



-STUDY GUIDE-

Y-MUN TRAINING  
DEVELOPMENT CONFERENCE

ICC

## **I. Letter from the Secretary-General**

## **II. Letter from the Under Secretary-General**

## **III. History of the Court**

It has been decades since the first time that United Nations declared the need for an international court that prosecutes the crimes, which are today regarded as, crimes against humanity, war crimes and genocide. Until 1998 the Rome Statute there were not any legal rules codified under one body of law. The first time a new thought regards to necessity of an international criminal court presented in 1872 by Gustav Moynier<sup>i</sup> after the Franco- Prussian war.<sup>iiii</sup> After the Nuremberg trials were held in October 1946, Paris some leading authorities raised their voices regarding an urge to create a sufficient legal platform for commencing actions against people who are committing crimes as it were happened in the World War 2.<sup>iv</sup> In 9 December 1948 United Nations General Assembly initiated the Convention on the Prevention and Punishment of the Crime of Genocide by the resolution number 260, further it is explicitly stated and referred in many of the precedent cases by the International Court of Justice<sup>v</sup> as “*in order to liberate mankind from such an odious scourge*”<sup>vi</sup>. In the aforementioned convention Article 1 the crime of genocide categorized as an international crime.

Article 1 of the Convention on the Prevention and Punishment of the Crime of Genocide reads as follows:

*“Article I The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”*<sup>vii</sup>

Moreover, in the following Convention Article 6 laid out the circumstance when and how a court can prosecute a person. Unfortunately, in 1950's there was not an international criminal tribunal to investigate and prosecute the crimes of genocide, with that aim a proposal regarding an establishment of a court submitted to the United Nations General Assembly in 1951.<sup>viii</sup> An alternative statute is drafted 1953 but suddenly, the proceedings suspended without a sufficient notice until 1989. Due to the new crisis and events in all over the world such as the request by Trinidad and Tobago to continuation of establishing an international criminal court or 1993 Yugoslavia disaster, the International Committee decided to pursue the initial aim of creating a tribunal that can prevent individuals from enduring great pain because of the uncontrolled inhumane treatments.<sup>ix</sup>

In 1994 the Committee formulated possible statute for the establishment of the International Criminal Court. In 4 years following the first draft there were 52 meetings and in the last aforementioned meeting United Nations General Assembly decided to gather in Rome between 15 June and 17 July 1998. The meeting regarded as the Rome Conference or United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court by many scholars, which is the conference that the Rome Statute has established.<sup>x</sup> In the Rome Conference there were 160 participant states existed with many Non-governmental organizations witnessed the deliberations. At the end of the conference 120 nations endorsed the Rome Statue and establishment of an international permanent court in other words voted in favor whereas 7 nations including United States of America, Israel, China, Iraq and Qatar voted against and 21 nations remained abstain.<sup>xi</sup>

As the Secretary General of the United Nations, Kofi Annan, stated:

*“In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished.”<sup>xii</sup>*

additionally,

*“For nearly half a century -- almost as long as the United Nations has been in existence -- the General Assembly has recognized the need to establish such a court to prosecute and punish persons responsible for crimes such as genocide. Many thought . . . that the horrors of the Second World War -- the camps, the cruelty, the exterminations, the Holocaust -- could never happen again. And yet they have. In Cambodia, in Bosnia and Herzegovina, in Rwanda. Our time -- this decade even -- has shown us that man's capacity for evil knows no limits. Genocide . . . is now a word of our time, too, a heinous reality that calls for a historic response.”<sup>xiii</sup>*

Officially International Criminal Court established in 17 July 1998 with the Rome Statute, but the court entered into force on 1 July 2002. As it stated in the Rome Statute Article 126, Entry Into Force:

*“This Statute shall enter into force on the first day of the month after the 60th day following the date of the deposit of the 60th instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.*

*For each State ratifying, accepting, approving or acceding to this Statute after the*

*deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.*<sup>xiv</sup>

The statement mentioned above basically asserting that in order for the International Criminal Court to begin investigating or prosecuting, it first requires 60 states to accept, ratify or accede to the Rome Statute.

Currently there are 139 states, which are referred to as the signatory states of the Rome Statute while 120 states have ratified it.<sup>xv</sup>

#### **IV. Structure of the Court**

The International Criminal Court has 4 significant organs each is responsible with different duties and have their own importance for the procedures before and after the case.<sup>xvi</sup>

The Presidency is one of the units of the International Criminal Court as stated above as well as the Office of the Prosecutor, the Chamber and the Registry.<sup>xvii</sup>

To begin with the duties the Presidency is obliged to operate the administration of the court while the Office of the Prosecutor analyzes, investigates the received data regarding the situations in the modern world, moreover with the result examination the prosecutor decides whether or not to initiate criminal proceedings. Moving on with the duties of the Registry is to assist the International Criminal Court to conduct proceedings without bias and have equal and public hearings.<sup>xviii</sup>

The Chamber is relatively different than other organs of the court because it is actually composed by 3 different chambers: the Pre-trial chamber which is

responsible for concluding all the issues before the actual trial phase begins and confirms that the proceedings will not impair the integrity of the court, on the other hand in the Trial Chamber where the case is actually tried, determines that whether the perpetrator is actually guilty and if he is what should be the just punishment for the crimes that has been committed, while in the Appeal Chamber as it speaks for itself it is the place for appeals regarding the judgment of the court, and request for the case to be tried in a new trial chamber.<sup>xix</sup>

## **V. Procedure**

There is a specific procedure, which should be followed in front of the International Criminal Court.

First of all, in the event of a breach of the Rome Statute any state can refer the issue to the Office of Prosecution where the prosecutors will investigate whether it is necessary for bringing an action as it is explained above or if the court has jurisdiction over the aforementioned state. On other hand if the sufficient circumstances occurred any prosecutor can commence investigation on his/her own initiative (*proprio motu* powers).<sup>xx</sup> Additionally, United Nations Security Council can invoke the International Criminal Court to Investigate.<sup>xxi</sup>

Moreover, when an issue referred to the International Criminal Court it is important that the perpetrator breached the Rome Statute since the House of Prosecution can only prosecute crimes within the jurisdiction of the Rome Statute.

There are four crimes that are mentioned in the Rome Statute:

- Crimes against humanity, stated in the Rome Statute Article 7
- Genocide, stated in the Rome Statute Article 6

- Crime of aggression, stated in the Rome Statute Article 8bis
- War Crimes, stated in the Rome Statute Article 8

Each of the above-mentioned crimes composed by its own elements.

Crime of Genocide basically the intention to kill, destroy a group of people or groups who are widely known by their significant and distinctive aspects such as religion, ethnicity, gender etc.<sup>xxii</sup>

Crime of Genocide Article 6 of the Rome statute reads as follows:

*“For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:*

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group. ”*

The Crimes Against Humanity can be accepted as one of the most crucial crime against every individual in the planet. The crimes have been condemned by approximately every international platform that defends the human rights. The crime can be differentiated from the crime genocide because the perpetrator does not target only a group of people, which are well-known for any characteristic feature.<sup>xxiii</sup>

Crimes Against Humanity Article 7 of the Rome Statute:

- “(a) Murder;*
- (b) Extermination;*
- (c) Enslavement;*
- (d) Deportation or forcible transfer of population;*
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;*
- (f) Torture;*
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;*
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;*
- (i) Enforced disappearance of persons;*
- (j) The crime of apartheid;*
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. ’’<sup>xxiv</sup>*

Whereas, war crimes may mostly arise during the armed conflicts between states<sup>xxv</sup>,

and includes not only inhumane killing or destroying the enemy but also the civilian population of that nation on purpose.<sup>xxvi</sup>

War crimes Article 8 of the Rome Statute declares as follows:

“(i) *Wilful killing;*

*(ii) Torture or inhuman treatment, including biological experiments;*

*(iii) Wilfully causing great suffering, or serious injury to body or health;*

*(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;*

*(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;*

*(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;*

*(vii) Unlawful deportation or transfer or unlawful confinement;*

*(viii) Taking of hostages.* <sup>xxvii</sup>

Finally, Crime of Aggression laid out clearly in the Rome Statute Article 8*bis*. The crime introduced into the Rome Statute by a resolution (RC/Res.6<sup>xxviii</sup>) issued by the United Nations General Assembly on 11 July 2010. The court may begin prosecuting for the crime of aggression after 1 January 2017.<sup>xxix</sup>

There are defenses against the criminal charges that can any suspect can raise under the Rome Statute for example: lack of mental element, mistake of fact or mistake of law, superior order and prescription of law, intoxication, self-defense, duress and

imminent threat. <sup>xxx</sup>

Article 31 of the Rome Statute explicitly declares every situation for eliminating criminal responsibility:

*“(a) The person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law;*

*(b) The person is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his or her conduct, or capacity to control his or her conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of the intoxication, he or she was likely to engage in conduct constituting a crime within the jurisdiction of the Court;*

*(c) The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected. The fact that the person was involved in a defensive operation conducted by forces shall not in itself constitute a ground for excluding criminal responsibility under this subparagraph;*

*(d) The conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person,*

*and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided.*

*Such a threat may either be:*

*(i) Made by other persons; or*

*(ii) Constituted by other circumstances beyond that person's control.* <sup>xxxix</sup>

International Criminal Court also recognize some international legal norms such as:

- the mens rea which stands for 'criminal intent',
- the reasonable person standard which demonstrates average prudent person's actions and ability to foresee the results, the court usually ask the question of *“whether ‘a reasonable person’ in defendant circumstance can perceive the (accused's) conduct as necessary”*. This defense can create significant changes when the defendant is arguing intoxication or duress.<sup>xxxii</sup>

Regarding the Article 31 of the Rome Statute:

- Mental illness constitutes a situation where the accused is unable to understand or recognize anything that surrounds him/her or regulate his/her actions. The issue is relatively more important for determining a sentence for the accused if he/she is found guilty.<sup>xxxiii</sup>
- Intoxication can be argued only if the defendant is successful to accomplish the three elements: (i) the accused is intoxicated, (ii) the accused's ability to comprehend shall be diminished and demolished, (iii) the intoxication shall not be result because of the accused's own behaviors.<sup>xxxiv</sup>
- Self Defense contains for important prerequisites: (i) reasonableness, (ii) proportionality, (iii) imminent, (iv) unlawful use of force. Applicable

standard for reasonableness shall be implemented by the court as objective and shall be investigated as “*what would a prudent person would have done*” or “*how would a prudent person categorized the attack as unlawful or not*” in every situation.<sup>xxxv</sup>

- Mistake of facts, in order to comprehensively describe the defense an example would be appropriate: during the war when a soldier throw a bomb in building which is used and widely known as a terrorist or enemy area but due to the subsequent changes turned into an orphanage and there is no knowledge regards to the transformation or it is justified under the current circumstances, may benefit from the mistake of fact.<sup>xxxvi</sup>
- Mistake of law often arise regarding the alleged crime committed by the accused is categorized within the jurisdiction of the court, albeit in fact it is not.<sup>xxxvii</sup>

Additionally, the court may only prosecute crimes, which are occurred after the establishment of the Rome Statute and the International Criminal Court due to the Rome Statute Article 11. Further information regarding the crimes within the jurisdiction of the court can be found in the Elements of Crimes document.

At the Pre-Trial stage with the request of the prosecution the International Criminal Court may issue an arrest warrant or invite the accused to appear in front of the court if there are reasonable premises for a violation of the Rome Statute. The rationale behind it is to prevent the accused to commit farther crimes or to establish a smooth procedure during the trial. When there is a warrant for arrest the International Criminal Court does not have enough power to deprive the accused’s liberty since the court does not have a police force, therefore State cooperation is essential. When the

accused surrendered or capture he/she may spend the majority of the time in the detention center located in Hague, Netherlands until the trial is concluded.<sup>xxxviii</sup>

## **VI. Judgment and Sentence**

From the first day of the trial the prosecution and the defense are allowed to present their opening arguments, evidence, witness testimonies and finally closing arguments, a rule defendant shall have an opportunity to give the speech last.<sup>xxxix</sup>

After all the stages, judges shall be responsible for delivering a judgment regarding whether or not the accused person is guilty under the terms of it had been presented by the prosecutor as well as the defendant.<sup>xl</sup> Following the judgment of the court, a copy of the decisions shall be provided to the all parties and the accused, in language that can be understood easily by the aforementioned persons.<sup>xli</sup>

The court may only imposed sentence to the accused due to the Rome Statute Article 77:

*“...(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or*

*(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.*

*1. In addition to imprisonment, the Court may order:*

*(a) A fine under the criteria provided for in the Rules of Procedure and Evidence;*

*(b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties. ’’<sup>xlii</sup>*

As it is stated above, the court may only enforce prison time, which cannot exceed 30 years except in an unconventional event the court has the power to enforce life imprisonment, and the aforementioned sentence shall be served in a State chosen by the court from the list of States, which are declared an approval to accept prisoner.<sup>xliii</sup> Moreover, fines or seizure of goods as a secondary punishment shall be categorized as appropriate when the court find it is necessary.<sup>xliv</sup>

List of States Article 200 of Rules of Procedure and Evidence:

*“A list of States that have indicated their willingness to accept sentenced persons shall be established and maintained by the Registrar.”<sup>xlv</sup>*

## **VII. Enforcement**

Enforcement of the judgments shall follow a procedure as how the Chapter 10 of the Rome Statute declares. International Criminal Court, does not possess any kind of police force, most of the time, and it requires to cooperate with the States in order to keep being functional.<sup>xlvi</sup>

Article 103 of Rome Statute, Role of States in Enforcement of Sentence of Imprisonment:

*“1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons.*

*(b) At the time of declaring its willingness to accept sentenced persons, a State may attach conditions to its acceptance as agreed by the Court and in accordance with this Part.*

*(c) A State designated in a particular case shall promptly inform the Court whether it accepts the Court's designation.* <sup>»xlvi</sup>

Article 109 of the Rome Statute, Enforcement of Fines and Forfeiture Measures:

*“1. States Parties shall give effect to fines or forfeitures ordered by the Court under Part 7, without prejudice to the rights of bona fide third parties, and in accordance with the procedure of their national law.*

*2.If a State Party is unable to give effect to an order for forfeiture, it shall take measures to recover the value of the proceeds, property or assets ordered by the Court to be forfeited, without prejudice to the rights of bona fide third parties.*

*3.Property, or the proceeds of the sale of real property or, where appropriate, the sale of other property, which is obtained by a State Party as a result of its enforcement of a judgment of the Court shall be transferred to the Court.”* <sup>xlvi</sup>

### **VIII. Jurisdiction**

The jurisdiction may be authenticated when a State accepts and ratifies the Rome Statute and if it is not the situation a non-party State can affirm the International Criminal Court’s jurisdiction for only one specific case.

Article 12 of the Rome Statute, Preconditions to the Exercise of Jurisdiction:

*“1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.*

*2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:*

- a. *The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;*
- b. *The State of which the person accused of the crime is a national.*

*3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9. <sup>xlix</sup>*

## **IX. Case History**

In 2011, an investigation has been commenced and led by the International Criminal Court regarding the events in Côte d'Ivoire, which is also known as Ivory Coast. After the research with all the evidence and documents gathered by the prosecution, the court concluded that there were reasonable grounds to issue arrest warrant for Simone Gbagbo due to the alleged breaches of Article 7 of the Rome Statute: rape, and other sexual violence, murder, persecution and other inhumane acts between 16 December 2010 and 12 April 2011.<sup>1</sup>

Ivory Coast is a West African country located near the ocean, and experienced many political changes in approximately 5 decades. Firstly, Ivory Coast was under the French colony during 1890s, although in 1960 the Ivorian people officially announced their independence. Furthermore, Ivory Coast was well known by its political stability for a long time compared with other African countries after the proclamation of independence, until 1999 military coup led by Robert Guei that has changed everything, who after the coup declared himself as the new President, as he won the

election while the nation claimed that Guei manipulate the poll results and the real winner was Laurent Gbagbo who is the husband of Simone Gbagbo, reasonably Robert Guei was forced to oust. <sup>li</sup>

Even though it seemed like the society was endorsing Laurent Gbagbo another attempts of coup tried against the president in 2011. After the mass violence in Ivory Coast the president decided to meet with the opposition leader, Alassane Quattara, in order to reduce the brutality. Unfortunately, another scandal broke, and reports of children slavery have been released moreover a new request was submitted regarding a need for a new legislative election in Ivory Coast after the opponents assembled majority of the people in 2001. <sup>lii</sup>

In 2002 despondent military officials rebelled and initiated the Ivory Coast Patriotic Movement and seized power of the north although the seizure was short, and the president agreed for peace talks in 2003. Unfortunately, what happened during the rebellion was merciless due to the controversial way that the government forces tried to stop the rebels. Attacks were concluded with the death of the interior minister of Ivory Coast, some very powerful generals in the military and Robert Guei whose death circumstance today remains unclear. After the incident the government decided to take very serious security caution in order to prevent any other possible coup attempts as well as rebellions which was probably will going to be the initial source for the later problems because government forces burned and destroy many of the shanty town, where the migrants and some of the Ivorian people live, to find any hidden weapons as well as rebel forces and displace approximately 12,000 people. <sup>liiii</sup>

In 2003 the president and the major political parties convene a meeting due to the latest events in Ivory Coast, during the meeting a new party was also invited named New Forces which was composed with rebellion groups. The meeting concluded with

the Linas Marcoussis Accord.<sup>liv</sup> The aforementioned agreement foresaw a new Government of National Reconciliation, which is led via consensus in order to maintain serenity, that once Ivory Coast known for, moreover it will also arrange a schedule for a new fair and equal election, and until then the current president, Laurent Gbagbo, will remain in the office. Lastly, it is decided that the new government will establish a National Human Rights Commission to address the alleged human right violation in Ivory Coast.<sup>lv</sup> In July, 2003 New Forces militias confirmed the president's authority via "End of War" declaration signed with the government and promised to work for the perfect implementation of the Linas Marcoussis Accord.<sup>lvi</sup>

In the same year, a group of people detained for the crime of attempt to kill the president, Laurent Gbagbo.<sup>lvii</sup> Additionally New Forces suspended their contribution for the implementation of the Accord while in 2004 the aforementioned party accused the president for delaying the reconciliation procedures and revealed that there is going to be public protest even though it was widely known that in Ivory Coast there was a decree, which prevents people from demonstrating in open air.<sup>lviii</sup> Consequently, all the acts culminated with the government's involved and concluded with hundreds of death bodies in the area. After United Nations High Commissioner for Human Rights examined the accident, released a report saying, "indiscriminate killing of innocent civilians and the committing of massive human rights violations occurred direction and responsibility of the highest authorities of the State."<sup>lix</sup> Moreover reports suggests that at least 120 people killed by executions and torture.<sup>lx</sup> The important information regarding the events were the majority of the people who are killed were Muslims.<sup>lxi</sup>

There were a lot of savage and inhumane cases recorded in Ivory Coast until 2005 planned election. Albeit, before the official elections Laurent Gbagbo adjourn it by invoking a law which permit him to stay as president and increase the length of his presidency. Until the 2010 new elections the president comprehendingly led new peace talks with the rebellion group as well as with the parties, which have disagreement with the government. New attempts for peace were relatively more favorable and advantageous for the government since 2002.<sup>lxii</sup>

31<sup>st</sup> October 2010, the first round of the election won by Laurent Gbagbo with 38% of the votes which was below the limit stated in the law, on the other hand in the second round the opponent leader Allassane Quattara gathered 32% of the votes. Later it is decided to be held the final round in November in the same year.<sup>lxiii</sup>

On November 2010, the president Lauren Gbagbo insist that he was the winner of the 2010 election where Allassane Quattara asserts that he was elected as the official president of Ivor Coast due to the second round results. On 2 December 2010 when the head of the Commission Electorate Indépendante reveals the results as Allasance Quattara on the election by having 54.1% of the whole votes while Laurent Gbagbo having only 49.1%, the army forces closed the borders. The Constitutional Court of Ivory Coast reversed the result as Lauren Gbagbo won the election, reasonably an incrimination raised including misuse of authority, influence and power by Allasane Quattara regarding the court's decision. Also at that time both of the candidates sworn as a president resulted to Ivory Coast to have two governments.<sup>lxiv</sup>

During this unstable stage both parties' opponents created an unsafe and violent environment.<sup>lxv</sup> Laurent Gbago believed to have encouraged the supporters to get involved with vicious activities against the opponents, moreover concurrently commanded his general, Ble Goude also known as Street General, to conduct

passionate speeches in front of the public to urge the Ivoirians to take actions, to murder, to rape, to tear apart, burn and destroy.<sup>lxvi</sup> On 16 December 2010, squads of the two powers battled in the capital, which formerly and widely known as “Paris of Africa”, and resulted estimated 20 deaths. In only 3 days assumed number of deaths escalated to 50, and in 5 days it did increase to 170.<sup>lxvii</sup> At the end of the December Ivory Coast declared to be in a civil war by the international communities moreover United Nations stated that at least there were 300 hundred cadavers remained.

The news regarding that soldiers who were also Gbagbo enthusiasts, opened fire to unarmed women on 3 March 2011, prompted world leaders to request Laurent Gbagbo to vacate the office.<sup>lxviii</sup> The unfortunate incident also reported in the Security Council reports.<sup>lxix</sup> Another news released suggesting that 2 April 2010 the International Red Cross announced that there were approximately 800 deaths<sup>lxx</sup> while in the Security Council Report it is recorded as approximately 500 deaths recorded by the International Red Cross.<sup>lxxi</sup> In the same month Allasane Quattara forces detained Laurent Gbagbo and Simone Gbagbo. In November Laurent Gbagbo transferred to the International Court of Justice with Ble Goude on the other hand Simone Gbagbo remained in the custody of the national forces, Allasane Quattara.

## **X. Simone Gbagbo**

Simone Gbagbo is the wife of the former president of Ivory Coast and has never been officially contributed the government and has been under any title that suggest that she directly resulted the unfortunate events in Ivory Coast.

Simone Gbago born in 1949, furthermore she was a part of a family with 18 children. Her father was a policeman. Simone Gbagbo worked with the organization, which fights with AIDS and poverty after she graduated from linguistic and history major from her university.<sup>lxxii</sup> Simone was famous with her idealistic thoughts of democracy

and political pluralism during her teaching period and due to her assistance, she was imprisoned and tortured as she claims in 1970.<sup>lxxiii</sup> She has wed with Laurent Gbagbo in 1989 and currently has 5 daughters, 3 of them from another husband.<sup>lxxiv</sup>

In 2000 Simone Gbagbo became the First Lady of the Ivory Coast, where is listed as the world's top cocoa source moreover she is mostly known as "*Maman Simone*"<sup>lxxv</sup> known by the supporters and "*Blood Lady*" or "*Iron Lady*"<sup>lxxvi</sup> by her opponents.<sup>lxxvii</sup>

Even though she has never been under any kind of governmental titles, she was very passionate and proud about representing the country and played a key role in the presidency of her husband. In an interview she stated, "*It is true that I have an office. You should keep in mind that I have a political past. (...) My current position is due to my experience, not to my husband's office. I don't want to create a foundation. For that, you have NGOs.*" Her status in the administration claimed to be higher than any other ministers and the maybe the most important information is that she was the counselor of her husband, the president which label she have never disguised.<sup>lxxviii</sup>

Moreover in the same interview for the French press l'Express she further commented "*All the ministers respect me, and they often consider me above them. I've got what it takes to be a minister,*" and "*I engaged in political struggle against the former regime alongside men. I spent six months in prison; I was beaten, molested, left for dead. After all those trials, it's logical that people don't mess with me.*"<sup>lxxix</sup>

## **XI. Alleged Crimes Committed by Simon Gbagbo**

Simon Gbagbo was actually accused of being the mastermind behind all the unfortunate and brutal events<sup>lxxx</sup> that resulted approximately 3,000 deaths<sup>lxxxi</sup>, which also constituted crimes against humanity under the Rome Statute of the International Criminal Court. The court issued an arrest warrant for Simon

Gbagbo, unfortunately the current president refused to transfer her to the international authorities instead Ivoirians preferred to prosecute her in the national court<sup>lxxxii</sup> regards to the crimes only ‘against the state’<sup>lxxxiii</sup> where the prosecutor argued, "*Simone Gbagbo most certainly participated in the composition of armed gangs...Her men... participated in an insurrectional movement.*" and where Simone Gbagbo testified that after her arrest while she was in the government’s custody, she was “*beaten with incredible violence*”. In Ivory Coast, there were group of people believed that the prosecution of Simon Gbagbo, hearings of the trial and the judgment of the court was politically biased and it was a “victor’s justice”. Albeit after the judgment was announced Simon Gbagbo kept her poise and stated that "*I have suffered humiliation upon humiliation during this trial. But I am ready to forgive... because if we do not forgive, the country faces a crisis worse than what we experienced.*"<sup>lxxxiv</sup> On the other hand other press agencies reported as "*I forgive because if we don't forgive this country will burn.*"<sup>lxxxv</sup>

## **XII. The International Criminal Court**

In fact the International Criminal Court cannot prosecute and investigate the events happened in Ivory Coast, because Ivory Coast sign the Rome Statute but did not ratified it, albeit Laurent Gbagbo consented and confirmed the jurisdiction of the court in 2003, prosecutors did not have any restriction regarding anything related with Ivory Coast as long as it falls under the scope of the Rome Statute.<sup>lxxxvi</sup> For the sake of the committee topic, in the event in front of the judges Simon Gbagbo transferred to the International Criminal Court after the national trial and awaits a new trial at The Hague where she is indicted with crimes against humanity of murder, rape and other sexual violence and persecution.

The prosecutor of the International Criminal Court clarified the relation between charges and Simone Gbagbo by stating that Simone Gbagbo was inside the presidency where all the political and military plans are formed and “participated in all the meetings during the relevant period,” additionally “instructed pro-Gbagbo forces to commit crimes against individuals who posed a threat to President Gbagbo's power.”<sup>lxxxvii</sup>

Article of the Rome Statute, Individual Criminal Responsibility:

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

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

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

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

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

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

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

Moreover, many times International Criminal Court repeated that the accused does not necessarily be executing a formal duty moreover the outline of the rule stated under Article 27 of the International Criminal Court:

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

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

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