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**Victor's Justice: Assessing the Impact of One-Sided
International Prosecutions on Grave Crimes in Côte d'Ivoire**

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**Victor's Justice: Assessing the Impact of One-Sided
International Prosecutions on Grave Crimes in Côte d'Ivoire**

by

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Report

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Dedication

This report is dedicated first and foremost to my fiancée, Casey Cork, who has stood by me throughout this arduous process, provided support and comfort along the way, and (God knows why) agreed to marry me halfway through. It is also dedicated to my family – my loving parents Dr. Santos M. Soberon and Catherine Soberon, and my siblings Nicolas Soberon and Diana Bishop. I also have endless gratitude for my supervisor, Dr. Alan Kuperman, for teaching me how to see the world from a new perspective in the classroom and for his patience and guidance throughout the writing and bureaucracy that led to this point. Additional thanks goes to the staff of the LBJ School of Public Affairs, namely Dr. Catherine Weaver, Dr. Jeremy Suri, and Chaz Nailor. At the UT School of Law, I want to thank Professors Karen Engle, Ariel Dulitzky, H. W. Perry, Cary C. Franklin, and Derek P. Jinks. I finally want to thank Andy Uhler for convincing me that I am smart, Michael Alan Lyle for allowing me to laugh at my misfortunes, and Andrew Long for giving me the courage to finish.

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by

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Among the international responses to the political violence that erupted in Côte d'Ivoire in the wake of the 2010-11 electoral conflict was a swift judicial intervention by the International Criminal Court (ICC). Central to the mission of the ICC is to prevent the future commission of those grave crimes within its jurisdiction and ending the impunity of those that have perpetrated such crimes. The ICC began its prosecution by targeting crimes committed by one side of the conflict – that of ousted Ivorian President Laurent Gbagbo – while refraining from prosecuting the crimes committed by those loyal to the victorious President Alassane Ouattara. The report develops a theory and predicts both positive and negative effects of one-sided prosecutions. After providing historical context, the report tests the theory's predictions from evidence of the subsequent criminally violent behavior committed by both sides after the ICC transferred Gbagbo to the ICC in October 2011. Amid the difficulties in ascertaining the motives for such behavior, the report concludes that Gbagbo loyalists were not deterred from committing more violent crimes, and that Ouattara loyalists continued to commit violent crimes with impunity. An answer to the question of whether or not Gbagbo loyalists retaliated because of the ICC's actions remains elusive. However, the report points to potential research that could answer that question and generate new scholarship on the impact of the ICC's one-sided prosecutions in Côte d'Ivoire.

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Introduction

Following a contested election in 2010 and civil conflict in the following year, Côte d'Ivoire was scarred by violent atrocities committed by forces loyal to the ousted President Laurent Gbagbo and supporters of the electoral victor Alassane Ouattara. Soon after Ouattara was announced the victor, he petitioned the International Criminal Court (ICC) to investigate the crimes committed in the unraveling post-electoral crisis. Upon his inauguration in May of 2011, President Ouattara quickly promised reconciliation for the wounded nation, and impartial justice on behalf of victims of atrocities from all sides of the conflict. Later that year, the ICC began its investigations of prosecutions against Gbagbo and his affiliates. But advocates of international justice expected the intervention to be evenhanded. For example, the International Crisis Group noted, "It is inconceivable that the ICC will hesitate to investigate the Duékoué killings for example, or to open proceedings against senior [pro-Ouattara] officers if they are implicated."¹ However, in the four years since, the ICC has yet to indict figures from Ouattara's government. This led to criticisms of the ICC's one-sided prosecutorial approach from a number of activists and NGOs who saw a number of negative consequences that would arise from ignoring well-documented abuses committed by the ultimate victors.

Issues of impunity and atrocity prevention are at the heart of the discourse surrounding international criminal justice and the work of the ICC. In the preamble of the Rome Statute of the ICC (the institution's foundational treaty), the signatories affirm that

¹ International Crisis Group, *A Critical Period for Ensuring Stability in Côte d'Ivoire*, Africa Report 176, August 1, 2011, p. 11 (Hereinafter "Crisis Group, 'Critical Period'").

they are “[d]etermined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of [atrocities].”² The underlying assumption of the international criminal justice effort is that there is a causal link between holding individual perpetrators accountable for grave crimes and the future commission of those crimes by not only those same perpetrators, but by others in that society and beyond. While commenting on the one-sided prosecutions in Côte d’Ivoire, scholar Alana Tiemessen observed the following: “Political and social divisions in post-conflict Côte d’Ivoire have become further entrenched with the recognition that both international and domestic justice is imbalanced, partial, and politically subservient to ruling elites. This is problematic given the veritable link between impunity and renewed cycles of violence in this case.”³ The underlying theory is that one-sided prosecutions by the ICC will cause officials aligned with Gbagbo to resent the undue focus and perceived bias against them, and to violently retaliate against Ouattara’s unprosecuted allies. It also predicts that the victims of abuses committed by Ouattara’s forces will resort to violent vigilantism in the absence of formal justice. For the unprosecuted, it predicts that those perpetrators will continue to commit abuses with impunity.

This paper analyzes the four years since Laurent Gbagbo was transferred to the ICC and the outcomes of the ICC’s imbalanced, one-sided prosecutions. It finds that the ICC’s one-sided prosecutions in Côte d’Ivoire have not ameliorated the causes of

² Rome Statute of the International Criminal Court, July 17, 1998, 37 I.L.M. 999 (hereinafter “Rome Statute”).

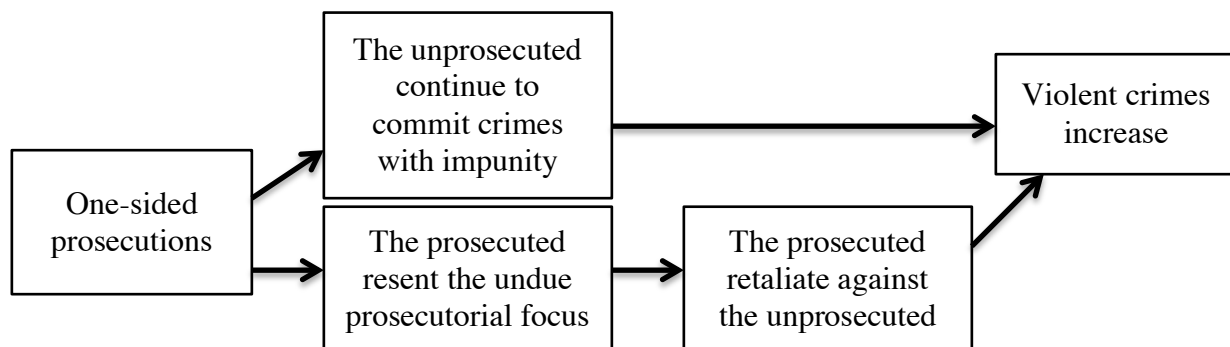
³ Alana Tiemessen, “The International Criminal Court and the Politics of Prosecutions,” *The International Journal of Human Rights*, vol. 18:4-5 (2014), 444-461.

violence since late November 2011. The biased prosecution has, on the one hand, allowed pro-Gbagbo leaders in exile to justify their facilitation of military incursions into the country. On the other hand, it has encouraged figures in Ouattara’s regime to use the ICC’s Gbagbo-focused prosecutions as cover for their own prosecutorial inaction towards pro-Ouattara officials responsible for grave crimes. However, these negative effects are limited by other circumstances in Côte d’Ivoire and the broader region. Moreover, recent actions by the Ouattara government show limited promise to remedy the consequences of one-sided prosecution. The mixed picture demonstrated by the evidence suggests that the theory underlying the ICC, and international justice more broadly, is either incompatible with one-sided prosecutions or insufficient in explaining the continued commission of grave crimes under the jurisdiction of the ICC.

THEORY, PREDICTIONS, AND METHODOLOGY

The causal theory outlined above can be simplified and represented in the following arrow diagram:

Figure 1. The Causal Theory⁴



⁴ “Violent crimes” as listed in the theory are limited to instances of violence that could be prosecuted by the ICC.

The analysis will proceed by examining the predicted outcomes for both the Gbagbo and Ouattara camps. Since the theory underlying the ICC is only relevant to the commission of those crimes that the ICC could prosecute, the predictions and the evidence will focus such crimes. These predictions specifically relate to the commission of violent acts that could be within the jurisdiction of the ICC, namely war crimes and crimes against humanity.⁵ This excludes the incidence of normal violent crimes that remain the exclusive domain of domestic authorities. Furthermore, it is important to distinguish between a desire to retake power and a desire to commit violent crimes. There is a wealth of evidence that demonstrates the various attempts by exiled pro-Gbagbo figures to regain political power, and these attempts are discussed below. However relevant these efforts may be, standing alone they do not amount to the violent crimes contemplated by the theory.

The first prediction results from the impunity among Ouattara's administration. It predicts that Ouattara loyalists (specifically, alleged war criminals) would continue to commit serious human rights abuses, war crimes, and other forms of state sponsored violence after the ICC's biased intervention. This does not mean that the violent crimes would have to be committed by the same individuals responsible for crimes committed over the course of the post-electoral conflict. Other individuals loyal to Ouattara might commit crimes with impunity with the expectation that the ICC would not prosecute them. Statements from Ouattara loyalists and officials evincing their impunity after such

⁵ The evidence does not suggest that acts of genocide (another crime within the ICC's jurisdiction) were committed, and the ICC is not yet able to prosecute crimes of aggression. Analyzing whether each instance of violence would rise to the level of one of the crimes within the jurisdiction of the ICC in light of the Court's precedent and the Rome Statute is worthy of inspection, but outside the scope of this report.

acts would confirm this prediction. Less direct evidence for this prediction would be crimes committed by the government after the prosecutions of Gbagbo officials have commenced.

The second prediction concerning the actions of individuals aligned with Gbagbo is difficult to clearly outline. The theory appears to predict that pro-Gbagbo ex-combatants, exiled officers, and associated militias would continue to launch attacks amounting to grave crimes in retaliation to the perceived imbalance in post-conflict justice. These attacks might be in direct response to ICC actions, or motivated by a desire to obtain “vigilante justice” to rectify “victor’s justice.” However, a possible predicted outcome of one-sided prosecutions discussed below is that Gbagbo loyalists would be deterred from committing such crimes after seeing their leaders and colleagues prosecuted by the ICC. There is a related prediction – that those figures currently indicted by the ICC yet still free in the Ivory Coast would be deterred from committing further acts of violence. However, it is untestable in the Ivorian case since currently only three individuals have been indicted, and they are all in custody – two (Laurent Gbagbo and Charles Blé Goudé) are being held at The Hague, and the third (Simone Gbagbo) is being detained in the Ivory Coast.

These effects are predicted after November 30, 2011, when the ICC received Laurent Gbagbo at The Hague and began its first prosecution. Obviously, the most direct evidence would be actions consistent with the predictions combined with statements by officials, combatants, and alleged war criminals describing the motivations behind their actions in terms of the ICC’s actions. However, this kind of blatant evidence is limited, which leaves the analysis to draw inferences from other kinds of evidence. This includes the patterns and sources of violence, and quotes from civilians, combatants, former Gbagbo-aligned leaders, and current Ouattara-associated officials. In analyzing whether

or not these predictions have come to fruition, this report relies on evidence gathered by NGOs, the United Nations (UN), and journalists. The lack of direct evidence linking acts of violence to ICC actions complicates the analysis. However, the report still draws meaningful conclusions based on what is available.

A History of Côte d'Ivoire and ICC Involvement

A pattern familiar to Côte d'Ivoire emerged in the months preceding and following the 2011 New Year. In short, violent conflict erupted after contested presidential election results, and that violence occurred along ethnic lines. At the behest of the embattled and recently elected Ouattara, the ICC reconfirmed its jurisdiction in December of 2010 and ICC Pre-Trial Chamber authorized the initiation of investigations in October of the following year. Since then, the ICC has indicted three individuals – Laurent Gbagbo, Charles Blé Goudé, and Simone Gbagbo. This section will explore the historical background of the post-electoral violence, the nature of the conflict itself, and the beginning of the ICC's involvement in Côte d'Ivoire. The brief history outlined below demonstrates the history of violent transfers of power in the country before the post-electoral crisis of 2010-11.

HISTORICAL BACKGROUND

Between 1980 and 1990, the economic success of Côte d'Ivoire's post-independence era had faded, and public unrest began to foment. The catholic-socialist-academic Laurent Gbagbo at the time was the most vocal opponent of the then-President Houphouët-Boigny. In 1988, Houphouët-Boigny allowed Gbagbo to return to Côte d'Ivoire from exile, "receiving him in his palace as the prodigal son."⁶ That year, Gbagbo founded the opposition party *Front populaire ivoirien* (FPI). It was in this unstable context that President Houphouët-Boigny announced multi-party elections in 1990.⁷ That

⁶ Tamar Golan, "Obituary: Felix Houphouët-Boigny," *The Independent*, December 8, 1993. Accessed March 19, 2015 <http://www.independent.co.uk/news/people/obituary-felix-houphouetboigny-1466093.html>

⁷ Richard C. Crook, "Winning Coalitions and Ethno-Regional Politics: The Failure of the Opposition in the 1990 and 1995 Elections in Côte d'Ivoire," *African Affairs* 96, 383: 219

same year the former IMF technocrat Alassane Ouattara was installed as Prime Minister by the President to oversee the implementation of austerity reforms to tackle an insurmountable debt.⁸ In the 1990 elections, Gbagbo led the FPI against the dominant party of President Houphouët-Boigny – *Parti démocratique de la Côte d'Ivoire* (PDCI) – in a campaign that sought to paint the dominant party as serving the interests of the Baoulé ethnic group.⁹ Gbagbo's FPI lost with the incumbent President receiving an overwhelming majority.¹⁰ The only support the FPI could gain was from the southern, predominantly Christian Akan ethnic group, which felt disenfranchised by certain policies of President Houphouët-Boigny.¹¹

After the death of Houphouët-Boigny in December of 1993, internal divisions arose within the ruling PDCI, now led by the Speaker of the National Assembly Henri Konan Bédié.¹² As established by the constitutional revisions put in place by the late President Houphouët-Boigny, Bédié assumed the presidency, and soon after, Ouattara returned to Washington, D.C. as a Deputy Director-General of the IMF.¹³ Supporters of Ouattara (primarily from northern Muslim ethnic groups) split from the PDCI to form the *Rassemblement des républicains* (RDR). Richard C. Crook places the RDR in context:

The RDR's initial stance was that of radical reformers who claimed to be the 'true' *houphouëtistes*—standard bearers for Houphouët-Boigny's political legacy and beliefs; it was the PDCI, they said, which had become corrupt..., whilst they represented a path which was loyal to real *houphouëtisme*.¹⁴

⁸ Ibid.

⁹ Ibid.; President Houphouët-Boigny was from the Baoulé ethnic group – one of the largest in Côte d'Ivoire.

¹⁰ Ibid, 220.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid, 225.

¹⁴ Ibid, p. 229.

The spring of 1995 saw the unlikely political union of the RDR and the FPI into the *Front republican*.¹⁵ The FPI political calculus assumed that the only chance their party had at defeating Bédié at the polls later that year was through the Front and the support of a broad northern coalition represented by the RDR.¹⁶ Bédié was wary of these potential challengers, and he espoused the ethnically charged notion of *Ivoirité*¹⁷ and revised the Electoral Code to drastically limit the eligibility of who could hold certain national offices, including the office of the President on the basis of nationality.¹⁸ The exclusion mainly targeted Ouattara's northern ethnic groups, although both the RDR and the FPI had serious grievances with this revision.¹⁹ In September of that year, the government banned street marches from any political group. But demonstrations continued, leading to a violent confrontation on October 2, 1995, which came to be known as "Black Monday" in Côte d'Ivoire.²⁰ After it was clear that Ouattara would not seek a nomination, a series of decisions led to the ultimate boycott of the 1995 elections by the FPI.²¹ In addition, the party openly sought to violently disrupt elections in a way "that can only be described as an attempt to foment a state of insurrection."²² The boycott and disruptions were unsuccessful in preventing the reelection of Bédié's PDCI later that year.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Abu Bakarr Bah, "Democracy and Civil War: Citizenship and Peacemaking in Côte d'Ivoire," *African Affairs* 109 (2010), 602.

¹⁸ Crook, at p. 229.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid. (Crook, writing in 1997, incorrectly predicts that the decision not to run would spell the end of Gbagbo's career).

²² Ibid, p.233.

Bédié was eventually ousted from power by a military coup led by General Robert Guéï in December of 1999.²³ General Guéï sought to solidify his position through elections the following year. Even after disqualifying Ouattara under the same *Ivoirité* doctrine, General Guéï lost to Laurent Gbagbo.²⁴ When Guéï declared the results invalid, “[s]ubsequent riots and attacks on the presidential palace forced him to flee.”²⁵ Gbagbo then took the presidency, and Ouattara supporters clamored for new elections and inclusion to rectify the injustices of 2000.²⁶ However, Gbagbo perpetuated the doctrine of *Ivoirité* instead.²⁷ Having been “[c]onverted by his wife to a militant form of evangelical Protestantism, he saw Ouattara’s northerners as the enemy in a growing religious struggle between Islam and Christianity in Africa.”²⁸ In the time preceding the first Ivorian Civil War, “Gbagbo gradually purged northerners from the army, the police, and the civil service, replacing them with his own supporters... [while he] and his wife also armed their own militias.”²⁹

Ethnic tensions simmered as leaders in the north balked at the doctrine of *Ivoirité* and demanded full citizenship rights.³⁰ A fresh outbreak of violence was precipitated in 2002 by a coup attempt initiated by a group of Muslims ex-army officials.³¹ The coup was pushed back, and the ensuing civil war between the army and the allied military groups operating under the banner *Forces nouvelles* (FN) of the north led by General Guillaume Soro saw the death of 10,000 people with hundreds of thousands displaced

²³ Theirno Mouctar Bah, “Addressing Côte d’Ivoire’s Deeper Crisis,” *Africa Security Brief No.19*, March 2012, 3.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Daniel Chirot, “The Debacle in Côte d’Ivoire,” *Journal of Democracy* 17, no. 2 (April 2006): 63-77.

²⁷ Bah, 603.

²⁸ Chirot, 71.

²⁹ Ibid.

³⁰ Bah, Abu Bakarr, 604.

³¹ Chirot, 71.

by the end of 2002.³² The French military initially deployed a force of 3,000 to protect French citizens in Côte d’Ivoire and to protect the Gbagbo government by placing the troops between the north and south due to the fear “that a rebel victory would produce another Rwanda, with hundreds of thousands killed.”³³ This force was later increased to 4,000 French troops and 6,000 UN peacekeepers.³⁴ The conflict endured with numerous failed attempts at a peace agreement until the 2007 signing of the Ouagadougou Political Agreement (OPA), which demanded the processes leading to new elections within 10 months of its signing.³⁵ Gbagbo ensured that these elections were delayed six times before eventually being held on October 31, 2010.³⁶ In the first round, President Gbagbo’s main opponents were old rivals – Ouattara and Bédié.³⁷ The first round of presidential elections left no one with a clear majority, and run-off elections were announced between the two candidates receiving the highest votes – Gbagbo and Ouattara. In the second round, Bédié and his PDCI threw their support behind Ouattara.³⁸

The Post-Election Conflict

After the second round of presidential elections on November 28, 2010, the initial results showed a trend towards Ouattara benefitting largely from the support of Bédié’s

³² Ibid. *Forces nouvelles* may alternatively be seen abbreviated as FAFN.

³³ Ibid. 72.

³⁴ Ibid.

³⁵ Ouagadougou Political Agreement Text, “Letter dated 13 March 2007 from the Secretary-General addressed to the President of the Security Council” S/2007/144, Annex

³⁶ International Crisis Group, *Côte d’Ivoire: Securing the Electoral Process*, Africa Report No. 158, May 5, 2010.

³⁷ Reuters, “PREVIEW-Ivory Coast Pins Hopes on First Poll in 10 Years.” October 29, 2010. Accessed March 19, 2015. <http://www.reuters.com/article/2010/10/29/ivorycoast-election-idUSLDE69Q2O320101029>

³⁸ International Crisis Group, *Côte d’Ivoire: Is War the Only Option?*, Africa Report 171, March 3, 2011. (Hereinafter “ICG Report, March 2011”)

PDCI. On November 30, the state owned media *Radio télévision ivoirienne* (RTI) dismantled the television studio that had been prepared in the offices of the *Commission électorale indépendante* (CEI) to announce the results. Finally, on December 2, the CEI announced Ouattara as the winner. Two days later, December 4, the Constitutional Council (chaired by a Gbagbo appointee) declared Gbagbo to be the winner after cancelling more than 660,000 votes from FN strongholds and centers of Ouattara support, claiming fraud, and systemic irregularities. Later that same day, Young-Jin Choi – Special Representative of the Secretary General of the United Nations in Cote d’Ivoire – certified the results of the CEI.³⁹ The following day, both Gbagbo and Ouattara took their oaths to assume the presidency. From that point until the end of the conflict, Alassane Ouattara, RHDP party officials, and CEI officials were effectively blockaded in the Golf Hotel in Abidjan operating a parallel government guarded by UNOCI personnel.⁴⁰

On December 7, ECOWAS⁴¹ issued a communiqué supporting the findings of the CEI and recognizing Ouattara as the winner.⁴² This was followed, two days later, by the African Union’s endorsement. Then on December 20, 2010,⁴³ the UN Security Council formally echoed the chain of recognitions in Resolution 1962.⁴⁴ Although Ouattara

³⁹ UN News Centre. "UN Chief Supports Certification of Ivorian Presidential Poll, Congratulates Ouattara." December 4, 2010, accessed March 19, 2015

<http://www.un.org/apps/news/story.asp?NewsID=36952&Cr=ivoire&Cr1#.UMKKN5Pjm6w>

⁴⁰ "Twenty-seventh progress report of the Secretary-General on the United Nations Operation in Côte d’Ivoire," S/2011/211, March 30, 2011, p. 10 (Hereinafter "UNOCI 27th Progress Report"). *See also*, Thomas Fessey, "Ivory Coast: Life Inside Ouattara's Hotel." BBC, December 23, 2010. Accessed March 19, 2015. <http://www.bbc.co.uk/news/world-africa-12068131>.

⁴¹ ECOWAS is the Economic Community of West African States.

⁴² ECOWAS. "Final Communiqué on the Extraordinary Session of the Authority of Heads of State and Government on Côte d’Ivoire (Nu02da188/2010)." December 7, 2010, accessed March 19, 2015.

<http://news.ecowas.int/presseshow.php?nb=188&lang=en&annee=2010>

⁴³ African Union Peace and Security Council. "Communique of the 252nd Meeting of the Peace and Security Council." December 9, 2010, accessed March 19, 2015

<http://www.peaceau.org/uploads/communiquy-of-the-252nd.pdf>

⁴⁴ S/RES/1962 (2010)

gained near universal recognition, the question of who really won the election is critical to questions of legitimacy, since recognition may not reflect reality. After an extensive analysis of the results, International Crisis Group found no evidence of irregularities that would necessitate a cancellation of hundreds of thousands of votes. Even assuming that those votes had to be thrown out, the Constitutional Council had no legal authority to cancel the votes and proclaim a winner without another election. In the words of the report, “The Council, chaired by Paul Yao N’Dré, simply picked Gbagbo as president.”⁴⁵

Pro-Gbagbo forces perpetrated most of the violence that immediately followed the run-off election, from December 2010 through January 2011.⁴⁶ This violence was largely localized to Abidjan with the military violently responding to demonstrations by pro-Ouattara supporters. However there were a few isolated incidents of violence in the north committed by FN against pro-Gbagbo civilians.⁴⁷ The groups involved in this suppression in the capital were mostly pro-Gbagbo military forces, which sometimes worked in concert with militant youth groups such as the “Young Patriots” or the *Fédération Estudiantine et Scolaire de Côte d’Ivoire* (FESCI).⁴⁸ Human Rights Watch (HRW) recounts the methods employed by pro-Gbagbo forces to disperse demonstrations, noting that the response would begin with tear gas and shots of live ammunition over the heads of protesters followed minutes later by live ammunition and grenade-throwing at protesters.⁴⁹ These incidents continued in Abidjan and its suburbs through January, as individuals and groups backing Ouattara were being targeted with enforced

⁴⁵ ICG Report, March 2011 p. 5.

⁴⁶ Human Rights Watch, “*They Killed Them Like It Was Nothing*” - *The Need for Justice for Côte d’Ivoire’s Post-Election Crimes*, October 2011, p. 26. The report notes that there were some isolated incidents of violence committed in the north by the FN against Gbagbo supporters. (Hereinafter “HRW Report, October 2011”).

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid, 27.

disappearances, sexual violence, and killings.⁵⁰ As stated above, the north saw some violence, but much of the harm came in the form of intimidation by FN forces, and tens of thousands of pro-Gbagbo supporters fled in anticipation of the same kind of abuses experienced during the 2002-2003 civil war.⁵¹

The outright militarization of the conflict began in late February 2011. On February 24, a group of allegedly pro-Ouattara militants named the “Invisible Commandos” took control of large sections of Abobo, a suburb north of Abidjan loyal to Ouattara.⁵² The allegiance and motives of these forces remained opaque throughout the conflict, as they claimed at once not to support Ouattara’s claim to the presidency, but to seek to force Gbagbo from office.⁵³ Nonetheless, it was clear that the figure leading the Invisible Commandos was a man named General Ibrahim Coulibaly, a former FN leader.⁵⁴ The invisible commandos were responsible for numerous attacks on civilians in a pro-Gbagbo village and the extrajudicial killing of pro-Gbagbo militants.⁵⁵ Soon after the Invisible Commando attacks in Abobo, the leader of Gbagbo’s Young Patriots appeared on the state-sponsored RTI to order youths to operate checkpoints in their neighborhoods and to “denounce every foreigner who enters.”⁵⁶ This was followed by a member of the Young Patriots exhorting viewers to do the same, emphasizing, “if you

⁵⁰ *Ibid.*, 27-37.

⁵¹ *Ibid.*, 37-40.

⁵² HRW Report, October 2011, p. 41. *See also* Loucoumane Coulibaly. "Battles Rage with Mysterious Ivory Coast Insurgents." *Reuters*, February 25, 2011. <http://www.reuters.com/article/2011/02/25/ivorycoast-idAFLDE71O0PA20110225>.

⁵³ Tim Cocks, "Ivorian Abidjan Insurgents Say Don't Back Ouattara." *Reuters*, March 27, 2011, accessed March 18, 2015 <http://uk.reuters.com/article/2011/03/27/uk-ivorycoast-insurgents-idUKTRE72Q1N720110327>

⁵⁴ HRW Report, October 2011, at 41.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*, 42.

don't denounce [the foreigners], you are a rebel, you are the enemy of Côte d'Ivoire, and you must be treated as such!"⁵⁷

From late February to mid March, broadcasts from *Radiodiffusion-Télévision ivoirienne* (RTI) increased their incitement against anyone from northern ethnic groups or from an immigrant background, characterized as sub-human.⁵⁸ HRW reported that it was a mixture of "xenophobic incitement and the first sign of military threat" from rebels that led to increased repression and violence from pro-Gbagbo forces in Abobo and Abidjan. It is not immediately clear that the Invisible Commandos were under Ouattara's chain of command, but it is clear that there was a dramatic escalation in violence around Abidjan after the initial Invisible Commando attack in late February.

All the while, the western regions of the country saw serious violent episodes.⁵⁹ Particularly, the town of Duékoué, "the site of major inter-ethnic violence in 2005,"⁶⁰ saw a string of attacks against predominantly Muslim ethnic groups and immigrants by pro-Gbagbo forces.⁶¹ This pattern of violence was repeated in a series of attacks from both pro-Gbagbo and pro-Ouattara forces until the eventual triumph of Ouattara's forces.

The month of March 2011 saw an escalation in violence within Abidjan. Gbagbo's government stirred international outrage when its forces shelled pro-Ouattara neighborhoods with rockets and mortars between March 11 and 24.⁶² In particular, the world took note when a market in Abobo was shelled, resulting in the death of 20 civilians.⁶³ This eventually spurred the UN Security Council to adopt Resolution 1975 on

⁵⁷ Ibid.

⁵⁸ Ibid. 43.

⁵⁹ HRW Report, October 2011, 59.

⁶⁰ Scott Strauss, "'It's Sheer Horror Here': Patterns of Violence During the First Four Months of Côte d'Ivoire's Post-Electoral Conflict," *African Affairs*, 110/440, 481–489, 486.

⁶¹ HRW Report, October 2012, 59.

⁶² Ibid. p. 64.

⁶³ Ibid. at 66.

March 30, 2011, which enhanced the mandate of UNOCI to “prevent the use of heavy weapons against the civilian population.”⁶⁴

On March 17, Ouattara announced the creation of the *Forces republicains de Côte d’Ivoire* (FRCI) composed of former FN rebels and those who had defected from the FDS.⁶⁵ Soon after the announcement, Ouattara supporters estimated that they had the “secret support of as much as 80 per cent of the divided army...”⁶⁶ The march south to Abidjan was swift. In just 12 days, the FRCI controlled much of the country.⁶⁷ As HRW reported:

By March 29, after a month of tense fighting with primarily pro-Gbagbo militias and mercenaries, the now-created Republican Forces controlled the west. In the subsequent two days, town after town fell throughout southern, central, and eastern Côte d’Ivoire as attacks opened up on three fronts. By March 31, the Republican Forces converged on Abidjan and began a battle that would culminate in Gbagbo’s April 11 arrest.⁶⁸

This advance was marred with abuses by the new FRCI in the west. Most notably, the FRCI working in concert with “Dozo” militants and another militia led by Amadé Ouérémi was directly responsible for the massacre in the western town of Duékoué on March 29.⁶⁹ The attack resulted in the killing of hundreds of civilians among the Guéré ethnic group, seen as Gbagbo supporters. Strauss observed that this was perhaps “the worst massacre during the electoral crisis.”⁷⁰ According to HRW, armed men wearing the uniform of Ouattara’s Republican forces were identified among the perpetrators by

⁶⁴ S/RES/1975 (2011).

⁶⁵ Crisis Group, “Critical Period,” 3.

⁶⁶ Katrina Manson, “Ouattara Forms New Ivory Coast Army.” *The Financial Times*, March 19, 2011.

⁶⁷ HRW Report, October 2011, at 75.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, 87.

⁷⁰ Strauss at 486.

victims in Duékoué.⁷¹ A pattern of such abuse continued in numerous towns in the campaign that led to the eventual capture of the capital Abidjan. As HRW reports, “At times in systematic and organized operations, and at times in simple revenge, the Republican Forces engaged in collective punishment against young males from ethnic groups aligned with Gbagbo—committing extrajudicial executions in neighborhoods and detention sites and subjecting scores more to inhumane treatment that at times reached the level of torture.”⁷²

As Ouattara’s forces converged on Abidjan, their control of the capital led to the eventual detention and arrest of Gbagbo in April of 2011.⁷³ However, the capture of Abidjan was not the end of large-scale violence. HHRW reported that Ouattara’s forces “killed at least 95 unarmed people in Abidjan during operations in late April and May, when they sealed off and searched areas formerly controlled by pro-Gbagbo militia.”⁷⁴ HRW found that these reprisals were marked by “clear ethnic targeting during widespread acts of reprisal and intimidation.”⁷⁵ In early May, the UN Human Rights Council established the International Commission of Inquiry on Côte d’Ivoire to investigate the crimes committed over the course of the conflict and the continued violence.⁷⁶ Ouattara was officially inaugurated the same month with a promise of reconciliation.⁷⁷ The new President announced the creation of a commission to

⁷¹ HRW Report, October 2011, at 87.

⁷² *Ibid.*, 91.

⁷³ BBC, “Ivory Coast: ‘Gbagbo under house arrest in villa’,” April 13, 2011, available at <http://www.bbc.com/news/world-africa-13065633>.

⁷⁴ Human Rights Watch, “Côte d’Ivoire: Gbagbo Supporters Tortured, Killed in Abidjan,” June 2, 2011, available at <https://www.hrw.org/news/2011/06/02/cote-divoire-gbagbo-supporters-tortured-killed-abidjan>.

⁷⁵ *Ibid.*

⁷⁶ UN News Centre, “Côte di’Ivoire: UN human rights team heads to alleged mass grave site,” May 6, 2011, <http://www.un.org/apps/news/story.asp?NewsID=38294#.VIPDFWSrQy4>.

⁷⁷ BBC, “Ivory Coast’s President Alassane Ouattara inaugurated,” May 21, 2011, available at <http://www.bbc.com/news/world-africa-13482188>.

investigate the crimes committed during the post-election crisis in June; however, doubts quickly arose surrounding the impartiality of the Ouattara administration's efforts.⁷⁸ By August, Ivorian officials had indicted twelve members of Gbagbo's inner circle, but none from Ouattara's camp.⁷⁹ Those Gbagbo affiliates who had not been arrested or killed fled into exile in neighboring countries.

Violence continued in the months leading to Gbagbo's transfer to the ICC in November due in part to the difficulties in reorganizing the regular armed forces from disparate groups and the proliferation of weapons in the country.⁸⁰ Many Ivorian combatants loyal to Gbagbo found refuge in neighboring Liberia and used the host country as a base for two prominent cross-border raids into Côte d'Ivoire in September 2011.⁸¹

A BRIEF SYNOPSIS OF ICC INVOLVEMENT

The circumstances of the ICC's jurisdiction are unique in the case of Côte d'Ivoire. On April 18, 2003, the Government of Laurent Gbagbo lodged a declaration with the Registrar of the ICC under Article 12-3 of the Rome Statute to investigate potential crimes that took place after September 19, 2002.⁸² Ironically, the Gbagbo

⁷⁸ Eric Agnero, "Ivory Coast announces commission to investigate post-election crimes," CNN, June 16, 2011, available at <http://www.cnn.com/2011/WORLD/africa/06/16/ivory.coast.abuses/>. See also Fredrik Dahl, "U.N. rights chief concerned about new Ivory Coast army," Reuters, June 15, 2011 ("Another member of the U.N. commission, Suliman Baldo, said concern about "one-sided victory justice" was well-founded.").

⁷⁹ Monica Mark, "Members of Gbagbo inner circle indicted," CNN, August 10, 2011, available at <http://www.cnn.com/2011/WORLD/africa/08/10/ivory.coast.arrests/>.

⁸⁰ Crisis Group, "Critical Period," 3-6.

⁸¹ Human Rights Watch, "Côte d'Ivoire: Second Deadly Attack Near Liberian Border," September 21, 2011, available at <https://www.hrw.org/news/2011/09/21/cote-divoire-second-deadly-attack-near-liberian-border>.

⁸² République de Côte d'Ivoire, "Déclaration de reconnaissance de la Compétence de la Cour Pénale Internationale" April 18, 2003, accessed November 6, 2015. <http://www.icc-cpi.int/NR/rdonlyres/CBE1F16B-5712-4452-87E7-4FDDE5DD70D9/279779/ICDE.pdf>

government's own declaration would serve in its eventual prosecution. Because this declaration has no expiration date, it served as the jurisdictional basis for the ICC's eventual investigations in 2011.

On December 14, 2010, only a week after being declared the winner by ECOWAS, President-elect Ouattara sent a letter to the ICC confirming acceptance of its jurisdiction based on the 2003 declaration.⁸³ Then-ICC Prosecutor Luis Moreno-Ocampo requested authorization to proceed with an investigation from Pre-Trial Chamber on June 22, 2011, and had it granted on October 3, 2011.⁸⁴ That day, Ocampo pledged to present its cases to the Court in order to determine who would ultimately face trial "as soon as possible," further stating that the "investigation should be part of national and international efforts to prevent future crimes in Côte d'Ivoire."⁸⁵

The Prosecutor then quickly applied for an arrest warrant against Gbagbo on October 25, and had it granted less than a month later on November 23.⁸⁶ The arrest warrant included four counts, including crimes against humanity "based on his individual responsibility for the crimes of murder, rape and other forms of sexual violence, persecution and inhumane acts committed during the post-election violence from 28 November 2010 onwards by the [FDS], reinforced by the pro-Gbagbo youth militia and mercenaries."⁸⁷ Arrest warrants followed for Simone Gbagbo (Laurent Gbagbo's wife)

⁸³ Présidence de la République, "Confirmation de la Déclaration de reconnaissance," accessed November 6, 2015. <http://www.icc-cpi.int/NR/rdonlyres/498E8FEB-7A72-4005-A209-C14BA374804F/0/ReconCPL.pdf>

⁸⁴ Pre-Trial Chamber III, "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire," No. ICC-02/11, October 3, 2011.

⁸⁵ ICC Press Statement, "ICC Prosecutor: This decision ensures justice for victims in Côte d'Ivoire. I will conduct effective, independent and impartial investigations," October 3, 2011, available at www.icc-cpi.int.

⁸⁶ Pre-Trial Chamber III, "Warrant of Arrest for Laurent Koudou Gbagbo," No. ICC-02/11, November 23, 2011.

⁸⁷ *Ibid.*

and Charles Blé Goude (a Minister in Gbagbo's government) on similar counts. The warrants were unsealed on November 22, 2012, and September 30, 2013, respectively.⁸⁸

To date, the ICC has not investigated any leader responsible for the atrocities committed by Ouattara's Republican forces in Duékoué and other parts of the country. This is in spite of findings by the Pre-Trial Chamber in the October 3, 2011 Authorization that describe the war crimes and crimes against humanity committed by the FRCI or other pro-Ouattara forces.⁸⁹

⁸⁸ International Criminal Court, "Côte d'Ivoire," available at www.icc-cpi.int.

⁸⁹ Pre-Trial Chamber III, "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire," No. ICC-02/11, October 3, 2011.

Analysis: Côte d'Ivoire in Light of ICC Involvement

PRO-GBAGBO VIOLENCE AND CRIMES

There are a number of preliminary findings. First, Gbagbo loyalists demonstrated a desire to return to power. From exile, individuals pursued this through violent incursions, and domestically they did so through peaceful political means. Second, there is a demonstrable pattern of revenge violence, but it is not necessarily motivated by the ICC's biased prosecutions of Gbagbo and his loyalists. Finally, there is evidence that points to compelling alternative explanations for the patterns of violence.

The political leaders closest to Gbagbo fled to neighboring countries, most notably to Ghana and Liberia.⁹⁰ These leaders (Charles Blé Goudé among them) led efforts to destabilize Côte d'Ivoire with an eye to an eventual return to power. The UN Group of Experts on Côte d'Ivoire accused some of the most prominent and well-networked figures of holding a meeting on July 12, 2012, in Ghana, to coordinate their efforts to retake the country.⁹¹ The UN Group of Experts cited evidence that linked the high-ranking exiles in Ghana to militia and mercenary recruitment in Liberia, reporting that "military actions that have been conducted since early 2012 in Côte d'Ivoire were planned in Ghanaian territory, funds were transferred from Ghana to Liberia (physically or via bank transfers) and recruitment took place in Liberia."⁹²

The pro-Gbagbo militants that continued to attack from Liberia in cross-border raids between 2011 and 2012 have expressed similar sentiments. HRW conducted a series of interviews with Liberian and Ivorian fighters in Liberia between April and May of 2012. "In describing their motivations, most of the Ivorian militants speak of 'revenge'

⁹⁰ Mid-Term Report of the Group of Experts on the Côte d'Ivoire submitted in accordance with paragraph 16 of Security Council Resolution 2045 (2012)", 15 October 2012, para. 28.

⁹¹ Ibid, para. 29.

⁹² Ibid, para. 38.

– revenge for Gbagbo no longer being president, or, more often, revenge for killings and other abuses committed by pro-Ouattara forces in western Côte d’Ivoire.”⁹³

In these interviews, there was no evidence of the ICC’s actions being a primary motivating factor or any mention of the ICC’s actions at all. However, it is possible that to test for a correlation between ICC actions and cross-border violence by comparing the most significant ICC actions and the most violent and criminal episodes emanating from pro-Gbagbo groups. The table below offers a temporal comparison between specific ICC actions (namely transfers and confirmation of charges) and cross-border violence perpetrated by pro-Gbagbo groups (the most consistent and deadly of attacks by such groups).

Figure 2. Comparing ICC Actions to Cross-Border Violence⁹⁴

Year	ICC Actions	Cross-Border Violence
2011	November 30 – Laurent Gbagbo transferred to ICC.	July 18 – Liberia; (raid near Taï); 8 civilians killed. September 15 – Liberia (raid south of Taï, villiages of Zriglo and Nigré); 23 civilians killed.
2012		February 20/21 –Liberia (raid near Taï); 6 civilians killed. April 25 –Liberia (near Sakré); 8 killed. June 6 – Liberia (attack near Taï); 17 killed, including 7 UN Peacekeepers.

⁹³ Human Rights Watch, “Liberia: Ivorian Government Foes Wage, Plot Attacks,” June 6, 2012, <https://www.hrw.org/news/2012/06/06/liberia-ivorian-government-foes-wage-plot-attacks>.

⁹⁴ Events catalogued in the “ICC Actions” column were taken from icc-cpi.int. Events in the “Cross-Border Violence” column were taken from both the International Crisis Group’s “Crisis Watch” cross-referenced with HRW reporting. The author was also careful to select those events that might reach the threshold of crimes within the ICC’s jurisdiction.

Figure 2. Comparing ICC Actions to Cross-Border Violence (continued)

	<p>October 26 – Laurent Gbagbo’s appeal for release is dismissed.</p> <p>November 22 – Arrest warrant for Simone Gbagbo is unsealed.</p>	<p>August 12/13 – Liberia (attack at border checkpoint near Toulépleu); 1 killed.</p> <p>September 21-22 – Ghana (attack near Noé); 9 killed.</p> <p>October 15 – Attacks on Azito power plant in Abidjan and police/gendarmerie positions in Bonoua; no casualties.</p>
2013	<p>February 19 – Confirmation of Charges hearing begins for Laurent Gbagbo.</p> <p>October 1 – Arrest warrant for Charles Blé Goudé is unsealed.</p>	<p>March 13 – Liberia (attack near Ziléply); between 7-13 killed.</p> <p>March 23 –Liberia (raid near Toubly southwest of Toulépleu); 6 killed.</p>
2014	<p>March 22 – Charles Blé Goudé transferred to ICC.</p> <p>September 29 – Confirmation of Charges hearing begins for Charles Blé Goudé.</p>	<p>February 23 –Liberia (raid near Grabo); 4 soldiers killed.</p> <p>May 15 – Liberia (attack near Fetai villiage); 13 killed.</p>

This comparison between ICC actions and cross-border attacks reveals one obvious observation: there is no obvious immediate response by pro-Gbagbo forces to

ICC actions. Moreover, testimonial evidence from civilian Gbagbo supporters and from pro-Gbagbo fighters in Liberia indicate that the primary motivations for the cross-border incursions were not directly related to the ICC's prosecution of Gbagbo and his officials. It might be tempting to infer causality from the correlation between Gbagbo's transfer to the ICC in November 2011, a subsequent increase in the cross-border attacks throughout the first half of 2012, and a decline in violence following the failure of Gbagbo's appeal in October 2012. However, there are better explanations for the cross-border violence.

The UN Group of Experts October 2012 report suspected that a group of exiled pro-Gbagbo officials including Charles Blé Goudé was responsible for financing organized violence against the Ivorian government.⁹⁵ Ghanaian authorities arrested Goudé on January 17, 2013 on criminal charges from Ivorian authorities relating to the post-election crisis.⁹⁶ After his extradition to Côte d'Ivoire, he was eventually transferred to The Hague in March 22, 2014.⁹⁷ As the table demonstrates, the majority of cross-border violence Goudé allegedly financed and organized took place in late 2011 and throughout 2012 before his arrest. One might argue that Goudé's removal from the regional context facilitated this decrease in violence, however two other developments were probably more consequential, namely, the dismantling of the group of pro-Gbagbo exiles in Ghana and increased border security along the Liberian/Ivorian border.

First, a number of key arrests of other former Gbagbo officials exiled in Ghana likely hampered efforts to fund and organize such attacks. A string of arrests began in

⁹⁵ "Mid-Term Report of the Group of Experts on the Côte d'Ivoire," 15 October 2012, para. 29, 30.

⁹⁶ Kwasi Kpodo, "Fugitive Ivorian youth leader Ble Goude arrested in Ghana," *Reuters*, January 17, 2013, available at <http://www.reuters.com/article/2013/01/17/us-ivorycoast-ghana-idUSBRE90G10420130117>.

⁹⁷ Loucoumane Coulibaly and Thomas Escritt, "Ivory Coast sends Gbagbo ally to International Criminal Court," *Reuters*, March 22, 2014, available at <http://uk.reuters.com/article/2014/03/22/uk-icc-ivorycoast-blegoude-idUKBREA2L0CK20140322>.

August and September of 2012.⁹⁸ Most notably, the arrests in September took place in response to an alleged coup plot hatched in Ghana that was coined “Operation Red Falcon.”⁹⁹ Following Goudé’s arrest, another high-profile Gbagbo loyalist (the head of Gbagbo’s “elite mobile gendarme squadron”) was arrested in February 2013.¹⁰⁰ He too was implicated in the UN Group of Experts report in the financing and organizing of military attacks on the government.¹⁰¹

Second, the Ivorian and Liberian governments signed a communiqué on October 18, 2012, to enhance security along their shared border.¹⁰² The agreed measures included an enhanced presence of Liberian security forces and the extradition of Ivorian mercenaries operating in Liberian territory back to Côte d’Ivoire. This was followed by arrests later that year of a number of Liberian mercenary leaders implicated in cross-border raids.¹⁰³ In the wake of a deadly attack on March 23, 2013, the UN peacekeeping mission in Liberia (UNMIL) and UNOCI began reinforcing their respective border patrols.¹⁰⁴ Later, on April 5, 2013, Liberian and Ivorian officials met with leaders from the UN peacekeeping missions in Liberia and Côte d’Ivoire in quadripartite talks to better coordinate border security.¹⁰⁵ These arrests and enhanced cooperation initiatives seemed

⁹⁸ Kwasi Kpodo, “Ghana arrests three in suspected Ivory Coast coup plot,” *Reuters*, September 17, 2012, available at <http://www.reuters.com/article/2012/09/17/us-ghana-ivorycoast-weapons-idUSBRE88G16B20120917>.

⁹⁹ ICG Report, “Diffusing Tensions,” 6.

¹⁰⁰ Ange Aboa, “Pro-Gbagbo exile arrested, returned to Ivory Coast,” *Reuters*, February 5, 2013, available at <http://www.reuters.com/article/2013/02/05/us-ivorycoast-ghana-arrests-idUSBRE91417M20130205>.

¹⁰¹ *Ibid.*

¹⁰² Terrence Sesay, “Liberia, Côte d’Ivoire sign border peace deal,” *Africa Review*, October 20, 2012.

¹⁰³ Jonathan Paye-Layleh, “Liberia seeks to extradite 7 alleged mercenaries,” *AP* (reprinted on Huffington Post), December 26, 2012, available at <http://www.huffingtonpost.com/huff-wires/20121226/af-liberia-ivory-coast-mercenaries/>.

¹⁰⁴ UN News Centre, “UN peacekeepers step up patrols in western Côte d’Ivoire after deadly attack,” March 25, 2013, available at <http://www.un.org/apps/news/story.asp?NewsID=44487#.V1StbWSrQy4>.

¹⁰⁵ UN News Centre, “UN peacekeepers agree with Governments of Côte d’Ivoire and Liberia to strengthen security,” April 5, 2013, available at <http://www.un.org/apps/news/story.asp?NewsID=44577#.V1StU2SrQy4>.

to have a greater impact on cross-border violence than the removal of one individual to the ICC.

Certainly further in-depth interviews with Liberian mercenary leaders, pro-Gbagbo Ivorian combatants, and the Gbagbo loyalists in exile would yield a more precise assessment of their perceptions and responses to various ICC actions. However, the testimonial evidence collected from Liberia-based fighters by HRW indicates that revenge for abuses committed by pro-Ouattara forces was primary motivation. It is unclear if ICC prosecution of Ouattara officials would have sated the desire of Gbagbo's exiled loyalists to retaliate against Ouattara's forces.

Political figures who remained in Côte d'Ivoire leading Gbagbo's FPI party have reacted directly to ICC actions, but not violently. In response to Gbagbo's transfer on November 29, 2011, the FPI and its allies announced that they were withdrawing from reconciliation talks with the government and from the upcoming parliamentary elections scheduled for December 11, 2011.¹⁰⁶ Through November of the following year, International Crisis Group reported that Gbagbo's transfer to the ICC continued to stoke resistance to meaningful reconciliation and political engagement.¹⁰⁷

Unable to distance themselves from the exiled hardliners in Ghana, the FPI leaders in Côte d'Ivoire have adopted an exaggerated victim mentality and have sought to stir up tensions. The party continues to base its return to the political game on the release of Laurent Gbagbo, but the ability to do this lies with the [ICC], not with the Ivorian authorities. This hope for Gbagbo's release remains firmly anchored in the minds of many FPI activists close to protestant and evangelical churches who believe that their deposed leader is innocent, that he was robbed of an election victory due to a foreign backed plot and thus he should be released by the ICC. ... Nonetheless, many of the actual FPI leaders no longer

¹⁰⁶ International Crisis Group, *Côte d'Ivoire: Continuing the Recovery*, Africa Briefing N°83, December 16, 2011, 4.

¹⁰⁷ International Crisis Group, *Côte d'Ivoire: Diffusing Tensions*, Africa Report N°193, November 26, 2012, 11. (Hereinafter "ICG Report, 'Diffusing Tensions'").

believe that President Gbagbo will be released, but to admit this publicly would be impossible without attracting the wrath of both the ordinary party members and the hardliners.¹⁰⁸

This suggests a plausible causal explanation linking the ICC's actions and the cross-border incursions in the absence of a direct quote from the exiled Gbagbo loyalists on the matter. The causal story begins with Gbagbo's transfer to the ICC in October 2011 and the FPI electoral boycott. Then, seeing no peaceful means to regain power, the FPI exiled hardliners in Ghana sponsor the incursions.

Critical to this causal pathway is that the in-country FPI's actions directly responding to Gbagbo's transfer to the ICC must be connected to the exiled FPI and former Gbagbo government officials. However, there is no evidence that FPI political leaders within Côte d'Ivoire resorted to calls for violence, or that they publically cheered cross-border incursions, in response to the ICC's actions. There is also no evidence of communication between in-country and exiled FPI leaders suggesting that one was directing the other or that there was coordination between them. Put another way, there is a missing link in the causal chain that would otherwise demonstrate that the in-country FPI leaders coordinated with the pro-Gbagbo exiles responsible for facilitating the cross-border violence.

PRO-GBAGBO VIGILANTISM MOTIVATED BY BIASED PROSECUTIONS

Likewise, there is not a large body of evidence to demonstrate that Gbagbo loyalists resorted to "vigilante justice" in light of the ICC's prosecutions. International Crisis Group has noted that there is a history of impunity-fueled violence in Côte

¹⁰⁸ Ibid.

d'Ivoire. The March 29 massacre at Duékoué during the post-electoral crisis is a prime example.

For several years, serial rapes occurred regularly in Duékoué and the surrounding area. In 2009, 107 rapes were reported to the local authorities. Most were committed by members of the pro-government militias that controlled the town. Judicial proceedings were opened in only a very small number of cases. Not only is the nearest court about 100km from Duékoué but the pro-government militias, armed by President Laurent Gbagbo, enjoyed total impunity. Some parents of victims have therefore carried out justice themselves, either acting alone or assisted by FRCI soldiers, and executed the individuals they believe to be responsible for these rapes.¹⁰⁹

It is difficult to assess whether or not the most violent criminal acts committed by pro-Gbagbo groups after October 2011 were motivated by revenge for specific unprosecuted abuses by the FRCI and affiliated pro-Ouattara groups or if they were motivated by a broader desire to retake political power. The two possible motivations are not mutually exclusive. The testimonial evidence collected by HRW cited above suggests as much. While it seems clear that the mentality of Gbagbo supporters being the victims of “victor’s justice” is not solely based on the ICC’s biased prosecutions, there is at least minor testimonial evidence that it has contributed to it.

Through interactions with Gbagbo-loyal Ivorian, a researcher with HRW reached the following conclusions:

Most of the moderate Gbagbo supporters I have interviewed over the last year believed the ICC was the best hope for breaking the stalemate of a politicized judiciary – one of the main causes of the country’s last decade of political violence. Ivorian civil society has expressed a similar faith in the ICC, at least in comparison with domestic justice mechanisms. ...

More fundamentally, a perception among a sizable percentage of Ivorians that the ICC is acting like a tool of those in power could further stoke political-ethnic

¹⁰⁹ Crisis Group, “Critical Period,” 10 (fn 70).

tensions and damage the court's ability to obtain cooperation from certain victim groups for future investigations.¹¹⁰

In addition to the perceptions of the common Ivorian, Gbagbo's party FPI consistently has voiced its opposition to the ICC's involvement and boycotted involvement in the political process. Importantly, this has not yet materialized into violent mobilization of pro-Gbagbo supporters within Côte d'Ivoire.

One could speculate that the cross-border attacks carried out by Ivorian and Liberian militants were reprisals for serious crimes committed in the western regions of Côte d'Ivoire amidst the pro-Ouattara offensive during the post-election crisis. HRW reported various instances of FRCI sexual violence and killings in western towns and villages throughout the March 2011 offensive: Bloléquin, Bohobli, Diboké, Doké, Duékoué, Toulépleu, Zoguiné.¹¹¹ These do not match the locations of the cross-border attacks perpetrated by Ivorian/Liberian militants, which were centered largely around Tai, over 100 kilometers south east of the focus of the 2011 FRCI attacks. Between 2012 and 2014, other cross-border attacks took place in Fetai, Grabo, Petit Guiglo, Sakré, Zilebly Ziriglo.¹¹² Regardless, the string of violent crimes is still geographically relevant. In the post-electoral conflict, the locus of FRCI attacks in the March 2011 offensive was in the west, and as previously mentioned, these attacks were listed among the motivations for pro-Gbagbo fighters in Liberia in committing their cross-border attacks.

¹¹⁰ Matt Wells, "What will the ICC's legacy be in Côte d'Ivoire?," *Human Rights Watch* (originally published in *Le Monde*), July 19, 2012, <https://www.hrw.org/news/2012/07/19/what-will-iccs-legacy-be-cote-divoire>.

¹¹¹ HRW Report, October 2011

¹¹² Locations drawn from the monthly "Crisis Watch" publication by International Crisis Group, available at crisisgroup.org.

ICC DETERRENCE OF PRO-GBAGBO LEADERS

It should be clear at this point that those exiled pro-Gbagbo figures did not respond throughout 2012 in a way that would suggest they were deterred. There was a failed coup attempt, the channeling of money and resources from Ghana to Liberia, and the support from exiles for regular incursions into the country. As previously stated, the mere desire to retake power does not offer evidence that supports or detracts the theory. However when the means employed to achieve those ends result in violent crimes, these instances become relevant.

Reports indicate that as of November 2012, there were about one thousand high-level Gbagbo supporters living in Ghana as “urban refugees.”¹¹³ One of these figures, pro-Gbagbo militia leader, Moussa Tore Zeguen, was reported as being the “leader of the exile’s propaganda campaign.”¹¹⁴ Zeguen would repeatedly and violently call for “the mobilization of the Ivorian people against Ouattara.”¹¹⁵ He was quoted as saying, “if I get [Ouattara] in front of me I can cut his neck.”¹¹⁶ Moreover, his anti-Ouattara diatribes would find publication in the pro-Gbagbo press inside Côte d’Ivoire.¹¹⁷ As one reporter put it, “The role the exiles play in shaping public opinion is clear. Ever since Gbagbo was transferred to the International Criminal Court one year ago, his high-level allies have insisted that reconciliation can only happen if the court releases him immediately - something that is practically inconceivable.”¹¹⁸

¹¹³ Robbie Corey-Boulet, “Ivory Coast exiles in Ghana campaign for Gbagbo,” *Associated Press* (republished by Yahoo! News), November 23, 2012, available at <http://news.yahoo.com/ivory-coast-exiles-ghana-campaign-gbagbo-141432165.html>.

¹¹⁴ *Ibid.*

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

The violent rhetoric from pro-Gbagbo exiles that might be liable before the ICC is backed by the financial and organizational network that supported the 2012 cross-border raids. These formerly high-ranking exiles promoted and facilitated continued violence along the Liberian and Ghanaian borders well after the transfer of Gbagbo to The Hague. It seems clear that ICC prosecutions of the Gbagbos and Goudé did not prevent their close associates from engaging in the kinds of activities the ICC seeks to deter.

PRO-OUATTARA IMPUNITY

The theory further predicts that leaders in Ouattara's administration would continue to engage in violence and commit abuses with impunity upon realizing that the ICC's prosecutorial focus was not on them. These acts would have likely happened after Gbagbo's transfer in November of 2011, implying that those acts of violence and abuse emanating from the Ouattara camp were committed with impunity and without fear of ICC scrutiny. The record in this regard seems mixed. Some of the pro-Ouattara figures implicated in violence during the 2011 crisis continued to commit serious human rights abuses, while reports regarding others doing the same are lacking.

One prominent FRCI commander implicated in criminal activity before, during, and after the crisis, but before the arrest warrant for Gbagbo, is Eddie Médi. As an FN commander prior to the crisis, Médi and his troops were reportedly responsible for a number of mass killings and incidents of sexual violence.¹¹⁹ During the western offensive in spring of 2011 (and after the FRCI's consolidation of power), Médi's troops were again implicated in massacres, rape, and wholesale destruction of villiages.¹²⁰ Médi's "boss" Fofana Losséni shares a similar story – a former FN leader who participated in the

¹¹⁹ Human Rights Watch, *"A Long Way from Reconciliation" – Abusive Military Crackdown in Response to Security Threats in Côte d'Ivoire*, November 2012, 85. (Hereinafter "HRW Report, November 2012").

¹²⁰ *Ibid.* 106.

2011 FRCI offensive marred by abuses.¹²¹ Losseni was identified by then-prime minister Soro as “the leader of ‘pacification of the far west,’” where his soldiers took part in the massacres in Duékoué in March 2011.¹²² After the crisis, Losseni was named commander of an elite Ivorian force.¹²³ Chérif Ousmane is yet another FN leader turned FRCI commander implicated in atrocities committed in 2011.¹²⁴ HRW reported that under his explicit orders, detainees were summarily executed in Yopougon in early May of that year. Later, “[o]n August 3, 2011, President Ouattara signed a promotion making Chérif Ousmane the second-in-command for presidential security....”¹²⁵

It is difficult to find instances of violence or abuse that occurred under the direct command of these pro-Ouattara leaders after Gbagbo’s transfer in November 2011. One example of such an instance might be in a June 2012 Ivorian offensive led by Losséni intended to stabilize the far western regions of the country in the wake of the cross-border assaults from Liberia. International Crisis Group indicated that “[t]his force’s action has been criticised by several international officials. It worked without a clear and coherent plan, did not have enough logistical support and reportedly acted with brutality against the population, which it assumed was colluding with the Liberian militias and pro-Gbagbo combatants that it was trying to neutralise [sic].”¹²⁶

In 2012, HRW reported that another figure, Ousmane Coulibaly (a former FN leader), was the FRCI commander in charge of the BAE military camp in Yopougon after the post-election crisis until September 2012.¹²⁷ HRW reported that during the crisis, as

¹²¹ Ibid. 107.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Crisis Group, “Diffusing Tensions,” 10.

¹²⁷ HRW Report, November 2012, 49.

forces under his command fought in Yogoupon, his troops were “repeatedly implicated in summary executions, torture, and arbitrary detentions.”¹²⁸ While at the camp, Coulibaly oversaw troops who engaged in “cruel and inhuman treatment” towards detainees and “extortion in exchange for release.”¹²⁹ HRW reportedly briefed an Ivorian minister on serious human rights abuses committed under Coulibaly’s command and questioned the decision to place him in a position of power as the prefect of the San Pedro region in south west Côte d’Ivoire.¹³⁰ “In his response, the minister of human rights and public liberties said that Ousmane Coulibaly’s move to the position of San Pedro prefect was not a ‘promotion’ but rather a ‘nomination’ made by the president within his ‘discretionary legal power.’ The minister continued: ‘Furthermore, the fact that Ousmane Coulibaly is mentioned in a report is not the same as a conviction, and at present, no juridical act incriminates Ousmane Coulibaly for acts in violation of human rights.’”¹³¹

One violent incident demonstrates that instead of remaining satisfied with the national and international prosecutions against pro-Gbagbo leaders, certain pro-Ouattara elements still resorted to vigilantism and violence. An IDP camp called Nahibly near Duékoué was attacked on July 20, 2012. The attack was prompted by reported killings that took place the previous night in Duékoué.¹³² Rumors quickly spread that the perpetrators had fled towards Nahibly, which is largely populated by members of the Guéré ethnic group, seen as Gbagbo supporters.¹³³ Early on the morning of July 20, a number of Dozo militants approached the camp, eventually joined by FRCI soldiers and members of the local population. The crowd eventually overwhelmed the UNOCI

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid, 50.

¹³¹ Ibid.

¹³² Amnesty International, *Côte d’Ivoire: It Looks Like Nothing Happened Here*, July 29, 2013, 7.

¹³³ Ibid.

peacekeepers, and the ensuing attack left at least 14 dead, according to Amnesty International.¹³⁴ Local authorities were claimed to be complicit in the attack, and Amnesty International accused Ivorian officials of failing to investigate the incident thoroughly.¹³⁵ Notably, the Nahibly attack did not implicate any of the pro-Ouattara leaders who were already culpable in prior killings and abuses. The absence of clear leadership at Nahibly then does not easily lend itself as an example in which the ICC's failure to prosecute high-ranking Ouattara officials has led to the continued commission of atrocities. Instead it may suggest that even Ivorian civilians who support Ouattara and have seen the ICC and domestic prosecutions of Gbagbo and his associates may still resort to vigilante justice. However, if these Ouattara officials intentionally turned a blind eye to the crimes in Nahibly, it would be consistent with the prediction by demonstrating that the Ouattara officials continued to facilitate grave crimes after the end of the conflict and the ICC's one-sided prosecution. In short, it would demonstrate that they acted with impunity.

Writing in July of 2012, Matt Wells of HRW commented on one telling quote from Guillaume Soro, Ouattara's former prime minister, writing:

In an July 8 interview with Radio France International, Guillaume Soro... said this when asked about the lack of justice for crimes committed by his side's forces: "It was precisely in order not to be accused of victor's justice that we brought in the International Criminal Court ... [which] people cannot claim to be complaisant or to pick sides.... Up until now the ICC has been invited to come investigate in Côte d'Ivoire. Yet, the ICC, to my knowledge, has only issued four arrest warrants, [all against the Gbagbo side]. You will agree that the ICC has decided on the basis of its investigations."¹³⁶

¹³⁴ Ibid. 8.

¹³⁵ Ibid. 10-12.

¹³⁶ Matt Wells, "What will the ICC's legacy be in Côte d'Ivoire?," *Human Rights Watch*.

This quote leaves one with the strong assumption that the lack of ICC prosecutions against Ouattara loyalists leaves the Ivorian government in a position to insinuate that pro-Ouattara groups were largely innocent of any wrongdoing during the post-electoral crisis and incentivizes continued perpetration of similar crimes. Elsewhere, HRW claims that the sequential approach taken by the ICC in investigating and prosecuting Gbagbo and his affiliates has allowed the Ouattara administration to “mirror” the same practices and prosecute pro-Gbagbo figures before prosecuting criminals within its own ranks.¹³⁷

Any national prosecutions of such individuals carry with them political risk. The Ivorian security forces in the wake of the crisis were fragmented and loyalties were divided amongst former FN rebels and warlords. However, these are the cases that the ICC’s principles and founding document say it should prosecute. The principle of complementarity outlined in the Rome Statute indicates that it is those cases that the national authorities are “unwilling or unable” to pursue that are within the proper jurisdiction of the court.¹³⁸ However, it appears that the ICC operated with convenience in mind when it began its prosecutions instead against Laurent Gbagbo and his associates.

¹³⁷ Human Rights Watch, *Turning Rhetoric into Reality – Accountability for Serious International Crimes in Côte d’Ivoire*, April 2013, 46.

¹³⁸ Rome Statute, Art. 19.

Conclusions

There are two troubling conclusions from the evidence presented above. The first is that some allies and leaders of Ouattara's Ivorian security forces continued to commit (or permit) abuses against Gbagbo supporters after the ICC began prosecuting Gbagbo demonstrated by the July 2012 crimes in Nahibly. Coupled with a troubling assessment by former Ivorian PM Soro, it appears that the ICC's prosecutorial focus has been interpreted by the Ouattara administration as a pass for crimes committed during the crisis and a green light for their repetition. This may explain the vigilante justice pursued by some elements of the Ivorian population loyal to Ouattara.

Second, it seems clear that the ICC's prosecutorial focus on Gbagbo and his affiliates did not deter the continued commission of violent crimes from the Gbagbo camp. This is evident in the efforts by some exiled pro-Gbagbo figures to secretly organize cross-border raids along the Liberian and Ghanaian borders and others in their explicit calls to violence. This behavior does not indicate a concern that they might be brought to justice at The Hague or elsewhere.

There is at least one plausible explanation that would link the ICC prosecutions to retaliation by Gbagbo loyalists. The causal chain begins with Gbagbo's transfer to the ICC in October 2011 and the FPI's boycott of the upcoming parliamentary elections. It then links to the exiled FPI hardliners in Ghana and their plotted coup leading to the subsequent increase in cross-border attacks in 2012 until Ghanaian, Liberian, and Ivorian authorities collaborated to resolve the issue. There is however a critical evidentiary link that is missing in this causal chain. There is no indication that in-country FPI party leaders commenced their political and electoral boycott in coordination with or at the direction of the exiled FPI leaders that were facilitating the cross-border attacks. Indeed,

the country's history suggests that the violence organized by exiled Gbagbo supporters might be motivated in part by a simple desire to retake power from longtime political rivals. At a minimum, it can be concluded that Gbagbo loyalists were not deterred by the prosecution of their allies. In spite of their potential liability before the ICC, they continued to perpetrate acts of violence and disruption where they could in an effort to destabilize the government.

However, if the causal story linking domestic FPI and exiled Gbagbo officials turned out to be true, it would present disturbing implications for the ICC's decision to initiate prosecutions on one side of the conflict at the expense of inciting retaliatory violence against the other side. This presents scholars interested in international criminal justice and Côte d'Ivoire with what could be a fruitful endeavor – seeking out those Ivorian actors who would have engaged in such coordination and investigating their motives and reasoning.

In the summer of 2015, President Ouattara announced that a number of military officials, including Chérif Ousmane and Fofana Losséni, were to be tried for abuses committed during the post-electoral crisis. Coupled with the release of key Gbagbo allies, Ouattara appears to be making progress on a promise of genuine and impartial reconciliation he made at his inauguration over four years ago.¹³⁹ All of this suggests that in the Ivory Coast, the ICC may not have had nearly as negative an impact as some had feared, but that it certainly did not have the positive impact as many hoped for.

¹³⁹ *Supra* note 77.

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Vita

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