

**Laurent Gbagbo's Trial and  
the Indictment of the  
International Criminal Court**  
A Pan-African Victory

**Gnaka Lagoké**  
Lincoln University

**Series in Social Equality and Justice**



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*I dedicate this book to Africa and its people, yearning for freedom, justice, and unity and who want to conquer the right to have the right to choose their own path and to freedom lovers, justice seekers, and human rights' advocates of the world whose voices have been sidelined and smothered regarding international justice.*



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# Preface

A decade ago—following a controversial election after which both the then-incumbent president, Laurent Gbagbo, and his challenger, Alassane Ouattara, claimed victory—Ivory Coast entered a turbulent zone that led to an electoral stalemate.<sup>1</sup> The latter candidate was recognized as the lawful president by the electoral commission and by the international community. The former was declared the winner by the constitutional council, and his defiance provoked the wrath of the international community. French troops and the Ivory Coast-based UN forces entered the war, siding with the pro-Alassane Ouattara rebels who had occupied the northern part of the country for eight years, since 2002. Laurent Gbagbo was defeated militarily and captured on April 11, 2011. Alassane Ouattara became immediately the effective president of the country.

The electoral stalemate was a defining moment both for Ivory Coast, my country of origin, and for me. For most of the time Laurent Gbagbo was in power (2000–2010), I had had a certain amount of dissension with his administration and about some of his actions, policies, and decisions. Even though I have claimed part of his political legacy, I have also distanced myself from another part of the same political legacy. When the electoral stalemate erupted, I decided to defend what I thought was right and what I saw as the right side of history: to support the struggle for nationalism, sovereignty, and Pan-Africanism in Ivory Coast in what appears to be a revolution of its own kind linked to the global struggle for the redemption of Africa and its diaspora. And Laurent Gbagbo, despite his missteps and shortcomings, came to symbolize that new wave of Ivorian nationalism embedded in the revival of Pan-Africanism, as he meant to free Ivory Coast. I could not be a spectator to a tragedy and to a martyrdom of the Ivorian people, who—despite their different political ideologies, religions, and ethnic groups—constitute the humus of the African nation, as Ivory Coast, a multiethnic and multicultural nation is the microcosm of the United Nations of Africa. My heart of a Pan-Africanist enjoined me to tune the trumpet of justice. Like many I embarked on an improbable journey. All odds were against us, but I was convinced that we would win; Dr. Martin Luther King, Jr. said it appropriately: “The arc of the moral universe is very long, but it always bends towards justice.” I gave media interviews, lectures, and conferences in universities, at community gatherings, and on social media about Ivory Coast’s political, electoral, and military crisis.

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<sup>1</sup> Ivory Coast and Côte d’Ivoire are used interchangeably throughout the book.

When Laurent Gbagbo was taken to The Hague, to the International Criminal Court (ICC), the issue of the International Court became part of the focus of my struggle and of my narrative, and I had to oppose the selective justice of the ICC. My detractors and some friends questioned the wisdom of my path. Even though I understood their concern and their assessment of the slim possibilities of victory, I knew that this battle was just and that I would be vindicated before the tribunal of history where the ICC's fate and condemnation would be sealed. I had to respond to this call, which is in line with the battle for the soul of Ivory Coast and Africa.

Laurent Gbagbo's trial became the legal battle of a series of episodes of a crisis that erupted in 2002. His imprisonment in a western country, a former colonial power, captured the imagination of many Pan-Africanists and reinforced the narrative of European neo-colonialism. They organized as they could to denounce the ICC as a court, seen as promoting a victor's justice and which is perceived as a tool in the hands of the most powerful nations, which only believe in the law of might is right. My commitment to true justice has made me oppose the instrumentalization of the court as a tool in the hands of the most powerful, even if I adhere to its spirit and to its noble mission. The struggle for justice cannot be segregated.

My commitment to true justice led me to several American universities and led me to take trips overseas, including to The Hague (Holland), May 24–25, 2014; to Accra (Ghana) March 17–18, 2016; and to Windhoek (Namibia) June 14–15, 2016. I have presented at academic conferences organized in these locations. In Accra—on Thursday, March 17, 2016, at Ghana Institute of Management and Public Administration (GIMPA)—I had an altercation with Fatou Bensouda, the chief prosecutor of the ICC, about her selective investigation in Ivory Coast. I decided to transform the paper on Laurent Gbagbo's trial before the court into a book, encouraged by events and friends. This work meets my professional and political goals, as I have been an agent of justice, freedom, and unity of Africa for decades. Embedded in the Pan-African vision I cherish, as a faculty member of Lincoln University in Pennsylvania (PA), it contributes also to the telling of the story of that university as it spotlights the contributions of two of its greatest alumni, two advocates of Pan-Africanism and champions of human rights: Kwame Nkrumah and Nnamdi Azikiwe.

In sum, the fight for true justice in Ivory Coast is the epitome of my struggle for justice and peace in the world. I have sided with the victims of human rights abuses across the globe, I have opposed various types of oppression, and I have shared the ideal of international justice. Decades ago, I happened to be in Germany for a mission which coincided with the 60<sup>th</sup> anniversary of the liberation of the concentration camp of Buchenwald. I visited that camp. I could feel the indignation of my soul at the sight of the crematories still full of

the memories of the horrors of the holocaust engraved in the defaced human landscape. My imagination of the spectacle of the horrendous cruelties of the Nazis had made me understand the relevance and the imperative of international justice. This experience encrusted in me made me understand very quickly that in the case of the Ivorian crisis, Laurent Gbagbo's trial lacked the *prima facie* evidence.





# Abstract

The International Criminal Court (ICC), created in 2002 to combat impunity, projects a sense of unfairness and stirs an unending debate. A trial before the court epitomizes the controversy surrounding the court, perceived as a neocolonialist tool in the hands of the most powerful nations. This research critically examines the trial of the former president of Ivory Coast, Laurent Gbagbo. The two-decade crisis in Ivory Coast was a series of armed, diplomatic, and political conflicts in which human rights were violated by all sides. Military confrontation resumed as a result of an electoral stalemate that followed a controversial presidential election in the fall of 2010. The most atrocious human rights abuse was perpetrated at the end of March 2011, by the rebel forces backed by the French and the United Nations troops: the massacre of Duékoué. In one day, hundreds of Laurent Gbagbo's followers were killed. However, the ICC undertook a selective prosecution against Gbagbo's camp.

After a trial of eight years, Laurent Gbagbo was finally acquitted. The news of his unanticipated acquittal shocked the world. Later, that decision was overturned and transformed into freedom with binding and coercive conditions by the Appeals Chamber, which had succumbed to political pressure. The former president of Ivory Coast spent months of confinement in Belgium until the Appeals Chamber rebutted the prosecutor's appeal against his release and confirmed his total acquittal and that of Blé Goudé. He eventually went back to Ivory Coast on June 17, 2021.

The trial of Laurent Gbagbo before the ICC, despite his acquittal (a tardy one), reflects a series of biases germane to international law and international justice, such as the victor's justice stance, the conflict between national law and international law, the question of sovereignty, and the issue of lawfare. The trial of Laurent Gbagbo, which was the hallmark of the selective international justice system embedded in unfairness, led to a historical landmark with his shocking acquittal which led to the indictment of the International Court whose fate has thus been sealed before history.



# Introduction

The existence of an international arbitration institution has been a long-sought dream of justice lovers, human rights activists, and justice seekers across the globe. When the International Criminal Court (ICC) finally came to existence in 2002, it was the latest culmination of a long journey for the search and the quest of global justice in the field of international affairs. It vows to combat impunity, to bring justice to victims, and to bring victimizers to justice. Its birth was a major shift in international arbitration architecture.<sup>1</sup> It aims to enable “the values of global justice, human rights, and the rule of law.”<sup>2</sup> The initial hopes it raised have waned, and it remains today at the center of an unending controversy. This research, which takes the Laurent Gbagbo’s trial as a case study, critically examines the question of global human rights and the *modus operandi* of the International Criminal Court in world politics and in the field of international relations.

The idea of the existence of an international arbitration architecture was first expressed in contemporary history in 1872, after the Franco-Prussian War, by Gustave Moynier, resurfaced recurrently throughout history, during the trial of Leipzig after WWI, during the Nuremberg and Tokyo trials after WWII, and through the subsequent creations of special tribunals: Yugoslavia, Rwanda, and Sierra Leone.<sup>3</sup> This dream finally came to fruition with the creation of the International Criminal Court, whose constitutive document is the Treaty of Rome, adopted in 1998. While the idea of an international justice institution was welcomed, the way the business of the ICC is conducted nurtures suspicion, mistrust and distrust. Three world powers who have veto power at the United Nations (United States, China, and Russia) have not endorsed the court, and some even seek to undermine it. The other powers that enjoy the veto power at the United Nations Security Council (France and United Kingdom) support its existence, like the entire European Union, but have expressed some serious reservations regarding its functioning. In general, most powers use the court to advance their national security agendas to the

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<sup>1</sup> Dawn Rothe and Christopher W. Mullins, *Symbolic Gestures and the Generation of Global Social Control* (Lanham: Lexington Books, 2006), 61.

<sup>2</sup> Dominic McGoldrick and Eric Donnelly, “Criminal Trials before International Tribunals: Legality and Legitimacy,” in *The Permanent International Criminal Court, Legal and Policy Issues*, eds. Dominic McGoldrick et al. (Oxford: Hart Publishing, 2004), 42.

<sup>3</sup> Mark D. Kielsingard, *Reluctant Engagement: US Policy and the International Criminal Court* (Leiden: Martinus Nijhoff Publishers, 2010), 78.

detriment of the interests of true international justice and of the rights of weaker nations, mainly African. There are double-dealings and double standards on the part of both world powers and the ICC itself in the handling of international justice.

Most of the arrest warrants of the ICC were for Africans, and the twenty-seven cases of prosecution concerned African countries, including Ivory Coast, Sudan, the Democratic Republic of Congo, and Kenya. This research deals specifically with the court's relationship with Africa, mainly with Ivory Coast and the trial of its former president, Laurent Gbagbo.

After the electoral stalemate of 2010–2011, following the controversial presidential election in Ivory Coast, the then-incumbent president Laurent Gbagbo, who is known as a nationalist, was believed to have lost while he claimed victory. The international community recognized his challenger Alassane Ouattara as the legitimate president of the country. After failed negotiations, the international community, under the leadership of France and the United Nations, resorted to war against Ivory Coast, siding with the rebels to dislodge him. It was an escalation of violence in the context of the resumption of the war that erupted in 2002, which had led to the division of the country into two parts: the south controlled by Laurent Gbagbo and the north in the hands of the pro–Alassane Ouattara rebels.

The United Nations and France's troops bombed the positions of the army loyal to the former head of state of Ivory Coast, including the presidential palace where he found refuge. He was captured on April 11, 2011, and after seven months of custody in the once-rebel-controlled area in the north of the country, he was transferred to the ICC, where he was put on trial for several counts: namely crimes against humanity, alongside with his youth organization leader, Blé Goudé.<sup>4</sup> Later, the court also issued an arrest warrant for Gbagbo's wife, Simone Gbagbo, who spent seven years in prison in Ivory Coast.<sup>5</sup>

With the involvement of the ICC in the Ivorian crisis, the trial of Laurent Gbagbo became the legal battle of a series of episodes in a crisis that erupted in Ivory Coast in 2002. Thus, this research posits that the hallmark of the controversy of the ICC is the trial of Laurent Gbagbo. While several believed justice was being served, many others decried the selectivity of the court, which omitted the responsibility of Alassane Ouattara and his warlords, who brought

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<sup>4</sup> The ICC confirmed the charges against Blé Goudé on Thursday, December 11, 2014.

<sup>5</sup> The ICC ordered Simone Gbagbo be handed over to it, on Thursday, December 11, 2014, rejecting Alassane Ouattara's regime's claims that it had taken the proper steps to try her in Ivory Coast.

a civil war to Ivory Coast in 2002, and who resorted to violence to dislodge Gbagbo in 2011. The former president of Ivory Coast was therefore singled out in a two-decade crisis in which all sides committed human rights violations. The single most atrocious human rights violation, the massacre of Duékoué (in the western part of the country) was perpetrated by the rebels during the electoral stalemate. Several hundreds of Laurent Gbagbo's followers were butchered, in one day, at the end of March 2011.

An increasing number of critics therefore denounce the one-sided prosecution and assert that the ICC is a neocolonialist institution in the hands of neocolonial forces that have been undermining Africa's quest for self-determination.<sup>6</sup> Its prosecutorial approach has been in collusion with the interests of foreign powers such as France, the former colonial power of the country, which has been on the side of Ouattara's forces and which has been pursuing a neocolonial agenda in its former African colonies, namely in Ivory Coast.

This research discusses the selective prosecutorial rationale and strategy of the ICC and the handling of the prosecutions in the Ivory Coast, and highlights significant issues related to the credibility of the International Criminal Court. The court denied Gbagbo the presumption of innocence, as his bail request was rejected thirteen times. He was eventually acquitted after eight years of trial in the context of a growing opposition against the court embedded in the revival of Pan-Africanism that rose against the court.

While answering the questions mentioned below, I will demonstrate that the forceful engagement of the ICC reinforces the general chorus of the court's critics, who see it as an extension of neo-colonialism: Is the ICC living up to its core functions to promote impartial justice and to undertake impartial investigation? How can the ICC prove its impartiality in Ivory Coast while its one-sided prosecution seems to reinforce the consolidation of the victor's justice? How can the ICC claim that it is not serving neocolonial interests while the consequences of its actions coincide with the plans of the neocolonial forces that initially opposed President Gbagbo?

This research aims at shedding light on factors at the basis of the controversy about the ICC, some inscribed in its founding document. It deconstructs the mainstream and the widespread Manichean view about the Ivorian crisis and Laurent Gbagbo's trial. In light of the historical background of this research, this study demonstrates that the ICC trial of Gbagbo does not serve the interests of

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<sup>6</sup> Raymond Koudou Kessié, "Pourquoi le Président Gbagbo doit être Libéré," in *Le Président Laurent Gbagbo à la Cour pénale internationale: Justice ou imposture*, eds. Raymond Koudou Kessié and Hubert Oulaye (Paris: L'Harmattan, 2013), 224.

true justice and is at odds with the goal of nation building, peace, and reconciliation in a once war-torn country. This work is in contrast with the Eurocentric perspective of the trial.

The discussion in this book is conducted through two theoretical frameworks: the realist theory and Pan-Africanism. The *modus operandi* of France, the United Nations, the Western powers, and the ICC in the Ivorian crisis stands mostly on the realist theory, echoing the words of John Mearsheimer, who argues that “the sad fact is that international politics has always been a ruthless and dangerous business, and it is likely to remain that way.”<sup>7</sup> He states that great powers are never satisfied with the power they have, and therefore they strive to increase it or to control their spheres of influence or expand them.<sup>8</sup> The neocolonial aspect can be interpreted both through the lens of the realist theory and through Pan-Africanism.

With regard to Pan-Africanism, it is imperative to note that it is this movement that seeks to unify Africa and its peoples—and that advocates values such as unity, common purpose, oneness, solidarity, and pride among Africans and peoples of Africans descent.<sup>9</sup> This theory will be used to explain the reaction of a community of justice seekers and freedom lovers who see the fate of Laurent Gbagbo as the epitome of the African collective memory filled with recurrent tragedies from slavery to neo-colonialism. For them, the trial is a remembrance of the misfortunes of the African leadership and of the pogrom of the African people. Therefore, it will be demonstrated how this trial captures the imagination of Africa and its people and contributes to the revival of Pan-Africanism.

The historical context is also a favorable opportunity to shed light on this study. Recent political developments that have transpired in the United States, in Sudan, and in the Russian invasion of Ukraine pique interest in this book. A book on the ICC in a context marked by an ongoing war between the United States and the court, the military overthrow of Omar al-Bashir, former president of Sudan, who has been a target of the ICC after a people’s movement, and the numerous call for justice against the Russian president Vladimir Putin since the Russian invasion of Ukraine on February 24, 2022 sharpened the curiosity of the court stakeholders and many readers. Besides the unpredictable and suspenseful trial of the former Ivorian president, these three events

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<sup>7</sup> John J. Mearsheimer, *The Tragedy of Great Power Politics* (New York: W.W. Norton & Company, 2003), 2.

<sup>8</sup> John J. Mearsheimer, *The Tragedy of Great Power Politics*, 2-3.

<sup>9</sup> P. Olanwuwe Esedebe, *Pan-Africanism: The Idea and Movement 1776–1963*, 2nd ed. (Washington, DC: Howard University Press, 1994), 5.

heightened the hotly debated issue of international justice's ability to deliver justice.

This research is significant in many ways. The book contributes to the plurality of discourses about international justice, about the relationship between the ICC and Africa, and about the trial of Laurent Gbagbo. It is a distinctive and singular work that will greatly contribute to enriching the debate about the ICC and Africa. It will be one of the very first in English to discuss at length the Ivory Coast crisis and Laurent Gbagbo's trial in relation to international justice, Pan-Africanism, and neo-colonialism. It is important to underline that there has been a blackout of that trial in the United States and in the English-speaking world. Consequently, many scholars and people are uninformed about it. Most books published on the role of the International Criminal Court in the Ivory Coast crisis are in French. These pioneer books gave a thorough and expansive analysis of Gbagbo's trial and denounced the prosecutorial approach of the ICC in collusion with neocolonial interests, but they could not link such insightful analysis to the discussion on Pan-Africanism and to the history of international justice as this work does.

This book will therefore fill a vacuum. It provides to the readers an update about the intricacies of a trial that is both the hallmark of the controversy surrounding the ICC and a landmark in its outcome in the history of international justice. Laurent Gbagbo is the first former head of state to be brought before the court; he was then the first former head of state to be acquitted, leaving many of his detractors in disbelief and shock.

This study intersects with social sciences and humanities, thus being a contribution that is likely to be of interest to a wide range of people. The research draws from primary and secondary data, relevant books, scholarly articles, and newspaper articles. Part of the study is an eyewitness account of the Ivory Coast crisis. This research is enriched with firsthand information, thanks to my background in journalism. Court documents produced by judges and various chambers, the prosecutor, and Gbagbo's legal defense provided an insightful source of information that enrich the study. The ICC videos of the trial which was broadcasted live are a useful wealth of information as well.

This study proceeds in five major parts. The first part deals with the historical account of the crisis, which highlights the specific features of the Ivorian crisis. Therefore, it is entitled "Anatomy of a conflict." It is composed of five subparts: ethnicity, violence, electoral stalemate, neocolonial aspect of the crisis, and the Pan-African dimension of the Ivorian crisis. The historical account of the crisis lays the ground to help better understand the question of the ICC (un)fairness.

The second chapter, entitled "International justice and the International Criminal Court," discusses the dual journey of international justice and of the notion of human rights that led to the creation of the ICC. In addition, this

chapter stresses the double-dealings of the ICC and its sponsors (the West) and engages a debate about Africa and the court. The third chapter focuses on how the ICC dealt with the Ivory Coast crisis. It is entitled “The ICC and Ivory Coast: justice, peace, and neo-colonialism.” This section of the book highlights a set of the Laurent Gbagbo trial’s incongruities, thus highlighting the role of the international criminal court in Ivory Coast as a reflection of Western neo-colonialism. The fourth chapter, entitled “Laurent Gbagbo’s trial, testimonies, acquittal, and the decision” gives a summative account of the testimonies of the prosecutor’s witnesses. It will be demonstrated that they contributed to the weakening of the case as several key testimonies led to the acquittal of the former president of Ivory Coast. The last chapter, “The decision, the prosecutor’s appeal, and the Appeals Chamber’s judgement,” contains a summary of the oral decision of the Pre-Trial Chamber that decided to acquit Laurent Gbagbo and Blé Goudé in mid-January 2019. This chapter also includes the appeal of the prosecutor against the acquittal and the Appeals Chamber’s total acquittal of the accused. In sum, in this work, the trial of Laurent Gbagbo has served as a case study to demonstrate that the court has failed to live up to its core functions and its main missions, which are about ending impunity and investigating fairly. This research is definitively an unsavory tale and an unflattering assessment of the ICC.



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# Glossary

UNOCI	United Nations Operations in Côte d'Ivoire
NATO	North Atlantic Treaty Organization
GIMPA	Ghana Institute of Management and Public Administration
WAEMU	West African Economic Monetary Union
PANA	<i>Parti Nationaliste</i>
SAA	<i>Syndicat Agricole Agricole</i>
RDA	<i>Rassemblement Démocratique Africain</i>
PDCI	<i>Parti Démocratique de Côte d'Ivoire</i>
SYNARES	<i>Syndicat National pour la Recherche et l'Enseignement Supérieur</i>
MEECI	<i>Mouvement des Etudiants et Elèves de Côte d'Ivoire</i>
FESCI	<i>Fédération Estudiantine et Scolaire de Côte d'Ivoire</i>
FPI	<i>Front Populaire Ivoirien</i>
GPP	<i>Groupement Patriotique pour la Paix</i>
FLGO	<i>Front de Libération du Grand Ouest</i>
NFI	Netherlands Forensic Institute
ECOWAS	Economic Community of West African States
ECOMOG	the Economic Community of West African Monitoring Group
AU	African Union
FRCI	<i>Forces Républicaines de Côte d'Ivoire</i>
BCEAO	Banque Centrale des États de l'Afrique de l'Ouest
FDS	Forces de Défense de Sécurité
IMT	International Military Tribunals
NCNC	National Council for Nigeria and the Cameroons
NEPAD	New Economic Partnership for Africa's Development
PIDE	<i>Polícia Internacional e de Defesa do Estado</i>
AfCFTA	African Continental Free Trade
OAU	Organization of African Unity
UNIA	Universal Negro Improvement Association
ASPA	American Servicemembers' Protection Act
UNWCC	United Nations War Crimes Commission
COJEP	<i>Congrès Panafricain des Jeunes Patriotes</i>
CFA	<i>Communauté Financière Française</i>





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