges: the President and two Vice-Presidents, who are elected through an absolute majority vote by the 18 judges of the court.

C. Jurisdiction

The International Criminal Court was established to examine, charge, and adjudicate individuals who are accused of committing the most serious crimes of concern to the international community.

The International Criminal Court (ICC) supports national criminal justice systems; it does not replace them. Its duties include looking into, prosecuting and trying people only when the relevant state is actually unable, unwilling, or unable to carry out such actions. Complementarity is a notion that emphasizes national systems and places a premium on nations being the principal prosecuting authorities for the most serious offenses.

International Criminal Court mainly focuses on 4 crimes:

- Genocide:

Acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Which consists of killing members of the group, causing serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within the group, forcibly transferring children of the group to another group.

- Crimes Against Humanity:

Certain serious crimes were committed as part of a large-scale attack against civilians. Which consists of murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, etc.

- War Crimes:

Violation of the laws of war that gives rise to individual criminal responsibility for actions by combatants in action, such as intentionally killing civilians or intentionally killing prisoners of war, torture, taking hostages, unnecessarily destroying civilian property, deception by perfidy, wartime sexual violence, pillaging, and for any individual that is part of the command structure who orders any attempt to committing mass killings including genocide or ethnic cleansing, the granting of no quarter despite surrender, the conscription of children in the military and flouting the legal distinctions of proportionality and military necessity

- Crime of Aggression:

Planning, initiation, or execution of a large-scale and serious act of aggression using state military force.

D. Rome Statute

The first treaty-based permanent International Criminal Court was created on July 17, 1998, by a meeting of 160 states. This agreement is officially known as the Rome Statute of the International Criminal Court. This treaty, which was approved at the conference, specifies the

crimes that fall under the purview of the ICC, provides guidelines for procedure, and sets up procedures for state cooperation with the ICC. States Parties are those countries that abide by these provisions; they are represented in the Assembly of States Parties.

The Assembly of States Parties, which meets at least once a year, develops broad guidelines for the Court's management and performs assessments of its functioning. States Parties examine the work of the working groups that member states have established, discuss issues relevant to the ICC, discuss potential new projects, and approve the ICC's yearly budget at these meetings.

III. PROSECUTOR v. SIMONE GBAGBO

A. Background of Events

In the early 1980s, the Ivorian economy faced significant challenges due to the global recession and a local drought. Over-exploitation of timber resources and plummeting sugar prices led to a three-fold increase in the country's external debt. The rise in crime in Abidjan was exacerbated by an influx of villagers, contributing to unemployment resulting from the recession. Laurent Gbagbo formed what would become the Ivorian Popular Front (FPI) during the 1982 strike. Laurent Gbagbo went into exile in France after participating in the 1982 teachers' strike as a member of the National Trade Union of Research and Higher Education. Laurent Gbagbo returned to Ivory Coast from exile in France on 13 September 1988. Later on, Laurent Gbagbo was elected as Ivorian Popular Front's (FPI) Secretary-General at the FPI's constitutive congress on 19-20 November 1988.

Laurent Gbagbo, in the Ivory Coast Presidential election which was on 28 October 1990, challenged Houphouët-Boigny who was the president of Ivory Coast at the time. Laurent Gbagbo received 18.3% of the votes against Houphouët-Boigny. In 1990, numerous civil servants went on strike, joined by students protesting institutional corruption. This unrest compelled the government to endorse multi-party democracy. Laurent Gbagbo won a seat in the National Assembly along with 8 members of the FPI in the Parliamentary Election on 25 November 1990. He was also the President of the Ivorian Popular Front (FPI) Parliamentary Group from 1990 to 1995. Afterward, in 1992, Laurent Gbagbo was sentenced to two years in prison for inciting violence but was released later in the year.

Houphouët-Boigny died in 1993 and he favored Henri Konan Bédié as his successor. In October 1995, Henri Konan Bédié secured a decisive victory in the re-election, facing a divided and poorly organized opposition. He strengthened his control over the political landscape by imprisoning numerous opposition followers. However, there was a noticeable improvement in the economic situation, albeit on the surface, characterized by declining inflation rates and efforts to alleviate foreign debt. Bédié excluded many potential opponents from the army. A group of dissatisfied officers staged a military coup, putting General Robert Guédi in power in late 1999. Bédié fled into exile in France.

On 26 October 2000, Laurent Gbagbo was elected president of Ivory Coast therefore Simone Gbagbo became the First Lady of Ivory Coast. In November 2000, a mass grave containing 57 bodies of RDR supporters, allegedly killed by FPI-affiliated militias, was discovered in Yopougon, Abidjan. In response, the RDR opted to boycott the parliamentary elections in December 2000. Subsequently, an attempted coup against Gbagbo took place the following month. This led the government to escalate its crackdown on individuals from the northern regions and perceived supporters of Alassane Ouattara, resulting in numerous arrests and fatalities. After the disputed election of 2000, there were violent clashes between supporters of the Ivorian Popular Front (FPI) and the supporters of the Rally of the Republicans (RDR). On 19 September 2002, rebelling soldiers attacked the main city of Abidjan in an attempt to overthrow President Laurent Gbagbo, and with that the Civil War I started. Despite their efforts, the coup attempt was unsuccessful, but the rebels managed to seize control of the northern region of the country. Seydou Diarra was appointed prime minister on 25 January 2003, under a peace deal signed in France, after Laurent Gbagbo agreed to share power with rebels and political rivals.

In March 2003, A bipartisan agreement was established to form a new government under the leadership of a neutral figure, Seydou Diarra. This government included nine ministers from the rebel faction. Rebels and the army signed a total ceasefire on May 3rd 2003, bringing an end to months of fighting in western regions. French and West African troops secure ceasefire line on May 24. The army and rebels declared war is over on July 4th 2003, with country split between the rebel-held north and government-controlled south. In March 2004, an anti-Gbagbo demonstration occurred in Abidjan. Government troops reacted by fatally shooting approximately 120 individuals. A subsequent UN investigation determined that the Ivorian government was accountable for the massacre. Warring parties signed a deal on July

30th 2004 after talks in Ghana, setting out a timetable for reform and rebel disarmament. In early November 2004, following the breakdown of the peace agreement due to the rebels' refusal to disarm, Gbagbo authorized airstrikes against the rebel forces. During one of these airstrikes in Bouaké on November 6, 2004, French soldiers were struck, resulting in nine fatalities. While the Ivorian government claimed it was an accidental incident, the French alleged it was intentional. In response, the French destroyed the majority of Ivorian military aircraft, triggering violent retaliatory riots against the French in Abidjan. On April 6th 2005, Rebels and Laurent Gbagbo finally agreed at peace talks in Pretoria to end the war. At least 100 people were killed in revenge attacks and a massacre around the western town of Duekoue on June 2nd 2005.

Gbagbo's initial presidential term ended on October 30, 2005. However, due to the perceived impossibility of holding a peaceful election, his term was extended for up to one year, while a new prime minister was appointed. On December 4th 2005, Charles Konan Banny, governor of West Africa's central bank, was appointed interim prime minister in a move brokered by African Union mediators. Constitutional authorities allow the parliament to continue working until elections, after its mandate expires on 16 December 2005. On 15 January 2006, foreign mediators recommended parliament should not be reconvened. Gbagbo's supporters say the international group has no right to make such a recommendation. Gbagbo supporters stage anti-U.N. protests in which 11 people are killed. On November 1st 2006, U.N. Security Council voted unanimously to shift power from the president to the prime minister. It extends Laurent Gbagbo's term for a second year, but the resolution also aimed to enhance the authority of Prime Minister Charles Konan Banny. Gbagbo stated the following day that certain elements of the resolution, considered to be violations of the constitution, would not be enforced.

A peace agreement was reached between the government and the rebel group, known as the New Forces, on March 4, 2007. Following this, Guillaume Soro, the leader of the New Forces, assumed the role of prime minister. On 26 March 2007, the government and rebels agree on Soro as prime minister under a plan to reunite the country. Laurent Gbagbo named a new government led by Soro on April 7. U.N. and French peacekeepers begin a staged pullback from the military buffer zone on 16 April 2007. Gbagbo says the dismantling of the zone underlines the war was over. A visiting U.N. Security Council delegation pressed politicians on 19 June 2007 to speed up sluggish progress on the peace deal aimed at reuniting the West African state. Guillaume Soro's plane is hit by a rocket on his arrival at the

rebel stronghold at Bouake, on 29 June 2007. Three people were killed. Gbagbo made his first visit to the northern region since the outbreak of the war to participate in a disarmament ceremony known as the "peace flame" on July 30, 2007. This event involved the symbolic burning of weapons to signify the end of the conflict. During the ceremony, Gbagbo announced the end of the war and emphasized the need for the country to swiftly transition to elections, originally scheduled for early 2008. On 30 August 2008, Laurent Gbagbo was nominated as the candidate for the FPI in the November 2008 presidential election during a party congress. He was the sole nominee for the FPI candidacy. However, the presidential election was once again postponed, this time to 2010.

B. Relevant People

1. Simone Gbagbo

Simone Gbagbo is a well-known figure in Ivorian politics, recognized as being the First Lady of Ivory Coast as her husband Laurent Gbagbo, served as the President of Côte d'Ivoire from 2000 to 2011. Engaging actively in Ivorian politics, Simone Gbagbo has played a significant role within the Ivorian Popular Front (FPI) by being the President of the Parliamentary Group of FPI and Vice President of FPI.

2. Laurent Gbagbo

Laurent Gbagbo, a former Ivorian politician, held the presidency of Côte d'Ivoire from 2000 to 2011. He was a prominent figure in Ivorian politics, playing a key role in shaping the country's political scene for many years. Gbagbo was one of the founders of the Ivorian Popular Front (FPI) in the early 1990s and led the party throughout his presidential term.

3. Alasanne Quattara

Alasanne Quattara was the President of the RDR and an economist. He was the opposing candidate against Laurent Gbagbo. The disputed election process between Quattara and Gbagbo resulted in favor of Gbagbo according to the data from the Constitutional Council, even though the country's electoral commission declared that Quattara won the election with 54 percent of the vote.

4. Aya Virginie Toure

Aya Virginie Touré is a peace activist and a notable politician in Ivory politics. She is known for the action she took against President Laurent Gbagbo, who originally lost the presidential election and took over the control against the law, by organizing women in non-violent resistance.

C. Statement of Facts

- **Nov 28, 2010** Elections day in Ivory Coast
- **Dec 2, 2010** The Independent Electoral Commission (IEC) released provisional results showing that Ouattara had won the elections in the second round with 54% of the vote.
- **Dec 3, 2010** The President of the Constitutional Council (CC) declared that the results were invalid and the next day, in accordance with article 94 of the Constitution, the Constitutional Council declared Gbagbo the winner.
- **Dec 10, 2010** The United Nations, the African Union, the Economic Community of West African States (ECOWAS), the European Union, the United States, and former colonial power France have affirmed their support for Ouattara.
- **Dec 15-22, 2010** UNOCI (United Nations Operation in Côte d'Ivoire) human rights division reported that 173 persons were killed, 90 were mistreated, 471 were arrested and detained, and 24 were missing.
- **Jan 25, 2011** Simone Gbagbo's speech about the incident in December.

"My fellow Ivorians,

Tonight, as I address you, my heart is laden with sorrow as we collectively mourn the loss of lives within our nation. We find ourselves standing together against the traitors in our country.

Those traitors who tried to destroy the peace in our country by standing against the authority, fortunately, failed. Those who've died, died for the peace and sovereignty of our nation.

We mourn not only those who have been victims of senseless violence or tragedy but also the erosion of trust and unity within our communities. Each departure leaves an indelible mark on our society, compelling us to redouble our efforts in the pursuit of

justice, equality, and peace. In this time of darkness, let us seek solace in each other's presence.

As we pay homage to the memories of those we've lost, let us reaffirm our commitment to fostering a world where every life is cherished, every individual esteemed, and where hope prevails even in the face of chaos.

May we find solace in the embrace of our community, drawing strength from the cherished memories of our departed, guiding us through the darkest of days.

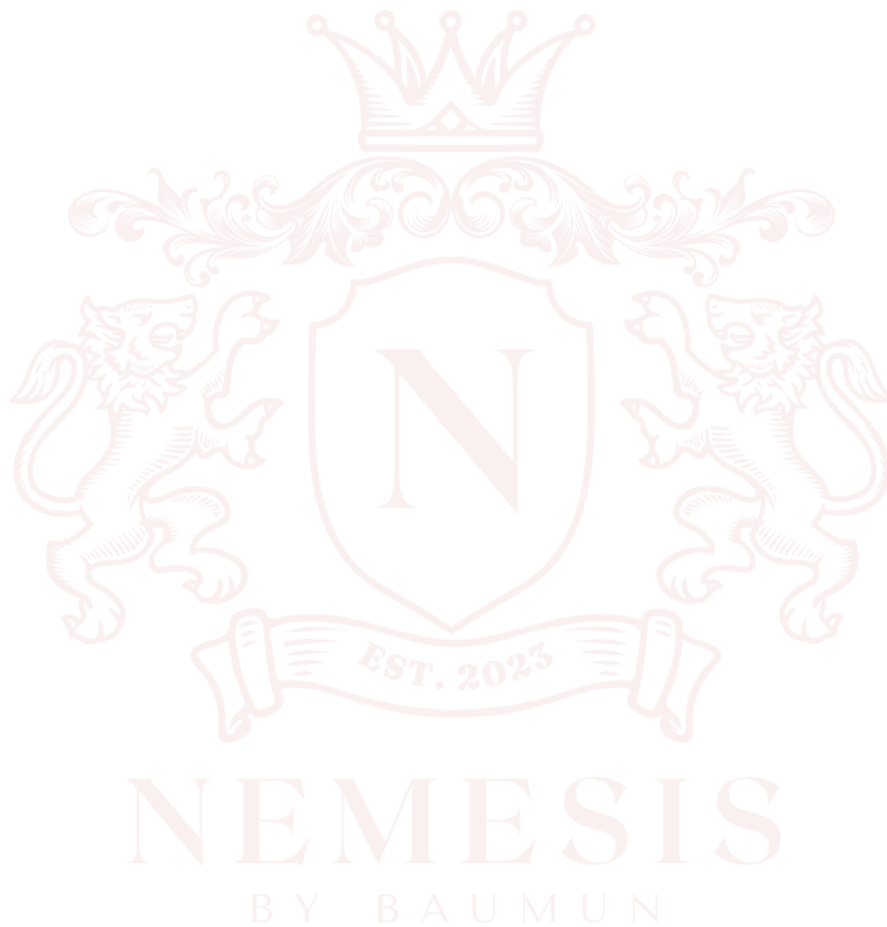
We hope this unfortunate event teaches everyone something.

Stay with us, stay united

Thank you.”

- **Feb 4, 2011** UNOCI Human Rights Division reported that; two FNCI (Forces Nouvelles de Côte d'Ivoire) soldiers, Bakayoko Tiekuma and Kone Moussa Junior, beat and killed a 35-year-old man of Gouro ethnic origin in Bazra Natis. The soldiers severely beat the victim for four hours with rifles.
- **Feb 12, 2011** The UNOCI Human Rights Division reported that; three FNCI soldiers summarily executed 11 persons accused of highway robbery.
- **March 8, 2011** Aya Virginie Toure organized protests against Laurent Gbagbo with more than 40.000 women.
- **March 10, 2011** FDS, coordinated a raid for the houses of the people they suspected of attending the protests on March 8.
- **March 15, 2011** Laurent Gbagbo ordered the UN to leave the country. Afterward, Simone Gbagbo gave a speech that warned peacekeepers and rebels.
- **March 17, 2011** The Security Council has extended the mandate of the UN Mission in Ivory Coast until 30 June 2011.
- **March 25, 2011** UN Peacekeepers arrested 146 people with suspicion of killing and injuring civilians about the incidents on Dec 15-22, 2010.
- **April 1, 2011** 173 women reported to the police that they got sexually harassed by the people in FDS after attending the protest on March 8.

- Feb 29, 2012 *HEREBY ISSUES a warrant of arrest against Simone Gbagbo, who was born on 20 June 1949 in Moosou, Grand-Bassam prefecture in Côte d'Ivoire, an Ivorian national and a member of the Akan tribe, for her alleged criminal responsibility of acts committed in the territory of Côte d'Ivoire during the period between 16 December 2010 and 12 April 2011;*



IV. APPLICABLE LAW

A. ROME STATUTE - ESTABLISHMENT OF THE COURT

Article 1 - The Court

“An International Criminal Court (“the Court”) is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.”

Article 2 - Relationship of the Court with the United Nations

“The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.”

Article 3 - Seat of the Court

“1. The seat of the Court shall be established at The Hague in the Netherlands (“the host State”).

2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.

3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.”

Article 4 - Legal status and powers of the Court

“1. The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State.”

A. ROME STATUTE - JURISDICTION

Article 5 - Crimes within the jurisdiction of the Court

“The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;*
- (b) Crimes against humanity;*
- (c) War crimes;*
- (d) The crime of aggression.”*

Article 7 - Crimes against humanity

“1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;*
- (b) Extermination;*
- (c) Enslavement;*
- (d) Deportation or forcible transfer of population;*
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- (f) Torture;*
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under*

international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

(b) "Extermination" includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;

(c) "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;

(d) "Deportation or forcible transfer of population" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;

(e) "Torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This

definition shall not in any way be interpreted as affecting national laws relating to pregnancy;

(h) "The crime of apartheid" means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

Article 9 - Elements of Crimes

"1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 bis. They shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

2. Amendments to the Elements of Crimes may be proposed by:

(a) Any State Party;

(b) The judges acting by an absolute majority;

(c) The Prosecutor.

Such amendments shall be adopted by a two-thirds majority of the members of the Assembly of States Parties.

3. The Elements of Crimes and amendments thereto shall be consistent with this Statute."

Article 10

“Nothing in this Part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.”

Article 13 - Exercise of jurisdiction

“The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the

Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the

Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.

Article 15 - Prosecutor

“1. The Prosecutor may initiate investigations proprio motu on the basis of information on crimes within the jurisdiction of the Court.

2. The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

...”

Article 17 - Issues of admissibility

“1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

Article 21 - Applicable Law

“1. The Court shall apply:

(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;

(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;

(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

2. The Court may apply principles and rules of law as interpreted in its previous decisions.

3. *The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.*”

Article 25 - Individual criminal responsibility

“1. The Court shall have jurisdiction over natural persons pursuant to this Statute.

2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.

3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) *In respect of the crime of genocide, directly and publicly incites others to commit genocide;*

(f) *Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions. However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.”*

3 bis. In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

4. No provision in this Statute relating to individual criminal responsibility shall affect the responsibility of States under international law.”

Article 27 - Irrelevance of official capacity

“1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.”

Article 28 - Responsibility of Commanders and Other Superiors

“In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) *A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and*

control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

(b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”

Article 33 - Superior Orders and Prescription of Law

“1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

(a) The person was under a legal obligation to obey orders of the Government or the superior in question;

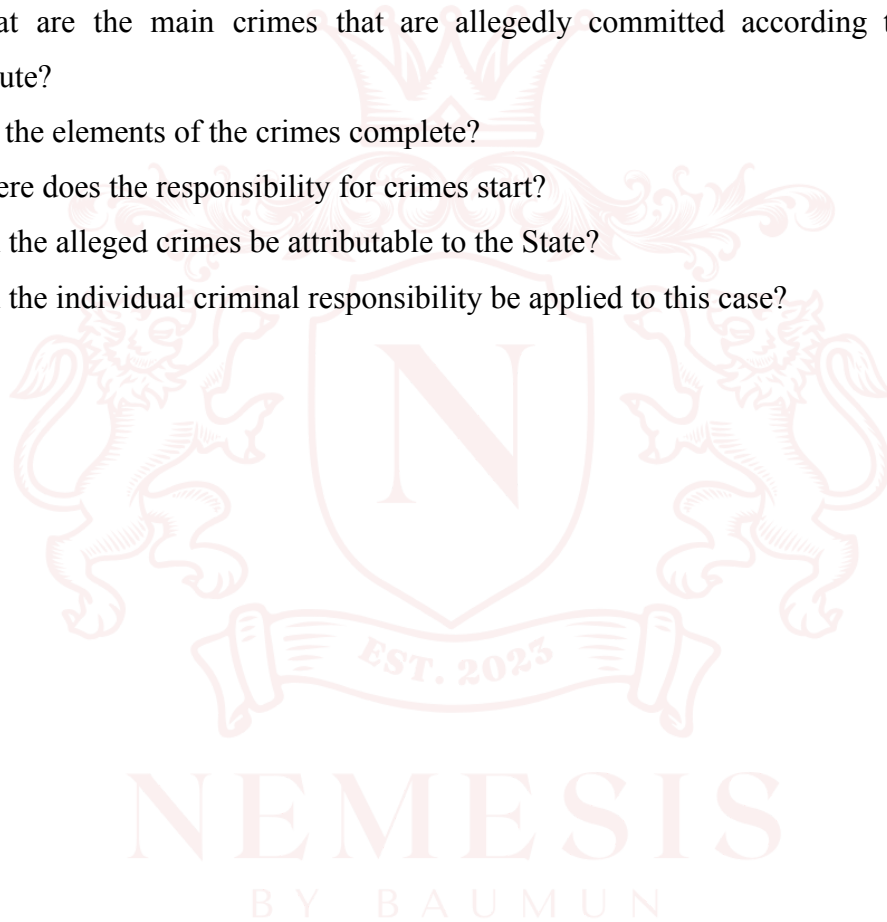
(b) The person did not know that the order was unlawful; and

(c) The order was not manifestly unlawful.

2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful.”

MERITS OF THE CASE

1. Does ICC have jurisdiction on the issue?
2. What are the main crimes that are allegedly committed according to the Rome Statute?
3. Did the elements of the crimes complete?
4. Where does the responsibility for crimes start?
5. Can the alleged crimes be attributable to the State?
6. Can the individual criminal responsibility be applied to this case?



FURTHER READINGS

1. Inspired Case:

<https://www.icc-cpi.int/cdi/simone-gbagbo>

2. Rome Statute:

<https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>

3. Elements of Crime:

<https://www.icc-cpi.int/sites/default/files/ElementsOfCrimesEng.pdf>

4. Universal Declaration on Human Rights:

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>

5. International Covenant on Civil and Political Rights

<https://www.ohchr.org/sites/default/files/ccpr.pdf>

6. The Prohibition of Rape in International Humanitarian Law as a Norm of Jus Cogens:

<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1114&context=djicil>

7. Evolution of Rape in International Level

<https://deliverypdf.ssrn.com/delivery.php?ID=150124106095081114016091119095096022063075036012049018106115003097090092113092024067123121063030017007034090087120122112029106020040034053046097080070027122065090119028069037067096072124006123119094006004025112100112105085121082118085082116093094008110&EXT=pdf&INDEX=TRUE>

8. Report on Events of Ivory Coast

<https://2009-2017.state.gov/documents/organization/160454.pdf>

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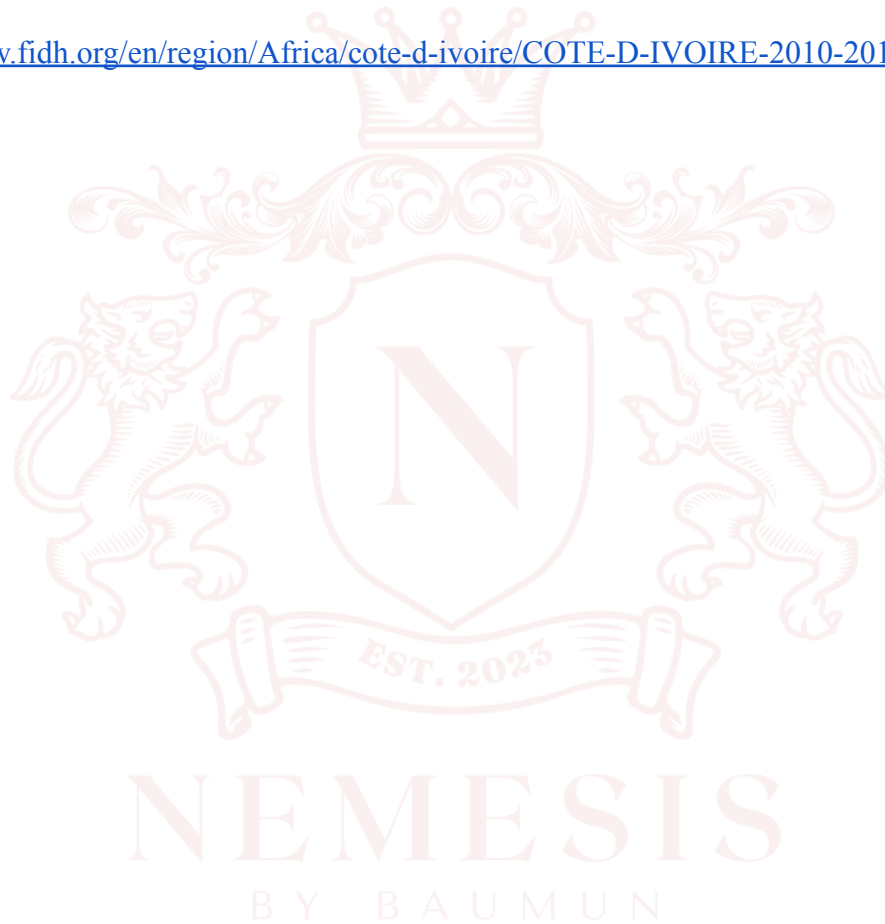
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<https://www.fidh.org/en/region/Africa/cote-d-ivoire/COTE-D-IVOIRE-2010-2011>





INTERNATIONAL CRIMINAL COURT

CASE NO: ICC-02/11-01/12

PROSECUTOR v. SIMONE GBAGBO



This document is prepared by the Prosecution Office of the International Criminal Court in order to bring together the relevant witness testimonies as requested. It contains 6 testimonies demanded by the court based on their relevance;

- Simone Gbagbo
- Laurent Gbagbo
- Philippe Zion
- Céleste Diarra
- Akissi Touré
- Brahima Sangare

Dated February 4th, 2012.

Prosecutor Office

MS. BRADY



INTERNATIONAL CRIMINAL COURT

WITNESS STATEMENT

CASE NO: ICC-02/11-01/12



PROSECUTOR v. SIMONE GBAGBO

Name: Simone Gbagbo

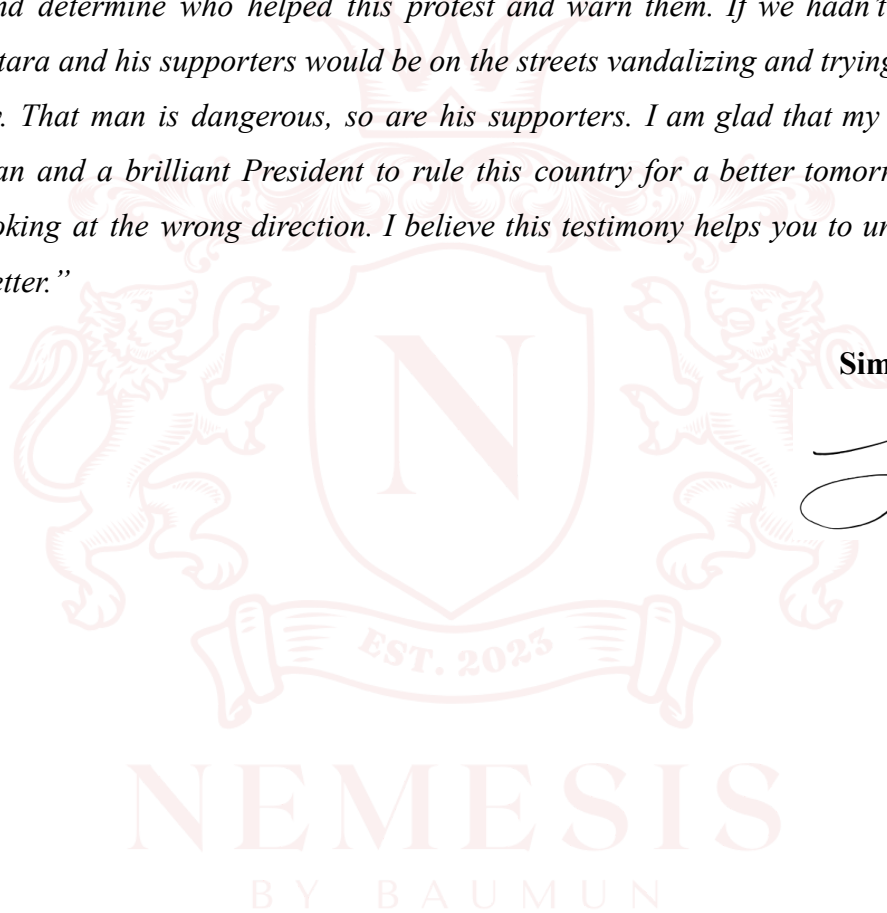
Date: 1 Dec 2011

Time: 9.08

"Hello. My name is Simone Gbagbo and I am the First Lady of the Ivory Coast. I understand why I am here and I am here to help you clear the air. I know that I am the accused but that is fine. My husband and I will always be on the side of justice. We hope for what is best for our country. As you may know, we have been through a lot as a country. Economically, socially and politically. I am deeply sad about this. My husband and I worked for so long to come up with a new way of managing the country and evolving. There were so many plans and projects. He worked so much. I was always there to support him, and give him my ideas. He appreciated my thoughts a lot. I am also a politician so I know a thing or two. We care about the chain of command but the 2010 elections were, let's say "a lot". We were not expecting people to protest our success. Our success is our country's success. My husband, Mr. President wants what is best for our country. And reactions got worse from both sides. People who supported the other candidate started getting violent and our supporters reacted to them. It was not the right thing to do. It was, is our job to protect our people. The ones who want bad things for our people should have got what they deserved. We cannot live in the same environment with vandals and violent people. This country is not going to bow down because of some traitors. Ivory Coast deserves to thrive and we are the ones to give it to them. Everyone who tried to do otherwise was stopped by our powers. It is our police and our army. But Police officers were not all loyal, our soldiers were. We collaborated with them to stop violent public acts against the presidency. Mr President, General Philippe and I took action. My husband was so busy and it was a complicated time. So, as a politician and First Lady, I helped Mr. President to give orders. When he didn't have time, I was delivering his orders to General Philippe and the army. General Philippe trusts me and the presidency. He is a respected General who serves his country, the same as his army. So, during this hard time,

some people might get hurt but everything was to maintain the peace. I am sorry for the dead and injured people. No action was taken for personal reasons. We were just trying to stop the hate in the country. There was no aim to intentionally hurt our people. We are in charge because we wanted to stop the hurt. So, if Mr. President's orders to protect the peace harmed people during the process, it is because there was no other choice for us to end the hostility. Yet, you can see that we were not harsh enough to stop them. They made a huge March 8th walk. We gave so many warnings to all of them to protect them. But still, they did the walk and of course, there was a huge riot. If only they listened to us. We told the General to interfere and determine who helped this protest and warn them. If we hadn't done any of them, Quattara and his supporters would be on the streets vandalizing and trying to take over the country. That man is dangerous, so are his supporters. I am glad that my husband is a brilliant man and a brilliant President to rule this country for a better tomorrow. I believe you are looking at the wrong direction. I believe this testimony helps you to understand the situation better."

Simone Gbagbo





INTERNATIONAL CRIMINAL COURT

WITNESS STATEMENT

CASE NO: ICC-02/11-01/12



PROSECUTOR v. SIMONE GBAGBO

Name: Laurent Gbagbo

Date: 2 Dec 2011

Time: 09.40

"I am Laurent Gbagbo and I am the President of the Ivory Coast. I am the leader of my nation. I am the one who is supposed to keep my country safe and make my people happy. I understand why I am here. Allegations against my wife... I know that they are not true but I am here to tell this to the authorities. I am in politics for so long, and so is my wife. We loved each other and we helped each other. She was by my side the whole time. She was the source of my power to rule this great nation. We worked together for my campaign and when the Constitutional Council announced the actual winner, we celebrated together. I knew that not everyone was going to be happy about this. Still, it became my duty to serve everyone. Everyone, yes. But not traitors. You cannot try to destroy the peace of this country, just because you support the other man. You cannot protest and you cannot provoke people. You cannot organize walks and vandalize around. This is what I fought against, along with the First Lady and the General. I know the rumors but I will tell you this: I give the orders in this country. Whatever we have done, we have done to keep this country safe. We wanted to stay away from those traitors. I will not let this country go down. It has been a busy couple of months. I might have delivered some of my orders via the General or the First Lady. But they were only delivering the message and following my orders. We were talking everything together and planning everything together but whatever happened to those who have been hurt during the protests, it was the consequences of their actions. So, no. Simone Gbagbo did not order any violent and unlawful acts. I gave orders by the power of my seat. Lawful orders. Incidents did not happen because of my wife. We are lucky as a country that we have been through this, thanks to my orders to keep the traitors away and make my citizens safe."

Laurent Gbagbo



INTERNATIONAL CRIMINAL COURT

WITNESS STATEMENT

CASE NO: ICC-02/11-01/12



PROSECUTOR v. SIMONE GBAGBO

Name: Philippe Zion

Date: 4 Dec 2011

Time: 10.00

“ I am Phlippe Zion. I am serving my country as a General. I understand why I am here but I disagree. I think it is hard for someone who hasn't been to Ivory Coast to understand the situation in our country. It is complex, it is hard, it is fearful, it is stressful. I am a soldier. I spent my life clearing our environment from traitors. If you don't show respect to the President and do actions against him that can hurt our presidency, our country and our people, then it is my job to stop them. So many things happened after the elections. The Constitutional Council declared the winner. That is where my loyalty stands. We worked with him and Mrs. Gbagbo during the post-election incidents. It was a busy schedule. We were all working every second of every day. I order my army and I listen to Mr. President. He is a busy man so sometimes Mrs. Gbagbo delivered his ideas and plan of action. She told me that we needed to find those criminals on the walk of March 8th. I agreed immediately. Because Mr. President and I worked so hard to stop people from having that protest. We knew there was gonna be blood and it happened. There was huge resistance. Later on, I ordered my soldiers to find the supporters of this protest who wanted to start a duality in our country. They needed to be warned so that we all can live in peace. I know the rumors about my soldiers but it's just another resistance from the March 8th supporters. They tried to break the country with that walk. When they failed, they chose to blame my soldiers. It is a massive play. I know what they are claiming. Behind closed doors, wrong actions. They have no proof of violence, sexual harassment nor disturbing act. Because it is not true. There is no report. They stayed silent for so long to make a plan of accusing my soldiers who sacrificed a lot for this country. I will not let anyone put a shadow on that.”

Philippe Zion



INTERNATIONAL CRIMINAL COURT

WITNESS STATEMENT

CASE NO: ICC-02/11-01/12



PROSECUTOR v. SIMONE GBAGBO

Name: Céleste Diarra

Date: 8 Dec 2011

Time: 08.37

“My name is Céleste Diarra and I am 43 years old. I live in Cote D'ivoire. I was born and raised in Abidjan. I have 7 children and a husband. I stay at home and my husband works. We are good citizens. We serve and we pay taxes and we show respect to people. But last years were hard for our country. There was chaos politically. Elections were delayed for years and it was not a good sign. When finally we had our election, the decision was made by our people. It was Quattara. And people were celebrating. I think it was the next day we heard that the president of the Constitutional Council said it was Gbagbo, not Quattara. Both side was celebrating and both side was angry. I remember we were scared so we did not leave our house for days. I did not let my children leave the house. I was worried about my husband. It was chaos outside. It went like this for so long. Streets were filled with protestors and police and soldiers. Fighting for democracy, you know. I cannot remember the dates of the incidents on the streets. I am still in shock. After what happened- It was fear for months and we wanted to do something. We cannot stay home forever. I dared to go outside for few times and i saw the brochure of the March 8th walk. I talked with my neighbors and we decided to go. It was a peaceful walk. We meant no harm. But it ended with fights and strikes. I do not know how I managed to get home safely. I could not even see my neighbors when I was leaving. Then a few days later some people knocked on my door. My husband was at work. I was home with my children. Then soldiers broke the door and came inside. There were a lot, maybe more than 5-6. They were shouting and scattering my house. They were yelling at my children and me. Asking me if I want this country to be a dangerous place. They were looking for something and they found the brochure of the walk. And they were laughing. It made no sense to me. My children were crying and the older siblings were trying to calm the little ones. Then one of them grabbed my arm and threw me to the door and then threw me

to the floor. He pushed me to the closet of my bedroom. Other soldiers were watching. My 2 oldest boys were trying to fight back. And he locked the door. There were 4 people inside. it was me and 3 other soldiers. They were threatening me, telling me to stay calm or they will hurt my children. So I stayed quiet. All I heard was my children yelling outside of the door. He asked me to do things. I don't know how to say. I don't know how to prove. That one soldier told me to suck my finger. He was laughing. I did not want to do it but i had no choice. I put my finger in my mouth. I was crying silently. And then he took his pants off, told me to look at it, look at his penis. Only to look at his- Other 2 soldiers were laughing. I did it. I did what they asked me to. He told me to do it harder. Then the other 2 soldiers said that it was their turn. So they took their pants off and started touching their organs. I was there to amuse them. They used me. I made no sound. And the first soldier told me that next time, I will have a chance to taste it. Then they wore their pants, opened the door and left. I was sitting on my bedroom floor. I did nothing. I did not tell my husband. i did not tell my children. I only told my neighbors, the ones that I attended the walk with. They told different stories. but we could not tell our husbands. What will we do? How do we explain? We were feeling ashamed. We were small. I was small. I regretted going to that walk, going outside. It is just - hard for me. Even harder to tell you this. I don't know what to do. Please help.”

Celéste Diarra



NEMESIS
BY BAUMUN



INTERNATIONAL CRIMINAL COURT

WITNESS STATEMENT

CASE NO: ICC-02/11-01/12



PROSECUTOR v. SIMONE GBAGBO

Name: Akissi Touré

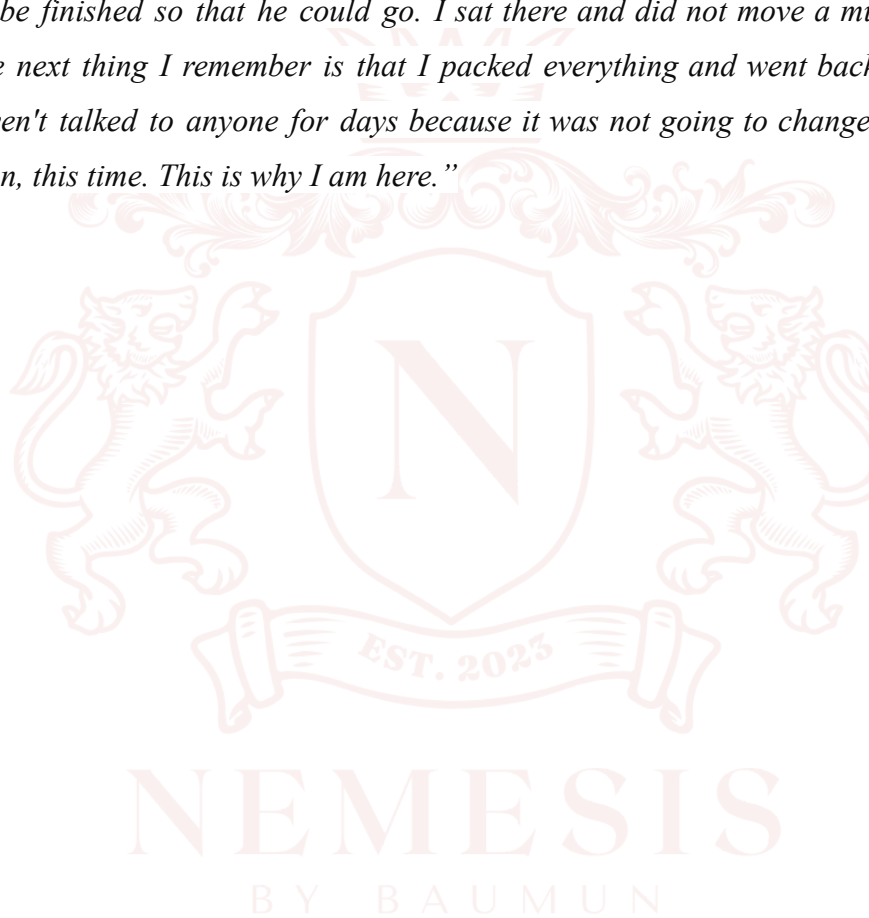
Date: 8 Dec 2011

Time: 11.05

“ I am Akissi Touré. I live in Abidjan. I am 22 and I go to the University of Science and Technology of Ivory Coast. I am from Bouaké in Cote D'Ivoire mainly but I came to Abidjan to study but my family is still in Bouaké. I am the older sister and I have 1 younger sister, Nadège. I have only been in this city for a few years. Though my parents didn't want me to come because it is dangerous, I insisted. I guess they were right. I never expected this. I knew that our country was not in the best place but I did not know that just walking would be a crime. I just wanted to defend what I believe in, which is democracy. Anyway. Whatever happened, it was a peaceful walk until authorities interfered. One minute we were trying to raise our voices, another minute I was on the ground. I held my friend Sarah's hand and we ran away. We got away with scratches. I know there are so many people who got hurt badly, got beaten, dragged and everything. It is not humanic. It was not the worst part. I don't know how to explain, I don't even know how to start. Couple days later my doorbell rang. When I checked, there were soldiers outside my apartment. I opened the door and one guy pushed me back and said they were gonna search my apartment. They looked everywhere. They asked me about the walk and protest and where I keep my cardboards and all my traitor stuff. They did not find anything. I got rid of everything right after the incident. They looked even more mad. They were 2 and I was 1 and alone. I did not know that was my worst day. One soldier told the other that they got this. So one of them went out. The soldier who stayed kept questioning me. He was so aggressive and he was a young person. So young to be imposed by the big guys. I even asked him his age. He was only 25. I tried to convince him that he was too young to deal with these things. He said that I was smart but not smart enough to be on the right side. And he said that if i am not going to act smart, he will teach me. And then he came closer and grabbed my wrist. Pushed me against the wall. We were in the living room. He put

a cloth in my mouth and said screaming wouldn't help. He leaned on me and he breathed on my face, for a long time. Later on, he put me on my knees and told me "I am ordering you to enjoy." He said that it is for my own good not to fight because he has to do this. I don't understand. Why do you have to do this? He said resistance will hurt me. I was alone and he had a gun. I did not want to die but I am not sure now. Maybe I should have. I was on my knees crying when he took his pants off. He said if I can manage to make him happy, he will leave. "Happy people don't do bad things," he said. Shortly after, it was his organ in my mouth. I barely recall. I know I stopped fighting because it was not the answer. I just waited for him to be finished so that he could go. I sat there and did not move a muscle. I had no choice. The next thing I remember is that I packed everything and went back to our family house. Haven't talked to anyone for days because it was not going to change anything. But maybe it can, this time. This is why I am here."

Akissi Touré





INTERNATIONAL CRIMINAL COURT

WITNESS STATEMENT

CASE NO: ICC-02/11-01/12



PROSECUTOR v. SIMONE GBAGBO

Name: Brahim Sangare

Date: 10 Dec 2011

Time: 11.45

"I am Brahim and I am 34 years old. I am an honorable soldier in Cote D'ivoire. My whole family is soldier. I have been serving my country for 14 years. I actually don't understand why I am here. My duty is for my country. It went through so much lately. But we as the army are honored to help our country to make things better and safe and just. We take orders and we make them. Election time was hard. But a decision was made by the Constitutional Council. It was Mr. Gbagbo. Our president is mr. Gbagbo but people wanted to claim otherwise. They started going out into the streets. They were yelling and asking for justice. Our job was to keep our country safe. We got orders to stop the aggression, protests and chaos. Orders mostly came directly from General Philippe but he told us that these are the times to act fast. So he told us for urgent cases, the President will interfere to maintain the peace and stop the incident, situation, whatever that is; immediately. People need to understand that they cannot break the peace because their candidate did not win the election. They were putting our president at risk by showing him as a target. So we tried to stop those people. We heard that there was gonna be a walk on March 8. We knew that people would not just walk because Aya was leading. That woman says harsh things. She is aggressive and tries to make people aggressive too. I heard that she was warned about the walk. On that day, by the order of the President which was delivered by the First Lady Mrs. Simone, we interfered with the walk because supporters from both sides were fighting. That walk never should have happened. A lot of people got hurt. And people got warnings about not making this walk at this sensitive time. After the walk of chaos, we need to determine the people who helped this walk happen and who supported this action. So we went door by door and searched their houses. If we find evidence, we warned people so that they wouldn't get hurt by this in the future. If there is no evidence, then they are already clean. We just found the ones that were not clean. The house

you are mentioning, I remember. It was a crowded house. We looked at his house to find evidence about the walk. And she had the brochure. So we told her what would happen if she keeps attending these things. She had so many children, fighting with us. We couldn't make a proper conversation with the woman. So some of us were trying to calm the children, me and my other 2 fellows took the woman to a room and locked the door so the children wouldn't interrupt. We talked to her calmly but still her children were yelling. She said she was sorry. Ask her children. She did not yell, she did not ask for help. Because there was no situation for her to escape. It was 3 soldiers warning a citizen for the sake of the country. After the speech, we went out and did our job. We visited other houses and made the same warning for our people. They shouldn't be supporting violent acts in the street. That is all."

Brahima Sangare

