Independent Legal Representation of **Victims of War Crimes and Crimes Against Humanity**

CIVITAS MAXIMA

2021 ANNUAL REPORT

Many members of the NPFL wore unusual outfits for spiritual reasons, like this man who wears a beaded bracelet around his wrist. Congo Town, Liberia, 1990

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Foreword

Alain Werner, Director of Civitas Maxima

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Our Annual Reports always reflect on the organization's work that took place in the previous year. However, in the past 5 months, Europe has witnessed war within its geographical borders, and a Ukrainian court has already tried and sentenced to life in prison a Russian soldier, Vladim Shysimarin, for war crimes. It will probably be the first of many war crimes trials that will take place in Kyiv but also elsewhere in Ukraine and Russia throughout this year, as academics and practitioners in our field are debating the legitimate, albeit complex, question of whether conducting such trials when fighting is ongoing is the right thing to do.

Today, multiple judicial bodies at national and international levels are investigating in Ukraine – as they absolutely should. However, one cannot forget that Syrian, Liberian, Burmese, Libyan, Chinese, Iraqi, Korean, Afghan and many other victims around the world do not have the same prospect of justice for the crimes they and/or their loved ones have suffered from. And this is because the prosecution of the numerous crimes committed against these victims around the world does not fit into the political agenda of the day.

Civitas Maxima's mission remains unchanged, and if anything, our resolve is stronger than ever: contributing to a world where those who commit international crimes are tried with due process of law. Above all, our philosophy of working independently by not seeking financial support from governments allows us to represent those whose voices remain unheard, as we can work where we are needed, and not where the spotlight hits.

In 2021, Civitas Maxima also prioritized the work and expansion of its Knowledge and Training Centre (KTC). Our ambition is to share our unique methodology with like-minded organizations around the world, allowing them to strengthen their own methodology and practice. We believe that justice should be sought first and foremost by the very people whose lives are affected by international crimes, and that they should be at the very core of the process.

As you will read in the following pages, the KTC held a workshop in the summer of 2021 for a Ukrainian NGO conducting documentation. We are continuing to collaborate with our colleagues in this moment of need. Our aspiration is that more and more organizations will have the tools required for us to be able to leave to our children and grandchildren a world where impunity for international crimes is not the norm. This is one of the greatest legacies we can leave to our future generations.

This Annual Report will explore what our work contributed to achieve in 2021, including a verdict in Switzerland in June 2021 which made legal history twice: the first ever conviction for war crimes in front of the Swiss Federal Criminal Court, and the first ever conviction for international crimes of a Liberian taking part in the conflicts which devasted the country for so long. Over 30 years have passed since the start of the First Liberian War and this verdict was obviously long overdue. It was made possible only thanks to the incredible bravery and resilience of several Liberian citizens who believed in their quest for justice, in spite of the most adverse circumstances one could face: the Ebola outbreak in Liberia at the time the case became public in 2014-2015, and Covid-19 once the case was ready for trial in 2020.

Our work and achievements would not be possible without the unmatched dedication and drive of our team. In 2021, we were proud to welcome new staff to our legal team, who enrich our work with their diverse professional and personal experiences. Several of them agreed to share their thoughts on what drives them and what keeps them believing in justice, despite all the obstacles that arise in our line of work. The Deputy Director of Civitas Maxima – Emmanuelle Marchand – also agreed to share her views on the challenges facing NGOs working with national authorities on cases related to international crimes.

For a week in July 2021, I was Editor in Chief of Swiss newspaper Le Temps' Opinion Pages. I asked prestigious guests – including the ICC's Chief Prosecutor and a Nobel Prize Laureate - to share their views on current issues. You will read some of these contributions in this Annual Report, which also showcases pieces written by leading legal practitioners and academics from several countries and continents.

With Civitas Maxima's assistance, three concrete cases were heard in court or awaiting trial in 2021 for international crimes. I believe we can be proud of what we have accomplished so far. As we do not accept government funding of any kind, those achievements would not have been possible without our fantastic donors – institutions and individuals. Our very deep and genuine gratitude goes to them. We have come very far from when we started in 2012 – we have multiplied our budget by five - and it is thanks to their unwavering trust and confidence in our work and our mission. Thank you. We would not be here today if it were not for you.

Sincerely,

Alain Werner

A militaman from the NPFL with his face painted with kaolin powder for superstitious reasons. Liberia, 1990 © Patrick Robert

Civitas Maxima's Legal Team

Our legal team benefits from unique expertise in the field of international criminal law, with experience acquired in every prominent international criminal court established since Nuremberg. Many of our lawyers have worked to defend alleged perpetrators of international crimes and understand how to efficiently challenge evidence, which is key for the integrity of our own work.

A Journey Through International Courts

Maddalena Ghezzi

Senior Legal Counsel, Civitas Maxima

My journey in international criminal law started with an internship in a minuscule NGO in Kosovo, where I monitored the implementation of an action plan against human trafficking from a modest office in Pristina. Since then, I have worked for the UN Judicial Support Division in Kosovo and at the ICTY in the Hague. After a brief period at the UN Office of the OHCHR in Geneva, this path led me to the ECCC in Phnom Penh, and eventually to Civitas Maxima.

Since the early 90s, with the creation of the ICTY and the ICTR, the international community has made efforts to tackle serious international crimes, including war crimes, crimes against humanity, genocide, and torture. The first thing I learnt about transitional justice is that there is no one solution that fits all and that each response must be tailored to the specific post-conflict situation; where a TRC may be successful in one scenario, it may be completely inefficient in others. Similarly, the answer to dealing with conflict related crimes is not necessarily always the creation of an ad hoc international tribunal. In my view, however, directly involving the judiciary of the country dealing with the past atrocities in bringing justice to the victims and doing so on its own territory can be extremely powerful.

Such was my experience as legal officer in the trial chamber at the ECCC.

"Involving the judiciary of the country dealing with the past atrocities in bringing justice to the victims and doing so on its own territory can be extremely powerful."

In my first week working there, someone told me the Chambers were 'extraordinary' in every sense of the word. With time, I became fond of the layered significance of that simple statement. Formal and legalistic aspects aside, the work at the ECCC gave me the opportunity to witness, firsthand, how the proceedings affected the community it intended to bring justice and accountability to. And, in return, how the community affected the life of the court.

The court was far from perfect, but many of the issues it faced in its work exposed the possibility that the international community might have underestimated the implications of providing for the direct participation of witnesses and victims (civil parties) in trials of such magnitude.

I recall a very old man walking into the courtroom. It was impossible to guess his age, but his face was carved with memories that went beyond the horrors lived during the Khmer Rouge. He was hunched forward, but he did not use a walking stick. The oversized jacket the Witness Unit lent him, almost reaching his knees, was meant to protect him from the cold of the air conditioning, more than as a matter of formality for the chamber. The weight of those memories seemed to be crushing him and at each step I expected him to stumble, my body slightly tensed, ready to help him should that happen. Yet, with every step, he went slowly but surely to the witness stand, facing five judges in red gowns and about five court legal officers in purple robes, the prosecution and civil party co-lawyers to his left and two full defence teams to his right, all in black robes and white bibs. The Extraordinary Chambers rose before him, and behind him was an amphitheater of dozens of people that came every single day, in bus loads, to watch the trial of Khieu Samphan, former Chairman of the State Presidium of the Kampuchea Democratic, and Nuon Chea, Pol Pot's right-hand man. The old man remained unimpressed. He did not blink.

When he left the courtroom, he did not seem to be hunched over any more. His courage and its symbolic visual representation will stay with me for a long, long time.

And so will the testimonies I have heard and read, and the people I have met whilst working at Civitas Maxima. Despite my varied and extensive professional experience, I have never worked for an organization that though small, has great direct impact. The organization's 'hands-on' approach allows me to meet, listen to, and directly interact with those who have lived indescribable horrors, and who, like the old man with the jacket in Phnom Penh, chose to share their stories in the hopes for justice.

Maddalena Ghezzi *is an international jurist from Italy with over 13 years of experience in international humanitarian law, international criminal law and international human rights law. Maddalena graduated in law at the University of Bologna and holds an LLM in international law and international relations from the Brussels School of International Studies – University of Kent. She worked with UNMIK, UNAKRT, ECCC, and ICTY.*

From the ICC to Civitas Maxima

Building Strong Cases for Victims

Elsa Marguet

Legal Counsel, Civitas Maxima

In 2017, I had the chance to work with Civitas Maxima for the first time. Shortly after that, I joined a defence team at the ICC, and then, in 2021, my path led me to Civitas Maxima again. Leaving to come back better: this was indeed the case for me.

Prior to this, I was part of the VPRS, and my work was to analyze prima facie evidence: I had to determine whether the facts described by a victim could fall within the scope of the situation or case before the ICC. For some conflicts, documentary evidence is hardly available, and therefore the temporal, material and spatial scope of a case is assessed through victims' recollection of events. In the case against Al Mahdi, for example - an alleged Ansar Eddine member, a movement associated with Al Qaeda, who in 2016 was found guilty of the war crime of intentionally destroying historical and religious buildings in Timbuktu, Mali – victims' accounts were written, and I did not directly interact with them. This was the very first case where charges connected to destruction of cultural heritage were being discussed before the ICC. Buildings can be rebuilt but their history, heritage, and cultural and religious significance cannot be replaced. The collective trauma lived by local population and the loss of cultural heritage is unmeasurable. Because of the complexity and profundity of such crimes, it was paramount for me to acquire in-depth knowledge of the historical and cultural aspects of the case and to keep an open-minded approach.

The experience of being part of the defence team of a high-profile ICC case gave me the resources to better represent victims' interests in the future. Victims' accounts could easily be challenged by the defence. Because of the trauma of such violent and heinous crimes, victims' recollection of events might be vague or inconsistent with previous statements, or not specific enough to incriminate an alleged perpetrator. During the examinations and cross examinations of victims and witnesses in Court, it is the defence's job and duty to thoroughly question both the reliability of the source of the information and the credibility of the information itself. In general terms, any blurred element or doubt raised by the defence leads to the questioning of the credibility of a victim or witness, and hence weakens the prosecution or victims' case. It is a delicate process, as often the memory process is imperfect, the psychological impact of the lived experiences may alter the memory, and trauma sometimes leads to confusion.

"Defence and Victims' lawyers share the conviction and critical mindset that justice should be fairly rendered with due process."

However, defence and victims' sides should not be antagonistic with each other, but quite the opposite: both parties fight for the interests of their clients with the conviction that justice should be fairly rendered with due process. This critical mindset - knowing what you need and what element is not solid enough - is an extremely valuable resource in my current position at CM.

A year ago, and for the second time, my path led me to Civitas Maxima. After four years of closely following the organization's work, I joined CM again in February 2021 as a Legal Counsel, where my work and experience in defence is highly valued. Although my role may be different, my focus remains unchanged: assisting and supporting victims of mass atrocity crimes.

The diversity of my previous experiences made me the lawyer I am today: someone who always strives for justice and accountability, and who firmly believes in justice, and the law, albeit imperfect these might sometimes be. By no means should this imply that 'forgotten' victims are left behind. That is the reason why I am truly convinced that upholding victims' rights by considering pragmatic legal avenues is the best opportunity to amplify their voices, and hold perpetrators accountable.

All in all, and despite a lot of challenges, we hope to make a difference and pursue our mission, one step at the time.

Elsa Marguet *contributes to a number of CM's European cases concerning alleged international crimes in Liberia and Côte d'Ivoire. She also supports CM's capacity building efforts with GJRP. She is a French jurist holding a master's degree in International Public Law from the University of Strasbourg as well as a master's degree in Human Rights Law and a university degree in International Criminal Law from the University of Paris-Nanterre. She worked on international cases at the ICC and the STL.*

A sign outside the ULIMO headquarters in Kakata reads "WELCOME TO CRAZY DRAGON PLATOON HEADQUATOR (sic) ULIMO." Liberia, August 1994 © Patrick Robert


TO CRAZY
ON PLATOON
QUATOR
IMO

Victims' Access to Justice in Conflict and Post Conflict Settings

Gaëlle Buchet

Legal Counsel, Civitas Maxima

In August 2021, I joined Civitas Maxima's legal team. Just one month prior, I had been in the Central African Republic (CAR), working as a Judicial Affairs Officer for the UN peacekeeping mission (MINUSCA). Although these two experiences may appear very different - one focused on developing and strengthening judicial institutions, the other victim-centered - they share one challenge: access to justice in conflict and post-conflict settings.

The history of the CAR has been marked by violent regime changes, institutionalized corruption, deep-rooted poverty, and ethnic tensions that have led to a succession of armed conflicts. Despite the Khartoum Accord, signed in February 2019 between the government and 14 armed groups, most of the CAR's territory is still controlled by armed groups and the security situation remains volatile. This was notably demonstrated during the latest presidential elections in December 2020, throughout which a coalition of armed groups launched several military attacks that terrorized the civilian population.

Confronted with political instability, corruption, a lack of infrastructure and a lack of resources in general, the CAR's judicial institutions remain fragile, and struggle to fulfil their role of strengthening the rule of law and building long-lasting peace.

For a year and half, I was posted in Bouar's field office, in the western part of the CAR, close to the border with Cameroon. Together with two fellow Judicial Affairs Officers, both experienced magistrates from the CAR and Burundi, I collaborated closely with the magistrates, prosecutors, and law clerks working under the jurisdiction of the Court of Appeal of Bouar, contributing to the best of my ability to the MINUSCA's mandate to support both national and international justice, the fight against impunity, and the rule of law.

I provided legal advice and logistical support to the magistrates and other judiciary actors, organizing trainings to build the capacity of all judiciary actors, and leading projects to rehabilitate judicial facilities. This could only work by building a relationship of trust with all the stakeholders involved in the fight against impunity: magistrates, local authorities, police officers, military officials, and civil society representatives.

"In overcoming the many obstacles on the way to achieving justice, it is necessary to be pragmatic whilst tailoring the strategy to the needs of the victims."

There is still a long way to go in the restoration of the rule of law in the CAR, where impunity remains widespread. Despite all the hurdles they face, members of the judiciary continue to show determination and resilience in their work. In early 2021, faced with a growing threat of violence created by the presence of armed groups and of mercenaries, and the desertion of governmental army forces, prosecutors and magistrates made valiant efforts to protect civilians who had been arbitrarily arrested by belligerents by ensuring that they would be transferred into the custody of judicial authorities. It may seem like a small step in the overall fight against impunity, but from the victims' perspective it was the difference between life and death.

Whether working on capacity building - like I was doing in the CAR and now in Liberia - or on universal jurisdiction cases with CM, the rights of the victims should be the guiding principle in any effort toward access to justice. This does not mean that there is only one approach. For example, the concern for victims' rights can be manifested by reinforcing capacities of local partners, considering that grassroot civil society organizations must play a leading role in the fight against impunity in Liberia. It can also be illustrated by the efforts to obtain justice on behalf of the victims using all available remedies, including outside of Liberia in countries recognizing the principle of universal jurisdiction. In overcoming the many obstacles on the way to achieving justice, it is necessary to be pragmatic whilst tailoring and adapting the strategy to the needs of the victims. There is one end goal, and only one: to ensure that victims' voices are heard.

Gaëlle Buchet *is a French qualified lawyer with an LL.M. in International Humanitarian Law and Human Rights from the Geneva Academy of International Humanitarian Law and Human Rights. She holds a professional lawyer's certificate (CAPA) from the École des avocats Rhône-Alpes. Gaëlle worked as a United Nations Judicial Affairs Officer in Bouar (Central African Republic), and has extensive experience in defense teams at the ICC, and the ECCC.*

The Overall Fight for Justice

Representing the Defendant and the Victims

Laura-Lou Moreau

Legal Counsel, Civitas Maxima

I started my career working in a defence team at the International Criminal Tribunal for the former Yugoslavia (ICTY). I then worked for defence teams at the International Criminal Court (ICC) as well as at the Extraordinary Chambers in the Courts of Cambodia (ECCC). While some people may struggle to comprehend how one can defend an individual accused of the worst crimes – such as war crimes, genocide, and crimes against humanity – and be "l'avocat du diable," these experiences are, in my opinion, intrinsic to the quest for justice.

A defence lawyer's perspective is not the same as that of the victims' representative. Its essence is to give a voice to the accused, to ensure the criminal procedure has integrity, to safeguard fair trial rights and to guarantee that the presumption of innocence is respected until it has been ruled otherwise by a court of law. I strongly believe that the accused being granted the strongest defence possible serves justice in its highest form. This is because we owe victims the highest standards of law: if the guilt of the defendant is proven, the court's judgment will be undisputable, and there will be no room for doubt.

When I reflect on my past defence experiences, two cases have particularly shaped my path as a lawyer: my work at the Khmer Rouge tribunal in Cambodia and a universal jurisdiction case related to the Rwandan genocide that I worked on as a trainee-lawyer in France. It was in Cambodia that I truly realized how crucial defence work is, notably when highlighting irregularities in the investigatory phase of a case. Holding alleged perpetrators accountable does not justify any breach of fair trial rights or dubious investigative practices.

"I realised that my previous experience as a defence lawyer made me a better victims' lawyer."

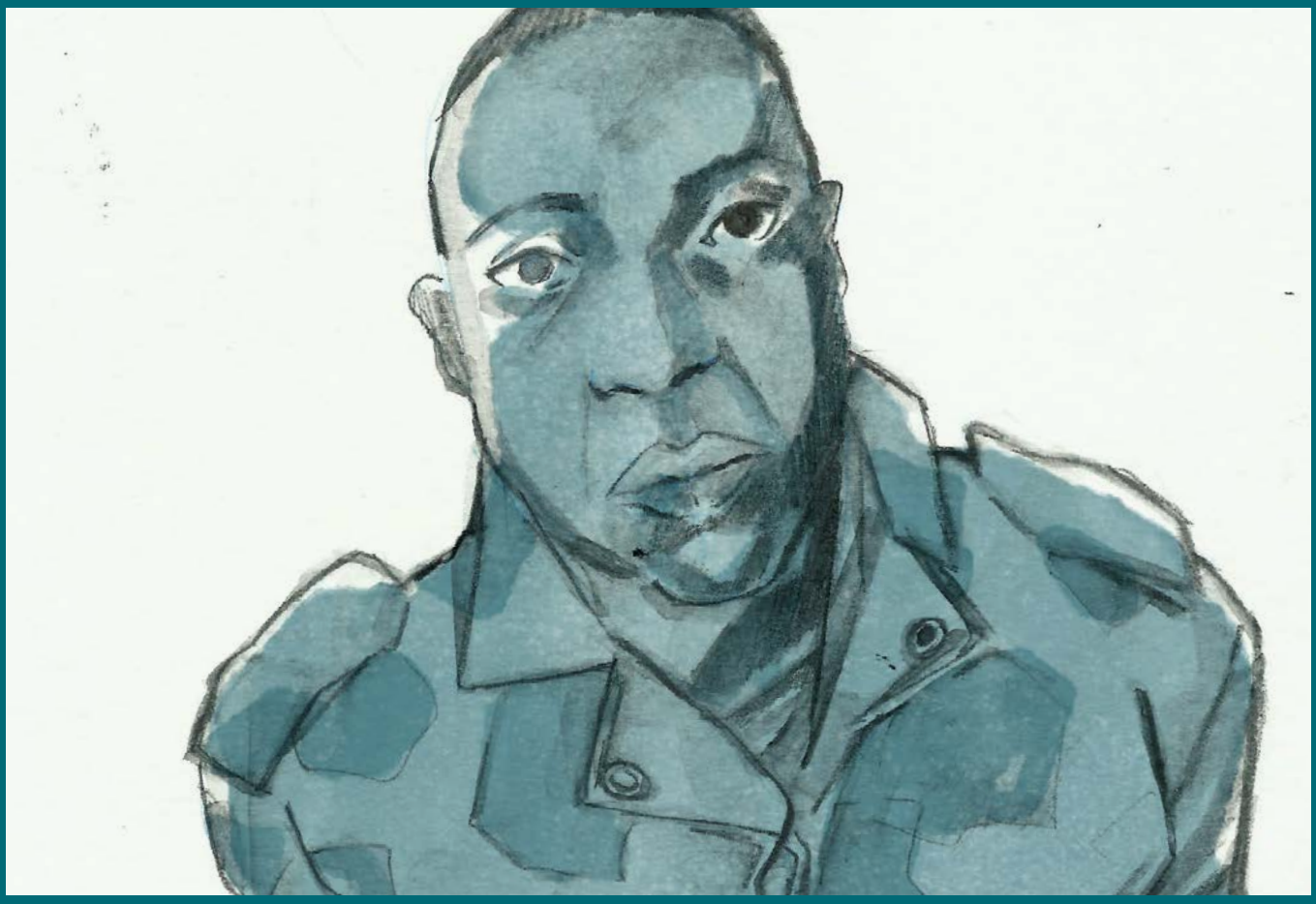
During the French criminal case, assisting the lead counsel of the accused in the appeal hearings for over two months, I was challenged both as a lawyer and as a human being. Criminal trials can be blatantly violent, both for the victims and for the accused. Often, the very nature of what is being discussed, and the brutality of the feelings attached to it, can make one forget that everyone involved is human. The work of a defence lawyer is neither to justify nor to endorse the accused's actions, but to give a voice to the accused and ensure that they get proper legal representation throughout the case.

My very first experience working alongside victims was on a case related to the Darfur genocide for Global Diligence Alliance. I realized that my previous defence "hat" had made me a better victims' lawyer. Not only do I know what the defence may attack in a case, but I also believe that respecting the highest standards of documentation to build the strongest case possible is key when investigating international crimes.

The investigating stage is the fundamental part of any criminal case, which can then make a judgment undisputable in a court of law. In other words, the end does not justify the means. It is essential that rules are respected, as the victims have no interest in a conviction that was obtained unfairly. When working for the victims, we support the prosecuting authorities upon whom the burden of proof falls on, which means that we should be bound by the very same duty of regularity and diligence, ensuring that the case is built in accordance with the highest standards.

When working for the defence, I was ensuring the full respect of the accused's basic human rights, which is to have a fair trial; when working for the victims, I work to obtain reparations for those who have suffered from the most heinous crimes that can be committed by human beings. Although the lens varies depending on which side one may sit on, the end goal remains the same: achieving justice.

Laura-Lou Moreau *is a French qualified lawyer with an LL.M. in Public International and European Law from Erasmus University (Rotterdam). She holds a Professional Lawyer's Certificate (CAPA) from the Haute École des Avocats Conseils de la Cour d'appel de Versailles. Laura-Lou has more than 8 years of experience working in the fields of international criminal law, human rights law, transitional justice, sexual and gender-based violence, financial crimes, and corporate accountability, and has worked for the ICTY, ICC and ECCC.*



Artistic Impression of Alieu Kosiah © JP Kalonji / Civitas Maxima

The Alieu Kosiah Case

On June 18, 2021 the Swiss Federal Criminal Court convicted Alieu Kosiah for war crimes with appeal proceedings currently ongoing. This first decision sets a historical and momentous precedent at different levels. Several experts and legal practitioners reflect on the importance of this verdict, and share their analysis and conflicting views about International justice in Switzerland.

The New York Times

Switzerland Finds Liberian Rebel Leader Guilty of Wartime Atrocities

In a landmark case, Alieu Kosiah was sentenced to 20 years in prison for crimes committed during Liberia's civil war.

By Nick Cumming-Bruce
June 18, 2021

GENEVA — A former Liberian warlord was found guilty of war crimes including murder, cannibalism and the use of child soldiers in Switzerland's criminal court on Friday — the first conviction specifically for atrocities in Liberia's back-to-back civil wars between 1989 and 2003 in which a quarter-million people are thought to have died.

The court found the former warlord, Alieu Kosiah, 46, guilty on 21 of the 25 charges against him, including ordering the killing of 13 civilians and two unarmed soldiers, the murder of four other civilians, as well as rape, cruel treatment of civilians and using a child soldier in armed hostilities. Mr. Kosiah, a former commander of the United Liberation Movement of Liberia for Democracy, or ULIMO, was sentenced to 20 years in prison, the maximum sentence allowed under Swiss law. "This is a landmark judgment, not only because it is the first war crimes conviction against a Liberian commander, but because it shows it is possible to convince a court with testimonies of victims, even almost 30 years after the facts," said Alain Werner, the director of the Geneva-based legal organization Civitas Maxima, which was instrumental in Mr. Kosiah's arrest and which represented some of the plaintiffs.

Switzerland recognizes universal jurisdiction, which allows for the prosecution of serious crimes committed in other countries. The trial, held in the Alpine town of Bellinzona, was the first time Swiss federal courts have prosecuted war crimes in the about a decade since they took over jurisdiction from military tribunals.

For victims who had waited seven years for the case to come to court and traveled to Switzerland to testify, Mr. Werner said, the judges' verdict was "a beautiful victory for their courage, their resilience and their quest for justice." Human rights groups also saw the trial as a milestone event for both Liberia and Switzerland. No Liberian perpetrator of atrocities has faced prosecution in Liberia despite President George Weah's repeated vague expressions of willingness to set up a war-crimes court for that purpose. In a trial lasting more than a month, the court heard gruesome testimony of summary executions and the torture of civilians during Liberia's first civil war and how Mr. Kosiah forced Liberians on arduous treks as porters, carrying goods pillaged from their own farms and villages.

A woman testified by video from Monrovia, Liberia's capital, that she had been repeatedly raped by Mr. Kosiah. Witnesses also described how one of Mr. Kosiah's associates, known as Ugly Boy, hacked open the chest of a church schoolteacher and ripped out and cut up his heart, which he, Mr. Kosiah and their associates then ate. Mr. Kosiah was living in Switzerland when he was arrested in November 2014 and has already spent six years in pretrial detention, which will be deducted from his sentence. On his eventual release, he will be expelled from Switzerland for 15 years. Lawyers and human rights groups are hopeful that this conviction will invigorate international investigations and prosecution of other war crimes, even possibly within Liberia.

Mr. Kosiah's trial is one of several cases moving through European courts on the basis of universal jurisdiction. A Finnish court is prosecuting another case that has involved judges traveling to remote villages in Liberia and to Sierra Leone to hear testimony in the trial of Gibril Massaquoi, formerly a senior member of a Sierra Leone rebel group that fought in Liberia. France announced in April that next year it would put on trial Kunti Kumara, another former commander in ULIMO, who is also accused of murder, torture, rape and other atrocities. The contrast between the prosecution of war crimes outside Liberia and the lack of justice within the country has placed increasing pressure on Liberia's leadership to do more to hold perpetrators accountable, said Philip Grant, director of TRIAL International, another Swiss-based legal group pursuing international crimes.

Legal organizations hope that the outcome of this case will also galvanize change in Switzerland, where lawyers say the image of a country where the Geneva Conventions were established contrasts with a weak record in prosecuting international crimes. Switzerland was an early actor in international justice cases. It prosecuted a Rwandan war crimes suspect in 1999, the first such case outside Rwanda and the International Criminal Tribunal for Rwanda, and, in 2011, it adopted a law allowing universal jurisdiction cases to be pursued.

But federal authorities have provided only meager manpower and funding for what are typically long, complex and costly investigations, and lawyers say that in recent years Switzerland has fallen far behind other European countries.

"If you only had to rely on governmental authorities, very little would have happened," Mr. Grant said. "Without the nongovernment, civil society organizations, these cases would be nowhere."

A TIMELINE OF
THE ALIEU KOSIAH CASE

November 10, 2014

Alieu Kosiah is arrested in Switzerland, after a criminal complaint is filed against him by several Liberian victims allegedly accusing him of war crimes and crimes against humanity.

January, 2015

The first three plaintiffs come to Switzerland to give their testimonies to the Federal Prosecutor.

May/June, 2017

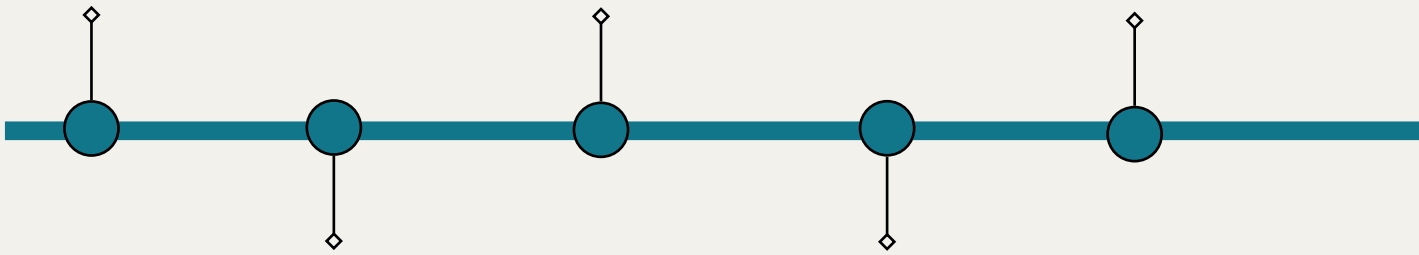
The last of nine plaintiffs comes to Switzerland to give his testimony to the Federal Prosecutor. Only seven plaintiffs will be granted the right to participate in the trial as plaintiffs. Many witnesses were also heard, including defence witnesses.

March 22, 2019

The Office of the Attorney General issued the indictment and sent Alieu Kosiah to trial for 25 counts of war crimes.

December 2-11, 2020

After being postponed in March 2020 due to the spread of COVID-19, the first part of the trial proceeds for one week with preliminary legal issues and the hearing of the defendant, in Bellinzona, Switzerland.

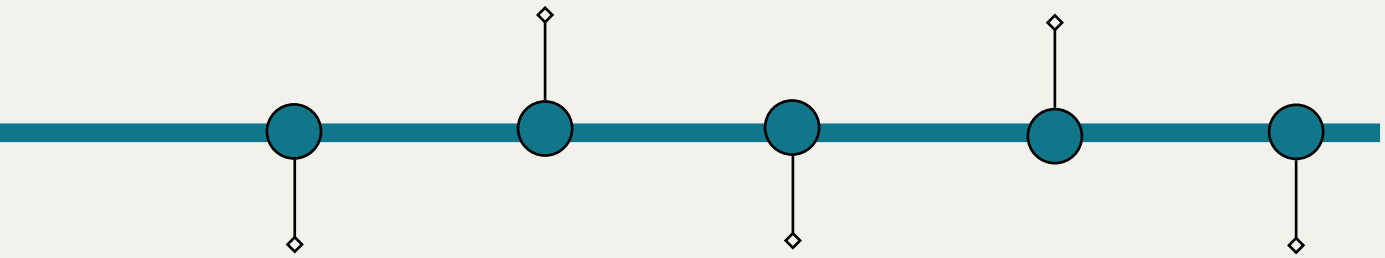


March 5, 2021

After three additional weeks, the trial concludes. Seven plaintiffs and nine witnesses were heard, some of them by video link from Monrovia.

March 31, 2022

The full written judgment of 290 pages is released.



February 15, 2021

The trial resumes and six of the plaintiffs travel to Switzerland to be heard.

June 18, 2021

Kosiah is found guilty of 22 counts, acquitted of four counts and is sentenced to 20 years in prison, from which his over six years of pre-trial detention will be deducted.

April 25, 2022

The defence lawyer files an appeal against the judgement. Appeal proceedings are expected in early 2023.

Historical Verdict and the New Beginning of Swiss Universal Jurisdiction Trials

C. Sophia Müller

Associate Legal Officer, ICC

On 18 June 2021, the Swiss Federal Criminal Court announced a historical verdict. On that day, Mr Alieu Kosiah, a former commander of a Liberian organised armed group, was convicted for war crimes committed between 1993 and 1995 in the context of the first Liberian armed conflict. Mr Kosiah was the first individual to be arrested and tried for war crimes in the context of this armed conflict. This raises the following question: why was a Liberian national accused of having committed crimes against Liberian victims in the context of the first Liberian civil war tried before Swiss courts?

Liberia has not (yet) prosecuted any individuals with regard to the first Liberian armed conflict (1989-1996/97), or even the second one (1999-2003). Therefore, in an attempt to end this impunity gap, Civitas Maxima has worked with Liberian partners to document crimes committed against Liberian victims and seek justice on their behalf outside Liberia. The Swiss authorities have competency to prosecute and try cases such as the one against Mr Kosiah based on the so-called principle of 'universal jurisdiction', as implemented in Swiss domestic legislation. This principle allows for the prosecution of specific crimes that are considered of concern to the international community, such as war crimes and the crime of genocide, in the national courts of any state. Thus, these crimes may be prosecuted irrespective of the nationality of the perpetrator or the victim(s) of the crimes, and even if the crimes were not committed on Swiss territory as long as the alleged perpetrator is in present in Switzerland.

In recent years, there was a rise of such cases based on the principle of universal jurisdiction around the world. In Switzerland, the case against Mr Kosiah was the first universal jurisdiction case after major revisions of the Swiss Criminal Code. Therefore, it sets the tone for future similar cases in Switzerland. The case was initially brought to the attention of the Swiss Office of the Attorney General (OAG) by Alain Werner as Director of Civitas Maxima and other lawyers on behalf of several Liberian nationals who filed complaints against Mr Kosiah between July and August 2014. Mr Kosiah was arrested on 10 November 2014 and the OAG indicted him with 25 counts of war crimes on 22 March 2019. Whereas the Swiss Federal Criminal Court announced the verdict on 18 June 2021, the written (anonymised) verdict was only published on 2 May 2022 (TPF, Cour des affaires pénales, Ministère public de la Confédération et parties plaginantes contre Alieu Kosiah, Jugement du 18 juin 2021, SK.2019.17).

"The trial was groundbreaking as it was the first universal jurisdiction case for war crimes before the Swiss Federal Criminal Court."

Mr Kosiah was convicted of all but four counts. More specifically, Mr Kosiah was convicted of having used a child soldier who was merely twelve or thirteen years of age when he initially joined the ranks of the ULIMO rebel group; of having ordered the killings of 13 civilians, having killed himself four civilians, and ordered the killings of two disarmed soldiers; of having raped a civilian by forcibly penetrating the victim four times in a row; of having ordered the cruel treatment of civilians on multiple occasions, including by ordering civilians to transport goods, as well as ammunition; of having ordered pillaging on multiple occasions and of different locations; and of having committed an outrage upon personal dignity by eating a piece of the raw heart of a civilian (act of cannibalism).

On the other hand, Mr Kosiah was acquitted of participating in the killing of the civilian whose heart was subsequently eaten by him and other commanders: indeed the Court found that the civilian had died as a result of another ULIMO commander cutting open his chest and tearing out his heart; however, with regard to Mr Kosiah, the Court held that his role in this killing was not clear beyond the fact that he was present, did nothing to prevent the killing and he 'gloated' at, and was 'jubilant' regarding, the killing (SK.2019.17, paras 7.6.3.5-7.6.3.6). Further, Mr Kosiah was acquitted of attempting to murder a civilian, as there remained doubt regarding the identity of the person who stabbed the victim (in dubio pro reo); and he was also acquitted of ordering the pillaging of one specific location.

Moreover, while Mr Kosiah was convicted of using a child soldier, he was acquitted of recruiting this same child soldier. At first sight, attendees of the Kosiah trial proceedings and readers of this Annual Report may think that the Court came to this conclusion, because the former child soldier testified himself in Bellinzona that he voluntarily joined the ranks of the ULIMO, or in other words that he was not forced to do so.

However, the fact that a child voluntarily joined an armed group is not a valid defence under international criminal law. Even if children may have reasons for desiring to join an armed group (for example, when the opposing armed group has killed their parents), not only is forcibly recruiting children under the age of 15, otherwise referred to as

'conscription', a crime but accepting the voluntary enlistment of such children also constitutes a crime.

The rationale behind this is that children under the age of 15 are generally not able to grasp the consequences of joining an armed group, are often not in a position to determine their own best interests, and therefore unable to genuinely consent to enlisting into the ranks of such groups (SK.2019.17, paras 7.1.3.5). Therefore, armed groups and their commanders have an obligation not to accept any children under the age of 15 into their ranks.

So, why was Mr Kosiah then acquitted of recruiting the child soldier? The Court found that the indictment, as filed by the OAG, had not sufficiently described Mr Kosiah's involvement and role in the recruitment (beyond his physical presence). The Court further pointed out that Mr Kosiah did not appear to be the highest-ranking commander present at the time of the capture of said child soldier (SK.2019.17, paras 7.1.3.1-7.1.3.12). Therefore, it was Mr Kosiah's lack of, or unclear involvement in, the recruitment of the child soldier and not the fact that the child soldier voluntarily joined the ULIMO that led to his acquittal regarding this count.

In the 285-pages long verdict, the Court also dealt with a number of preliminary questions raised by the parties and participants, its jurisdiction, and the applicable law. Among these matters was the scope of the principle of lex mitior (see Article 2(1) of the Swiss Criminal Code). In essence, this principle establishes that, whenever a court deals with alleged crimes that were committed before the revision of the applicable provisions of the criminal code, the court must apply those provisions that are more favourable to the accused. Considering that there was a major revision of the Swiss Criminal Code in 2011 and Mr Kosiah had committed war crimes between 1993 and 1995, at a time when another legal regime was in force in Switzerland, the Court had to address this matter.

"Alieu Kosiah was convicted amongst other things of ordering the killing of 13 civilians and 2 disarmed soldiers and having killed himself 4 civilians."

In the verdict, the Court held that the former law (Articles 108 and 109 of the former Swiss Military Criminal Code) was applicable. Even though the conduct that Mr Kosiah was accused and convicted of was punishable under both the former and the current law, the sentencing regime under the old provisions appeared more lenient and therefore more 'favourable to the accused' (SK.2019.17, para. 4.3.2). The same reasoning will also apply to future trials of war crimes committed before the introduction of the current provisions (i.e. before 2011).

Overall, whilst the Kosiah verdict clarified important matters, other matters (including on other international crimes) will need to be further clarified in future jurisprudence. Considering that the Kosiah case is currently under appeal, the appeal judgment may further contribute to the development of Swiss jurisprudence on the prosecution and trial of international crimes in national jurisdictions. In any case, the Kosiah trial was ground-breaking as it was the first universal jurisdiction case for war crimes in Switzerland before the Swiss Federal Criminal Court. It will not remain the last; further cases are already on the horizon.

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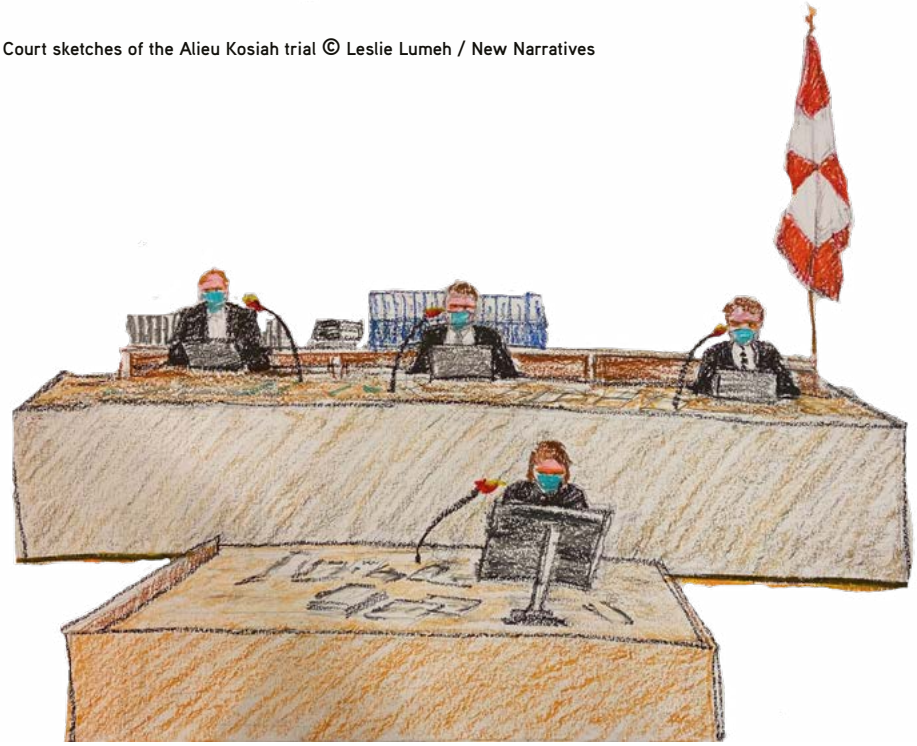
The views expressed in this contribution are those of the author and do not (necessarily) reflect the views of the ICC.

Court sketches of the Alieu Kosiah trial © Leslie Lumeh / New Narratives



15 February 2021
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: Did you hear Alieu Kosiah give the order?
Plaintiff G: I heard and saw him. He even yelled to tell the soldiers to execute them.
Presiding Judge: Did Mr. Kosiah specify how the seven men were to be executed?
Plaintiff G: He did not specify how they were to be executed, but they smashed their heads with a hammer.

23 February 2021
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: Did you give birth (recently) to a baby girl or baby boy?
Plaintiff K: A baby girl.
Presiding Judge: What is her name?
Plaintiff K: Justice.
Presiding Judge: Why did you name her that?
Plaintiff K: Because I want justice. That's why I called her Justice.

7 December 2020
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: How do you explain the fact that three people (...) are blaming you for the forced transportation of ammunition and the murder of Mr. M?
Alieu Kosiah: It is because they went through the NGO. If this had not been the case, until the day they died, they would not even have known who Alieu Kosiah was (...).

19 February 2021
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: Who killed Mr. K?
Plaintiff A: Chief Kosiah.
(...)
Presiding Judge: Who killed Mr. K and how?
Plaintiff A: As I told you, it was Chief Kosiah who killed him because he was tired. The ammunition was very heavy. We didn't have anything to eat or drink and he said he didn't want to cross the river and continue (...).

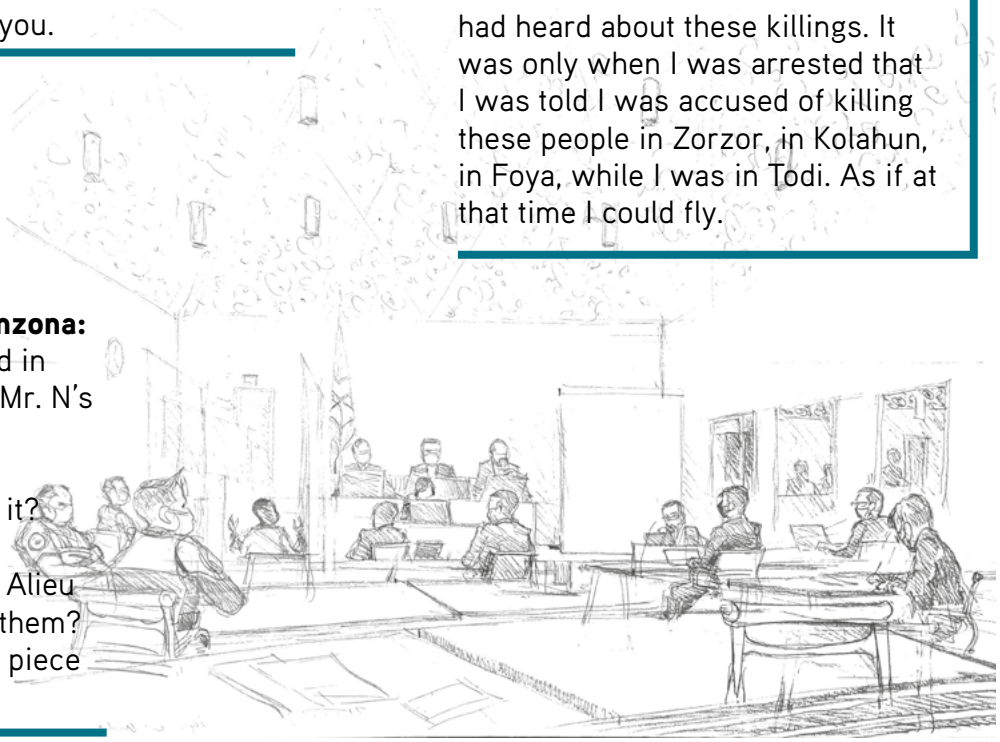
4 December 2020
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Alieu Kosiah: With all due respect, I am here to talk about myself in the war and not to pass judgment on the war itself. It was a war that was brutal. It was a civil war (...). This war began when I was only fifteen years old. As we know, it is impossible to have a clean war. But it is not the character of the war that we are talking about here, but me as a person (...).

16 February 2021
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: Do you know why you and the other six civilians were subjected to this abuse?
Plaintiff L: Because they said we were rebels.
Presiding Judge: Were the other six mistreated after the "tabé"?
Plaintiff L: There was one whose head they crushed with a stone. I closed my eyes and heard gunshots and screaming. When I opened my eyes again, no one was there.

20 February 2021
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: Is there anything else you would like to add?
Plaintiff E: (...) As a recommendation to the Swiss government, please work with the Liberian government so that such a court can be established in Liberia. Thank you.

7 December 2020
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: When did you first hear about the killing of these civilians?
Alieu Kosiah: I never said that I had heard about these killings. It was only when I was arrested that I was told I was accused of killing these people in Zorzor, in Kolahun, in Foya, while I was in Todi. As if at that time I could fly.

17 February 2021
Alieu Kosiah Trial
Federal Criminal Court, Bellinzona:
Presiding Judge: You reported in 2016 that ULIMO soldiers ate Mr. N's heart. Can you confirm this?
Plaintiff J: Yes.
Presiding Judge: Did you see it?
Plaintiff J: Yes.
Presiding Judge: Did you see Alieu Kosiah eat Mr. N's heart with them?
Plaintiff J: Yes. He received a piece of his heart and ate it.



Prosecuting International Crimes in Switzerland

Questions and Answers

1) **Who is in charge of prosecuting international crimes (genocide, war crimes, crimes against humanity, torture) in Switzerland?**

The Office of the Attorney General of Switzerland ("OAG") is the federal authority in charge of prosecuting core international crimes. It does so with the assistance of the Federal judicial police.

2) **Which criteria need to be met for someone to be prosecuted in Switzerland for international crimes?**

There is universal jurisdiction in Switzerland for international crimes (genocide, war crimes, crimes against humanity). The only condition for prosecution is that the suspect is present in Switzerland, regardless of where the crime was committed and the nationality of the perpetrator and victim.

That being said, the criteria for a person to be prosecuted for core international crimes in Switzerland will differ depending on which international crime is concerned, when and where the said crime was committed and what the status of the perpetrator is at the time of the prosecution.

3) **How quickly can someone be arrested in Switzerland once such accusations are made?**

Swiss authorities have a legal obligation to carry out procedures as promptly as possible which includes an obligation to "commence criminal proceedings immediately" whenever there is sufficient grounds to.

Therefore, if the allegations are substantial enough (e.g. a criminal complaint has been filed by victims with details on the allegations) and the suspect can easily be identified and located in Switzerland, an arrest can take place quickly, even within a matter of days in case of flight risk.

4) **How easily could the police or the Judges travel to the country where the crimes happened to understand the context?**

This will mostly depend on whether the country where the crime took place cooperates with the Swiss authorities. For example, in the *Niyonteze* case (see answer 10 below), the Swiss authorities travelled to Rwanda. This did not happen in the *Kosiah* case involving Liberia.

5) **Which direct role can the victims play in proceedings for international crimes?**

Victims can act as plaintiffs in the proceedings. As such, they have the right to access the case file, to request evidence, to take part in procedural acts (e.g. hearings) and to make a monetary claim for compensation.

They can also appeal a decision to abandon the proceedings or an acquittal. The plaintiffs in the Alieu Kosiah case made full use of such rights and played an important role in the proceedings.

6) **How can someone accused of international crimes be detained in Switzerland before the beginning of his/her trial?**

The conditions for pre-trial detention are (i) reasonable suspicions and either of (ii) flight risk, (iii) risk of undue interference with the proceedings or (iv) risk of reiteration.

Such detention is ordered for a maximum of 3 months (6 months exceptionally) but can be extended as many times as deemed necessary. There is indeed no fixed maximum duration but the pre-trial detention should remain proportional to the maximum possible penalty, i.e. should not exceed the duration of the envisaged prison sentence.

As an example, Alieu Kosiah who was arrested in 2014 for suspected war crimes during the Liberian civil war was detained for over 6 years until his trial started in December 2020.

7) **Who would be the ones judging such a case in Switzerland? In average how long would a trial for such crimes take?**

The Swiss Federal Criminal Court ("FCC") is the competent authority to judge core international crime cases. A trial will likely take several weeks or a few months. The investigation phase will likely last for years.

As an example, Alieu Kosiah was arrested in 2014 in Switzerland, his first instance trial was held in two phases at the FCC, the first one in December 2020 and the second one in February 2021, for a total of 4 weeks of hearings, and the verdict was delivered in June 2021.

8) **What is the maximum sentence for charges of international crimes?**

The maximum sentence for genocides is life sentence (art. 264 para. 1 PC).

The maximum sentence for crimes against humanity and war crimes is 20 years imprisonment. Yet, when such crimes reach a certain level of gravity, the maximum sentence can be extended to life sentence.

The maximum sentence for war crimes at the time of the facts of the Alieu Kosiah case was 20 years. In application of the "non-retroactivity" principle, his sentence can therefore not exceed this limit.

9) **Does a trial for international crimes cost much more than a trial for "standard" crimes in Switzerland?**

Not necessarily, it depends entirely on the circumstances of the case, whether victims have to come to Switzerland to testify, whether Swiss authorities travel to investigate etc.

10) **How many proceedings for such crimes did take place in Switzerland already?**

To our knowledge, to date only two persons have been convicted in Switzerland for international crimes, including Alieu Kosiah whose case is yet to be examined by an appeal court.

Though Alieu Kosiah is the first ever person to be convicted for war crimes by the FCC, a previous conviction had been made in 1999 by Swiss military courts against Fulgence Niyonteze for his role in the Tutsi genocide in Rwanda.

Another high-profile case is the 2018 conviction in Geneva of Erwin Sperisen for complicity in extrajudicial killings in Guatemala. Legally, however, this was not a case of crimes under international law (e.g., war crimes or crimes against humanity) but 'mere' crimes under Swiss law (murder), prosecuted not on the basis of universal jurisdiction but because of the perpetrator's Swiss nationality

In addition, a review of the last five years' statistics allows to establish that in average 13 procedures for international crimes are pending each year before the OAG. As of December 31, 2021, 15 investigations for international crimes were pending.

11) **Would you say that the prosecution of such crimes is a prosecutorial and/or political priority in Switzerland? Do such proceedings face any opposition amongst the population?**

The prosecution of core international crimes lies among the 2020-2023 priorities presented by the OAG and has hence officially been made a political and judicial priority. The 2010 revision of the Penal Code (entered into force in 2011) that led to the revision or inclusion of the above mentioned provisions on genocides, crimes against humanity and war crimes was also Switzerland's way of, quite belatedly though, ensuring compliance with its international commitments on the matter and demonstrating its determination to combat impunity for such crimes. The revision was supported by all political parties and by the population. There also seemingly is a general consensus among the political sphere as well as among the population that this should be a priority.

Yet such intentions are yet to be translated into actual, effective and expeditious proceedings, which is unfortunately still not the case at the moment. Indeed, NGOs as well as the media and some international crime experts routinely call out Swiss authorities for, in practice, dragging their feet when it comes to prosecuting perpetrators of core international crimes, especially in cases where Swiss diplomatic or economic interests may be at stake, and/or allowing insufficient resources to competent authorities to do so.

Answers provided by Hikmat Maleh and Fanny Toutou-Mpondo, Partner and Trainee Lawyer at Lenz & Staehelin. Hikmat represents a plaintiff in the Alieu Kosiah case.

The Trial that Made Swiss Judges Go Down in History

Alain Werner

Director of Civitas Maxima

On June 18, the Federal Criminal Court issued a judgment convicting Alieu Kosiah, a Liberian national arrested in Lausanne, for war crimes committed during the First Civil War in Liberia.

How and why were Swiss judges able to pass judgment on a foreign national who has not committed any of the crimes he is accused of in Switzerland, who is not Swiss, and whose victims are not Swiss? The answer to this question can be summed up in two words: universal jurisdiction. This concept from international criminal law, integrated into Swiss national law, gives a state the jurisdiction to judge certain crimes, including war crimes, as soon as the perpetrator is on its territory.

This competence generates a lot of hope for international justice everywhere in the world. When impunity is the rule in a country, notably for political reasons, victims of war crimes can hope to obtain justice elsewhere if the culprit resides in a foreign country – a country into which the laws of universal jurisdiction have been integrated.

It was the worldwide thunderclap of Augusto Pinochet's arrest in London on October 16, 1998, on a Spanish arrest warrant, and the judicial battle that followed for 16 months, that made victims from all around the world, and their lawyers, realize that universal jurisdiction could be a remarkable weapon against impunity.

Since 2012, the organization I lead, Civitas Maxima, has been a part of this rich legal legacy and represented dozens of Liberian international war crime victims by using universal jurisdiction to accompany them in their quest for justice all around the world, sometimes very far from home.

For the first time in its history, the Federal Criminal Court had to deal with a war crimes case, for which the only precedents in Switzerland are two judgments of military justice rendered more than 20 years ago.

In 2021, in the middle of winter, six Liberian victims arrived in Switzerland, 7000 kilometers away from home. They were led by an intense thirst for justice, as impunity for war crimes still reigns in their home country, despite the fact that approximately 300 000 people were killed during the 2 civil wars. The seventh victim, who gave birth to a little girl the morning of her flight to Switzerland, was able to testify via video link from the United States' embassy in Monrovia.

"I asked myself: how would the Liberian victims who arrived in Switzerland after having for the first time been on a plane or an elevator react to the Swiss legal formalism so alien to them?"

The history of this trial goes back to the first legal complaints that I and other lawyers filed against Alieu Kosiah in the name of these Liberian victims during the summer of 2014 in Bern. During the 7 years that separated the filing of the complaints and the final judgement, the difficulties we faced sometimes made me dizzy.

In Liberia there is a small town which is still named "Smell No Taste" because the American soldiers stationed there during the Second World War would cook food which smelled very good but was not shared with the surrounding, starving local population; they could therefore only smell the food. The name stuck.

How would the federal judges try to understand events which occurred in a country so different to ours, in a reality so unlike ours, and construct a mental representation of the situation?

How would the Liberian victims, who arrived in Switzerland after having for the first time in their lives been on a plane, in an elevator or on an escalator, react to the legal formalism in Switzerland, which was so alien to them?

How would the Swiss justice interact with the plaintiffs who, after having arrived at the Bern train station, were asking me why people spent money to get flowers in Switzerland, or how come people leave their cars on the road without any permanent security watching over them?

And how would we even understand the Liberian victims who only spoke "Liberian English", a form of English with such a unique accent that it is sometimes very difficult to understand?

To further complicate the equation, the Liberian authorities never authorized the Swiss judicial authorities to come and investigate in Liberia, which complicated the task considerably for the federal prosecutors. They were therefore never able to go to where the crimes were committed to get a better idea of the situation. It is all the more laudable that they were able to successfully lead this case until trial.

In addition to these "classic" difficulties (once we consider that we are trying to apprehend events which occurred so far away from the place where they are being judged) were added more, extraordinary, difficulties.

As a matter of fact, this procedure started at the same time as the 2014-2015 Ebola epidemic in Liberia which stunned the world, and it ended with the Covid-19 pandemic in 2020-2021, two events which put in place major restrictions on the movement of the victims, the witnesses, and even the trial itself.

The combination of all these events made this trial a cocktail of adverse factors quite unbeatable in its kind, and its outcome all the more welcome.

It took a lot of audacity, perseverance and confidence from the federal Prosecutor at the time to bring the first three plaintiff parties to Bern in 2015 from Liberia where Ebola raged on. Their arrival in Switzerland was only possible due to a strict month-long confinement system set up and run by our teams in Monrovia.

It then took the tenacity of the federal judges and their remarkable clerk in 2020 and 2021, to get most of the parties to come to Bellinzona in the midst of the pandemic, despite four successive postponements. All the other Swiss authorities who worked to make this possible must also be commended.

"The Judges were able to deepen their understanding of the case by asking pertinent and pragmatic questions to establish the facts whilst taking into account the Liberian reality."

These extraordinary circumstances alone do not explain why the accused, Alieu Kosiah, had to spend 6 years and a half in preventive detention before being tried.

In the end, however, the trial was held in Switzerland, and it answered at least several questions that such a case posed.

The three federal judges and the clerk seemed to accept as a prerequisite the cultural gap which separated them from the Liberian reality, all whilst taking genuine note of the unspeakable horrors suffered by the victims during the Liberian civil war.

They then provided themselves with the means to do their job, including first-class interpretation at the hearings, which was crucial to understanding the case. They were then able to deepen their understanding by asking pertinent and pragmatic questions in order to establish the facts of the case whilst taking into account the Liberian reality. Due to this, they often strayed from the questions scripted in advance to strengthen their perception of the case and understand whether what was being claimed made sense or not.

In the end, Alieu Kosiah was acquitted of 4 charges and condemned of 22 others, including 19 murders, resulting in 20 years in prison. Alieu Kosiah has appealed the judgement.

Beyond Alieu Kosiah's condemnation, this trial was a historic event which set a precedent on two counts, as it is also the first ever trial against a Liberian for war crimes.

At the same time, the Special Tribunal for Lebanon – which was judging the assassination of Rafic Hariri in 2005 – had its funding terminated. It cost more than $1,000,000,000 and had yet to get a single defendant on the bench in over 10 years of activity.

Universal jurisdiction exercised by national courts has a very bright future ahead. Even in Switzerland.

Alain Werner *is one of the very few lawyers in the world who has appeared in war crimes trials both in front of several international courts as well as in front of a national court, including trials of former head of state. He was awarded in 2019 the Bâtonnier Michel Halpérin Prize for Excellence by the Geneva Bar, and he received in 2020 a life fellowship from Ashoka, the world's oldest and largest network of social entrepreneurs. He represents, alongside Swiss lawyer Romain Wavre, several plainttifs in the Alieu Kosiah case.*

This article was originally written in French, and was part of the special July 2021 Op Ed section on Le Temps dedicated to international justice, with Alain Werner, director of CM, serving as guest editor.

International Justice: the Slowness of Switzerland

Dr Philip Grant

Executive Director of TRIAL International

On June 18 of 2021, Alieu Kosiah, a Liberian warlord, was sentenced to 20 years in prison by the Federal Criminal Court in Bellinzona. This was a historic trial, the first trial for war crimes to take place before a Swiss civil court.

It was certainly not the first time that Switzerland had tried a perpetrator of international crimes. Former Rwandan mayor Fulgence Niyonteze was convicted for his participation in the Tutsi genocide in Rwanda, but by a military court.

That was over 20 years ago, in the year 2000.

How can this lack of momentum in Switzerland be explained, when neighbouring countries are active on many fronts to prosecute, judge and condemn the perpetrators of atrocities committed in Syria, Rwanda, El Salvador, Iraq and elsewhere?

It is certainly not for lack of political will. At the international level, Switzerland has long played a very active role, strongly supporting international courts in the fight against impunity. In particular, our country has led diplomatic efforts to bring the appalling crimes committed in Syria before the International Criminal Court (ICC). Unfortunately, this attempt was blocked by Russian and Chinese vetoes in the UN Security Council. Nor can this stalling be explained by a lack of appropriate legislation. Ten years ago, the Swiss Federal Council called for – and Parliament adopted – a modern legal framework that would allow Switzerland to prosecute genocidaires, war criminals or perpetrators of crimes against humanity found on its territory. For a long time, Bern even boasted that it had set up a specialized unit within the Office of the Attorney General of Switzerland (OAG) to investigate these complex crimes. But since 2011, the OAG has only referred one case to the Federal Criminal Court, that against Alieu Kosiah.

A reality far from intentions

Twenty years ago, the question of whether it was legitimate for a state to judge the perpetrators of genocide, crimes against humanity or war crimes, when the crimes were committed abroad, was still being debated. But since the creation of the ICC in 1998, and the emergence of international justice as we know it today, this question has been settled. Only concerted action by the community of nations, using the possibilities offered by both international courts and national tribunals, can help to reduce these crimes.

However, problems start to arise during implementation. Some states, such as France, the Netherlands, Germany and Sweden, have allocated substantial human and material resources to create competent and effective specialized units. Hundreds of proceedings have been opened against torturers, members of death squads, and civilian or military authorities suspected of gassing their population, pillaging natural resources or committing mass rape.

For example, many officials of the Syrian regime or armed groups are now under investigation in several countries. Trials have taken place and convictions have been handed down. Europe has legitimately given refuge to many victims of the war in Syria – but also of Rwanda, Sri Lanka, Bosnia-Herzegovina and elsewhere... but perpetrators of atrocities have probably followed the same path, and probably by the hundreds. In the vast majority of cases, victims have no other option but to turn to the judicial authorities of our states to try to obtain justice, truth and reparations, which is impossible in countries where impunity is endemic.

"How can the lack of momentum in Switzerland be explained when neighbouring countries are active to prosecute perpetrators of atrocities in Syria, Rwanda, El Salvador, Iraq and elsewhere?"

A lack of strategic vision

What about Switzerland? Neither time, nor resources, nor personnel dedicated to these cases are anywhere near the level of what is done elsewhere. In order to carry out such cases effectively, the head of the OAG should hire a member of staff with a real strategic vision. There is indeed an exceptional dimension to these cases, which our prosecuting authorities must understand at all costs. Taking up these cases, and judging perpetrators of atrocities, means restoring the full meaning of the most elementary notion of justice. Depending on how you look at it, it can

either be a burden – long and complex affairs –, or, on the contrary, an incredible opportunity to participate in one of the most important human endeavours there is: to roll back barbarism. For a sense of history to prevail over bureaucratic vision, a major change must occur in the leadership of the OAG to mobilize the energies, skills and resources needed for these cases.

Such a vision can – and must – percolate through the various levels of the federal prosecution authorities. For it is men and women who are convinced that such cases – even if they are complicated, can succeed–, who can tip the balance. In Switzerland, investigators and prosecutors are unfortunately confronted with numerous obstacles: clearly insufficient resources, frequent turnover of personnel, lack of expertise, low motivation, inability or unwillingness to investigate in the field, obstacles from the hierarchy, political interference denounced by the UN... all these elements reduce the number of investigations and cause them to drag on.

"Legal time is of course slow, but this is not enough to justify the inertia of the system. Numerous cases abroad show that a proactive approach can pay off."

In practice, such delays are common in Switzerland: Alieu Kosiah had to wait nearly seven years in prison before knowing his fate; the former Gambian Minister of the Interior Ousman Sonko, prosecuted for crimes against humanity, has been in pre-trial detention since January 2017; the war crimes investigations opened in 2011, and respectively in 2013, against the former strongman of the Algerian regime Khaled Nezzar, and against Rifaat al-Assad, the uncle of the current Syrian president, are still waiting in the OAG's drawers, as are so many others. How many more times will we have to hear "But you know, it's complicated with a case like this," after having located an alleged culprit on Swiss soil, rather than "Your case looks solid, we'll deal with it as soon as possible?" One almost comes to believe that the aim is to wait for the suspects to die, so that the case can simply be closed.

New blood for a new start?

The Kosiah trial demonstrated that it was possible to investigate such crimes and reach a verdict that legitimized the work of the OAG – while respecting the rights of the defense. This was certainly an exemplary result, but it was achieved with great difficulty. Legal time is of course slow, but this is not enough to justify the inertia of the system. Numerous cases abroad show that a proactive approach can pay off.

The Federal Parliament will soon appoint the future head of the OAG. This is an opportunity to appoint a person who will be able to give a historic momentum to the prosecution of these crimes. The time has come for Switzerland to place itself on the map, not as a haven for criminals of all kinds, but as a state that is actively committed to reducing the impunity enjoyed by torturers, genocidaires and war criminals. It is high time we put our money where our mouth is and help build a world where such crimes have no place.

Philip Grant *is a Swiss Lawyer and TRIAL International's Executive Director, which he founded in 2002. Philip holds a Law degree, a diploma of Superior Studies, an LLM in International Humanitarian Law and Human Rights and a PhD in Constitutional Law. Philip has written numerous legal articles and has lectured at the University of Geneva.*

This article was originally written in French, and was part of the special July 2021 Op Ed section on Le Temps dedicated to international justice, with Alain Werner, director of CM, serving as guest editor.

Government militia soldiers duck from incoming rebel fire July 25, 2003 at a key bridge in Monrovia, Liberia. © Patrick Robert

Prosecution of Crimes Under International Criminal Law: a Clarification!

Miriam Spittler

Federal Prosecutor, Office of the Attorney General - Switzerland

By amending the Criminal Code in 2011, in particular from article 264 onwards, following the ratification of the Rome Statute 10 years earlier, the Swiss legislator opened up a new legal field. It entrusted the civil justice system, i.e. the Office of the Attorney General of Switzerland (OAG) , with the possibility of prosecuting the most serious crimes – i.e. war crimes in peacetime, previously prosecuted by military courts, genocide and/or crimes against humanity.

Contemporary history has shown that crimes under international criminal law (ICL) are generally committed beyond the borders of national territory. Nevertheless, the preamble of the Rome Statute determines that "it is the duty of every State to exercise its criminal jurisdiction over those responsible" for the most serious crimes – which "threaten the peace, security and well-being of the world" – in order to put an end to impunity for the perpetrators of these crimes. In other words, Switzerland should not be a safe haven for criminals who have committed the most serious crimes.

It is essential to specify that the Swiss legislator has attached several cumulative conditions to the initiation of criminal proceedings when the act was committed abroad, when it was committed by a perpetrator who is not a Swiss national and when the act was not directed against a Swiss national: presence of the perpetrator on Swiss soil as well as the absence of extradition (if this is not possible under Swiss law) or surrender to an international criminal court whose jurisdiction is recognized by Switzerland ("limited" conception of universal jurisdiction).

"The Prosecution of International Criminal Law crimes has always and continues to be one of the strategic priorities of the Swiss Office of the Attorney General."

Since 2011, Switzerland has had a legal basis in international criminal law in the Criminal Code, with crimes committed before 2011 having to be prosecuted using the legal tools available before the reform. It was then a question of structuring everything, of setting the guidelines for criminal prosecution in international criminal law in the light of what is done in particular abroad, as the Swiss civil justice system did not have any case law in this area. The prosecutor does not apply pre-established schemes but must be creative in the implementation of the investigation strategy in each new case, which is unique by definition. Yes, the prosecutor experiments by putting the new criminal norms to the test.

Much has been said about the administrative attachment of the ICL crime prosecution teams to the OAG. It seems obvious that talk of a "war crimes unit" is a sell-out. In reality, this is of little importance as long as there are sufficient resources and the network for a major investigation (including analysts, specialized investigators and prosecutors, and the registry) is functioning. This raises the question of whether the OAG has sufficient resources to fight impunity. This is a legitimate question that has been widely discussed and taken up at the political level. It is naturally linked to the number of investigations underway and, ultimately, to the institutional criminal strategy. We have often been reproached for being, in international comparison, somewhat numb. Beyond the adage that comparison is not reason, no one can deny that the prosecution of ICL crimes has always been and continues to be one of the strategic priorities of the OAG. However, there is nothing obvious about the path to the initiation of criminal proceedings.

Information is crucial and, as such, the MPC can hardly act without the support of its partners. While the work of the NGOs is useful, we cannot forget the contribution and the equally essential information of fedpol, which has specialists of this field, essential both upstream of the investigation in the context of monitoring, but also in support of the proceedings for specific analyses and the investigation itself, the State Secretariat for Migration, the Federal Department of Foreign Affairs, the Federal Intelligence Service, the Genocide Network, Eurojust – the coordinating group of prosecuting authorities specializing in the prosecution of ICL crimes, the ICC, and direct contacts with our counterparts around the world.

This is a long list in order to re-establish some facts, whereas according to some NGOs nothing could be done without their work. We recognize the importance of their work, particularly upstream of the investigation phase, but let us clarify from the outset what we thought was a truism: we do not do the same work! The work of the NGOs is what the jargon calls "facts finding", i.e. the search for facts in a given context, whereas the task of the criminal prosecution is to collect, in particular in these facts, evidence that can be legally qualified, i.e. "evidence gathering". NGOs cannot therefore substitute themselves to the work of the prosecutor. This confusion is regrettable, whereas

the complementary role of NGOs and the prosecution, within the framework provided by the law, is the only way to avoid unnecessary tensions.

Yet, who could seriously imagine that criminal proceedings evoking the most serious crimes, a strange understatement to evoke all the abomination of which man is sometimes capable, could take place serenely? We are in this field far from the cold calculation of the author of money laundering or corruption. The victims have been touched in their existence and their flesh to the point of denial of their identity and when they survive, the investigation can lead to a relapse into this trauma which often prevents life from resuming its course. This can generate excessive expectations and emotional outbursts that are sometimes difficult to reconcile with the rather rigid framework of a criminal proceedings.

There are also other pitfalls that are specific to the field of ICL. Temporal remoteness (the facts often took place many years or even decades ago), geographical remoteness or the need for legal assistance from the State concerned – although this is never given – and from third States insofar as the evidence is almost exclusively found abroad. Moreover, testimony often proves to be the main evidence, and the difficulties for the prosecutor are numerous because of the above-mentioned pitfalls.

"We recognise the importance of the work of NGOs but we do not do the same work. NGOs cannot substitute themselves to the work of the prosecutor."

Yet, the criticisms seem to be repeated regardless of the results of the OAG and there remains a certain discrepancy between internal and external perception. Beyond what could be perceived as bad faith on the part of certain editorialists or fans of easy tweeting, it must be admitted that it is difficult to determine the success factors of a criminal proceeding from the outside, since even in the context of a dismissal or an order of non-admission, the public prosecutor can be satisfied, having brought his case to a conclusion on the basis of the information and evidence that he managed to collect. So, what is the real interest in continuing, as has been the case in these columns or elsewhere, to brandish the ghosts of politicization or inaction?

The OAG is independent, and its management considers this independence to be a prerequisite for any criminal prosecution; moreover, our legal mandate obliges us to initiate criminal proceedings when the evidence proves sufficient – we have always done so and will continue to do so! Yes, the OAG has experimented, but it was necessary to build the architecture of the field, to generate the jurisprudence that is now growing. Beyond the two cases systematically mentioned, the OAG is currently conducting nearly fifteen equally important criminal proceedings, not to mention the preliminary examinations. The current resources make it possible to deal with the management of these cases, in complete independence and within the time frame of a complex criminal procedure that does not depend solely on the public prosecutor's office, which works with the tools given to it by the legislator.

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This article was originally written in French, and was part of the special July 2021 Op Ed section on Le Temps dedicated to international justice, with Alain Werner, director of CM, serving as guest editor.

Artistic impression of Gibril Massaquoi - JP Kalonji / Civitas Maxima

The Gibril Massaquoi Trial

For 10 months in 2021, Finnish judges held court hearings in 3 countries, across 2 continents, in an emblematic case for international crimes which was initiated by information provided by Civitas Maxima. Gibril Massaquoi was acquitted in April 2022. For this report, African and European lawyers and academics shed light on some of the most interesting aspects of this case: immunity for alleged perpetrators who collaborate with prosecutors, specificities of the Finnish legal system, and the collaboration between NGOs and national prosecuting authorities.

FRONT PAGE AFRICA

Massaquoi War Crimes Trial Opens in Liberia

Lennart Dodoo, February 24, 2021

Monrovia — The war crimes trial of Gibril Massaquoi that began in Tempere, Finland, continued in Liberia Tuesday with the first prosecution witness taking the stand.

In the first testimony, the witness said she saw Massaquoi near the Waterside Bridge in Monrovia one morning introducing himself as "Angel Gabriel" to the multitude of people crossing the bridge from Bushrod Island to find food in central Monrovia.

"When we crossed the bridge, we got to a checkpoint and they told us 'single file'" she told the four-judge panel. "When we got in the line, a man in a white T-shirt and camouflage trousers was walking introducing himself as 'Angel Gabriel Massaquoi'. 'I can send you to God'" the witness quoted Massaquoi as saying.

According to the witness, Massaquoi, now 51, warned that he would take anyone who resisted his commands under the bridge to kill or rape them. "He held my friend Felecia George by the hand and carried her," the witness told the court. "My friend resisted and in that process, he fired up and carried her under the bridge. While carrying her, shooting began and we all 'Chakala' (ran helter-skelter), and that's how I ran and entered one woman house in West Point. The next day the woman told me that the road was opened and I should find my way, and when I went, the sister of my friend, Mecky George, told me that her sister Felecia was killed."

Massaquoi, a Sierra Leonean and former commander with the Revolutionary United Front, is charged with rape, torture and crimes against humanity committed during the last phase of the Liberian civil war between 2000 and 2003. The witness testimonies have more weight in this trial than most. The alleged crimes were committed more than 17 years ago and the prosecution has no physical evidence to use to make their case. The judges in the case will reach their verdict based largely on the strength of the witness statements, which are from memories that in some cases are more than 20 years old. The court is also concerned that witnesses will be targeted for intimidation to deter them from testifying or persuade them to change their testimony. This risk is particularly strong given that the case is playing out on Liberian soil, unlike previous trials in Philadelphia and the ongoing trial of Alieu Kosiah in Switzerland, where witnesses were moved to the country of the court and away from potential intimidation.

Journalists covering the trial are under strict rules not to identify the witnesses or the location of the court. Journalists will not even be allowed in the courtroom for most of the witness testimonies, but are observing the proceedings by videolink from a separate location, which must also be concealed.

Tuesday's witness did waver from some of her previous testimony to investigators. She was calm as she answered questions in Liberian English that were then translated into English for the court. (A second translator translated the English into Finnish for the court.)

During cross-examination by Massaquoi's defense lawyer, the witness conceded that she could not remember the exact year, month and day she had the encounter with the accused but said she remembered seeing Massaquoi and understood from his accent that he was Sierra Leonean. The prosecution and judges asked several questions hoping to enable the witness to connect her encounter with the three different periods of war known in Liberia as "World War I, II, III," but she failed to make the connections in a convincing way. However, in audio played to the court from an interview with the investigators before the trial, the witness said that she was two months pregnant at the time of the encounter and miscarried as a result of the treatment she received from the fighters.

Despite these memory lapses her testimony in court about the incident near the Waterside Bridge matched that she gave to investigators before the trial.

There are four judges hearing the Massaquoi's case in Liberia with two prosecutors, investigators and other courtroom staff. The defendant is witnessing the activities virtually from Finland. He is not visible to reporters.

The trial is to last for the next few weeks with dozens of witnesses expected to testify before the court here and in Sierra Leone.

A TIMELINE OF
THE GIBRIL MASSAQUOI CASE

March 10, 2020

Massaquoi is arrested in Tampere, Finland, by the local police who suspected he committed war crimes and crimes against humanity in Liberia between 1999-2003. CM had provided the initial information to the police in 2017, who conducted their own investigation.

February 3, 2021

The trial against Gibril Massaquoi begins in Finland, where he was heard.

February 17-21, 2021

The Court visits Lofa County, in northeastern Liberia, and Monrovia Waterside area, where the crimes were allegedly committed.

February 23, 2021

The trial resumes in Monrovia, Liberia, in an undisclosed location, where 55 witnesses were heard over two months and a half.

May 11, 2021

The trial resumes in Freetown, Sierra Leone, where 18 witnesses were heard over a week.

May 31, 2021

The Court goes back to Tampere, Finland, to hear four witnesses over three days.

September 13, 2021

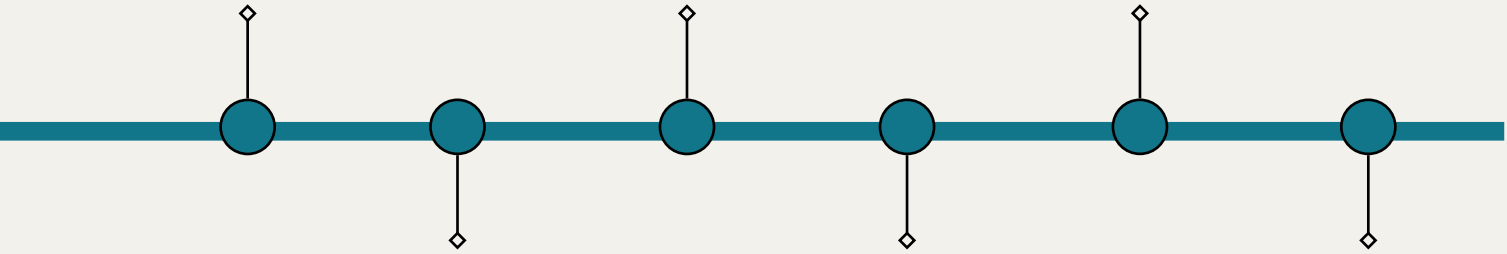
After a recess of a few months, the Court goes back to Liberia for a second time to hear 27 witnesses over a month.

January, 2022

The last witnesses are heard, and the Defense and Prosecution plead their closing arguments.

April 29, 2022

The District Court dismisses all charges, and found that there was reasonable doubt that the defendant committed the offences he was charged with.



October 26, 2021

The Court moves back to Tampere, for the final stretch of the trial.

February 16, 2022

Gibril Massaquoi is released from custody, awaiting judgement.

May, 2022

The Prosecution files an appeal.

"Witness Immunity" in International Courts and Relocation in Europe

A Critical Perspective

Dr. Ishmail Pamsm-Conteh

Law Professor, Sierra Leone

This article examines whether an international criminal court, such as the SCSL, can grant immunity from prosecution for suspects, such as Gibril Massaquoi, in exchange for cooperating with the prosecution as an insider witness, and whether the benefit of such immunity can be relied upon in the national courts of other jurisdictions - such as the Finnish courts.

A certain amount of criticism has been made against CM´s decision to provide the Finnish authorities with information relating to the alleged involvement of Gibril Massaquoi in the commission of crimes in Liberia. As Civitas Maxima only provided the Finnish authorities with information on crimes allegedly committed by Massaquoi in Liberia, a country not covered by the jurisdiction of the SCSL, this criticism seems misguided. This article will also explore whether the Finnish prosecutors could follow up on any information transmitted to them on Massaquoi's alleged crimes in Sierra Leone during the civil wars, despite his collaboration with the SCSL.

The claim that Gibril Massaquoi enjoyed immunity for having testified as an insider for the Special Court of Sierra Leone is often raised as a basis for such criticism. However, the use of the word "immunity" is misplaced. What would be more accurate to speak of is "witness immunity" or a "deal" with the prosecuting authorities.

Under international law, immunity from prosecution has different forms: high-ranking officials' immunity (immunity ratione personae), sovereign immunity (immunity ratione materiae), special missions' immunity (a special regime of personal immunity) and diplomatic immunity.

Immunity is a legal privilege attributed to a certain person that is recognized both in national and international law. The rationale behind it is to allow state agents to perform their duties without the risk of being prosecuted for acts committed while holding that role. Even in cases recognized under international and national law, immunity is not absolute, and is normally limited to the acts performed by virtue of the official role or while the person holds a certain official position. Also, these official immunities do not shield officials from accountability for any human rights atrocities, as was emphasized by the International Court of Justice in a decision made in 2000 (Democratic Republic of the Congo v. Belgium), Judgement, I.C.J. Reports 2002 (para. 60).

Relevant to our discussion is what can be generally referred to as 'witness immunity,' granted to those witnesses who make a deal with the prosecution and testify as 'insiders' in criminal proceedings. No treaty or legal text has offered a comprehensive definition of the phrase. However, it can loosely be interpreted to mean an exemption from being prosecuted for a crime that was committed by an individual, for some exceptional reason.

"It appears that there is no general immunity from prosecution for alleged perpetrators of international crimes at international courts."

Gibril Massaquoi was a former warlord of the RUF, a rebel group headed by Foday Sankoh. This group was the main protagonist during Sierra Leone's civil war which lasted between 1991 and 2002, and which is often portrayed as one of the most brutal conflicts in West Africa.

At the end of that war, the individuals who fell within the primary jurisdiction of the SCSL were to be prosecuted by the court, as found in the UNSC Resolution 1315/2000:

> *[T]he power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.*

That notwithstanding, the SCSL's Prosecutor did not indict Gibril Massaquoi. Instead, Mr Massaquoi served as an insider witness. In other words, he fell within the context of "witness immunity." In international criminal law circles, this role is referred to as an 'insider witness'.

International criminal courts are generally established with a specific mandate to prosecute the perpetrators of international crimes, and the SCSL was no exception.

For this very reason, it appears that there is no general immunity from prosecution for alleged perpetrators of international crimes at international courts. Certainly, it is the responsibility of the Prosecutor, in the exercise of their prosecutorial discretion, to identify suspects who should be investigated and prosecuted, as stated by Article 15(1) of the Statute of the SCSL. Without a Prosecutor identifying a suspect based not only on sufficiency of evidence, but also in the interest of justice, that perpetrator cannot be prosecuted by the court.

The SCSL Prosecutors therefore had a duty - and not a discretion - to prosecute those who fell within the primary jurisdiction of their mandate as the SCSL. The Judgement at the RUF trial at the SCSL supports the fact that Gibril Massaquoi should have been prosecuted either as an accused or as an accomplice. Since he was not prosecuted because of his role as an insider witness, it is therefore necessary to explore the principle of 'insider witness', and how other international courts have developed it.

Who is an insider witness?

Before the establishment of the recent international courts and tribunals, as early as the Nuremberg and Tokyo trials at the end of the Second World War, individuals played a rather subdued role in aiding the prosecution. This was due to the fact that those tribunals, instead of relying as much on insider witnesses, mostly relied on body of strong and detailed documentary evidence. However, the more recent international tribunals took a different approach as far as witnesses are concerned. They relied on perpetrators, eyewitnesses, and accomplices to assist the Prosecutors. The first Prosecutor at the ICTY and ICTR, Carla Del Ponte, stated that: "*[I]nsider witnesses are persons in a position to provide crucial, high-grade information about political and military decisions making, because they had witnessed events at close proximity to the decision makers.*" (Del Ponte, Sudetic, 2008)

It is fair to conclude that Gibril Massaquoi was not indicted by the Court because he had co-operated with the prosecution as an insider witness. To that end, even if Mr Massaquoi did not testify in this particular instance, it is important to cite the SCSL Judgement at the RUF trial, (SCSL-04-15-T, delivered 2 March 2009) at para. 539 which reads:

"*...These insider witnesses were themselves high ranking officers in the RUF or AFRC. Many of these witnesses were key participants to the crimes alleged in the Indictment and may be considered to be co-perpetrators or accomplices. The Chamber reiterates that the Appeals Chamber has clarified that such persons may be considered accomplices even if they have not been charged with any criminal offences.*"

Furthermore, Sierra Leone's TRC in its final report wrote about Gibril Massaquoi:

"Sankoh's "Special Assistant", Gibril Massaquoi, personally fuelled the tensions surrounding the UNAMSIL hostage-taking crisis. He was a central part of the chain of command of the RUF. He was duplicitous in his presentation of the RUF position to the outside world. Massaquoi bears an individual share of the responsibility for the deterioration in the security situation in Sierra Leone."

"The Commission holds Gibril Massaquoi responsible for the torture and summary execution of up to 25 RUF members in the Pujehun District in 1993. This set of executions eliminated some of the most popular and credible commanders in the RUF's First Battalion, including the erstwhile Battalion Commander Patrick Lamin (...)" (TRC para 156 Volume 2 Chapter 2).

Clearly, Gibril Massaquoi was one of the leaders of the RUF, and because of his close proximity to the RUF hierarchy, the Prosecutor may have been deemed him to be valuable as an insider witness, if one goes by Ms Del Ponte's definition. However, when one examines how the principle of insider witness was employed at the ICTY and ICTR, it can be observed that the SCSL departed from the established practice. Indeed, in The Hague and in Arusha, leaders who assisted the Prosecutors were given the maximum sentence even though they had cooperated with the prosecution.

"In The Hague and in Arusha, leaders who assisted the Prosecutors were given the maximum sentence even though they had cooperated with the prosecution."

For example, at the ICTY in Prosecutor v Miroslav Bralo, (Case No. IT-95-17), Miroslav Bralo committed a range of international crimes during the Bosnian war. He admitted to crimes that he was not originally charged with and made efforts to atone for his crimes by engaging in community work and assisting in the location of the remains of some of his victims. Despite his show of remorse and his cooperation with the Prosecution, he was sentenced to 20 years' imprisonment.

Another case was that of Predrag Banović, (Prosecutor v Predrag Banović Case No. IT-02-65-1) who was a guard at the Keraterm detention camp in Bosnia and Herzegovina in 1992. He had murdered five prisoners as a result of his participation in beatings. Despite assisting the Prosecution, he was later sentenced to 8 years' imprisonment.

At the ICTR, the former Prime Minister of Rwanda Jean Kambanda was prosecuted for international crimes. He had testified against others including former ministers, government officials and members of the military. He was found guilty of the crimes he was alleged to have committed and sentenced to life imprisonment.

In another ICTR case Prosecutor v Omar Serushago (Case No ICTR 98-39-T. 14 December 1998), not only did Serushago voluntarily surrender to the authorities, but he also cooperated with the Prosecution. Nonetheless, he was sentenced to 15 years in prison.

So why did the SCSL depart from this established pattern of prosecuting leaders and insiders, even if they provided information? The answer may lie in the wording of the Special Court's mandate, which is to prosecute only those 'who bear the greatest responsibility'. This might have allowed Mr Massaquoi and others to avoid indictment.

"It would be legally correct for the same Finnish police to investigate Gibril Massaquoi for any alleged crime he may have committed in Sierra Leone."

One can only speculate that in the eyes of the Prosecutor, Gibril Massaquoi did not bear such responsibility, despite the Sierra Leonean TRC finding that, amongst other things, he was responsible for acts of torture, extra-territorial executions, and shared responsibility for the deteriorating security situation in Sierra Leone around the time of the Lomé Accord. Moreover, in 1999, Gibril Massaquoi fell out with the then leader of the RUF, Issa Sesay, which saw Gibril Massaquoi being locked up at the Pademba Road maximum prison in Freetown for several months. I would therefore hypothesize that in the eyes of the Prosecutor this fall-out with his former comrades may have made him a valuable insider witness. The Prosecutor may have deemed that the information that Massaquoi provided was more important than prosecuting him.

In assessing these possibilities, one must also include the fact that the Court prosecuted a limited number of people, for which the SCSL has been heavily criticized by civil society and academics, which may or may not have played a hand in influencing the prosecutor's case selection.

Can Gibril Massaquoi enjoy "witness immunity" from prosecution in a Finnish national court?

Gibril Massaquoi was prosecuted in Finland, where he was relocated as part of a witness and victim protection scheme. His relocation was a protective measure because of his testimony. It is important to note that his testimony never accorded him immunity nor amnesty from prosecution for any alleged crime committed in Liberia either under international law or Finnish law.

Therefore, under the principle of universal jurisdiction for international crimes and individual accountability, it is right to say that Gibril Massaquoi was legitimately investigated for alleged crimes in Liberia once the Finnish police considered that the information transmitted by Civitas Maxima was credible enough.

Likewise, as only "witness immunity" was granted to him by the SCSL, and not a valid immunity under international or Finnish law, it would be legally correct for the same Finnish police to investigate Gibril Massaquoi for any alleged crime he may have committed in Sierra Leone, even if the SCSL decided that he was not one of those "who bore the greatest responsibility".

What signal such an investigation would send and whether it would be desirable or not in a broader perspective is entirely another question.

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Many members of the NPFL wore unusual outfits for spiritual reasons, like this young man who wears a mop as a wig. Liberia, July 1990 © Patrick Robert

Prosecuting International Crimes in Finland

Questions and Answers

1) **Who is in charge of prosecuting international crimes (genocide, war crimes, crimes against humanity, torture) in Finland?**

Because of the nature of international crimes, the State Prosecutors, who serve in the Office of the Prosecutor General, are usually in charge of prosecuting in matters involving international crimes. State Prosecutors are generally in charge of prosecuting in matters which are significant for the society.

2) **Which criteria need to be met for someone to be prosecuted in Finland for international crimes?**

Finnish law applies to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland.

Generally, in order for the prosecutor to bring charges against a person suspected of international crimes, there must be a probable cause to support the fact that the person is suspected of such an offence.

The prosecutor assigned for the case conducts a consideration of charges and decides on whether to bring charges or not. The consideration of charges is based on the evidence obtained during the pre-trial investigation. The pre-trial investigation is usually conducted by the police.

The Criminal code Chapter 1, Section 7 which considers international crimes does not provide that the presence of the perpetrator would be required. In practice, however, the authorities would take this into consideration when deciding on investigation and/or prosecution.

3) **How quickly can someone be arrested in Finland once such accusations are made?**

Before a person can be arrested the police has to start a pre-trial investigation. If there are probable grounds to suspect a person of international crimes, the person can be arrested already during the pre-trial investigation, if certain prerequisites set out are fulfilled. Considering the severity of international crimes and the possibility of the suspect escaping, the prerequisites for arrest during the pre-trial investigation can usually be argued to be met quite quickly.

A person suspected of international crimes can be first arrested for four days. During the third day after the arrest, the district court has to make a decision on the pre-trial detention of the suspect.

4) **How easily could the police or the Judges travel to the country where the crimes happened to understand the context?**

It is possible for the court as well as for the police to travel to the country where the crimes have happened during the pre-trial investigation. During the pre-trial investigation, the police can usually also cooperate with the local law enforcement officials when hearing victims or witnesses.

This was done for example in 2021, when the court handling the trial of international war crimes, traveled to the Republic of Liberia twice. In the Republic of Liberia, the court heard witnesses and visited the sites where the alleged crimes were committed.

5) **Which direct role can the victims play in proceedings for international crimes?**

In general, a victim of a crime may act as party in the proceedings and present their own claims. Finnish law does not provide for any exception to this rule regarding international crimes. In practice, however, it is difficult for victims of international crimes to be able to take part in the criminal proceedings as injured parties, given that their number might be extremely high and would thus cause difficulties for the proceedings.

Victims of international crimes can be called by the prosecutor to be heard in the proceedings as witnesses or as parties to the proceedings which means that their testimonies are taken into account in the court's judgment. The victims can, if the court so decides and the local authorities are co-operative, be heard in the country where the alleged crimes have been committed in order to gain more knowledge on what has happened in the country. Finnish law enforcement officials as well as the courts can also cooperate with the officials of the country where the alleged crimes have happened, for example by conducting remote hearings of witnesses.

Victims may request the prosecutor to pursue their civil claims against the perpetrator in the criminal proceedings. In principle, if the victims' claims are taken on by the prosecutor, it should not considerably prolong the investigations, as otherwise pursuing such claims could arguably cause essential inconvenience. We are not aware of cases in Finland in which an injured party in a universal jurisdiction case would have put forward a civil claim.

6) **How can someone accused of international crimes be detained in Finland before the beginning of his/her trial?**

A person accused of international crimes can be detained in pre-trial detention until the start of the trial. There is no maximum length for pre-trial detention. The pre-trial detention ends when the district courts judgment is final, or when the judgment of the Court of Appeal is rendered. The pre-trial detention also ends in situations where the district court decides that there are no longer grounds for the pre-trial detention.

7) **Who would be the ones judging such a case in Finland? In average how long would a trial for such crimes take?**

If the international crimes would have been committed in Finland, the trial would primarily be held in the district court in whose jurisdiction the alleged crimes were committed. Because of the nature of international crimes, the trial would usually take place in the district court in whose jurisdiction the accused has their legal residence. The matter would be first decided by a district court judge.

The length of the proceedings in the district court often takes between one or two years.

The last trial of war crimes in Finland, the case of Gibril Massaquoi, took over a year from the moment when the charges were brought until the judgment of the district court. After the judgment of the district court, the prosecutor or the defendant can file an appeal to the Court of Appeals. If the appeal is approved for further consideration, the judgment of the district court is revaluated by the Court of Appeals. Such a process can take up to additional one to two years.

The last instance of the judicial system in Finland is the Supreme Court. Again, after the judgment of the Court of Appeals, the prosecutor or the defendant can ask for a permission to file an appeal to the Supreme Court. This can take up to an additional two years. However, the Supreme Court will grant the appeal only if there are strong grounds for the need of revaluation of the judgment.

8) **What is the maximum sentence for charges of international crimes?**

Life sentence is the maximum sentence for international crimes, including war crimes and crimes against humanity. A life sentence in the Finnish punishment system is different from many other countries, because it does not carry a minimum or maximum length of imprisonment. The average length of a life sentence in Finland is usually 14 years.

For example, Francois Bazaramba, convicted of the Rwanda genocide, has been in prison for approximately 15 years and is yet to be released.

9) **Does a trial for international crimes cost much more than a trial for "standard" crimes in Finland?**

A trial for international crimes will cost considerably more than a trial for standard crimes. A major part of the additional costs come from travel expenses and related costs, in cases where the court travels to the country where the alleged crimes were committed. Also, the complexity of the issues around international crimes, the number of victims and witnesses and the use of translators increase the costs of the trial. For example, the costs of the Rwanda trial were estimated to be approximately five million euros.

10) **How many proceedings for such crimes did take place in Finalnd already?**

In addition to the Massaquoi case, in 2010 the District Court of Itä-Uusimaa gave Francois Bazaramba a life sentence for genocide conducted in Rwanda in 1994. The sentence was appealed by the defendant, but the Court of Appeal did not alter the sentence of the District Court. Francois Bazaramba was arrested and detained in 2007 and has served his prison sentence from that date onwards.

11) **Would you say that the prosecution of such crimes is a prosecutorial and/or political priority in Finland? Do such proceedings face any opposition amongst the population?**

Finland is known for its active participation in the operation of the International Criminal Court and supports it economically. Finland's priorities in the field of international law include the elimination of impunity for the most serious international crimes and the reinforcing of the rules-based international order in general. Finland has pledged to prosecute persons accused of war crimes internationally, who have their legal residence in Finland. Thus, the prosecution of international crimes is both a prosecutorial and political priority in Finland. That said, the associated costs and work required for the investigation of such crimes likely make the investigative authorities inclined to critically review which cases are indeed investigated and which are not. To our knowledge, the prosecution of international crimes does not face any substantive opposition in Finland. However, the costs of such proceedings are discussed critically from time to time, especially if the result is acquittal.

Answers provided by Aapo Heinäsmäki, Finnish lawyer, and Associate at Hannes Snellman in Helsenki. Aapo works in the Dispute Resolution group. He advises clients on various commercial disputes and assists in advocating cases before state courts and arbitral tribunals. Aapo has gained experience from other leading law firms and the Embassy of Finland in The Hague, where he worked with matters relating to international law.

Rebels from the NPFL sit and watch as refugees flee from the city of Paynesville. Liberia, July 1990 © Patrick Robert

NGOs Documenting International Crimes: Weak Link Or Missing Link?

Emmanuelle Marchand

Deputy Director, Civitas Maxima

Why do we document?

The first question that one could ask is why do we need NGOs to document international crimes when so many official international or national investigation mechanisms exist?

A field reality

When a conflict breaks out, civil society actors are often the first responders. They are the first to collect in-person information about events, including serious human rights violations, and to report on what is happening before any authority reacts. In other situations, such as in Syria, civil society is the only group with access to the field and therefore is the only group who can collect relevant information. Conflict situations, especially internal ones, make access difficult and international authorities must rely on documentation collected by third party. Even international organizations specifically tasked with investigating international crimes committed worldwide lack the resources to deploy professional investigators with relevant local knowledge and skills and cannot access all countries in a timely manner.

Additionally, the development of modern technology (like mobile phones and cameras) as well as specialized applications to assist in the collection of information has also allowed for the development of documentation by private individuals.

The impunity gap

It is also important to note that while there are various mechanisms in international criminal law to combat impunity and investigate human rights violations - such as the ICC, hybrid courts and regional mechanisms - these mechanisms are limited. The ICC does not have jurisdiction over all situations, as not all states have ratified the Rome Statute. Ad-hoc mechanisms are set up to deal with specific situations, and when these international mechanisms exist, they are often used to try only the most senior officials. Moreover, some countries refuse to prosecute international crimes committed on their territory. There is therefore an impunity gap.

For example, between 1989 and 2003, Liberia experienced two civil wars that devastated the country and affected the entire population. Yet for years no proceedings have been conducted. Indeed, the ICC has no jurisdiction over these wars, as Liberia only ratified the Rome Statute in 2004. A hybrid court has been set up in the region: the Special Court for Sierra Leone, but this court only had jurisdiction over crimes committed in the neighbouring country. This court tried former Liberian president Charles Taylor, but it did so for his crimes committed in connection with Sierra Leone and not with Liberia. At the national level, a TRC was set up which submitted its final report in 2009, recommending the prosecution of more than 100 individuals as well as the creation of a court in Liberia. But since 2009 there has been no prosecution or trial in the country, demonstrating to this day the lack of political will to deal with past crimes.

In this situation, if the documentation was left to the traditional prosecuting authorities, there would be no hope that the victims of these horrific crimes would be able to testify and to have access to justice. Similarly, the evidence of these testimonies would be doomed to disappear with the increasing number of survivors who are dying over the years due to a lack of care and rehabilitation.

"The collection of evidence by civil society is necessary to fill the gap in the accountability landscape."

The collection of evidence by civil society is therefore necessary to fill the gap in the accountability landscape.

How do we document international crimes?

CM was built on the firm belief that documentation work can only be properly conducted with the assistance of local grassroots organizations. Local civil society organizations have a unique and vital understanding of their country's context and culture, as well as a strong network and the trust of victims, which places them in a unique position to undertake this work. In addition, empowering and strengthening local NGOs is a tangible and long-term contribution to achieving accountability, building peace, and supporting sustainable change. By partnering with local

organizations, CM maximizes its access to victims and ensures that these victims are approached with the required cultural sensitivity and in their own language or dialect.

"CM was built on the firm belief that documentation work can only be properly conducted with the assistance of local grass roots organizations."

In practice, CM's local partners like GJRP in Liberia will identify potential victims/witnesses and conduct a preliminary interview with them. The interview notes are then safely stored and shared with CM's legal team, which analyses the information received. Depending on the need and stages of the "investigation", CM staff will then conduct a full interview with the identified persons. It takes several years for CM to build a casefile including the identification and the location of alleged perpetrators. When the file is considered developed enough, CM shares the information collected with the relevant authorities. CM works in countries where there is no political will to prosecute the crimes committed, so it has to use different forms of jurisdiction to trigger an accountability process in a third country. Indeed, countries are usually able to judge crimes committed by their nationals (active personality) or against their nationals (passive personality) even if these crimes are committed abroad. In addition, some countries consider themselves able to judge crimes committed abroad by non-nationals against non-nationals (universal jurisdiction) if the perpetrator is present on their territories. This means that CM works in different countries which have different legal systems, different legal traditions, and different investigative standards. Often when CM is documenting, it does not know if the file will be ultimately shared with any country, and if it will, which one, which complicates the information-collection process further.

What happens to our documentation?

NGOs conducting investigations are considered by the authorities as intermediaries, whose credibility and reliability should first be assessed. Filing or sharing the information collected with the authorities does not automatically lead to proceedings opening. Even when the law of a country recognizes the possibility for a third-party to trigger an official investigation, in practice the authority will first conduct an assessment of the documentation received and will then have control over how this preliminary documentation is used during the proceedings.

Documentation by NGOs: a work product under scrutiny

First, national authorities in charge of dealing with international crimes often have a discretionary power to open an investigation and to prosecute. Information provided by NGOs solely serves to trigger the official authorities to open their own investigation.

Second, if a case is open, some authorities might rely heavily on the documentation provided by NGOs and some might decide to develop their own source of evidence entirely and only to use the information provided as leads or as a direction for investigation. The authorities can also extend the scope of the investigation by developing new incident or crime bases that were not part of the initial documentation. For example, when the Gibril Massaquoi case was triggered by evidence collected by CM and GJRP, the prosecution made sure to develop its own entire set of evidence. Only one witness identified by CM and GJRP in their preliminary documentation was called to testify during the trial conducted by the Finnish authorities.

The reason for this distancing is usually due to the perception that intermediaries are the weak link of an investigation. Indeed, legal investigations require the integrity of the evidence-collection process through the respect of the chain of custody and of the strict rules for interview procedure. As first responders, intermediaries are unlikely to have received the professional training that authorities have had and, similarly, they might lack the resources to properly store the evidence collected and this could lead, in some cases, to the dismissal of the evidence at trial. The Thomas Lubanga case at the ICC is an illustration of such a situation and became the infamous precedent that no authorities want to see repeated. In this particular case, the reliance on third-party evidence by the Prosecutor raised problems regarding inter alia disclosure, confidentiality, and the integrity of the evidence-gathering process. In its Judgment, the Lubanga Trial Chamber rejected the reliability of the testimony of some Prosecution witnesses based on the alleged conduct of intermediaries, including buying testimonies and influencing witnesses. In order to avoid this pitfall some authorities try to protect themselves by adopting a code of conduct for third-parties, or by collecting their own elements of proof disconnected from the intermediaries.

Therefore, NGOs are perceived as being the Achilles' heel of investigations and a target for defense lawyers' strategies, who find it easier to attack the process rather than to debate the substance of the case. In both the Alieu Kosiah and Gibril Massaquoi trials, the defense attacked in vain the collection of evidence conducted by GJRP and CM. GJRP staff members were called sometimes several times to testify about their work methods and had to explain the investigation process in detail. Ultimately, the Trial Chambers had to assess the integrity of our work. In both instances, the judges dismissed the defense's arguments.

The counterpart of this situation is that NGOs must build up a trusting relationship with the authorities and justify their credibility and reliability. In order to do so, NGOs have to invest in trainings and develop work processes by adopting protocols and standard operating procedures. This professionalization requirement clashes with the reality of the environment of urgency and resource scarcity in which civil society organisations often operate.

Documentation by NGOs: a lack of control in the proceedings

Even when NGOs can refer a case to the authorities by sharing information, they nevertheless have limited control over how the information is exploited and used by the authorities. Especially in the common law system, the referral

party will have access to limited information on the conduct of the proceedings and have no impact on the investigation led by the authorities.

In certain civil law countries, NGOs can become a party to the proceedings through the civil party status. This is, for example, the case for CM in the Kunti K. case in France. This status allows for the NGOs to inter alia have access to the case file, to request investigating acts or to appeal certain decisions. Unfortunately, this is more of an exception rather than the rule.

This limited access to the proceedings can be problematic for extraterritorial cases, which are by nature cases that concern situations alien to the prosecuting authorities, and which took place in a territory to which they often do not have access. As explained, NGOs may have expertise that authorities do not have: access to the victims and witnesses, understanding of the terrain as well as logistic, cultural and contextual knowledge, and if these actors are too far removed from the proceedings the authorities are deprived of crucial assistance.

"There is an inherent tension between the existing need for documentation by non-officials' actors and the standards required by the authorities regarding the evidence gathering process."

There is therefore an inherent tension between the existing need for documentation by non-official actors and the standards required by the authorities regarding the evidence gathering process. Third-party information collection is a need and a reality. As the GJRP and CM have demonstrated with our Liberian cases, civil society actors are indeed sometimes the only ones to bring to light situations that would otherwise remain ignored and buried. If the standards for information gathering are set too high this can lead to the dismissal of third-party documentation and, in consequence, to the silencing of the suffering and cry for justice of thousands of people. Hence, there is a need to find a fine balance between the required integrity of the process and the existing need for access.

Emmanuelle Marchand *leads the legal team at CM. Since 2013, she has been working on the organization's strategic litigation cases and has been conducting investigation on international crimes including conflict related sexual and gender based violence (CRSGBV). She also works on capacity building of CM's partner organization, the GJRP. As part of CM's Knowledge and Training pillar, Emmanuelle also provides training to share CM's know-how on strategic litigation and how to build extraterritorial cases. For more than a decade she has been working on international cases including at the ECCC, the ICTY, the CAE, and war crimes cases at national level.*

A young AFL soldier accused of looting and murder is bound to a telegraph pole before facing the firing squad. Monrovia, Liberia, November 1992 © Patrick Robert

Lofa County, in the Northwest of Liberia, where Kunti K. allegedly committed the crimes he is accused of.

The Kunti K. Case

The Liberian quest for justice made concrete and tangible progress not only in Switzerland and Finland but also in France. In April 2021, The Paris Court of Appeals sent to trial the former Liberian rebel commander, Kunti K., for torture and crimes against humanity. The trial will take place in Paris in October and November 2022.

ULIMO Commander Kunti K. Will Face Trial in France for Crimes Against Humanity

Civitas Maxima, April 2, 2021

Today, the investigating chamber of the Paris Court of Appeals confirmed the referral to trial in France of Kunti K., former Liberian commander of the United Liberation Movement of Liberia for Democracy (ULIMO), for crimes allegedly committed during the First Liberian Civil War (1989-1996).

In November 2020, the investigating judge in his closing order had requested the indictment of Kunti K. for crimes of torture and barbaric acts. The Prosecutor appealed the failure to indict for crimes against humanity. The investigating chamber found in favor of the Prosecutor, by expanding the indictment to cover crimes against humanity in addition to crimes of torture and acts of barbarism that had been ordered by the investigating judge.

Kunti K.'s trial will be the first in France, since the establishment of the French war crimes division in 2012, not connected to the 1994 Rwandan genocide.

The preliminary investigation against Kunti K. and his arrest were prompted by a complaint filed in 2018 by Civitas Maxima and several Liberian plaintiffs it represents. Both Civitas Maxima and the plaintiffs were granted the status of civil parties in the case and are represented by lawyers Simon Foreman and Sabrina Delattre in Paris.

In 2019, French authorities, alongside Liberian authorities, travelled to Lofa County, in Northern Liberia, for a fact-finding mission related to Kunti K.'s case. This was the first time since the end of the Second Civil War in 2003 that Liberian authorities, together with foreign authorities, undertook crime-scene reconstructions related to war-time crimes.

The announcement of the Kunti K. trial closely evokes the trial of Alieu Kosiah, which was concluded in March 2021 in Switzerland, and it is expected that a verdict will be reached soon. Both Kunti K. and Kosiah were ULIMO commanders active in the same region and are both implicated in alleged heinous crimes against the population of Lofa County in Liberia.

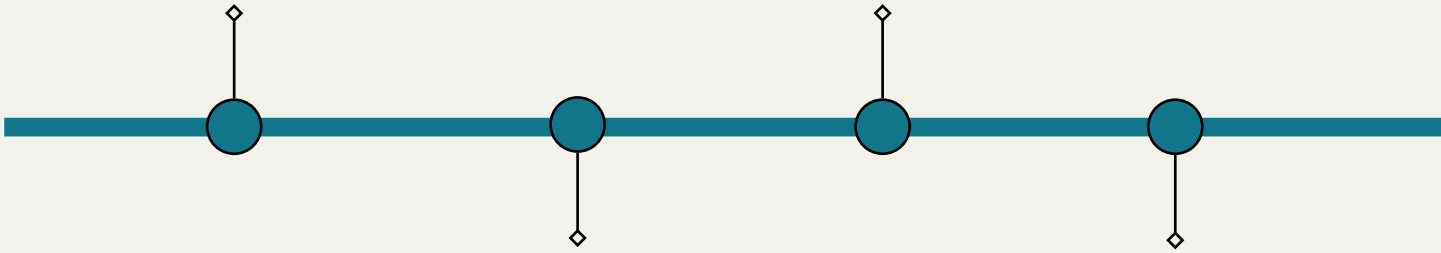
A TIMELINE OF THE KUNTI K. CASE

September, 2018

Kunti K. is arrested in Paris, France, after a criminal complaint was filed earlier that year by CM and several plaintiffs. He is suspected of committing torture and crimes against humanity allegedly committed during the First Liberian Civil War.

September, 2019

Kunti K. is released from pre-trial detention due to a procedural error. This release was done under some conditions and he was prohibited from leaving France.



Spring, 2019

Liberian and French authorities collaborate on a fact-finding mission relating to proceedings in Lofa County, northwestern Liberia.

January, 2020

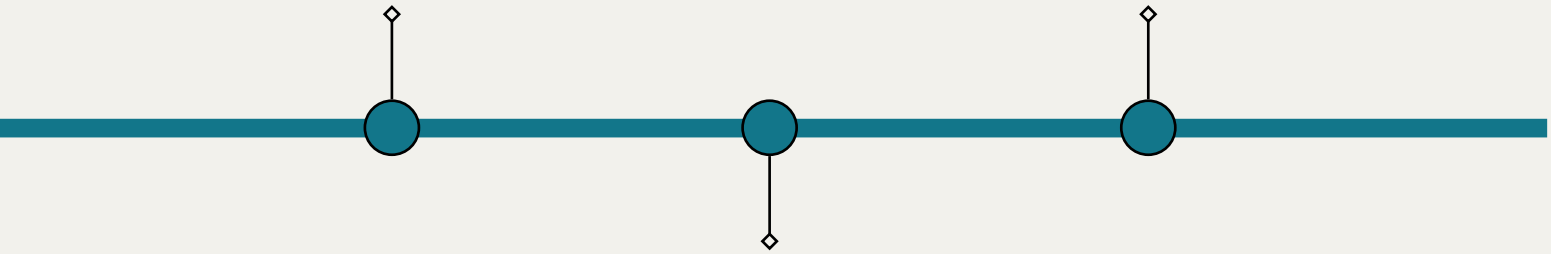
Kunti K. is arrested again on January 10, 2020 as he did not respect the terms of his pre-trial release.

November, 2020

The investigating judge indicted Kunti K. of crimes of torture and acts of barbarism. The Prosecutors filed an appeal.

October-November, 2022

The trial is expected to take place from October 10 to November 4, 2022, in Paris.



April, 2021

The Appeal Court expands the charges to include crimes against humanity.

Prosecuting International Crimes in France

Question and Answers

1) **Who is in charge of prosecuting international crimes (genocide, war crimes, crimes against humanity, torture) in France?**

The Public Prosecutor (Procureur de la République) is in charge of prosecuting international crimes in France. A dedicated unit was created in Paris in December 2011. The first prosecutions were dealing with the Rwandan Genocide. In July 2019, the section has been incorporated in the larger Anti-Terrorism Prosecution Service (Parquet National Anti-Terroriste) as International Crimes and Terrorism tend to overlap in some conflicts (for instance, Syria).

Because international crimes are a part of the most serious offences, the Prosecutor is in charge of the preliminary investigations but then must place the investigations in the hands of an independent investigative judge (juge d'instruction) who has more powers, can indict the suspect and eventually put them in custody if needed.

Like the specialized prosecution section, a handful of investigative judges are specialized in international crimes investigations and work in a specific division at the Paris Tribunal (le Pôle crimes contre l'humanité – Pôle CCH).

The Prosecutor and the investigative judge are assisted by a specialized investigation team of mainly police and gendarmerie officers (Office central de lutte contre les crimes contre l'humanité et les crimes de haine – OCLCH).

2) **Which criteria need to be met for someone to be prosecuted in France for international crimes?**

The French code of criminal procedure provides for an extended jurisdiction of the French courts: a suspect can be prosecuted and tried before a French tribunal:

- if he/she habitually resides in France

- and is suspected to have committed in a foreign country a crime for which the International Criminal Court has jurisdiction under the Rome Statute (18 July 1998), that is to say:

    - the crime of genocide;

    - other crimes against humanity and war crimes, if the country where the crime was committed punishes such crimes or is a member state of the Rome Statute, or if the suspect has the nationality of a member state of the Rome Statute.

The Prosecutor must verify if there aren't any ongoing proceedings before an International or national court and no ongoing extradition process.

If found in France, a suspect can be prosecuted and tried before a French Tribunal for international crimes specified in international conventions such as the New-York Convention against torture and inhuman and degrading treatment (10 December 1984).

3) **How quickly can someone be arrested in France once such accusations are made?**

The Anti-Terrorism Prosecution Service has discretion over the initiation of proceedings and the opening of investigations placed under the authority of an independent investigative judge. If a complaint is filed, the plaintiff must await the Prosecution decision. Then, the decision to arrest the suspect will depend on the seriousness of the allegations and the state of the investigations, the risk of escaping, the fear that the suspect might obstruct the investigations, the risk of pressure on witnesses and victims, etc. The arrest and remand in custody of a suspect are not automatic as he/she can be released on bail.

4) **How easily could the police or the Judges travel to the country where the crimes happened to understand the context?**

The prosecutor (during the preliminary investigations) or the investigative judge, or the police or gendarmery executing their instructions can travel abroad in a country that positively replied to a request of mutual legal assistance in criminal matters in accordance with International or bilateral conventions.

The prosecution and investigative judges bear in mind that, if the suspect is, at the term of the investigations, tried before a criminal court, especially the "Cour d'assises" which is composed of jurors, the history and context of the crime must be clearly laid out and explained to jurors. The investigators must therefore gather precise information and documents on the historical and cultural context.

5) **Which direct role can the victims play in proceedings for international crimes?**

Victims have a key role in international crimes proceedings in France. Especially if the crimes were committed

decades ago, the investigations heavily rely on their testimonies. The investigators of the Central office receive special training to conduct their auditions.

Under French law, the victims have the possibility to actively participate in the investigations. As civil parties, they have numerous rights, such as the right to apply for reparation, to be assisted by a lawyer, to have a translator, to ask the judge to perform specific investigations, to challenge some of the judge's decisions, to be informed of the investigations' progress, to participate in the trial, etc.

6) **How can someone accused of international crimes be detained in France before the beginning of his/her trial?**

The maximum duration depends on the prison sentence maxima. Regardless of the total duration, the detention is periodically reviewed: after 1 year and then every 6 months.

As international crimes are part of the most serious crimes, and are committed abroad, custody can last up to 4 years. Detention can then be renewed for exceptional reasons justifying the need to continue the investigations for two additional periods of 4 months. Finally, when the accused is, at the terms of the investigations, formally charged and set to be tried before a criminal court, he/she can be remanded in custody for another period of two years, which allows time to organize the trial.

7) **Who would be the ones judging such a case in France? In average how long would a trial for such crimes take?**

Because international crimes are ones of the most serious offences, the competent court will the "Cour d'assises", composed of six jurors (nine at the appeal stage) and three professional judges.

The lengths of the trial will depend on multiple factors, such as the complexity of the case and the number of parties and witnesses. For instance, the "Cour d'assises" of Paris has tried, in 2022, a Rwandan senior official (regional prefect) for the Tutsi's genocide and the trial has lasted 2 months and a half, with 115 victims and witnesses heard.

The pace for international trials is currently of two trials per year, all taking place in Paris.

8) **What is the maximum sentence for charges of international crimes?**

For crimes against humanity, the maximum sentence is life imprisonment. For war crimes, the specific nature of the crimes (i.e. murder as a war crime, rape as a war crime, etc.) will act as an aggravating factor and extend the maximum duration of the sentence. For instance, the maximum for rape is 30 years and the maximum for rape as a war crime is life imprisonment. In general, maximum terms for international crimes are among the longest ones.

9) **Does a trial for international crimes cost much more than a trial for "standard" crimes in France?**

The trials for international crimes are for sure very costly, as they can be long and as arrangements are made to compensate the victims, witnesses, experts, translators, and jurors for their participation. Recently, there has been a tendency to use videoconferencing, which might be seen as a way to cut down the costs.

10) **How many proceedings for such crimes did take place in France already?**

The first war crimes and crimes against humanity trials in France happend during World War II. The Accused were French nationals who collaborated with the Nazis: Klaus Barbie, Maurice Papon, and Paul Touvier.

Plenty of trials have been held on the Tutsi's genocide: Pascal Simbikangwa (25 years of imprisonment confirmed in 2016); Octavien Ngenzi and Tito Barahira (life imprisonment confirmed in 2018), Claude Muhayimana (14 years in 2021). Laurent Bucyibaruta is currently on trial, and Sosthène Munyemana is set to be tried next year.

Kunti Kamara's trial, set to take place in October 2022, would somehow open a new phase as it is not about the Rwandan Genocide. It is in line with the multiplication of the investigations and accordingly, of the wars and conflicts potentially concerned.

As for the ongoing proceedings, the number is not public but in February 2022, it was confirmed that there were 75 preliminary investigations and 80 investigations. Moreover, in the past 20 years there have been a few trials held in absentia for international crimes, all of them leading to prison sentences.

11) **Would you say that the prosecution of such crimes is a prosecutorial and/or political priority in France? Do such proceedings face any opposition amongst the population?**

The increase and geographic expansion of the investigations is already challenging the size of the dedicated units (the OCLCH, the Prosecution services, the investigative judges…) which are quite small. NGOs and the Prosecution service itself regularly deplore the insufficient manpower in the OCLCH as well as within the dedicated teams of prosecutors and judges.

Maybe the present conflicts in Syria and Ukraine will shed more light on the need to prosecute international crimes and advocate for the increase of the budget allocated to investigations and trials.

Answers provided by Dr Sabrina Delattre, lawyer and associate at Courrégé-Foreman, Paris. She holds a PhD in comparative criminal law and is an editorial secretary of the Revue de science criminelle et de droit pénal comparé. Since 2019, Sabrina coordinates the national working group on prisons at the French Human Rights League (Ligue des droits de l'homme - LDH).

Karim Khan, Kim Thuy Seelinger, and Dr Denis Mukwege drawn by © JP Kalonji

International Justice

In 2021, a new Chief Prosecutor for the ICC was elected, Karim Khan QC. Nobel Prize Laureate Dr. Denis Mukwege and CM's President of the Executive Board, Kim Thuy Seelinger, published an open letter to the new Chief Prosecutor, expressing their hopes for the future direction of the ICC. Mr. Khan outlined his vision for his tenure at the ICC.

Panzi Hospital in Bukavu, Democratic Republic of the Congo. © Alexis Huguet

An Open Letter to the ICC Prosecutor


Dr Denis Mukwege | Kim Thuy Seelinger

Dear Mr. Prosecutor,

We congratulate you on your recent election as Prosecutor of the International Criminal Court (ICC), a position with immense potential to bring justice to victims and survivors of mass atrocities around the world. We are writing to highlight one group of survivors: those who have been victims of sexual and gender-based crimes.

You inherit an office that has made great efforts to strengthen the investigation and prosecution of these acts. Your predecessor, Prosecutor Fatou Bensouda, appointed an excellent Special Advisor on Gender and issued a policy paper on sexual and gender-based violence crimes. We also observe a promising expansion of the practice of indictment, as illustrated by the accusations of "gender-based persecution" in the Al Hassan case in Mali and "forced marriage" and "forced pregnancy" in the Ongwen case in Uganda. We are further pleased to see sexual and gender-based crimes finally addressed in the recent convictions of Bosco Ntaganda (Democratic Republic of Congo, DRC) and Dominic Ongwen (Uganda).

As you take office, we take the liberty to raise three specific points that we hope will be of priority for you.

Maintain focus on the Democratic Republic of Congo (DRC)

"You could establish national offices in countries affected by the reviews, investigations and prosecutions of the ICC."

Firstly, in respect to the Office's work in the DRC: more needs to be done. The full report on the mapping of conflicts published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2010 is a veritable inventory documenting 617 violent "incidents" committed between 1993 and 2003. The report concludes that the majority of the documented crimes can be qualified as crimes against humanity and war crimes. Some acts could even constitute the crime of genocide if brought to the attention of a competent court.

However, in ten years, the report has gathered dust. For its part, the ICC has only opened six cases in the country and only convicted three lower-ranking individuals for war crimes and crimes against humanity. And yet, from 1999 to March 2021, Panzi Hospital personnel strove to heal the bodies and lives of 67,893 survivors of sexual violence in Ituri and the provinces of North and South Kivu, where armed groups literally and figuratively tore apart men, women, and children in their attempts to destabilize the region. In a nutshell, the violence has not diminished. Panzi Hospital and the Panzi Foundation are still receiving new cases of victims of sexual violence. The Panzi team operates on mothers, grandmothers, young people and even babies who have not yet taken their first steps.

This cannot continue. We urge you to reinvigorate your office's efforts to combat impunity in the DRC. For example, your investigations in the DRC could be strengthened by requesting the publication of the annexes of the OHCHR Mapping Report that contain the identities of alleged perpetrators of crimes committed in the DRC and specific allegations not included in the public document. And, to better understand how this violence manifested itself in the East, survivors of sexual violence and our staff will be glad to welcome you at the hospital and at the Panzi Foundation.

Investing in positive complementarity

This brings us to our second request. We understand that the ICC cannot be expected to hold all perpetrators accountable. We appreciate the principle of complementarity expressed in Article 17 of the Rome Statute and the division of burden it provides between the ICC and national courts. Today, more than two decades after the drafting of Article 17, we are witnessing the emergence of new war crimes chambers and prosecutors specialized in international crimes in national judicial systems around the world. From Colombia to Uganda and from Bosnia-Herzegovina to Iraq, national expertise in the investigation and prosecution of major international crimes continues to grow. Today, between ICCs and national legal systems, in addition to asking "Who should do what?", the time has come to ask "How can we help?" or "What can we do together?"

So far, it has largely been up to civil society organizations to provide technical assistance to judges, lawyers and victim advocates at the national level. Your Office has enormous potential - and even responsibility - to provide additional

support. You could, as Human Rights Watch recommended in 2020, establish national offices in countries affected by the reviews, investigations and prosecutions of the ICC. You could also establish protocols of engagement between the Office teams and their counterparts in the national systems to regularize contacts, define technical assistance priorities, and share information. The benefits would be mutual, especially with regard to sexual and gender-based violence crimes: some national actors could learn a lot from the Office about the investigation or prosecution of these crimes, about how to talk to survivors without stigmatizing them and taking into account their trauma. In turn, your own team could learn a lot from national investigators and prosecutors, about potential sources of evidence when eyewitnesses are rare, or about the social or gendered meaning behind specific conduct in an armed conflict, or even about the language to use when asking about sex, body parts, and violence. These relationships are crucial and symbiotic. We invite you to take the practice of complementarity to new levels during your mandate.

Seeing reparations as a form of justice

Finally, we urge you to give real priority to reparations for survivors, especially those who have suffered sexual violence. These crimes carry with them stigma, accusations against the victims, and in the case of rape, the possibility of having children. In addition to having their legendary "day in court" or even a conviction of the accused, most of the survivors we have helped want to be healed, to move on, and to regain their place in society. Whether it is an apology from the abuser or paying school fees for their children, survivors demand reparation. Reparations are more than a practical benefit; they allow for reintegration into the community and signal the fundamental and unimpaired value of survivors.

Victims of human rights and international humanitarian law violations are entitled to adequate, effective, and prompt reparations. Indeed, the victim or their heirs are entitled to receive damages from the perpetrator. In addition, the obligation to provide reparations is also incumbent on the State for acts and omissions that can be attributed to it, particularly when it has failed to protect the civilian population in a timely manner.

One of the gems of the Rome Statute is its provision for reparations to victims in the case of conviction. Yet, despite orders following the convictions of Bosco Ntaganda, Germain Katanga and Thomas Lubanga, reparations have only been paid once: in the Katanga case, in 2017. Otherwise, similar support for reparations has been provided by ICC's Trust Fund for Victims - mainly in the form of general assistance programs. The ICC should do more. Its Trust Fund for Victims receives only three million euros per year (2% of the ICC's overall budget). There is much more to be done.

"We urge you to give real priority to reparations for survivors."

We are aware that these financial constraints go beyond your responsibility as a prosecutor. We are also aware that your charges must be based on the available evidence. These charges, of course, influence everything that happens downstream, including who may ultimately be entitled to reparations through the judicial process. And, when the time comes for you to celebrate your first conviction, we urge you to do everything in your power to ensure that all subsequent reparation orders are directly informed by the survivors themselves.

In the meantime, along with the Global Survivor Fund (GSF), we are doing everything in our power to enable them to access reparations, especially where there is little chance of intervention by the ICC or conviction of perpetrators. We are working to mobilize financial resources to develop reparation mechanisms with and for survivors of conflict-related sexual violence. The Fund also plays an important role in lobbying states to take responsibility to provide reparations to victims, as well as the international community. Through its expertise and technical support, it guides states and civil society in implementing their reparations programs. Where states or stakeholders are unable or unwilling to fulfill their responsibilities, GSF acts to provide intermediate restorative measures for survivors.

This rights-based approach - which is truly survivor-centered - is at the heart of the Fund's work. Its broad conception of reparations and other forms of compensation - whether individual or collective, material or symbolic - allows it to contribute to rebuilding the shattered lives of survivors and to combat the stigmatization and exclusion to which they are subjected. In this, it echoes the initiatives of the ICC Office of the Prosecutor in this area. This is part of justice.

Thus, as you begin your mandate as ICC Prosecutor, we hope that you will be able to face these immense challenges with determination. We applaud the progress made at the ICC so far and urge you to go further, in the three areas detailed above. Why these? On the one hand, they are general and systemic challenges. On the other hand, they hold the potential to transform the lives of thousands of survivors of sexual and gender-based violence in particular, and the justice they can expect to achieve. In your nine years as ICC Prosecutor, how will you contribute to this great work and give more hope to our humanity?

Dr Denis Mukwege *is a Congolese gynecologis and Pentecostal pastor. He is the founder of the Panzi Hospital in Bukavu, where he works as a secialist in the treatment of women who have been raped by armed rebels. In 2018, Mukwege was awarded the Nobel Peace Prize for "efforts to end the use of sexual violence as a weapon of war and armed conflict."*

Kim Thuy Seelinger *directs the Center for Human Rights, Gender and Migration at Washington University (USA). She also serves as Special Adviser on Sexual Violence in Conflict to the Prosecutor of the ICC as well as President of the Executive Board of CM.*

This article was originally part of the special July 2021 Op Ed section on Le Temps dedicated to international justice, with Alain Werner, director of CM, serving as guest editor.


WELCOME T
BATTLEZO
IS YOU A
FUCK TH

Entrance of the zone held by ULIMO-J fighters.
Monrovia, Liberia, April 1996 © Patrick Robert

The International Criminal Court Must Deliver on its Promise for a Better Future for Humanity

Karim Khan

Chief Prosecutor ICC

The ICC matters. In establishing the ICC in 1998, the Court's founders in Rome invoked the unspeakable atrocities of the Holocaust, the killing fields of Cambodia, and the genocide in the former Yugoslavia and Rwanda. The ICC is an awful testament to the horrors of mankind and our collective will to give meaningful expression to the maxim of "Never Again". Yet, that commitment must not ring hollow to taunt the memories of victims of the past or to abandon the victims of tomorrow.

As I stated at my swearing in ceremony at the Court in the Hague last month, it is unacceptable that the 21st century still lays witness to medieval crimes being committed by so called modern people. Despite the ugly visage that criminality so often presents to the world, the ICC represents a promise to the future that tomorrow need not be as bleak and as sorrowful as yesterday. Indeed, atrocity crimes must increasingly be seen for what the are – a repudiation of humanity and egregious violations of the most basic norms.

It is a great honour and privilege to have been elected, in February this year, as the Prosecutor of the ICC. It is also a heavy responsibility. I will act with fidelity to the Rome Statute and with integrity, professionalism and independence. At the same time, this area of law represents the most basic considerations of humanity. It should not allow for spectators. Every single one of us can and needs to participate in this common cause to no longer tolerate intolerance or untrammelled violence. Across continents, we must individually and collectively endeavour – with renewed commitment – to view the suffering of our brothers and sisters and of children as if it were, God forbid, the suffering of our own families or those we love. We cannot avoid the ugly truth that, as you read this article, crimes are being committed against so many women and children and men, in so many different parts of the world. The tears they shed and the pain they suffer should galvanise us to action.

I intend to focus with renewed vigour on all crimes including crimes of sexual or gender-based crimes and have already instituted a plan to have the sexual and gender-based crimes adviser in the Office report directly to me and to be actively involved in all investigative plans to ensure we prioritise investigations and prosecutions of these crimes at all stages. I also intend to build expertise and capacity within the Office of the Prosecutor at the ICC ("OTP" or the "Office") to ensure crimes against or affecting children are addressed with particular attention. Far too often, these are the most invisible of victims. More often than not, they are conflated with the general civilian population. The transgenerational harm and trauma that such crimes bring remain a blight on every other accomplishment that may be achieved in any area of human endeavour. We must do better as an Office and as a community of nations in addressing these type of crimes and preventing them where possible.

"It is unacceptable that the 21st century still lays witness to medieval crimes being committed by so called modern people."

As I commence my term as Prosecutor, I intend to lead an effort to refocus and re-energise the Office. We can build on the various achievements since the ICC began operations but can no longer shy away from the reality that the Office can and must perform better.

The OTP will be assessed not by the quality of its policy papers, important though as they are – nor by press releases or interviews – or even Op-Eds like the one I write now. We are assessed in the courtroom by independent judges. What must and will define our work is the quality of our investigations, the resilience of our processes and the strength of cases we actually present. There has to be an ever greater realisation that cases are, invariably, "won and lost" before they get to The Hague. Linked to this must be an understanding that the OTP is not an NGO that does important work in shining a spotlight on possible violations of international humanitarian law, or maps certain trends to raise consciousness or to demand urgent action. Rather, the OTP is a law enforcement entity charged with investigating and prosecuting cases to the criminal law standard. Proving a case beyond reasonable doubt with regard to every single element on an offence against an accused is, quite rightly, an arduous process. I have just started a process of reviewing the cases and investigations under my purview, and intend to make the necessary decisions after that process is concluded.

That said, it is already clear to me that the Office needs to focus its resources more effectively to ensure that it can discharge its burden of proof in all cases. An office spread too thin, or promising more than it can deliver, is an Office that will fail to gain the trust of stakeholders or build confidence in the rules- based system we are party of. Victims and survivors simply cannot be promised the world, and then have their hopes and expectations dashed by cases that are not as thoroughly investigated, analysed or prosecuted as they deserve to be.

Linked to this is a greater effort to promote complementarity. The ICC was envisaged as a court of last resort. We should foster joint endeavours where possible and assist situation countries to discharge their international obligations, within the contours of the Rome Statute. We must also, to my mind, show increased willingness to engage with national authorities of third states for them to investigate and prosecute when they are able. The Statute expressly permits this, and I believe we can strengthen this aspect of the Court's functioning further. From ISIL trials being conducted in Germany and the United States to investigations and prosecutions of individuals for historic war crimes in Liberia by the Courts of Finland, we already see greater willingness of States to step up and be the voice of humanity's conscience. I applaud such efforts and believe we can replicate such action to a wider extent. In this context, the work that is be done by NGOs and civil society, working with States and also with the Court – pulling in one direction – has significant potential. The work of Civitas Maxima – whose Director Alain Werner is the editor of this week's edition of Le Temps merits special mention, in this regard.

The Office must be fit for purpose to deliver on its crucial mandate. Gender equality, geographical representation and diversity in the Office itself must be watchwords, not out of a sense of "political correctness" but in order to succeed. We cannot preach fairness outside the Office and not ensure it within the Office. In this regard, I am committed to implementing many of the excellent recommendations made by the Independent Expert Review in its Report last September, and I am grateful to the Assembly of States Parties for mandating that Review.

"We should help nurturing and supporting what is already owned as the common heritage of humanity - namely the values, obligations and rights stipulated in the Rome Statute."

The Rome Statute intertwines and reinforces essential parts of the Geneva Conventions, Hague Regulations and various rules of treaty or customary international law. This body of law is obviously not, however, the sole property of Italy, Switzerland or the Netherlands – nor of Europe or the Global North. It is the joint property of humanity. These rules and responsibilities should act as a reflection of humanity's basic hopes – which include a desperate desire to end fear caused by the atrocities that have mutilated the face of nations and peoples throughout the ages. The civil law, common law, Islamic law, Chinese law and any other legal system can and should coalesce around this most elemental body of law, for it to act as a shield for us and for future generations alike. Having staff – of all genders – from all regions of the world will inject ever greater linguistic, cultural and substantive expertise into the work of the Office and bring many benefits at the investigative and trial stages of proceedings and underline the common heritage and common ownership of the law we apply.

In this same vein, we should recall not only that the Rome Statute envisages that ICC as a court of last resort, but we should increasingly endeavour to see The Hague as a city of last resort. All things being equal, I am of the view that we should look at new and imaginative ways to support complementarity and national processes. This can include the Court sitting in the country where alleged violations have occurred – or in the region if witness security requires that. This is not the ICC vacating the field, but the ICC taking its expertise to the field in new ways. Simply said, we need to bring ever more local or regional participation into the process. This is why I said during my swearing in on 16 June 2021, that we should not be seen as exporting a product. Rather, we must be seen as helping nurture and support what is already owned as the common heritage of humanity – namely the values, obligations and rights that are stipulated in the Rome Statute. Where other options are not possible, the Court will stand up and endeavour to ensure effective accountability is achieved as required by the Rome Statute. This division of labour, or burden sharing will, however, potentially provide avenues to an ever more impactful and positive presence of the Court in different countries, and ever closer engagement with survivors, whose stories we have the honour to present.

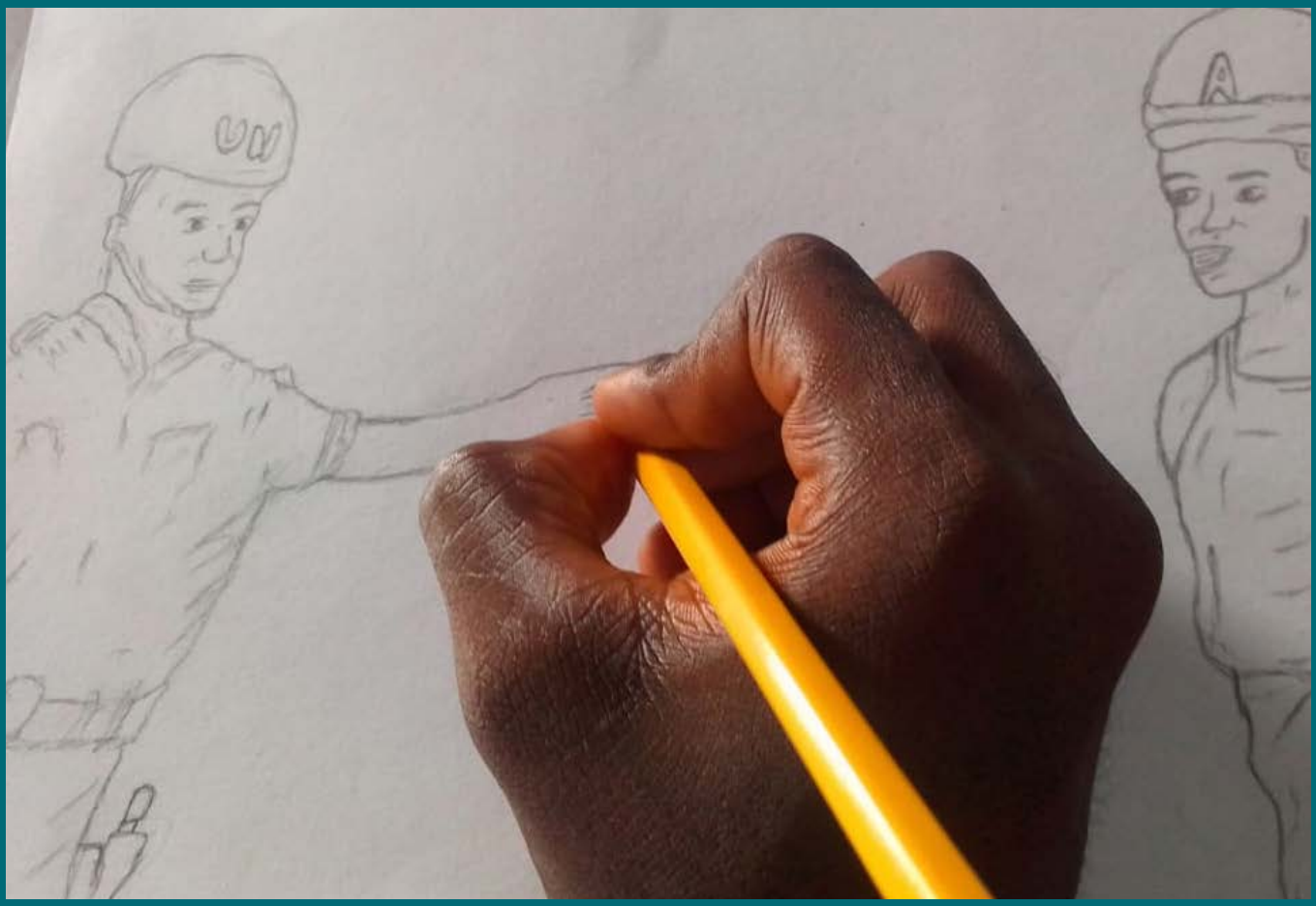
In summary, therefore, the concept I have of international justice is a sincere attempt, wherever possible, to build on the common ground that we all know exists (and to vindicate the Nuremberg principles) in order that the hollow promise or plaintive cry of "Never Again" that we tragically hear with obscene regularity, be moved to an ever closer reality. It is an endeavour worthy to embark upon in my view. It will require constant engagement with and between survivors, civil society, states and non-states parties and with international, regional and grass roots organisations. It is a common obligation that should gain, at least, as much traction and momentum as the environmental movement is now fortunately doing. We should aim not to recycle the decay and misery of the past but move to a cleaner, brighter and fairer future. The Court, and the Office I lead are certainly not a panacea for the ills of the world. Good governance, fairness, access to education and healthcare, economic opportunities and the fight against corruption and intolerance are directly linked to prevention of international crimes. But, all of these also require a rules-based system of which the Office of the Prosecutor and the ICC are an important part.

As we survey the history of the last few decades, we see despair and misery from the gas chambers of the Third Reich to the horrors witnessed in Cambodia, the Balkans, Rwanda or in Myanmar or the Democratic Republic of the Congo. The gloom is brightened by brilliant scientists who have engineered vaccines and cures, and who reach for the stars or move towards ever cleaner energy. The ICC may, in years to come, be seen as part of a new dawn of hope. I think it is and I believe it should be applauded as a statement of intent and as a Court in operation. The time has come, however, to collectively recommit ourselves to ensuring its voice is heard and effectively deliver for those whose cries are too frequently drowned out by the less dignified, and – it must be said – less important noise of life. I seek your help in advancing this common endeavour.

Karim A. A. Khan QC *is the Prosecutor of the ICC and former Special Adviser & Head of the United Nations Investigative team to promote accountability for the crimes of Da'esh / ISIL (UNITAD).*

This article was originally part of the special July 2021 Op Ed section on Le Temps dedicated to international justice, with Alain Werner, director of CM, serving as guest editor.

In April 1996, the Liberian State Council sent police-militia to arrest Prince Roosevelt Johnson on murder charges. As a direct result, fighting broke out in Monrovia. Liberia, April 1996 © Patrick Robert



A student attending a Cartooning for Justice Workshop in 2022, an outreach collaboration between CM, GJRP and LivArts © Civitas Maxima

Outreach

Engaging with civil society actors is part of CM's mandate. This is especially true in countries where the crimes happened, to encourage awareness of past crimes and to enable initiatives that seek accountability for war crimes. This section highlights two of these initiatives held in 2021, in Geneva and in Monrovia. It also highlights the work and mission of CM's Knowledge and Training Centre.

In 2008, the Temple of Justice was renovated, as it had been damaged during the war. The inscription on the facade used to say '*let justice be done to all men*', but the last word was removed to include everyone. Monrovia, Liberia, 2021
© Rebecca-Paris Senior / Civitas Maxima

Roadmap to Accountability

Resetting the Focus on a Liberian War Crimes Court

Hassan Bility

Director of GJRP

Discussions regarding the establishment of a war crimes court in Liberia have been ongoing for decades: despite the efforts of civil society and activists, its actual implementation seems elusive. The Covid-19 pandemic only stalled discussions further.

It is for this very reason that in early 2021, in collaboration with the University of Nottingham, GJRP and CM organized a series of five workshops which culminated in a two-day event to discuss the barriers to overcoming accountability issues related to the civil wars in Liberia and agree on a 'roadmap' which will dictate further steps and a commitment to the cause of justice.

In February 2021, workshops were conducted in different Liberian counties: Monrovia, Bomi, Lofa, Bong and Grand Bassa. The discussions involved over 150 people, amongst them traditional and community leaders, and youth and women leaders. The workshop participants then shared what was discussed with their own communities, allowing people to address the wider impact of the conflicts.

During these discussions, the groups identified what they believe are the most significant obstacles to justice and that currently prevent accountability. Amongst the obstacles identified were a lack of political will to implement the TRC final report, an absence of coordinated and continuous advocacy campaigns, propaganda by those interested in protecting impunity, and a lack of funding.

In March 2021, a two-day conference was held in Monrovia, and those very people who had brainstormed within the focus groups just a month prior met and collectively reaffirmed the previously discussed obstacles, and identified strategic actions to tackle those issues.

A good starting point for the conversation was the 2019 resolution for the establishment of a war crimes tribunal. Drafted earlier that year during a two-day legislative conference – organized by the University of Nottingham, SEWACCOL, GJRP and CM - the resolution had been endorsed by 52 legislators, representing more than enough support required for its adoption. However, the issue was not added to the agenda of the House of Representatives, a political maneuver that felt like a setback.

During the conference, the then President of the LNBA, Counsellor Tiawan Gongloe, presented an updated version of the Draft Act, and provided insight on issues such as the jurisdiction of the Court, witness protection, and the relationships that could develop between the Liberian and international staff who would work at the court.

"All Liberians must be involved in the quest for justice and outreach activities must include those who live beyond the capital Monrovia."

All participants agreed that government officials from all 15 counties of Liberia should mandate that their leaders and legislators request the speaker to reintroduce the resolution to the agenda. Moreover, the participants proposed listing those politicians and representatives that are in favor of the establishment of justice mechanisms, and those who have allegedly committed crimes during the wars and/or who have obstructed any accountability processes.

It was also pointed out how youth and student organizations can be vital in pushing forward the discussion of the resolution to the legislative agenda, and more broadly, how these groups are key in the organization of peaceful protests, hand in hand with victim organizations. I believe this signifies the trust and hope that Liberians have for their future generations.

We often invoke the TRC, yet not many people are aware of its contents, nor have access to it. It is for this reason that one of the solutions to fight misinformation was to summarize the TRC and translate it into the most spoken Liberian vernaculars, such as Kolokwa, Mano, Kissi, etc. This was endorsed by Dede Dolopei and John H. T. Stewart, both respectively vice-chairperson, and commissioner of the TRC, who were present during the event.

The issue of accessibility is particularly relevant, as the participants stressed how important it is that all Liberians must be involved in the quest for justice, and that all outreach activities related to the establishment of an accountability mechanism must also include those who live beyond the capital, Monrovia. It is crucial to have the support of leaders from these communities, and the conference allowed for an open and valuable exchange amongst people from all over Liberia. The rural areas of the country were also heavily affected during the conflicts, and those who live there

have also been victims of senseless violence: we all must be involved in the quest for justice.

Last, but not least, the issue of funding was discussed. We want a possible war crimes court to be a Liberian driven process: how do we achieve that, considering the very real financial challenges faced by our country?

13 years have passed since the final recommendations of the TRC were made, and nothing has been planned in terms of funding for accountability mechanisms. The participants all agreed that the time is now: first, we must establish a committee which will solely deal with these financial endeavors, and construct a realistic proposal which can be then presented to funding agencies, and later, to international organizations. If we want to see real change, we must set a real plan in motion.

"We want a possible war crime court to be a Liberian driven process: how do we achieve that considering the very real financial challenges faced by our country?"

Witnessing the room packed with people of all ages and from different tribes all brainstorming, sharing their experience and their views in the pursuit of justice, filled me full of hope. It might not be a priority for the government of Liberia, but accountability is a priority for Liberians. The pledge of commitment, signed by all invitees, attests to their commitment to the roadmap, and generally, to their commitment to their country.

It is my sincere hope that the Liberian Government will take fast actions aimed at making the TRC recommendations a reality.

Hassan Bility *is a Liberian journalist and the founder and Director of the GJRP. During Liberia's civil wars, Bility was one of the country's most prominent journalists and human rights activists. While serving as Editor-in-Chief of the Analyst Newspaper under the regime of Charles Taylor, he was arrested multiple times. He won numerous prizes for his work as a journalist and as an activist.*

Attendees of the 2 day "Roadmap to Accountability" event in Monrovia, Liberia, 2021 © Rebecca-Paris Senior / Civitas Maxima

Prosecutor for a Day

Margaux Francioli

Former Ecolint student, Geneva

Civitas Maxima was selected to participate in an educational program offered by Philanthropic Adventures, a Swiss registered non-profit association, aiming to introduce the concept of philanthropy to the youth and help them define their engagement and raise awareness of an issue they care about. As a result, a group of students from the International School of Geneva participated in a series of workshops culminating in a mock trial taking place in a fictional country. This experience is described on the students' behalf by one of those who participated, Margaux Francioli.

When we signed up for the workshops offered by Philanthropic Adventures to learn about the work of Civitas Maxima and to participate in a mock trial, none of us realized how much of an eye opener this experience was going to be, exposing us to so many things that we were not aware of.

The project was composed of five sessions. We met different lawyers working for the organization, with whom we discussed international justice, as well as the legal and ethical issues surrounding war crime trials. We watched "Beyond Impunity", a documentary that followed Civitas Maxima's participatory theatre outreach project, and which aimed to disseminate information on the trials of perpetrators taking place abroad. It was really special because we had a chance to speak to the film's director, Nicolás Braguinsky Cascini. He was present during the session and we were able to ask him questions about his experience in Liberia. We also had the opportunity to work with Alain Werner, the director and founder of Civitas Maxima, who enlightened us with his experience and enthusiasm. All of these experiences allowed us to brainstorm our interpretation of the mock trial script, and truly understand what we were doing.

"I felt quite empowered because I was raising awareness not only for the specific trial we were doing but also for a greater cause."

The Civitas workshops taught us about wars we had never learnt about in school and enlightened us to the situations in other countries that we never really talk about, like in Liberia, where people have suffered immensely. As international students in Geneva, we luckily have never been exposed to wars, nor to the long-term effects felt by the people involved. This made us realise how important it is to educate ourselves and raise awareness.

Hearing people's testimonies and real-life experiences really allowed us to understand the extent of the suffering and long-term damage caused by civil war, both of which are impossible for us to imagine and understand. Being faced with a small fraction of what took place in Liberia really incited us to learn more and take action.

When rehearsing for the mock trial, we were able to discuss the war and access to justice for the victims. We were asked thought-provoking questions which enabled us to expand our reflections and share our opinions. This taught us new skills while informing us about events we were not aware of before.

I chose to play the prosecutor as I thought I could expose the horrifying crimes committed. I knew I wanted to play the role of someone defending the victims who are unable to obtain justice for themselves. Playing the prosecutor enabled me to understand how trials work and how prosecutors present their arguments. I felt quite empowered because I was raising awareness not only for the specific trial we were doing but also for a greater cause. I really enjoyed it because I liked questioning and cross-examining the witnesses to try and debunk the defence's arguments. I also felt relieved that people and organisations like Civitas Maxima are working to raise awareness for victims of war crimes and working towards getting justice for them, as well as taking the initiative to create educational projects so that young students like myself can get involved.

Although we were guided both by Paola Genovese, founder and director of Philanthropic Adventures, and by Alain Werner during the mock trial rehearsals, we had a lot of freedom to debate and interpret our roles. This made us enjoy the performance but more importantly it showed us the importance of seeking justice. The mock trial was a creative and active way for us to learn and get involved. As Civitas Maxima Youth Ambassadors, we are keen to continue raising awareness about the work of the organization, and what it stands for. We would very much like to thank Philanthropic Adventures and Civitas Maxima for this amazing experience.

Margaux Francioli *is graduating from the International School of Geneva (Ecolint), and will attend UC Berkeley to study Life Sciences and Entrepreneurship.*

JOURNALIST: I am outside the supreme court of Ulamalu. Today is a great day for justice as infamous Eagle Eyes, nom de guerre of Thomas Wolf Smith, will be tried for war crimes allegedly committed during the civil war that tore our country apart for 20 years.

This is a historical trial as, for the first time since the end of the war, Ulamalu is pursuing a war crime trial.

[...]

PROSECUTOR: Your Honour, we intend to prove that Thomas Wolf Smith, nom de guerre Eagle Eyes, former MFFF commander, is indeed guilty of war crimes. General Eagle Eyes, personally and with MFFF fighters acting on his order and under his command, looted, raped, tortured, and murdered civilians. To that end, 4 witnesses will take the stand to testify about the alleged horrors committed by the defendant.

[...]

DEFENCE: Your Honour, the Prosecutor speaks of trauma. Indeed, there is trauma: the one that our client has been suffering for decades, trying to forget what has happened to him during the war. And now! Now, he is dragged here, to respond of crimes he was forced to commit in his youth, when kidnapped and forced to fight by the Army for Peace Revolution. Now he is asked to respond of what he has done in self-defence, to escape the horrors witnessed.

[...]

EAGLE EYES: War is war. I did what I had to do to defend my land and protect my people. But I only engaged in fights with other soldiers.

[...]

JUROR #3: Now it is up to us to evaluate the facts and decide if Eagle Eyes is guilty, and of what.

[...]

JOURNALIST: Thomas Wolf Smith, Ulamalu warlord known as 'Eagle Eyes' was found guilty on two out of four counts. Ulamalu's victims have been waiting for years to see their perpetrators held accountable, and the victims that testified in court showcased their bravery and their resilience. This has been the first time that the crimes that took place during the war have been documented, making it a crucial step to heal and learn from our past. The quest to end impunity in Ulamalu has just begun.


Independent Legal Representation of Victims of War Crimes and Crimes Against Humanity
CIVITAS MAXIMA
Welco
Mock War C

The students at Ecolint with CM's staff during their first workshop in 2019.
© Rebecca-Paris Senior / Civitas Maxima

Civitas Maxima's Knowledge and Training Center (KTC)

Since 2012, CM has collaborated with many judicial authorities around the world and assisted – in one way or another – with public criminal cases related to international crimes in six different countries and on two continents, which is a unique track record for an NGO that does not receive governmental funding. We therefore believe there is significant benefit in sharing our methodology, lessons learned, and our experience working on universal jurisdiction cases.

"In July 2021 we led universal jurisdiction training session for a leading Ukrainian NGO in the field of International criminal justice."

For this very purpose, CM has created within its legal department a Knowledge and Training Centre (KTC). Our aim is to allow, in the long run, as many organizations as possible to work with victims and assist judicial authorities in bringing cases against alleged perpetrators of international crimes.

Through the KTC, we facilitate the training of lawyers and investigators in different jurisdictions to better equip them to investigate and document international crimes, as well as bringing extraterritorial cases in front of national courts. We provide customized trainings based on our work model to select local groups and victims' associations.

During these trainings we also make relevant know-how on strategic litigation cases available (for example, on where and how to initiate, support, and participate in international criminal cases in different foreign and domestic legal systems). CM offers personalized trainings in order to better fit participants' needs and work reality. Topics explored during these trainings also include matters related to documentation, archiving, information management, mapping of jurisdictions/legal avenues, and procedural aspects.

We therefore aim to scale up CM's impact through trainings and open-access publications made available to grassroots organizations beyond West Africa. We have conducted several such trainings and courses on documentation and investigative techniques, international accountability venues, and strategic litigation with carefully selected partners.

In July 2021, thanks to a private donor in Geneva and under the expertise of Emmanuelle Marchand, our Deputy Director, we led a universal jurisdiction training session for Truth Hounds, a leading Ukrainian NGO in the field of international criminal justice. Unfortunately, this training became even more relevant as current events unfolded. CM is still collaborating with Truth Hounds.

CM intends to keep developing its KTC and multiply its collaboration with other organizations all over the world, funding permitting. Indeed, we believe that only this collaborative and inclusive approach can bring about systemic change and begin to tackle the scourge of impunity for mass crimes in national courts.

"CM intends to keep developing its KTC and multiply its collaboration with other organisations all over the world. Only this inclusive approach can bring about systemic change."

Emmanuelle Marchand delivering CM's signature training, Ukraine, 2021 © Civitas Maxima

Financials & Acknowledgements

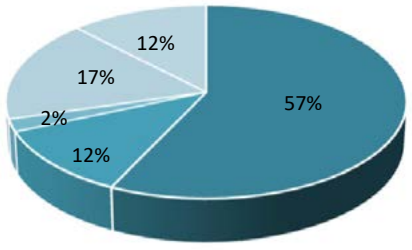
Since 2012, Civitas Maxima has grown very steadily. It has increased its budget every year, often substantially, without taking money from any government.

2021 FINANCES

Operating statement for the year ended December 31, 2021*

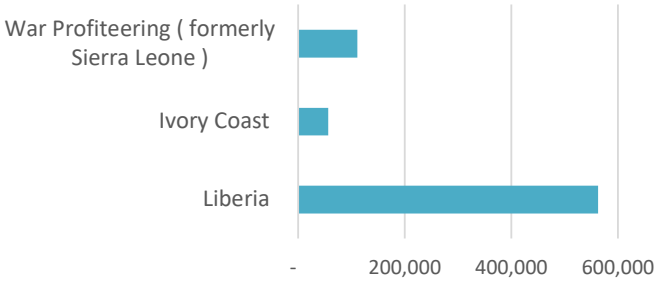
	2021 CHF	2020 CHF
INCOME		
Grants & donations**	1,296,295	1,111,453
Other income	4,218	-
TOTAL INCOME	1,300,513	1,111,453
EXPENSE		
Programme	-730,611	-665,748
Outreach & Communication	-145,748	-114,129
Knowledge & Training Centre	-26,500	-20,610
Management & General	-219,467	-165,175
Fundraising	-156,497	-125,719
TOTAL EXPENSE	-1,278,823	-1,091,381
EARNINGS BEFORE FINANCIAL RESULT	21,690	20,072
Financial expense	-13,505	-7,364
Financial income	18,015	6,610
RESULT FOR THE FINANCIAL YEAR	26,200	19,318

EXPENSE



- Programme
- Outreach & Communication
- Knowledge & Training Centre
- Management & General
- Fundraising

PROGRAMME



*Based on audited accounts by PriceWaterhouseCoopers (PwC)

**This figure includes allocation to and use of the restricted funds

Donors & Partners

Civitas Maxima is extremely grateful for the support received from the following donors and partners who have contributed towards the advancement of our vision and mission:

Our sister organization, the Global Justice and Research Project, Liberia

Akin Gump Strauss Hauer & Feld LLP, U.S.

Ashoka, International

Bijl Advocaat, The Netherlands

Centre for Civil and Political Rights (CCPR), Switzerland

Comité de Familiares de Víctimas del Caracazo (COFAVIC), Venezuela

Juan Garcés y Hernán Garcés de Garcés y Prada abogados, Spain

Geneva Academy of International Humanitarian Law and Human Rights, Switzerland

Global Diligence Alliance, U.S.

Human Rights Watch, International Justice Program, U.S.

Humanity United, U.S.

Inoks Capital SA, Switzerland

International Committee of the Red Cross (ICRC), Law and Policy Forum, Switzerland

Jacquemoud & Stanislas, Switzerland

King Baudouin Foundation, U.S.

Lenz & Staehelin, Switzerland

Liberia Visual Arts Academy, Liberia

New Narratives, U.S.

Oak Foundation, Switzerland

Ochsner & Associés, Switzerland

Office of the United Nations High Commissioner for Human Rights, Liberia and Switzerland

Other foundations which requested anonymity

Philantropic Adventures, Switzerland

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PricewaterhouseCoopers (PwC), Switzerland

Santamaria & Jakob, Switzerland

Secretariat for the Establishment of War Crimes Court in Liberia (SEWACCOL), Liberia

Swiss Incorp, Switzerland

SwissPeace, Switzerland

The Advocates for Human Rights, U.S.

The Centre for Accountability and Rule of Law (CARL), Sierra Leone

The Center for Justice and Accountability (CJA), U.S.

The Civil Society Human Rights Advocacy Platform, Liberia

The Hague University, The Netherlands

The Institute for International Criminal Investigations (IICI), The Netherlands

The Karl Popper Foundation, Switzerland

The Sigrid Rausing Trust, UK

The United Nations Voluntary Fund for Victims of Torture (UNVFVT), Switzerland

The University of Nottingham Human Rights Law Centre, UK

Truth Hounds, Ukraine

Waging Peace, UK

Walleyn & Blanmailland, Belgium

Washington University in St. Louis, U.S.

Wellspring Philantropic Fund, U.S.

White and Case LLP, Switzerland

Zennström Philanthropies, UK

Glossary

- **AFRC**: Armed Forces Revolutionary Council
- **AFL**: Armed Forces of Liberia
- **CAE**: Chambres Africaines Extraordinaires
- **CAH**: Crimes against Humanity
- **CAR**: Central African Republic
- **CM**: Civitas Maxima
- **CPC**: Code de procédure civile
- **CRSGBV**: Conflict Related Sexual and Gender Based Violence
- **DRC**: Democratic Republic of Congo
- **ECCC**: Extraordinary Chambers in teh Courts of Cambodia
- **FCC**: Federal Criminal Court
- **GJRP**: Global Justice and Research Project
- **GSF**: Global Survivor Fund
- **ICC**: International Criminal Court
- **ICJ**: International Court of Justice
- **ICL**: International Criminal Law
- **ICTR:** International Criminal Tribunal for Rwanda
- **ICTY**: International Criminal Tribunal for the former Yugoslavia
- **KTC**: Knowledge and Training Center
- **LLM**: Masters of Law
- **LNBA**: Liberia National Bar Association
- **MPC**: Model Penal Code
- **NPFL**: National Patriotic Front of Liberia
- **OAG**: Office Attorney General (Switzerland)
- **OCLCH**: Office central de lutte contre les crimes contre l'humanité et les crimes de haine
- **OHCHR**: Office of UN High Commissioner for Human Rights
- **OTP**: Office of the Prosecutor at the ICC
- **Pôle CCH**: Pôle crimes contre l'humanité
- **RUF**: Revolutionary United Front
- **SCSL**: Special Court of Sierra Leone
- **SEWACCOL**: Secretariat for the Establishment of War Crimes Court in Liberia
- **STL**: Special Tribunal for Lebanon
- **TPF**: Tribunale Penale Federale (Federal Criminal Court of Switzerland)
- **TRC**: Truth and Reconciliation Commission
- **ULIMO**: United Liberation Movement of Liberia for Democracy
- **UNAKRT**: United Nations Assistance to the Khmer Rouge Trials
- **UNITAD**: Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL
- **UNMIK**: United Nations Interim Administration Mission in Kosovo
- **UNSC**: United Nations Security Council

Arial View of Monrovia. 2014
© UN Photo / Ari Gaitanis

Independent Legal Representation of **Victims of War Crimes and Crimes Against Humanity**

CIVITAS MAXIMA

Civitas Maxima in 2021

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Cover picture: - Illustration of the Swiss Federal Criminal Court surrounded by an artistic impression of Pablo Picasso's Guernica. © JP Kalonji / Civitas Maxima