

INTERNATIONAL INVESTIGATION

The devious manoeuvres behind ex-Ivorian leader Laurent Gbagbo's trial at ICC

OCTOBER 8, 2017 | BY FANNY PIGEAUD

In April 2011, former Ivory Coast president Laurent Gbagbo, at the centre of a political crisis that followed disputed elections in the country five months earlier, was captured with French help by militiamen acting for his rival, Alassane Ouattara, the country's current leader. A confidential French foreign ministry document obtained by Mediapart reveals how International Criminal Court (ICC) chief prosecutor Luis Moreno Ocampo, without any legal basis, was involved in an operation to keep Gbagbo prisoner – five months before the ICC had even opened an investigation into his alleged crimes against humanity, for which he is now on trial in The Hague. Fanny Pigeaud reports on a covert operation in which the ICC appears to have played a key role France's political manoeuvring in its former West African colony.

On April 11th 2011, about 30 French army vehicles took up position in the Ivory Coast city of Abidjan in front of the smoking remains of the official residence of the country's president

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Inside the building, amid a group of around 100 people, was Laurent Gbagbo, who had refused to step down as Ivory Coast president after elections on November 28th 2010 when his rival Alassane Ouattara was declared the winner by the country's Independent Electoral Commission. After a French armoured vehicle knocked open a hole in the perimeter wall surrounding the residence, a group of armed militiamen loyal to Ouattara entered the ruins and Gbagbo gave himself up to them. Ouattara was at last able to take over the presidency.

Officially, the events that day marked the end of the political and military crisis that had crippled the country since the November presidential elections. But in reality, a secret plan was afoot to make sure Gbagbo was definitively removed from any future involvement Ivory Coast politics.

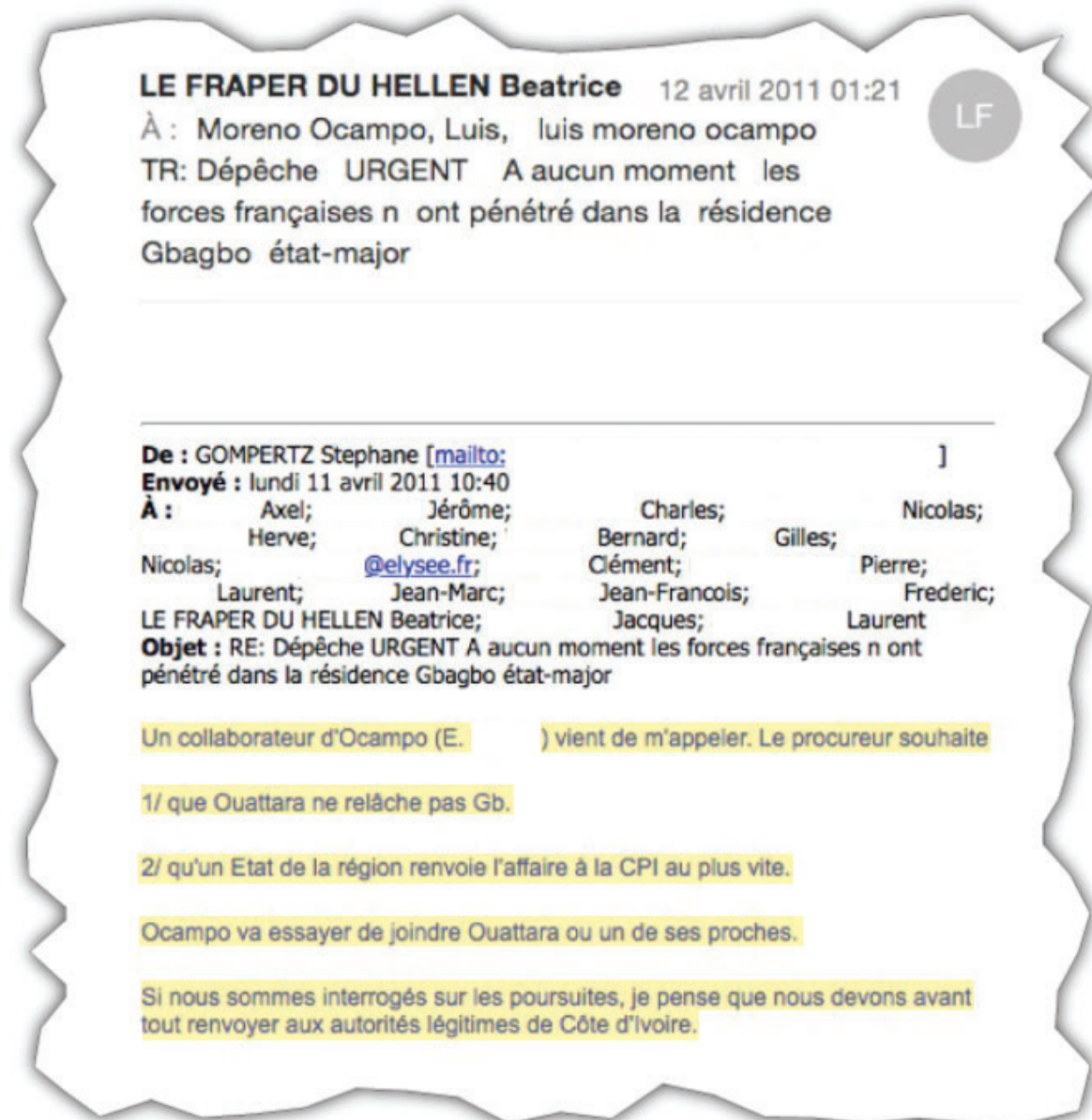
In Paris, the head of the African affairs department of the French foreign ministry, Stéphane Gompertz, sent out an email that same day, April 11th 2011, addressed to several officials and diplomats within both the ministry and also at the presidential office, the Elysée Palace.

In his email, Gompertz said a French official who worked with Luis Moreno Ocampo, then chief prosecutor of the International Criminal Court (ICC) in The Hague, had "just called me".

"The prosecutor would like 1/ that Ouattara does not release Gb," continued Gompertz, referring to Gbagbo, "and 2/ a state in the region send the case to the ICC as fast as possible", adding: "Ocampo will try to contact Ouattara or one of his close entourage."

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analysed by the journalistic consortium European Investigative Collaborations (EIC) which provided the starting point of a series of reports about the activities of the ICC and its former chief prosecutor, entitled 'Secrets of the Court'.



The April 11th 2011 email sent out by Stéphane Gompertz, head of the African affairs department of the French foreign ministry.

Ocampo's wish to have Gbagbo kept in detention, as described in Gompertz's email, had no judicial foundation. Importantly, the ICC

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Ocampo had no solid evidence of Gbagbo's involvement in crimes against humanity, which the ICC is tasked with prosecuting. Ocampo's apparent desire that "a state in the region send the case to the ICC as fast as possible" was in itself a recognition that the ICC had not at that time been officially notified of a case against Gbagbo.

Contacted by Mediapart, Ocampo, who left his post at the ICC in the summer of 2012, declined to offer any comment on the events reported here, leaving open the question as to whether he wittingly acted, without a legal basis, in support of political manoeuvring by France, whose then president Nicolas Sarkozy enjoyed close relations with Ouattara, in its former West African colony. In a book of conversations with French journalists Nathalie Schuck and Frédéric Gerschel, *Ça reste entre nous, hein ?* (<http://editions.flammarion.com/Catalogue/hors-collection/documents-temoignages-et-essais-d-actualite/ca-reste-entre-nous-hein%20>) (This stays between us, eh?), published in 2014, Sarkozy, speaking after he left office, recounted: "We got Gbagbo out, we put in Alassane Ouattara."

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Nicolas Sarkozy and Alassane Ouattara meeting at the Elysée Palace in Paris on June 22nd 2012. © Gonzalo Fuentes/Reuters

The background to the events began in December 2010, at the beginning of the crisis over the disputed final round of presidential elections in Ivory Coast on November 28th. Both Gbagbo, who had been in power since October 2000, and Ouattara claimed victory. Ouattara, a former deputy managing director of the International Monetary Fund and, between 1990 and 1993, served as prime minister of Ivory Coast, was credited with winning the election by the Ivorian electoral commission, which was mostly made up of his political supporters. Gbagbo, meanwhile, was proclaimed the winner by the country's constitutional council, which was presided over by his allies, and which claimed that the voting was marred by fraud in regions of the country, representing about 60% of the national territory, controlled by pro-Ouattara military forces, a coalition known as the Forces Nouvelles (New Forces).

The latter launched a rebellion against the government at the end of 2002, when Ivory Coast was largely split in two, with a predominantly Muslim, rebel-held north and a predominantly Christian south which

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subsequently signed in 2007. The fragile peace notably collapsed soon after the 2010 elections, when Ouattara received the backing of the UN and also the US, while his most active foreign support came from then French president Nicolas Sarkozy.

On December 11th 2010, ICC chief prosecutor Luis Moreno Ocampo was contacted by French diplomat Béatrice Le Fraper. Between 2006 and 2010 she had served at the ICC as Ocampo's senior advisor and principal private secretary, before becoming a member of France's permanent mission at the UN. "I need to know what happened in your conversation with Alassane Ouattara," Le Fraper told Ocampo in her December 2010 message.

Both Béatrice Le Fraper and Stéphane Gompertz gave no reply to Mediapart's invitation to comment on the findings of this report.

In December 2010, the African Union was engaged in mediation in the political crisis in Ivory Coast, where the security situation was still, and briefly, relatively stable. The intervention of the ICC's chief prosecutor with one of the two men at the heart of the dispute was in clear contradiction with the court's own requirements of independence and impartiality.

When Ocampo spoke with Ouattara, the latter was in difficulty. While he had the backing of Western countries, a number of the 55 member-states of the African Union leant their support to his rival Gbagbo. Furthermore, it was Gbagbo who days earlier had been sworn in as president, on December 4th, and who was effectively, for the country's institutions, head of state. Ouattara's government controlled only the Hôtel du Golf, in Abidjan, which served as his campaign headquarters and where he became based in the standoff with Gbagbo. While there, he was in regular contact with both Sarkozy and the French ambassador to Ivory Coast. It was vital for Ouattara to end the

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No action taken by the ICC against Ouattara's camp

The ICC was regarded by some as a means to end the crisis, and the documents obtained by Mediapart illustrate how it was used, if not manipulated, to get rid of Gbagbo by facing him with the prospect either of giving up his claim to the presidency or being sent to the Hague for prosecution by the ICC. Ultimately, he would have to accept both.

According to the 1998 Rome Statute of the International Criminal Court, which set out the court's future structure, functions and jurisdiction, a case can be referred to it in one of three manners: either by one of the 124 states that are party to the statute, or by the UN Security Council, or on the initiative of the court's prosecution services if the suspected crimes were committed within one of the countries that is signatory to the Rome Statute (or in a state that recognises the court).

But in the closing days of 2010, Ivory Coast had still not ratified the Statute of Rome. It had, in 2003, officially recognised the court but the terms of that recognition were legally open to interpretation over time. Throughout the months of crisis that followed the November 2010 presidential elections, and which erupted into open civil war in March 2011, the ICC prosecutor's office, along with the French government which had pushed for Ocampo to become involved, had sought – in vain – to find a solution to the legal confusion over its jurisdiction. In April 2011, the ICC still had no clear legal right to intervene in Ivory Coast.

Therefore, on April 11th 2011, when Ocampo urged Ouattara to keep Gbagbo in detention, he had no official power to do so. Yet Gbagbo was made prisoner, and two days later he was transferred to the town

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French diplomat Béatrice Le Fraper who asked him: “Did you speak to Ouattara?”

Gbagbo was held in Korhogo in a small house where he had no access to the light of day. The person in charge of his detention was Martin Kouakou Fofié, a local commander of the Forces Nouvelles who since 2006 was the target of UN sanctions – a travel ban and a freezing of assets – for crimes the UN said were committed by forces under his command including “extra-judicial killings”, “arbitrary arrests”, and “sexual abuse of women”.

In August 2011, shortly after the UN via its Abidjan mission publicly voiced concern at the conditions of his detention, Gbagbo, then aged 65, was charged by the Ivorian justice system with “economic crimes”.

While Gbagbo was being kept in Korhogo, discussions about his future continued between the ICC’s prosecution services, the French government, and Alassane Ouattara. French foreign minister Alain Juppé would even raise the issue with then UN secretary-general Ban Ki-moon on the sidelines of a G8 summit in France in May 2011. According to a summary of their discussion written up by French officials, Ban Ki-Moon, who it said had been consulted by Ouattara about “the treatment to be given to Gbagbo”, and Juppé “agreed that the transfer to The Hague offered the best security guarantees”. One month later, at the end of June 2011, Ocampo finally submitted to ICC judges a request to investigate “*motu proprio*” – meaning on his own initiative – in Ivory Coast and in October 2011, the request was approved.



Laurent Gbagbo appearing before the ICC court in The Hague on February 19th 2013.
© Michael Kooren/Reuters

But before that decision was announced, Ocampo, the Ivorian authorities, the French government and the UN had already begun preparations to transfer Gbagbo to the ICC in The Hague, and several meetings on the subject were held in Paris, The Hague and Abidjan.

In November 2011, one of Ocampo's staff informed him that he had taken a phone call from Ouattara who said he wanted to meet the chief prosecutor. "The purpose will be an update, [...] what messages he can deliver to the diplomatic actors he will meet in Brussels," Ocampo was told. "He needs the Prosecutor's advice."

On November 26th, Ocampo met with Ouattara in Paris, before also holding discussions in the capital with French foreign ministry official Stéphane Gompertz. Three days later Gbagbo was transferred to the ICC in The Hague.

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In 2013, the ICC judges told Ocampo that his case against Gbagbo was too weak to bring to a trial. But despite this the former Ivorian leader was kept in detention and in 2014 he was finally charged with crimes against humanity. The case against Gbagbo argued that he had organised a joint plan with his entourage for holding on to power and that he was responsible for the deaths of at least 167 people. The ongoing trial of Gbagbo and fellow accused Charles Blé Goudé (<http://www.bbc.com/news/world-africa-26765453>) finally opened in early 2016.

Meanwhile, the alleged crimes of the armed forces that backed Alassane Ouattara and his ally and former prime minister Guillaume Soro, including the massacre in March 2011 of 800 civilians in the town of Duékoué in the west of Ivory Coast, first revealed by the International Committee of the Red Cross, remain unpunished. No arrest warrant has been issued by the ICC against the alleged perpetrators of the Duékoué killings.

According to one of the confidential documents obtained by Mediapart, Ouattara met at the end of June 2011 with Fatou Bensouda, who was then Ocampo's deputy prosecutor, and who in

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Soro” to Bensouda, and also raised “the fact that Soro was very worried by our [*the ICC's*] intervention”.

Guillaume Soro, who never became the subject of an investigation by the ICC, is today the president (speaker) of the Ivory Coast parliament's lower house, the National Assembly.

The French version of this article can be found **here** (<https://www.mediapart.fr/journal/international/051017/proces-gbagbo-les-preuves-d-un-montage>).

English version by Graham Tearse

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KEYWORDS

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▪ IVORY COAST ▪ LAURENT GBAGBO ▪ LUIS MORENO OCAMPO ▪ THE HAGUE ▪ TRIAL

'The Secrets of the Court' is the result of six months of investigation carried out by six media organisations who are members of the consortium [European Investigative Collaborations](http://eic.network) (<http://eic.network>)

**INVESTIGATIVE
COLLABORATIONS**

More than 40,000 confidential documents – diplomatic cables, bank information, various correspondence – were obtained by Mediapart and analysed by the EIC. For the first time they allow a spotlight to be shone on certain practices of the International Criminal Court, which is based at The Hague in Holland.

Together with Mediapart, the EIC partners involved in the project are *Der Spiegel* (Germany), *NRC Handelsblad* (Holland), *The Sunday Times* (Britain), *El Mundo* (Spain), *L'Espresso* (Italy), *Le Soir* (Belgium), ANCIR (South Africa), *Nacional* (Serbia) and *The Black Sea*, an online publication created by the Romanian Centre for Investigative Journalism which reports on Eastern Europe and Central Asia.

