

# The Court Is the Political Arena: Performance and Political Narratives at the International Criminal Court<sup>\*</sup>

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## Abstract

*This article explores the politics of international criminal justice and argues that the International Criminal Court is a lieu of staged performance where actors deploy their political narratives. Using the Situation in the Republic of Côte d'Ivoire before the ICC and focusing on the pre-trial phase, I contend that the defendants Laurent Gbagbo and Charles Blé Goudé project a performance and deploy political narratives that are the extension of the politics of the Ivorian crisis, which make the Court the quintessential arena where domestic and international politics cohabit with law and rules of procedure.*

**Keywords:** Côte d'Ivoire, Laurent Gbagbo, trial, performance, narratives.

## 1 Introduction

The study of performance at trials tends to focus on how discursive political and theatrical narratives are deployed by a wide variety of actors. This article departs from that literature in the sense that it places the defendant at the centre of the performance by focusing on the pre-trial proceedings and the statements made by the defendants at that stage. Moreover, I study performance and political narratives in judicial processes by focusing on an international criminal court, where high-value political actors are standing trial. The symbolic value of the process and outcomes of the proceedings at the International Criminal Court (ICC) is exceptionally high, given the aim of the ICC to “end impunity” for the perpetrators of “unimaginable atrocities that deeply shock the conscience of humanity.”<sup>1</sup> Therefore, using the ICC as a site of study and analyzing the ways in which domestic politics are at the centre of the legal arena allow for a study of the pre-trial phase and a focus on the discourse deployed by the defendant. The Côte d'Ivoire situation at the ICC involves two main political actors – Laurent Gbagbo and Charles Blé Goudé – who both played central roles in the political life of their

\* An earlier draft of this article was presented at the 2015 International Studies Association Annual Meeting in New Orleans, LA.

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1 See the Preamble of the Rome Statute, available at <[www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf)>.

country for the past few decades. As such, the pre-trial proceedings before the ICC in the *Situation in the Republic of Côte d'Ivoire* provide a compelling site for the study of performative political narratives.

The first section of this article analyzes the performative dimension of trials, and trials as performative sites, while highlighting the limits of this approach when focusing on international courts and outlining the advantages of focusing on the pre-trial phase before the ICC because it places the defendant at the centre of the political narrative. The second section presents an overview of the political crisis in Côte d'Ivoire, which culminated in the post-electoral violence of 2010-2011 and ended with the arrest and transfer of Laurent Gbagbo to the ICC. I then analyze Gbagbo's statements before the Court, at the initial appearance audience and the confirmation of charges hearing, unpacking his political narrative, which I argue is part of the nationalistic legalist discourse that he has adopted throughout the crisis. Finally, I show that Blé Goudé's narrative before the ICC is also an extension of the eloquence and rhetoric of ultranationalist discursive politics of the Young Patriots movement and that his performance on the ICC stage mirrors the open agoras in Abidjan such as *La Sorbonne*, during the crisis.

## 2 Trials as a Performance Stage

In criminal proceedings, trials are *performative*, par excellence. Schechner defines performance as "all the activity of a given participant on a given occasion which serves to influence in any way any of the participants."<sup>2</sup> The audience, observers, and co-participants contribute to the performance, which takes place in "action, interaction, and relation" between people.<sup>3</sup> To be sure, trials constitute performances with "courtroom procedure as the routine, and interaction between the actors, or judges, lawyers, witnesses, and accused, as performance."<sup>4</sup> The interaction between the participants to the performance is deployed through narratives, which makes trials the "public narratives par excellence."<sup>5</sup> A performance takes place on a stage. For instance, Hannah Arendt writes that

[the Eichmann trial] proceedings happen on a stage before an audience, with the usher's marvelous shout at the beginning of each session producing the effect of the rising curtain. Whoever planned this auditorium ...had a theater in mind, complete with orchestra and gallery, with proscenium and stage, and with side doors for the actor's entrance.<sup>6</sup>

- 2 R. Schechner, *Performance Studies: An Introduction*, Routledge, New York, 2002, p. 23.
- 3 C. De Ycaza, 'Performative Functions of Genocide Trials in Rwanda: Reconciliation through Restorative Justice?', *African Journal of Conflict Resolution*, Vol. 10, No. 3, 2010, pp. 8-28.
- 4 De Ycaza 2010, p. 3.
- 5 B.J. Falk, *Making Sense of Political Trials: Causes and Categories*, Munk Center for International Studies, University of Toronto, 2008.
- 6 H. Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil*, Penguin Classics, New York, 2006, p. 4.

Oumar Ba

Indeed, not only are the performances occurring on a stage, trials are stages themselves. They are staged in a way to permit the deployment of narratives and “(in)justice frames” by the performers to reach and mobilize their target audience.<sup>7</sup> Falk contends that “Trials have long been ‘reality’ entertainment, because courtrooms provide a stage for the essential dramas of life, with the various players making their Shakespearian entrances and exits. They are both tragic and comic.”<sup>8</sup> As De Graaf argues, performances create identities, making the courtroom a place for *mimesis* and *poiesis*, of faking, but also making, of breaking and remaking.<sup>9</sup> The judiciary becomes then “a paramount site of resistance and contestation” where different versions of legitimacy, legality, and morality are deployed, providing a “strategic platform for spectacles of resistance” popularly referred to as show trials.<sup>10</sup> As such, the pre-trial phase at the ICC makes the defendant the main actor in a performance destined to deploy a political narrative. Moreover, the proceedings against Gbagbo and Blé Goudé before the ICC are important to this theoretical framework not only because they occur before a global stage, as opposed to a domestic court, but also due to the high political personality of the defendants.

### 3 Pre-Trials at the ICC: The Defendant as the Main Voice in the Performance

The Rome Statute and the rules of procedures established extra steps at the pre-trial phase before the ICC that are not always present in other courts. Soon after a defendant is in ICC custody, he/she is presented before the Pre-Trial Chamber for an initial appearance hearing. Although the purpose of the hearing is not to discuss the indictment and the matters of the case, the defendants often use the opportunity to answer questions by deploying their own political narrative. In fact, the initial appearance serves only to identify the defendant, make sure they are aware of the charges, remind them of their rights as a defendant, and set a date for the audience of confirmation of charges. However, as this article shows, both Laurent Gbagbo and Charles Blé Goudé would use that stage to deploy their own performance and deliver their narrative as political operatives in the Ivorian crisis.

The following step in the pre-trial proceedings is the Audience for Confirmation of Charges where the defense team and the prosecutor’s office have the opportunity to present the facts of the case to allow the Pre-Trial Chamber to decide whether there is satisfactory evidence that warrants moving the case to the trial phase. The defendant makes a statement during the last day of the audience. In this paper, I use two sets of primary sources to analyze the performance

7 B. De Graaf, ‘Terrorism Trials as Theatre: A Performative Perspective’, *Expert Meeting Paper*, International Centre for Counter-Terrorism, The Hague, 2011, p. 2.

8 Falk 2008, p. 5.

9 De Graaf 2011, p. 7.

10 A.K. Allo, ‘The “Show” in the “Show Trial”: Contextualizing the Politicization of the Courtroom’, *Barry Law Review*, Vol. 15, No. 1, 2010, p. 42.

and political narratives of the defendants: their statements at the initial appearance hearing and at the audience of the confirmation of charges. I argue that Gbagbo and Blé Goudé use that stage to perform to an audience both domestic and international. Moreover, all the proceedings at the ICC are broadcast live on ICC channels – except when a private session is needed in order to preserve the anonymity of witnesses, for example, which gives a real time global audience to Gbagbo and Blé Goudé.

#### 4 Côte d'Ivoire: Anatomy of a Crisis

Félix Houphouët-Boigny established his political pre-eminence already as a cocoa farmer and doctor in the 1940s and 1950s within French colonial politics and became president of Côte d'Ivoire at independence in 1960.<sup>11</sup> But he held onto the one-party state ruled by the Democratic Party of Côte d'Ivoire (PDCI), even when Laurent Gbagbo created his party, the Ivorian Political Front (FPI) in 1982, and went to exile in France. Houphouët-Boigny's cult of personality and one-man rule started being challenged as France pressured its former colonies to democratize, at the end of the Cold War. At the country's first multiparty election on 28 October 1990, Gbagbo won 18% of the votes against Houphouët-Boigny's 82% and gained nine seats in the parliament against PDCI's 163 seats.<sup>12</sup> The decades 1960-1980 were a period of economic growth, with the "Houphouëtist compromise" under which political support was maintained through the economic opportunities afforded by the benevolent hand of the charismatic father figure.<sup>13</sup> The foundations of the Houphouëtist compromise were eroded by the economic hardships of the late 1980s and plunged Côte d'Ivoire into a "post-miracle" period concomitant with demands of democratic openness.

Houphouët-Boigny was a clever patriarch, avoiding any of his heirs amassing too much political power.<sup>14</sup> When he called in Alassane Ouattara in 1990 to be his prime minister, Houphouët-Boigny wanted to benefit from Ouattara's relations with the international financial structures.<sup>15</sup> Henri Konan Bédié, also a potential heir, was uncharismatic, but member of the Baoulé group, which had ruled Côte d'Ivoire since independence.<sup>16</sup> A brief succession struggle ensued between Bédié, then-President of the National Assembly, and Ouattara, then-Prime Minister at Houphouët-Boigny's death in 1993. Bédié prevailed, as provided by the constitution.

11 M. McGovern, *Making War in Côte d'Ivoire*, University of Chicago Press, Chicago, 2011, pp. 15-17.

12 *Id.*, p. 113.

13 F. Akindès, M. Fofana & S.Y. Kouamé, 'The Hows and Whys of Mobilization in Côte d'Ivoire', in N.S. Sylla (Ed.), *Liberalism and Its Discontents: Social Movements in West Africa*, Rosa Luxembourg Foundation, Dakar, 2014.

14 On Félix Houphouët-Boigny's life and presidency, see F. Grah Mel, *Biographie: Félix Houphouët-Boigny*, Maisonneuve & Larose, Paris, 2003; F. Grah Mel, *Félix Houphouët-Boigny: L'Épreuve du Pouvoir*, Karthala, Paris, 2010.

15 Ouattara has been Deputy Director of the International Monetary Fund (IMF).

16 R. Banégas, 'Côte d'Ivoire: Patriotism, Ethnonationalism and Other African Modes of Self-Writing', *African Affairs*, Vol. 105, No. 421, 2006, pp. 535-552.

Oumar Ba

As the Ivorian economy entered a difficult phase in the 1990s due to the fall of the price of cacao and the devaluation of the CFA currency that lost half of its value, political tensions arose as well, and the concept of *ivoirité* – “ivorianness” – entered the debate as Ouattara was excluded from the 1995 presidential elections. *Ivoirité* “gave metaphysical and pseudo-intellectual justification to an instrumentalized xenophobia whose main object was keeping Ouattara and his RDR out of politics.”<sup>17</sup> In fact, the term *Ivoirité* was first used by Ivorian intellectuals as a cultural idea in the 1970s and did not become popular until Bédié made of it a political concept that redefines nationhood and citizenship.<sup>18</sup> And in a country where 28% of the population were immigrants, mostly from Burkina Faso, Mali, and Guinea, *ivoirité* redefined exclusionary citizenship and nationality that excluded not only the immigrants but also other Ivorians.<sup>19</sup> This was compounded by the fact that Côte d’Ivoire was never a melting pot, but rather a cohabitation and division of labour between the communities.<sup>20</sup>

The “Christmas Eve coup” of 1999 put General Robert Guéï in power, as he promised to “sweep” the political scene and leave. General Guéï promised new elections, but in October 2000, the Constitutional Court once again rejected Ouattara’s bid for the presidency on the grounds that he has held a Burkinabé diplomatic passport during his career as an official of the International Monetary Fund and that the new Ivorian constitution included a clause disqualifying any candidate who has held a nationality other than Ivorian.<sup>21</sup> In fact, General Guéï had introduced in the new Ivorian constitution the infamous Article 35 that requires that both parents of any presidential candidate be Ivorian citizens and a Supreme Court appointed by Guéï ruled that neither Bédié nor Ouattara was allowed to run for president, which basically left only Gbagbo standing for the opposition.<sup>22</sup> Naturally, Gbagbo won the election as Ivorians were faced with little options, but Guéï declared himself the winner, which led to popular uprisings, and Gbagbo was eventually sworn in as the president in 2000.

Nearly two years after Gbagbo assumed power, the next major event would rock Côte d’Ivoire: on 19 September 2002, an attempted coup and rebellion was launched from the North, initiated by soldiers and citizens that felt excluded by the *Ivoirité* policies of Bédié, Guéï, and Gbagbo, successively. The rebellion failed

17 McGovern 2011, p. 17. Ouattara was excluded from the 1995 elections through the passing by the Parliament of a law that was just meant to do that, in the aftermath of the power struggle at the death of Félix Houphouët-Boigny. The law stated that only Ivorian citizens by birth and whose both parents were also born in Côte d’Ivoire would be allowed to run for the presidency. However, it was said that Alassane Ouattara’s father was born in 1888 in Upper Volta (now Burkina Faso), the colony of Côte d’Ivoire did not yet exist, and yet, the Supreme Court ruled that Ouattara’s father was not an autochthone, hence Ouattara would not be allowed to run for the 1995 elections. See also A. Cutolo, ‘Modernity, Autochthony and the Ivorian Nation: the End of a Century in Côte d’Ivoire’, *Africa*, Vol. 80, No. 4, 2010, p. 527.

18 T. Förster, ‘Insurgent Nationalism: Political Imagination and Rupture in Cote d’Ivoire’, *Africa Spectrum*, Vol. 48, No. 3, 2013, p. 11. On the concept of *Ivoirité*, see also Cutolo 2010.

19 McGovern 2011, p. 14.

20 Banégas 2006, p. 540.

21 Cutolo 2010, p. 528.

22 McGovern 2011, p. 18.

to capture Abidjan, but they occupied Bouaké, the Ivorian second largest city, and controlled the northern half of the country, as Guillaume Soro became the political leader of the rebellion that controlled half of the Ivorian territory from 2002 to 2010.<sup>23</sup> As McGovern has pointed out, between 2002 and 2010, the Ivorian conflict was “a situation that has been perpetually tense, rather dismal, and characterized by frequent instances of violence, but never a full-blown war.”<sup>24</sup> That was until the aftermath of the 2010 post-electoral crisis blew unto a level of violence that had not been reached before.

In fact, by January 2003, following the de facto partition of the country, the Economic Community Of West African States (ECOWAS) had deployed an interposition force along the “*zone de confiance*,” which separated the Forces Nouvelles-controlled North and the South under the Gbagbo’s government control. The two sides held the Lina-Marcoussis talks outside of Paris on January 2003 and agreed to a power-sharing mechanism, but at the same time, pro-Gbagbo militants, the Young Patriots, were staging protests in Abidjan against France.<sup>25</sup> Prime Minister Seydou Diarra was picked to lead the coalition government, but the Forces Nouvelles ministers would later pull out, claiming obstruction from Gbagbo. The parties signed the Accra III accords in July 2003 and agreed to a timetable for legislative reforms, which the government failed to enact, as the Forces Nouvelles refused to disarm.<sup>26</sup> When Gbagbo’s forces launched an operation to reconquer the north in November 2004, while bombing Bouaké, they hit the French peacekeepers barracks, killing nine French soldiers. France retaliated by bombing and destroying Gbagbo’s military planes and helicopters. France’s involvement in the conflict reached a point of no return.<sup>27</sup>

Faced with another deadlock, Thabo Mbeki, as the African Union (AU) mediator, invited Soro, Bédié, Ouattara, and Gbagbo to Pretoria in March 2005 and “locked them in a conference room together for three straight days.”<sup>28</sup> Gbagbo subsequently signed a presidential decree under his exceptional powers to suspend the Article 35 of the Ivorian constitution, which allows Ouattara to run for the October 2005 presidential elections. After some more violence, Mbeki convened the parties to the Pretoria II round of negotiations in June 2005, and Gbagbo promulgated revised versions of law on nationality and naturalization and created an independent electoral commission.<sup>29</sup> But it was clear that Côte d’Ivoire was not ready to hold elections in October 2005, as the disarmament of the Forces Nouvelles and the Gbagbo militias proved impossible. The AU and the

23 G. Soro, *Pourquoi Je Suis Devenu Un Rebelle: La Côte d’Ivoire Au Bord Du Gouffre*, Hachette, Paris, 2005.

24 McGovern 2011, p. xviii.

25 *Id.*, p. 20.

26 *Id.*, p. 21.

27 For France’s role in the Ivorian crisis, see S. Smith, ‘La politique d’engagement de la France à l’épreuve de la Côte d’Ivoire’, *Politique Africaine*, Vol. 89, 2003, pp. 112-126; M. Wyss, ‘The Gendarme Stays in Africa: France’s Military Role in Côte d’Ivoire’, *African Conflict and Peacebuilding Review*, Vol. 3, No. 1, 2013, pp. 81-111.

28 McGovern 2011, p. 23.

29 *Id.*

Oumar Ba

UN then gave Gbagbo a one-year grace period within which the presidential elections needed to be held.<sup>30</sup> But elections could not be held in October 2006, either. In 2007, Soro and Gbagbo entered in direct dialogue, and the Ouagadougou Accords put forward a new peace plan that made Soro the Prime Minister of a unity government and scheduled elections for 2008. However, the elections did not take place until November 2010, five years after Gbagbo had legally finished his elected term.

## 5 The 2010 Elections: Political Violence Unleashed

Three years after the signing of the Ouagadougou Agreement that paved the way for the 2010 presidential elections, the Ivorians seemed eager to move on from the years of permanent crisis as shown by the voter turnout that reached 80%.<sup>31</sup> However, the elections opened up the bloodiest episode of violence, with “a ‘militianization’ of state and society.”<sup>32</sup> The year 2010 marked the end of the second – unelected – mandate of Gbagbo, and after having commissioned opinion polls from the French firm TNS Sofres, Gbagbo was confident that he was in a position to win the elections.<sup>33</sup> However, at the first round of the presidential elections on 28 October 2010, Gbagbo and Ouattara came ahead with 38 and 32% of the votes, respectively, which led to a run-off between the two candidates since none of them had won the required threshold of 50% of the votes. Ouattara’s RDR and Bedié’s PDCI joined forces for the second round. On 2 December 2010, The Independent Electoral commission (CEI) declared Ouattara the winner with 54.1% of the votes, after a series of incidents at its headquarters.<sup>34</sup> Those results were immediately dismissed by the Constitutional Council – led by Gbagbo’s loyalist Judge Yao Ndré – which invalidated 600,000 votes casted in the Northern region, which were Ouattara’s stronghold.<sup>35</sup> The Constitutional Council thus declared Gbagbo the winner with 51.45% of the votes. That led to the unusual scenario where the country had two presidents, each claiming his legitimacy. Both men were sworn in and formed their governments.<sup>36</sup> It is worth noting that the AU, ECOWAS, the UN, and the Carter Center observers said that despite some irregularities, the elections were globally free and fair and certified that the results delivered by the CEI that declared Ouattara the winner were correct.

30 A. Toh & R. Banégas, ‘La France et l’Onu devant le « parlement » de Yopougon’, *Politique Africaine*, Vol. 104, No. 4, 2006, pp. 141-158; Banégas 2006; McGovern 2011.

31 Banégas 2011, p. 457.

32 *Id.*

33 G. Piccolino, ‘David against Goliath in Côte d’Ivoire? Laurent Gbagbo’s War against Global Governance’, *African Affairs*, Vol. 111, No. 442, 2012, p. 21.

34 The spokesperson of Ivorian Independent Electoral Commission (CEI) electoral began announcing the result of the election, but a pro-Gbagbo commission member tore the paperwork off his hands in front of cameras. The video is available at <[www.youtube.com/watch?v=WjaWVyh s3qA](http://www.youtube.com/watch?v=WjaWVyh s3qA)>.

35 Banégas 2011.

36 Akindès, Fofana & Kouamé 2014, pp. 248-249.

In the aftermath of the elections, Ouattara at first pursued a legalistic battle, isolating Gbagbo internationally and through financial asphyxia, and most of the actors in the international community recognized Ouattara's victory and called on Gbagbo to step aside.<sup>37</sup> Ouattara and Soro – who was Gbagbo's Prime Minister in the unity government and had by that time defected to Ouattara's camp – retreated to the secured Golf Hotel in Abidjan. By February 2011, Gbagbo had found it difficult to pay his soldiers and his administration, leading to defections.<sup>38</sup> In March 2011, Ouattara renamed the Forces Nouvelles the Forces Républicaines de Côte d'Ivoire (FRCI) and launched an offensive at the end of March, which ended with the capture of Gbagbo on 11 April 2011 and his subsequent transfer to The Hague. The government had, in April 2003, entered a declaration accepting the jurisdiction of the International Criminal Court (ICC).

## 6 Laurent Gbagbo before the Court

This section first analyzes the statements that Laurent Gbagbo made during his initial appearance and confirmation of charge hearings. The working languages of the Court being English and French, Gbagbo uses the French language in his proceedings at the ICC, and I chose to discuss his statements in their original language, French.<sup>39</sup> Subsequently, this section explains how Laurent Gbagbo's performance before the Court is an extension of the political legalist discourse he had adopted in Côte d'Ivoire from 2002 to his downfall.

Gbagbo used the stage of his initial appearance hearing before the ICC on 5 December 2011 to indict the Ouattara regime and France.<sup>40</sup> When asked about the conditions of his transfer and of his detention in The Hague, Gbagbo answers by saying that he has no complaints about the conditions of his detention, but he goes on to explain the conditions under which he was arrested on 11 April 2011 “under the French bombs... from French tanks and helicopters.” Gbagbo asserts, “it is the French troops that did the work, before handing me over to the Ouattara forces, which were not at the time the regular forces, because the regular forces were working for me.” He also describes the harsh conditions under which he was held in Korogho, in Northern Côte d'Ivoire.

Laurent Gbagbo's Confirmation of Charges hearing was held before the ICC's Pre-Trial Chamber I in February 2013.<sup>41</sup> There was a strong presence of Gbagbo's supporters both in the courtroom and outside the Court, and Gbagbo often hailed

37 For instance, the UN, the AU, the EU, and ECOWAS had all deployed a wide range of measures designed to make Gbagbo relinquish power. See Banégas 2011, p. 458.

38 Banégas 2011, p. 463.

39 All translations are the author's.

40 International Criminal Court, 'Affaire Gbagbo: Audience de comparution initiale', 5 décembre 2011, video available at <[www.youtube.com/watch?v=mxW1XB0pJvc](http://www.youtube.com/watch?v=mxW1XB0pJvc)>.

41 International Criminal Court, 'Affaire Gbagbo: Audience de confirmation des charges, Déclarations en clôture, Défense – Partie 2', 28 February 2013. Video with Gbagbo's statement in French available at <[www.youtube.com/watch?v=4Ykp0L5NIUs](http://www.youtube.com/watch?v=4Ykp0L5NIUs)>.



Oumar Ba

his supporters through the windows.<sup>42</sup> At the hearing, eight charges of crimes against humanity as *indirect co-perpetrator* were read to Gbagbo: murder, rape, inhumane acts or attempted murder, persecution for political, national, ethnic, or religious motives, and the charges as a *contributor* to murder, rape, inhumane acts, or attempted murder, and persecution for political, national, ethnic, and religious motives.

Gbagbo's defense team challenged the admissibility of the case before the court, and due process allowed to their client. Dov Jacobs, a member of Gbagbo's legal team, asserted that Ivorian courts should have primacy because "complementarity is not an option recognized to national courts but rather an obligation" which means that the government of Côte d'Ivoire must allow Gbagbo to face justice in his country.<sup>43</sup> Arguing that Côte d'Ivoire has demonstrated the willingness to prosecute Gbagbo and has the ability to do so, Gbagbo's team asked the PTC to declare the case inadmissible under Article 17 of the Rome Statute. On the other hand, the ICC Prosecutor's Office emphasized that Gbagbo, with the support of his inner circle, developed a plan to use disproportionate violence against his political adversaries, by way of systematic attacks, whereas the defense argued that if there was a plan, it was to force Gbagbo out of power and took issue with the prosecution's silence on the events between 2002 and 2007, noting that Pre-Trial Chamber III had asked to include crimes supposed to have been committed between 2002 and 2010.

Gbagbo's statement during Confirmation of Charges comes at the last day of the hearing, following the closing arguments of his defense team. Unlike his statement at the initial appearance where the defendant answers a specific set of questions, he is allowed to make any statement he wishes during the confirmation of charges hearing.<sup>44</sup> Gbagbo spoke with notes but did not read them, and his statement lasted 17 minutes. The statement can be divided roughly in three sections focusing on three political narratives: (1) Gbagbo recounts his political trajectory and how he has been a champion for democracy; (2) Gbagbo focuses on domestic politics in Côte d'Ivoire, explaining to the global audience the climate under which the 2010 elections were held, and the origin of the conflicts between 2000 and 2010, and finally (3) Gbagbo closes his argument by a lecture on the fragility of African states and the need for democracy.

### 6.1 I, Laurent Gbagbo, Champion of Democracy

Gbagbo starts by expressing his surprise at how some of the arguments were so far off from the reality in Côte d'Ivoire. He said he asked himself why modern justice is functioning with entrenched camps (*des camps retranchés*) because both sides could have called him so he could give information that the Court could ver-

42 Open Society Justice Initiative, 'ICC Confirmation of Charges Hearing in the Case against Laurent Gbagbo', *Briefing Paper*, Open Society Foundations, The Hague, 2013.

43 *Id.*, p. 3.

44 At the initial appearance hearing, the Presiding Judge asked the defendant whether he was informed of the charges against him, whether he was told his rights as a defendant, and the conditions of his transfer and detention at The Hague.

ify afterwards.<sup>45</sup> He also refutes the accusation that his family was involved in the governance of the country. He tells the Court, “And do not give me relatives that I do not have...I do not govern with my family. Me, I’m Head of the State, President of the Republic. My wife is a Member of the Parliament. Kadet is not my nephew...He was Deputy Minister of Defense, and my Adviser. I do not govern with my family.”

As if he had just cleared some misconceptions, Gbagbo moves to what seems to be the heart of the matter. He wants to deploy not only a political narrative of a champion for democracy as the “historic opponent” to Félix Houphouët-Boigny but also a narrative of Gbagbo as an academic, a professor of history and political thinker. He asserts,

Madam President, my whole life, and that is known not only in Côte d’Ivoire, but everywhere in Africa, and everywhere in France..., I have fought for democracy. Last week, I have asked my lawyers, I told them that I want to send you all the books that I have written on my trajectory. They said that it is too late to add that to the filings, but when all this is done, whatever the result, I will send a package of Gbagbo’s books on Côte d’Ivoire, I will send you a book at the prosecutor’s office, I will send you a book of Gbagbo...

To place his narrative in a global context of historic events, as if he is trying to claim his spot in international political figures, Gbagbo affirms, “I have fought for democracy, at a time when we did not even know whether the Berlin Wall would fall. We did not know that.” Gbagbo argues that they did not believe that the fight for democracy would be achieved within their lifetime, but then the Berlin Wall fell, and that helped them achieve the victory of multipartism and democracy.

### 6.2 Côte d’Ivoire in Turmoil: Gbagbo’s Narrative of the Politics of Crisis

In the middle section of his statement, Gbagbo focuses on Ivorian domestic politics to make his claims that he followed the rule of law and upheld the constitution of his country. For Gbagbo, the Court proceedings cannot be dissociated from the politics of Côte d’Ivoire. He states,

Madam the Prosecutor has said a sentence that shocked me a bit, when she said that we are not here to discuss who won the elections and who did not win. But we cannot talk about, we cannot discuss the post-electoral crisis without discussing how the elections unfolded. Who won the elections? Because it is the one who did not win that has caused the troubles.

45 For instance, Gbagbo gives the example of people saying that he had signed a document to deploy the army, but in reality, what he signed was a decree to put the FDS on alert and ready, and that is a practice that started in 1961, at the time of the creation of the Ivorian army. The army can be called in to support the police forces during a crisis. For that, the president can sign a decree that he gives to the commanders that decide whether and when to deploy the armed forces.

Oumar Ba

Gbagbo discusses the elections, noting that when he asked for the recount of the polls, he meant it, and that the court documents show that in Bouaké 100,000 votes were added to “[his] adversary.”<sup>46</sup> The heart of the matter is the elections, Gbagbo argues. “When we were attacked in 2002,”<sup>47</sup> he claims, “I did what was needed because I never believed that Côte d’Ivoire could solve its problems through war.” He says that he has always favoured the dialogue, which is why he travelled all over Africa. He gives the examples of the Lomé talks, Marcoussis-Kleber, Accra I, Accra II, Accra III, Pretoria I, and Pretoria II. He says that it is in Pretoria in 2005 that he asked Thabo Mbeki to help him find a “legal solution for Alassane Ouattara to be a presidential candidate.” And the legal solution he found was through Article 48 of the Ivorian constitution, which he says “is similar to Article 16 of the French constitution. It gives extraordinary powers to the president, and that day, I took Article 48 of the Constitution, and I allowed Ouattara and Bédié to be candidates.”<sup>48</sup>

### 6.3 *The Fragility of African States*

Gbagbo leaves the domestic politics of Côte d’Ivoire and starts a lecture on African states and democracy. He says, “Our countries, our states, our states, and this will be my last point, are fragile. Our states are fragile ... and each time a European or western leader told me to adopt democracy in Africa, I responded that we actually need democracy in Africa... we actually need it to build our countries.” Asking a rhetorical question, Gbagbo wonders how else a country like Côte d’Ivoire would pick a head of state, given the ethnic fractionalization. Democracy helps Côte d’Ivoire because it erases the ethnic fractionalization and allows each citizen one vote. But for Gbagbo, democracy is not limited to elections; it requires also the respect of the constitution. He asserts,

We need democracy, Madam, but democracy is not only the vote...It’s also who is allowed to announce the results of the votes. When at night one goes and pick up the president of the electoral commission, and take him to the electoral headquarters of a candidate, and invite a foreign TV channel, tell him to speak and record him, and broadcast it the following morning, it is not very democratic. That is not democracy. Democracy is the respect of the text, starting with the constitution. He who does not respect the constitution is not democratic. Madam, it is because I respected the Constitution that they want to bring me here. So, I’m here but I trust you, because I wish that all Africans understand that the salvation of the African states lies in the respect of the constitutions that we choose, and the laws that stem from them.

46 Bouaké is the second largest city of Côte d’Ivoire, located in Ouattara’s stronghold.

47 This is a reference to the failed coup attempt against Gbagbo in September 2002, which resulted in the partitioning of the state, the rebel forces occupying the northern part of Côte d’Ivoire.

48 Article 16 of the French Constitution gives “extraordinary powers” to the President in time of crisis.

#### 6.4 Gbagbo's Narrative: A Political Legalist Approach

Gbagbo's discourse before the Court is consistent with the political legalist approach that he has adopted in Côte d'Ivoire since the beginning of the crisis.<sup>49</sup> One can easily notice the similarity between Gbagbo's "lecture" before the Court about democracy and the need for constitutional order and his speech at his swear-in ceremony at the height of the post-electoral crisis, after the Constitutional Council had declared him the winner. The opening statement at his oath ceremony was,

Today, I understand better why there are so many crises in Africa ... What I would like to stress today is that these crises come out also from the fact that people are outside the law. People do not like to respect the law and the procedures that stem from it. There is no strong State, no strong Republic without laws and procedures ... The only strong Republic is the one that stands on legally established rules. Since I have become president, I have realized that all the crises that we have known have come out from the non-respect of the law, of the jurisdiction and of the procedures that this law produces. However, we cannot claim that we are building democracy and put aside the law and the procedures stemming from it.<sup>50</sup>

As Piccolino shows, the words *law, legality, rules, and procedures*, "recur in an almost obsessive fashion in this speech, especially in connection with democracy." In another speech, Gbagbo insisted that "all the troubles that we are witnessing today in Côte d'Ivoire have come out from the refusal of my rival to abide by the laws, the rules and the procedures applicable in our country."<sup>51</sup> For Gbagbo, the rule of law and the respect of the democratic procedures as outlined in the constitution are at the heart of the Ivorian crisis. However, as Piccolino argues, "The manipulation of democracy in Côte d'Ivoire has taken place to a large extent on the legal and constitutional terrain, through the manipulations of the key rules of eligibility and voting rights."<sup>52</sup> In fact, Bédié was the first to manipulate the constitution to prevent his rival Ouattara from running by introducing the "born from an Ivorian mother *and* father" clause in the constitution. Guéï's new constitution passed through referendum included Article 35 that was so vague that it was used to disqualify 12 candidates out of 17 from the 2000 elections.<sup>53</sup>

49 It is worth noting that no member of the diplomatic corps attended Gbagbo's swearing in ceremony on 4 December 2010, at the presidential palace. See G. Piccolino, 'Ultranationalism, Democracy and the Law: Insights from Côte d'Ivoire', *The Journal of Modern African Studies*, Vol. 52, No. 1, 2014, p. 45.

50 *Fraternité Matin*, 6/9/2010, cited in Piccolino 2014, p. 46.

51 Gbagbo 2010, cited in Piccolino 2014, p. 47.

52 Piccolino 2014, p. 54.

53 *Id.*, p. 25.

Oumar Ba

Moreover, Gbagbo has been quick to represent the post-electoral crisis as a conflict between “legalists” and “those who have taken the road of illegality.”<sup>54</sup> As Banegas contends, Gbagbo relies on the Constitutional Council to give himself legitimacy in the post-electoral crisis, which is a way for him to claim the legalistic approach, which “has undeniable performative effects, compelling agents of the state (in particular the police) to respect ‘institutional order’ on pain of arrest for sedition.”<sup>55</sup> As such, Gbagbo’s discourse “combined the legalistic exaltation of state sovereignty, a fierce anticolonial nationalism, and religious overtones in portraying the Ivorian crisis as a ‘war of second independence’ against a wide range of international enemies.”<sup>56</sup>

## 7 Charles Blé Goudé before the ICC: The Fierce Rhetoric of Ultranationalist Eloquence

Blé Goudé’s first appearance before the ICC was on 27 March 2014.<sup>57</sup> His confirmation of charges hearing was held in October 2014, and he addressed the Court for 56 minutes on 2 October 2014.<sup>58</sup> At the initial appearance hearing, when Judge Silvia Fernández de Gurmendi asked Blé Goudé to introduce himself, he states his name, date, and place of birth and describes his profession as a “political communication consultant.”

### 7.1 *Blé Goudé’s Politics of Language and Language of Politics*

The judge says in French, “I notice that you speak French perfectly, I’m assuming that’s your mother tongue, Mr. Blé Goudé?” to which Blé Goudé replies, “That’s correct, Madam. I’m from a country that was colonized by France. Therefore, I speak French.” The Judge says: “My understanding is that you also speak English fluently, you have studied at the University of Manchester. Is that right?” Blé Goudé answers, “That’s not incorrect, Madame Judge”. The Judge asks again, “You speak it and understand it perfectly?” Blé Goudé responds in English this time: “Yeah, I can speak English but I prefer we speak in French.”

The exchange above is symptomatic of Blé Goudé’s view of the role of France in the downfall of the Gbagbo’s regime. Blé Goudé and Gbagbo loyalists viewed their fight as an attempt to gain Côte d’Ivoire “second independence” from

54 Gbagbo said, “I remind you that the IEC is an administrative authority, while the Constitutional Council is the highest jurisdiction of Côte d’Ivoire. The two institutions are not comparable, and it is illegitimate to compare them. Their decisions are of a different nature. They have neither the same foundation nor the same impact... I have waited for the voice of law to be expressed... They want to scare us, but they cannot expect that the legalists will surrender to those who have taken the road of illegality” (quoted in Piccolino 2014, p. 61).

55 Banegas 2011, p. 459.

56 Piccolino 2012, p. 1.

57 International Criminal Court, ‘Première comparution de Charles Blé Goudé devant la CPI’, 27 March 2014; video available at <[www.youtube.com/watch?v=DySaH0Bcuuc](http://www.youtube.com/watch?v=DySaH0Bcuuc)>.

58 International Criminal Court, ‘Affaire Blé Goudé/Audience de confirmation des charges : Défense, Clôture, 2ème partie’, 2 October 2014, video available at <[www.youtube.com/watch?v=DySaH0Bcuuc](http://www.youtube.com/watch?v=DySaH0Bcuuc)>.

France, which he invokes when he says that he speaks French because his country was colonized by France. Yet, despite being fluent in English, Blé Goudé chose also to speak in French as a way to reach his audience and more importantly, so he could deploy his eloquence and high rhetoric which he is a master of in the French language.<sup>59</sup>

Blé Goudé uses also the opportunity afforded to him by the Judge's questions about the conditions of his detention in The Hague to indict the Ouattara regime for what he calls the abuses of his human rights. He describes the harsh conditions under which he was arrested in Ghana, while he was asleep, taken for interrogation without a lawyer and his rights violated. He was in isolation in Côte d'Ivoire for 14 months before his transfer to the ICC. He spent 10 months "in a dungeon, naked, malnourished." One day, the jailers took him upstairs, gave him a haircut, and when he returned to the cell, it was cleaned, and books were put in there, and they took pictures, asking him to pose as if he was reading. He says, "I believe one can do politics with elegance and wisdom, and that prison should not be a tool to break the moral (soul) of the political adversary, you don't use prison for that." He closes his statement at the initial appearance hearing saying: "Madame Judge, I don't want to be the shame of my generation. I don't want to be the shame of my family and my children. I came here, and I view that as a mission for the uncovering of the truth. I'm pro-Gbagbo. I'm proud to be it. I was pro-Gbagbo yesterday, I'm pro-Gbagbo today."

### 7.2 *Blé Goudé, the Young Patriots and the Politics of Nationalist Rhetoric*

At the outbreak of the rebellion in September 2002, Côte d'Ivoire became separated into two social movements: the Young Patriots led by Blé Goudé and the Patriotic Movement of Côte d'Ivoire (MPCI) which would later become the Forces Nouvelles, under the leadership of Guillaume Soro. Both Soro and Blé Goudé had been leaders of the Ivorian students union, the FESCI.<sup>60</sup> These camps developed competing notions of the meaning of "fatherland" (*la patrie*).<sup>61</sup> In the Ivorian context, the patriot – the lover and defender of "la patrie" – is the one who is ready to fight for and defend the fatherland.<sup>62</sup> For the Gbagbo loyalists, "la patrie" meant the land inherited from the forefathers and patriotism meant resistance to re-colonization by France and also by those perceived as not being real Ivorians, whereas in the rebel-administered North between 2002 and 2010, patriotism entailed the fight for recognition into the national fabric.<sup>63</sup>

59 For instance, when asked whether he would like to have the arrest for warrant read to him again, Blé Goudé responds: "*Je pense qu'on peut en faire l'économie*" [we shall not trouble ourselves with that], instead of just saying "no", or "no need to."

60 Soro served as president of the pro-FPI student union, the FESCI from 1995 to 1998, and was succeeded to the post by Blé Goudé from 1998 to 2001.

61 Akindès, Fofana & Kouamé 2014.

62 F. Akindès & M. Fofana, 'Jeunesse, idéologisation de la notion de « patrie » et dynamique conflictuelle en Côte d'Ivoire', in F. Akindès (Ed.), *Côte d'Ivoire: La réinvention de soi dans la violence*, CODESRIA, Dakar, 2011, p. 228.

63 *Id.*, p. 231.

Oumar Ba

The pro-Gbagbo patriotic galaxy is made of a number of political organizations among which the most important were the National Coalition of Resistants of Côte d'Ivoire (CONARECI) led by Damana Pickas, the Alliance of Young Patriots for the National Salvation (AJPSN) led by "General" Charles Blé Goudé, the Union for the Total Liberation of Côte d'Ivoire (UPLTCI) led by "Maréchal" Eugène Djué, and the Patriotic Group for Peace (GPP) led by Touré Moussa.<sup>64</sup> These groups are organized around charismatic leaders who have great rhetoric, are excellent at political communication, and know how to captivate their audience.<sup>65</sup> Blé Goudé became the most charismatic leader of the patriotic galaxy and one of Gbagbo's closest allies, becoming the leader of the Gbagbo's party's youth wing, and appointed as Minister of Sports and Youth in 2010. The Young Patriots have claimed to be fighting for their country's "second independence" against France while at the same time navigating in "a poisonous morass of identity politics."<sup>66</sup> They re-appropriated the revolutionary discourse of the FESCI as a new mantra driven by autochthony for the emancipation of Ivorian people against neo-colonialism. This time around though, the category "Ivorian people" itself was exclusionary, leaving out most of the Ivorians from a northern ethnicity.<sup>67</sup>

## 8 Conclusion: The Court as the Stage for Performative Politics: Before the ICC, There Was *La Sorbonne*

The narrative politics and performance deployed by both Gbagbo and Blé Goudé find their antecedent and groundwork in another space of discursive performance of identity and narrative politics: *La Sorbonne* and other "agoras", "parliaments", and "sénats" which were scattered in the Ivorian urban space during the crisis, between 2000 and 2010. At such places of popular speechifying, rhetoricians and eloquent orators deployed populist discourses.<sup>68</sup> These "standing parliaments" (*parlements debout*) operate on an established timetable. Members engage in a "revue de presse" in the morning, reading newspapers and commenting on them, and preparing for the arguments to present to the audience in the evening. Political debates are held between 3 and 7 pm, with an invited guest as a moderator, as the audience reaches up to 1,000 people in the evening.<sup>69</sup> At first, *La Sorbonne* and similar gatherings emerged as "democratic space" which later morphed into

64 For a detailed study of these various groups and the patriotic groups of Northern Côte d'Ivoire, see Akindès & Fofana 2011, p. 218.

65 *Id.*

66 Banégas 2006, p. 535.

67 K. Arnaut, 'Re-Generating the Nation: Youth, Revolution and the Politics of History in Côte d'Ivoire', in J. Abbink & I. Van Kessel (Eds.), *Vanguard or Vandals: Youth Politics and Conflict in Africa*, Brill, Leiden, 2005.

68 McGovern 2011, p. 2.

69 Toh & Banégas 2006, p. 150.

places of ultranationalist discourse, where the eloquence and rhetorical prowess displayed in the performative speeches created their own “regimes of truth.”<sup>70</sup>

Designated as the “Paris of West Africa” and being the epicentre of the *miracle Ivoirien*, Abidjan embodied between the 1960s and the mid-1980s the booming cosmopolitan Francophone African city.<sup>71</sup> And Abidjan’s Plateau especially – where *La Sorbonne* was located – was the symbol of the *miracle ivoirien*, par excellence. As Matlon points out, Sorbonne was a nationalist space where Gbagbo’s supporters contested the crisis narrative and claimed their space in the discourse. “Literally and ideologically, Sorbonne orators and spectators moved themselves and their country from the periphery to the urban and global core.”<sup>72</sup> At the Sorbonne, “professors” and other “orators” from Gbagbo’s “patriotic galaxy” found an audience to engage with.<sup>73</sup> Indeed, before the ICC, there was La Sorbonne. This is meant both literally and figuratively. In the temporal sense, La Sorbonne predated the ICC proceedings related to the *Situation in Cote d’Ivoire*, which makes them a logical prologue of the Ivorian political crisis and its narratives. Moreover, Blé Goudé and Gbagbo’s performance before the ICC are an image of the transfer – or displacement – of La Sorbonne to the ICC. Thus, their appearance and statements are a performative reflection of La Sorbonne on the ICC stage. Charles Blé Goudé’s political narratives especially are in continuation with the ultranationalist high rhetoric and eloquent speech in the French language that made La Sorbonne and other agoras in Abidjan so singular.

This article has argued that the ICC is a stage of performative discourse where actors create, change, frame, make, and unmake their political narratives. Focusing on the pre-trial phase before the Court that places the defendant at the centre of the stage and analyzing their own statement in their – French – original language, I have shown the extent to which Laurent Gbagbo and Charles Blé Goudé have used their appearance before the Court to not only address the Chamber but also speak to their compatriots and to a global audience to tell their (his)stories, which fit in the larger frame of the (dis)placement of the Ivorian crisis into an international criminal justice apparatus.

70 Sorbonne as a phenomenon started in the late 1980s with the multiparty system. In the late 1980s, men congregated in a public park adjacent to its location to speak about society, politics, and religion. The place and concept had become heavily pro-Gbagbo by 2004, and Ouattara supporters razed it after April 2011. See J. Matlon, ‘Narratives of Modernity, Masculinity, and Citizenship amid Crisis in Abidjan’s Sorbonne’, *Antipode*, Vol. 46, No. 3, 2014, pp. 717-735.

71 *Id.*, p. 717.

72 *Id.*, p. 719.

73 Note that out of the 18 orators that Matlon interviewed, all but four had university education, and seven had or were in school for advanced degrees. See Matlon 2014, p. 722.