

**Bundesstrafgericht
Tribunal penal federal
Tribunale penale federale
Tribunal penal federal**

Numéro du dossier: SK. 2019.17

Judgment of June 18, 2021 Criminal Court

Composition

Federal Criminal Court Judges
Jean-Luc Bacher, President,
Stephan Zenger and David Bouverat,
The clerk Marine Neukomm

Parties

PUBLIC PROSECUTION, represented by
Andreas Muller, Federal Prosecutor,
Guisan- platz 1, 3003 Bern

and

1. **Georges**, domiciled in Liberia, represented by
Maître Alain Werner,
2. **Coralie**, domiciled in Liberia, represented by
Maître Zeina Wakim,
3. **Jérôme**, domiciled in Liberia, represented by
Maître Hikmat Maleh,
4. **Louis Z.**, domiciled in Liberia, represented by
Maître Alain Werner
5. **Raoul**, domiciled in Liberia, represented by
Maître Raphaël Jakob,
6. **Antoine W.**, domiciled in Liberia, represented
by Maître Alain Werner,
7. **Paul**, domiciled in Liberia, represented by
Maître Alain Werner

against

Alieu KOSIAH, Liberian national, currently detained
in Prison V., assisted by Mr. Dimitri Gianoli,

Subject War crimes (art. 108 and 109 of the former Swiss
Military Criminal Law Code)

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In fact

A. Procedure:

- A.1 On July 3, 2014, through their counsel Mr. Alain Werner, five Liberian nationals named Paul, Antoine W., Louis Z., Rémy and C. filed a criminal complaint with the Office of the Attorney General of Switzerland against Alieu Kosiah for crimes against humanity and war crimes (05-01-0001 ff).
- A.2 On August 21, 2014, Raoul, a Liberian national, also filed a criminal complaint with the Office of the Attorney General through Mr. Raphaël Jakob against Alieu Kosiah for crimes against humanity and war crimes (05-02-0001 ff).
- A.3 On August 22, 2014, Jérôme, a Liberian national, in turn, filed a criminal complaint with the Office of the Attorney General, through Maître Hikmat Maleh, against Alieu Kosiah for crimes against humanity and war crimes (05-03-0001 ff).
- A.4 On August 28, 2014, the Office of the Attorney General opened criminal proceedings under the reference SV.14.0828 against Alieu Kosiah for war crimes committed during the first civil war in Liberia in the form of murder of civilians, rape and acts aimed at enslaving the population and terrorizing them (art. 108 and 109 of the former Swiss Military Criminal Law Code of June 13, 1927 [CPM; RS 321.0], reproduced included in art. 264b ff Criminal Code, in relation with art. 3 common to the Geneva Conventions of August 12, 1949 [RS 0.518.12, 0.518.23, 0.518.42 and 0.518.51; CG] and art. 4 of the Additional Protocol of June 8, 1977 to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts [RS 0.518.522; PA II]) (01-01-0001 ff).
- A.5 Following an arrest warrant issued on November 10, 2014, Alieu Kosiah was arrested in U. on the same day and detained at the V. Regional Prison (06-01-0001 ff). His pre-trial detention was regularly extended.
- A.6 By order of September 2, 2015, the Office of the Attorney General extended the investigation to the offenses of recruiting a child soldier and looting (01-01-0005).
- A.7 On June 23, 2016, Georges, a Liberian national, filed a criminal complaint with the Office of the Attorney General through his lawyer Alain Werner, against Alieu Kosiah for war crimes (05-01-0017 ff).
- A.8 On August 23, 2016, Coralie, a Liberian national, filed a criminal complaint with the Office of the Attorney General through her counsel Maître Zeina Wakim for war crimes and crimes against humanity (05-04-0001 ff).
- A.9 By order of November 3, 2016, the Office of the Attorney General extended the investigation to the offense of violation of personal dignity, including humiliating and degrading treatment (01-01-0006).

- A.10 By order of June 19, 2017, the Office of the Attorney General ordered the joinder, under reference SV.14 .0828, of a procedure initiated by the Central Public Prosecutor's Office of the Canton of Vaud against Alieu Kosiah for fraud and forgery (01-01-0007 ff.).
- A.11 By decision of December 11, 2018, the Office of the Attorney General withdrew Rémy's status as a complainant for the facts that appear in section 1.3.3 of the indictment (15-01-0730 ff.; cf. infra consid. 7.3). An appeal was filed by the latter on December 24, 2018 (21-10-0003 ff.). The appeal was rejected by a decision of Cour des plaintes du Tribunal pénal fédéral on May 22, 2019 (BB.2019.3; 40.510.012 ff.).
- A.12 By a decision of December 11, 2018, the Office of the Attorney General also withdrew Antoine W.'s status as a complainant for the facts set out in section 1.3.17 of the indictment (15-01-0737 ff.; see below, section 7.11).
- A.13 By decision of January 7, 2019, the Office of the Attorney General withdrew Raoul's status as complainant for the facts listed in paragraph 1.3.5 of the indictment (15-01-0951 ff; see below, recital 7.4). An appeal was filed by the latter on January 18, 2019 (21-12-0003 ff.). The appeal was rejected by decision of the Complaints Court of the Federal Criminal Court on May 22, 2019 (BB.2019.14; 40.510.027 ff).
- A.14 By indictment of March 22, 2019, the Office of the Attorney General referred Alieu Kosiah for trial before the Criminal Court of the Federal Criminal Court (hereinafter: the Court) for violation of the laws of war within the meaning of Art. 109 para. 1 former Swiss Military Criminal Law Code in connection with Art. 108 para. 2 former Swiss Military Criminal Law Code as well as Art. 3 common to the GC and Art. 4 AP II.
- A.15 By order of April 8, 2019, Alieu Kosiah was taken into custody on security grounds (40.231.7.011 ff). The defendant remains in custody on security grounds to this day.
- A.16 On May 7, 2019, the Office of the Attorney General issued two closure orders regarding sixteen states of facts originally charged against Alieu Kosiah. The first order concerns acts prosecuted for violation of the laws of war within the meaning of Art. 109 para. 1 former Swiss Military Criminal Law Code in connection with Art. 108 para. 2 former Swiss Military Criminal Law Code as well as Art. 3 common to the GC and Art. 4 AP II (40.110.008 ff.); the second order concerns acts of fraud (Art. 146 Criminal Code) and forgery of documents (Art. 251 Criminal Code) (40.110.066 ff.). The facts denounced by C. having been classified, he is no longer a party to the proceedings. On May 17, 2019, an appeal was filed by the complainant Coralie against the first order of closure. The appeal was dismissed by decision of the Complaints Court of the Federal Criminal Court on November 7, 2019 (BB.2019.106; 40.510.126 ff).

- A.17 On June 14, 2019, the Court invited the parties to submit their offers of proof (40.400.009).
- A.18 On August 19, 2019, the Court received from the Federal Office of Justice the minutes of the hearing of D., former member of the Truth and Reconciliation Commission of Liberia (hereinafter: TRC), in execution of a request for assistance made by the Office of the Attorney General on March 16, 2017 (40.261.1.020 ff.).
- A.19 By order of September 6, 2019, the Court ordered, as means of evidence, the hearing during the debates of Alieu Kosiah on his personal situation and the facts of the accusation, the hearing of Georges, Coralie, Jérôme, Louis Z., Raoul, Antoine W. and Paul as complainants, the hearing of Pierre alias "Pégase" as a person called to give information, the hearing of Rémy, Olivier, Robert, Jean alias "Cassiopee", Victor X., Didier X., André, E., Alfred and Raoul's cousin, name unknown, as witnesses and the production of the minutes of the hearing of Alieu Kosiah on May 1, 2019 in the context of the execution of a rogatory commission with Norway. The Court otherwise denied the parties' requests for evidence (40.250.001 et seq.).
- A.20 On October 8, 2019, the Court also ordered the production of the minutes of the hearing of Alieu Kosiah that took place on August 30, 2019, in execution of a letter rogatory with France in the criminal proceedings against Pierre for war crimes allegedly committed during the first civil war in Liberia. Some of the alleged acts coincide with those alleged against Alieu Kosiah in the present proceedings (40.250.017 f.).
- A.21 By order of October 25, 2019, the Court rejected the defense's evidentiary requests for the production of a criminal complaint filed by Georges against Pierre, for the hearing of F., imam of Pasolahun, the production of the minutes of the hearings conducted in the French criminal proceedings against Pierre, the production of any documents related to the investigation or "possible verifications" in the French criminal proceedings against Pierre, and the indication of the names of all complainants heard in the said proceedings (40.250.022 ff.).
- A.22 On December 12, 2019, the Court sent a request for judicial assistance to the National Anti-Terrorist Prosecutor's Office in Paris (hereinafter: PNAT) in connection with the criminal proceedings it is conducting against Pierre. The Court thus requested the production of the criminal complaint filed by the organization for the defense of victims of war crimes Civitas Maxima against Pierre, of all the minutes of the hearings conducted by the French authorities in the context of the aforementioned proceedings, of any psychological expertise carried out on the persons heard, of the report drawn up by the French authorities following the judicial reenactment that took place in Liberia, and of any other document that could be related to the facts alleged against Alieu Kosiah in the indictment of March 22, 2019 (40. 261.3.0011ff). PNAT

sent the Court, dated February 4, 2020, a portion of the materials requested in the December 12, 2019 request (40.261.3.014 et seq.).

- A.23 By order of February 14, 2020, the Court added the exhibits received from PNAT to the present proceedings. It also rejected once again the defense's request for evidence from F., imam of Pasolahun, and added to the record a photographic report submitted by the organization Civitas Maxima on February 7, 2020. Finally, it canceled the hearings of Raoul's cousin (her contact details having remained unknown to the Court) and of E. (who had exercised her right to refuse to testify in her capacity as the defendant's ex-wife) (40.250.029 ff).
- A.24 On February 28, 2020, the Court sent the PNAT a request for mutual legal assistance complementary to that of December 12, 2019, in which it requested the production of certain minutes that were not transmitted to it on February 4, 2020, of a photographic plate that had been submitted to several participants in the French proceedings, as well as the psychiatric evaluation of Pierre. For the rest, the Court noted that all of the hearing minutes requested on February 12, 2019 had not been transferred, indicating to the PNAT that it would waive its request for them if the latter confirmed that they were not related to the present proceedings (40.261.3.1029 ff.). On March 11, 2020, the ATP forwarded the requested exhibits to the Court, with the exception of the psychiatric expertise and one other record that did not relate to the present proceeding (40.261.3.1031 et seq.).
- A.25 By order of March 17, 2020, the Court placed in the file the additional documents sent by PNAT and waived the request for the hearing minutes initially requested on December 12, 2019 which were not transferred by the French authorities, as they confirmed that the minutes in question did not concern the facts of the present proceedings. The Court also decided not to request psychiatric evaluation following the refusal of the French prosecutor's office to provide it. In addition, the Court once again rejected the request for evidence by Maître Alain Werner to hear from G., commander of the Central Office for the Fight against Crimes against Humanity, Genocide and War Crimes, as well as the request by the defense to hear from F., imam of Pasolahun. On the other hand, the court added to the file a video provided by Maître Alain Werner on February 28, 2020 on the "tabé" method (40.250.029 ff).
- A.26 In view of the sexual nature of the offense with which the accused is charged in paragraph 1.3.24 of the indictment (cf. *infra* recital 7.17), the Court ordered the proceedings to be partially closed in accordance with article 70 paragraph 1 letter a of the Code of Criminal Procedure.
- A.27 After several postponements imposed due to the COVID-19 pandemic, the first part of the proceedings opened on 3 December 2020. The following appeared: the Office of the Attorney General, represented by Federal Prosecutor Andreas Müller and Assistant Federal Prosecutor

Julien Wenger, the defendant Alieu Kosiah, assisted by Maîtres Dimitri Gianoli and Sébastien Weibel, trainee lawyer, Maîtres Alain Werner and Romain Wavre for the plaintiffs Georges, Louis Z., Antoine W. and Paul, Maître Zeina Wakim for the plaintiff Coralie, Maître Hikmat Maleh for the plaintiff Jérôme and Maître Raphaël Jakob for the plaintiff Raoul. The plaintiffs did not appear; insofar as the first part of the debates was devoted to the hearing of the defendant, the Court considered that the presence of the former, all domiciled in Liberia, was not required in view of the health situation in Switzerland. They were therefore only invited to appear voluntarily.

A.28 At the opening of the proceedings, the Court gave the parties the opportunity to raise preliminary questions, in particular with regard to the validity of the charge, the conditions for initiating the public prosecution, the impediments to proceeding, the case file and the evidence collected.

The Office of the Attorney General did not raise any preliminary questions.

Mr. Alain Werner raised the following questions for a preliminary ruling:

- Request to postpone the proceedings to allow the complainants to attend the proceedings;
- New request to hear G. as a witness.

Mr. Raphaël Jakob supported the questions raised by Mr. Alain Werner and formulated the following questions for a preliminary ruling:

- Application of Art. 264 of the former Swiss Military Criminal Law Code (crimes against humanity) to the facts in the indictment in connection with Art. 344 Criminal Code;
- Application of art. 264b ff Criminal Code instead of art. 108 and 109 of the former Swiss Military Criminal Law Code;
- Application of art. 264k Criminal Code (responsibility of the superior).

Maîtres Zeina Wakim and Hikmat Maleh agreed with the preliminary questions raised by Maîtres Alain Werner and Raphaël Jakob.

Finally, Mr. Dimitri Gianoli raised the following questions for a preliminary ruling:

- Inability of the lawyers of Civitas Maxima to represent plaintiffs in the proceedings due to lack of independence;

- Inability to use certain evidence;
- Withdrawal from the file of the documents related to the identification of the witnesses Victor X. and Didier X. by the plaintiffs Louis Z. and Antoine W.

Dimitri Gianoli also requested to be allowed to file a text consisting of an analysis of the statements and contradictions arising from the hearing of the witness Benoît by the Office of the Attorney General.

On Friday, December 4, 2021, the Court communicated its decisions on preliminary questions to the parties. With regard to the hearing of G., it invited Maître Alain Werner to renew his request at the time of the administration of evidence. With regard to the text that Mr. Dimitri Gianoli wished to submit, the Court rejected it at this stage. For the rest, the Court rejected the questions raised for a preliminary ruling. The reasons for its decisions are set out in recital 2 below.

A.29 Following the communication of the Court's decisions on the preliminary questions raised, Maître Jakob formulated a new preliminary question requesting the referral of the indictment so that the Office of the Attorney General could amend it in order to enable the Court to assess the facts from the perspective of Article 264a of the Criminal Code (crimes against humanity). After questioning the parties, and in particular the Office of the Attorney General, which indicated that it did not wish to amend its indictment, the Court rejected the preliminary question. The reasons for its decision are set out in recital 2 below.

A.30 The Court then initiated the evidentiary procedure and proceeded to hear the defendant Alieu Kosiah (from December 4 to 9, 2020). During the hearing of the latter, the Office of the Attorney General, requested that the following two press articles be admitted into the proceedings:

- «Liberia: Foya Wants Death Sentence for Alieu Kosiah in War Crimes Trial» written by James Harding Giahvue, published in Front Page Africa on December 8, 2020 (40.721.005 ss);
- «Alieu Kosiah soll Menschen versklavt, getötet, gar gegessen haben. Seine Freunde aber sagen, er sei ein Held» written by Michael Schilliger, published in the Neue Zürcher Zeitung on November 28, 2020 (40.721.014 ss).

The counsel for the plaintiffs wished to reserve their questions to the defendant for the second part of the proceedings, in the presence of their respective clients, which was accepted by the court.

- A.31 At the end of Alieu Kosiah's hearing, Mr. Dimitri Gianoli requested that the scar on Alieu Kosiah's leg be photographed. The Court admitted this request for evidence.
- A.32 The proceedings were suspended on December 9, 2020.
- A.33 The proceedings resumed on February 15, 2021. The following appeared: the Office of the Attorney General, represented by Federal Prosecutor Andreas Müller and Assistant Federal Prosecutor Julien Wenger, the defendant Alieu Kosiah, assisted by Dimitri Gianoli and Mélanie Ajac, trainee lawyer, the complainants Georges, Louis Z., Antoine W. and Paul, assisted by Alain Werner and Romain Wavre, the complainant Jérôme, assisted by Hikmat Maleh, and the complainant Raoul, assisted by Raphaël Jakob. The plaintiff Coralie was unable to travel to Switzerland from Liberia for maternity reasons. She was considered excused and was represented by her counsel, Maître Zeina Wakim.
- A.34 The Court received, during the recess, various requests from the parties. After having given the parties the opportunity to state their position in writing on each of these motions, the Court communicated its decisions on them at the opening of the second part of the hearing.

The incidental questions raised by Mr. Alain Werner are the following:

- Request correction of Alieu Kosiah minutes;
- Request for George to be excused from appearing on February 19 and 20, 2021;
- Request that the plaintiffs be allowed to ask questions to the defendant before being heard themselves.

Alain Werner also made the following evidentiary submissions:

- Hearing of G., commander of the French Central Office for the fight against crimes against humanity, genocide and war crimes, as a witness;
- Production of the asylum application that Alieu Kosiah filed in France;
- Submission of a map of the city of Foya.

The incidental questions raised by Maître Raphaël Jakob are as follows:

- Request that the plaintiffs be allowed to ask questions to the defendant before being heard themselves;

- Request that the video recordings of the interrogation of Alieu Kosiah remain on file;
- Request to obtain the minutes of the second part of the debates before the pleadings;
- Request to obtain the minutes of the first part of the proceedings containing the decisions on the preliminary questions raised.

Mr. Raphaël Jakob has also made the following request for evidence:

- Three press clippings were added to the file, concerning the capture of the town of Bong Mines by the ULIMO and the establishment of a court by the ULIMO to judge atrocities committed within the faction (40.555.065 ff).

The incidental issues raised by Ms. Zeina Wakim are the following:

- Request that the plaintiffs be allowed to ask questions to the defendant before being heard themselves;
- Request to modify the minutes of the interrogation of Alieu Kosiah.

The incidental questions raised by Mr. Dimitri Gianoli are the following:

- Request for amendments to Remy's minutes of November 21, 2016 and Coralie's minutes of November 7, 2016;
- Request that the defendant be allowed to make his own requests for amendments to his interrogation minutes by the Court.

Attorney Dimitri Gianoli also made the following evidentiary requests:

- Map of the city of Foya to be submitted to the journalist Michael Schilliger, author of the article published in the Neue Zürcher Zeitung newspaper on November 28, 2020 and entitled "Alieu Kosiah soll Menschen versklavt, getötet, gar gegessen haben. Seine Freunde aber sagen, er sei ein Held" (40.721.014 ff);
- Various confrontations between the plaintiffs and the witnesses called in the proceedings.

With regard to incidental matters, the Court granted Georges a exemption to appear on February 19 and 20, 2021, provided that his hearing was not delayed on those dates due to an unforeseen event

affecting the schedule of the proceedings. With regard to the amendments to the minutes of the examination of Alieu Kosiah requested by the various attorneys in the proceedings, the court indicated that it would only accept the correction of typos or obvious errors. It is up to the lawyers to make their requests for corrections, not the parties themselves. Finally, with regard to the request that the video recordings of the interrogation of Alieu Kosiah remain in the file, the Court accepts it with the following conditions:

- The consultation of the videotapes takes place in a room provided for this purpose at the headquarters of the Federal Criminal Court in Bellinzona.
- The consultation will take place only by means of a computer provided by the court, on which the videos have been recorded.
- Internet access, Bluetooth, wi-fi, USB, etc. are blocked on this computer.
- Access to the recordings can only be done in "read-only" mode, i.e. no copies can be made.
- The parties are authorized to take handwritten notes during the consultation and to take them with them at the end of the consultation.
- During the consultation, the use of any technical means allowing the copying of all or part of the video recordings (photographs, videos, scans, etc.) is prohibited.
- The person who consults the recordings is authorized to use his or her cell phone during the consultation. The use of the cell phone is only allowed for oral communication with the study. On the other hand, it is forbidden to copy all or part of the recordings using the cell phone.

With regard to the requests for evidence, the Court accepted the documents proposed by Alain Werner and Raphaël Jakob insofar as they are related to the facts of the case. The Court also accepted the confrontations requested by the defense, when, in the course of the debates, they will prove useful.

In addition, the incidental questions and the requests for evidence were rejected (cf. *infra* recitals 2 and 3).

A.35

The Court then continued the evidentiary procedure and proceeded with the hearing of the plaintiffs and witnesses and the additional hearing of the accused, from February 15 to February 26, 2021. Complainant Coralie and witness Alfred were heard via video conference from the

U.S. Embassy in Monrovia. The other complainants and witnesses traveled to Switzerland from Liberia. Pierre, detained in France, was heard from Paris by videoconference.

A.36 Following the hearings of Paul and Raoul, the Office of the Attorney General requested that the indictment of 22 March 2019 be amended. This request was partially granted by the Court (see *infra* recital 2 for the reasons).

A.37 During the hearings, Mr. Raphaël Jakob requested that a World Bank report from December 1984 and an advertisement for the sale of a "Mirlees Black Stone" generator be placed in the file. Mr. Alain Werner also provided the Court with a screen shot showing the location of an institution (Lutheran Training Institute, LTI) that the plaintiff Paul mentioned during his deposition in connection with the facts mentioned in paragraph 1.3.25 of the indictment (see below, paragraph (hereby after para.) 7.18). Finally, Mr. Dimitri Gianoli asked to be allowed to add to the file a document that was supposed to establish the genealogy of the X family, the surname of two alleged victims of the accused's actions (cf. *infra* recitals 7.10 and 7.11). These documents were admitted insofar as they were related to the facts of the case.

A.38 The pleadings then took place. The Office of the Attorney General proceeded first with its indictment and made the following conclusions:

The Federal Prosecutor's Office requires that:

1. Alieu KOSIAH be found guilty of serious violations of the laws of war within the meaning of Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code, in connection with Art. 3 common to the Geneva Conventions and Art. 4 AP II.
2. Alieu KOSIAH be sentenced to 20 years of imprisonment.
3. Alieu KOSIAH be expelled from Swiss territory for a period of 15 years in application of art. 40 al. 1 former Swiss Military Criminal Law Code.
4. Alieu KOSIAH be ordered to pay the costs of the proceedings.

The counsels of the plaintiffs then addressed in turn general themes before moving on to the pleadings concerning their respective clients.

Maîtres Alain Werner and Romain Wavre made the following submissions on behalf of the plaintiffs Georges, Louis Z., Antoine W. and Paul:

1. Paul, Georges, Louis Z. and Antoine W. file civil claims (art. 122 ff. code of criminal procedure) against the accused Alieu Kosiakh, in connection with the facts listed under numbers 1.3.2, 1.3.10, 1.3.12, 1.3.14, 1.3.15, 1.3.16 and 1.3.25 of the indictment.

2. They request that Alieu Kosiah be condemned to pay them an amount of CHF 8'000 each.

Maître Zeina Wakim made the following conclusions for the plaintiff Coralie:

1. Coralie requests that a guilty verdict be rendered against Alieu Kosiah and formulates civil conclusions (art. 122 ff code of criminal procedure) in relation to the facts which appear under numbers 1.3.22, 1.3.23 and 1.3.24 of the indictment;
2. She claims that Alieu Kosiah should be ordered to pay her an amount of CHF 8'000.

Mr. Raphaël Jakob made the following submissions on behalf of the plaintiff Raoul:

1. Raoul requests that Mr. Kosiah be sentenced for the facts described in paragraphs 1.3.4, 1.3.5, 1.3.6 and 1.3.7.
2. He requests that Mr. KOSIAH be condemned to pay him CHF 8,000 as moral damages.
3. He reserves his conclusions on the expenses incurred by his participation in the proceedings, which will be made before the end of the debates.

Mr. Hikmat Maleh has made the following submissions on behalf of the plaintiff Jérôme:

1. Jerome requests that a verdict of guilty be rendered against Alieu Kosiah for numbers 1.3.19 and 1.3.20 of the indictment.
2. He requests that Alieu Kosiah be ordered to pay him compensation for moral damages in the amount of CHF 8'000

Finally, Mr. Dimitri Gianoli pleaded for the defendant Alieu Kosiah and made the following conclusions:

1. Acquit Alieu KOSIAH of all charges and therefore exempt him from all penalties (sic.);
2. To order the Confederation to pay Alieu KOSIAH the following indemnities:
 - a. an indemnity for expenses incurred in the reasonable exercise of his rights of defense, to be determined on the basis of the fee note that will follow;
 - b. CHF 500,000 as compensation for the economic damage suffered as a result of the mandatory participation in the criminal proceedings;

- c. CHF 856'000.00 as compensation for moral damage suffered due to a particularly serious attack on the personality;
3. To reject the civil claims of the plaintiffs;
4. To pay the costs of the proceedings.

The Office of the Attorney General and the counsels of the plaintiffs replied. Mr. Dimitri Gianoli, for his part, did not reply.

- A.39 The defendant was given the opportunity to make a final statement. Alieu Kosiah made use of this opportunity.
- A.40 At the end of the debates, the Court withdrew to deliberate in camera. It rendered its judgment in open court on June 18, 2021. On this occasion, the Court notified the parties orally of the judgment and gave brief reasons for it. The operative part of the judgment was handed over to the parties on the same day and the Court ordered that the defendant be kept in custody in order to guarantee the execution of the sentence.
- A.41 On June 25, 2021, the defense announced an appeal against this judgment (40.940.001).

B. Personal situation of the defendant

- B.1 Alieu Kosiah, of Mandingo ethnicity, was born and spent his childhood in Nimba County, Liberia. He grew up between Sagleipia, where his father lived, and Ganta, where his mother lived (13-01-0008, 0010). He arrived in Switzerland as an asylum seeker in January 1999 from Conakry, Guinea, after fleeing Liberia following the election of Charles Taylor as president of the country (13-01-0008; 40.731-003; 10-01-0007). Upon arrival in Switzerland, Alieu Kosiah filed an asylum application, which was denied (13-01-0007; 40.731.004; 10-01-0007). The removal order could not be enforced because he could not be found (10-01-0007). Alieu Kosiah was married to a Swiss national from October 2004 to September 2012 (10-01-0007). He was thus able to obtain a settlement permit in Switzerland (13-01-0007 f.). Alieu Kosiah has a son, H., who has reached the age of majority in Switzerland and who lives in the U. region, as well as a cousin named I.. The rest of his family lives in Liberia or elsewhere abroad (13-01-0008; 40.731.002, 007). Since his arrival in Switzerland in 1998, Alieu Kosiah reported having visited Liberia three times, in 2006, 2010 and 2012 (13-01-0007; 40.731.006).
- B.2 Regarding his education and work history in Liberia, Alieu Kosiah stated that he attended high school (13-01-0009; 40.731.003). He interrupted his studies when the war began on December 24, 1989. He then joined the army in January 1990, lying about his age because he was not yet 18 (13-01-0009). He completed military training near Monrovia for a few

months (13-01-0009; 40.731.003). The defendant stated that he was then sent to the front line in Grand Bassa and then returned to Monrovia. When the war came to Monrovia, he went to Tubmanburg and later to Sierra Leone, where he stayed for one to two years. Alieu Kosiah said he returned to Liberia in 1992 or 1993 and took part in the war in the ULIMO (United Liberation Movement of Liberia for Democracy) faction until 1995. He then joined the civilian police force as deputy director of the Crime Investigation Division (CID) (13-01-0009 f.).

- B.3 Regarding his professional background in Switzerland, Alieu Kosiah stated that he worked small jobs until 2004. From that year onwards, he worked for a tank overhaul company until 2011. After his divorce in 2012, the defendant received unemployment insurance benefits, and then received welfare benefits, until his arrest in November 2014 (40.731.008). During the debates, he indicated that he had no savings at the time of his arrest and that he had tax debts of about CHF 10'000.-. In the prison where he is detained, the defendant works and receives an income of CHF 3.00 to CHF 5.00 per hour for his activity. He has savings of approximately CHF 800 on a prison account (40.731.009).
- B.4 The Swiss criminal record of Alieu Kosiah does not show any convictions (40.231.1.002). The Liberian criminal record could not be obtained.
- B.5 Alieu Kosiah was arrested on 10 November 2014. He was kept in pretrial detention until 8 April 2019, when he was detained on security grounds. His detention has been regularly extended to this day. According to the November 9, 2020 behavioral report from V. Prison, which covers the past two years, Alieu Kosiah has shown very good behavior, despite his long period of detention. He maintains exchanges with other inmates and acts as a mediator for them. He also acts as an intermediary between the prison staff and the inmates. He supports the new arrivals, answers their questions and provides them with assistance when needed. The defendant has always been friendly to the prison staff and supports them to the best of his ability. There have never been any negative incidents involving him. Alieu Kosiah has also always performed the duties assigned to him by the facility to the complete satisfaction of the staff (40.231.7.144 f.).

C. Brief History of the First Liberian Civil War

General Overview

- C.1 The first civil war in Liberia began in late 1989, in a context of great instability linked to the authoritarian and repressive policies of the government of Samuel Doe, in power since the early 1980s (10-01-0247). The beginning of the war is usually referenced to December 24, 1989, when about 100 insurgents, forming the National Patriotic Front of Liberia (NPFL), under the command of Charles Taylor, a former

member of the Doe regime, entered Liberian territory from Côte d'Ivoire and seized the Butuo border post in Nimba County. The NPFL were composed primarily of ethnic Gio and Mano insurgents who had fled Doe-ruled Liberia in 1984 and 1985. They had received 18 months of military training in Libya and could count on logistical support from Burkina Faso and arms supplies from Ivory Coast (10-01-0249, 0253). The NPFL incursion marked the beginning of a period of clashes between the NPFL and the Armed Forces of Liberia (AFL). The AFL were composed mainly of soldiers of Krahn ethnicity, who were hostile to the NPFL. They landed in Nimba County to repel the NPFL and targeted in particular the Gio and Mano populations, suspected of supporting the insurgents. The NPFL, for their part, attacked the Krahns and Mandingos in particular, whom they considered to be government sympathizers. The NPFL consisted of two separate forces, one under Charles Taylor and the other under Prince Johnson. After the clashes in Nimba County, the clashes between the NPFL and the AFL spread towards the Liberian coast and Monrovia. By mid-1990, the NPFL controlled more than 80 percent of Liberian territory. The arrival of the NPFL in Liberia provoked a reaction from the countries of the region, which, within the framework of the Economic Community of West African States (ECOWAS), set up an interposition force: the ECOWAS Monitoring Group (ECOMOG). This faction is dominated by Nigeria, which provides the vast majority of the troops. Other fighters came from Ghana, Guinea, Sierra Leone and the Gambia. ECOMOG landed in Monrovia on August 24, 1990, and succeeded in blocking the NPFL's advance, driving them back from the city (10-01-0249, 0253, 0254).

- C.2 Samuel Doe's regime ended with his assassination on September 9, 1990 by insurgents of the Independent National Patriotic Front of Liberia (INPFL), a splinter group that broke away from the NPFL at the end of July 1990, led by Prince Johnson (10-01-0249).
- C.3 On November 28, 1990, the belligerents reached a cease-fire agreement in Bamako, which provided for the establishment of an interim government, headed by Amos Sawyer (10-01-0249).
- C.4 In early 1991, a movement was organized in Conakry, Guinea, composed primarily of Mandingo refugees, whose goal was to return to Liberia to fight the NPFL. This movement is called Movement for the Redemption of Muslims (MRM) and is led by Alhaji G. V. Kromah. In May 1991, it merged with another movement made up of former Krahn soldiers from the AFL who had deployed to Sierra Leone to counter Charles Taylor. This was the Liberian United Defense Force (LDUF). This merger was renamed the United Liberation Movement of Liberia for Democracy (ULIMO). Alhaji G. V. Kromah became the spokesperson for this group, and then its leader from June 1992, after orchestrating the assassination of Albert Karpeh, who was the head of the LDUF and operational commander of ULIMO until his death (10-01-0250, 0256). Formed within the Liberian diasporas in Sierra Leone and Guinea, the ULIMO can count on the support of these two countries,

especially for their supply of weapons (10-01-0253). The ULIMO consist of two battalions: Mandingos are concentrated in the Zebra Battalion, commanded by J. a.k.a. J.a., and Krahns make up the Alligator Battalion, commanded by K. a.k.a. K.a. (10-01-0258).

- C.5 The ULIMO entered Liberia in September 1991, with the support of ECO-MOG. From February 1992 onwards, there was violent fighting between the NPFL and the ULIMO. The latter took over a large part of western Liberia, along the border with Sierra Leone. They conquered the town of Tubmanburg, capital of Bomi County, on 24 August 1992 and established their headquarters there (10-01-0250, 0256). The ULIMO then reached Po River Bridge, about 20 kilometers west of Monrovia. By the end of August 1992, the ULIMO had captured a significant part of the territory previously conquered by the NPFL, including all of Grand Cape Mount and Bomi counties, including much of Lofa County (10-01-0250).
- C.6 In October 1992, threatened by the advance of the ULIMO into Liberian territory, the NPFL launched the so-called "Octopus" operation, aimed at dislodging ECOMOG from Monrovia and taking over the capital. However, ECOMOG, with AFL and ULIMO support, repelled Charles Taylor's troops (10-01-0250).
- C.7 During the first part of 1993, the ULIMO completed their conquest of western Liberia, in particular Lofa County (10-01-0250).
- C.8 On July 25, 1993, the three main parties to the conflict, the NPFL, the ULIMO and the ECOMOG-sponsored interim government, signed the Cotonou Accords, which provided for a cease-fire, the establishment of new transitional authorities, and disarmament and demobilization. However, the peace process failed after only a few months, mainly due to the appearance of new armed groups that did not consider themselves bound by the Cotonou Agreements (10-01-0250 ff.).
- C.9 In October 1993, the Liberian Peace Council (LPC) emerged, composed mainly of former AFL soldiers of Krahn ethnicity. This group focused its fight against the NPFL in southeastern Liberia. On his side, Charles Taylor organized the formation of a new faction, the Lofa Defense Force (LDF), led by François Massaquoi, to fight the ULIMO in Lofa County (10-01-0251, 0254, 15-02-0309).
- C.10 In March 1994, following the Cotonou Agreement and due to dissension over the election of ULIMO representatives to the transitional government body, the ULIMO faction split into two: a Mandingo branch (ULIMO-K) under the leadership of Alhaji V. G. Kromah and a Krahn branch (ULIMO-J) led by Roosevelt Johnson (10-01-0251, 0253, 0257).
- C.11 Before the split, the ULIMO faction consisted of 6,000 men. Afterwards, ULIMO-K had about 4,000 fighters and ULIMO-J had 3,000 (10-01-0254).

- C.12 During the split, ULIMO-J took over the headquarters in Tubmanburg, forcing ULIMO-K to relocate its headquarters to Voinjama, the capital of Lofa County in the far north of Liberia, near the border with Guinea (10-01-0257).
- C.13 On August 19, 1995, the Abuja Agreement was signed, which provided for a cease-fire, the establishment of a new transitional government, and elections within one year. In December 1995, ULIMO-J violated the cease-fire by attacking ECOMOG positions in Tubmanburg. On April 6, 1995, the situation escalated again with the failed attempt to arrest ULIMO-J leader Roosevelt Johnson by the NPFL and ULIMO-K. The clashes in Monrovia involved all the Krahn factions (ULIMO-J, AFL, LPC), the NPFL and ULIMO-K (10-01-0251).
- C.14 In August 1996, the factions signed the Abuja II Agreement, which re-established a cease-fire, ordered the disarmament of troops, and scheduled elections for May 30, 1997, which were finally postponed to July 19, 1997. Charles Taylor was elected president winning 75 per cent of the votes, ending seven years of civil war (10-01-0251).

Conquest of the territories by the ULIMO faction

C.15 **Year 1992**

In August 1992, the ULIMO took Po River. This was the beginning of their conflict with the NPFL (15-02-0398, 18-03-0083).

On September 25, 1992, Liberian newspapers reported the capture of Bong Mines by the ULIMO (40,555,067 ff.).

On October 15, 1992, the NPFL attempted to capture Monrovia in an operation called "Octopus". This attempt failed, thanks in part to the ULIMO who came in support of the forces defending Monrovia (10-01-0250).

On December 28, 1992, the town of Kakata, which is located near the town of Todee, was captured for the first time by ULIMO (15-02-0414).

C.16 **Year 1993**

On January 11, 1993, the Liberian press reported that the town of Zorzor was under siege by ULIMO (15-02-0447).

On January 22, 1993, the press reported that the Zebra Battalion of the ULIMO faction was in the town of Klay. The area between Klay and Bomi was already under ULIMO control in September 1992 (15-02-0434).

On January 26, 1993, the press reported for the first time the recapture of Kakata and the capture of Todee by ULIMO (15-02-0422).

On February 9, 1993, ULIMO forces attacked Voinjama after the fall of Zorzor (15-02-0455).

On February 17, 1993, the press reported the capture of Todee Barracks by ULIMO (15-02-0477).

On March 8, 1993, the press reported the capture of the town of Voinjama, the capital of Lofa, by the ULIMO (15-02-0461).

On May 10, 1993, the newspapers reported fighting between the ULIMO and the NPFL in the Foya area (15-02-0469).

On July 2, 1993, the press reported that the town of Foya had fallen into ULIMO hands (15-02-0300).

On December 14, 1993, the DFL captured the town of Zorzor, then in the hands of the ULIMO (15-02-0342).

C.17 Year 1994

On March 7, 1994, a confrontation between the leaders of the Mandingos and the Krahns took place, marking the definitive separation of ULIMO into two groups (15-02-0514 to 0525).

On May 27, 1994, ULIMO-K lost control of Bomi to ULIMO-J and its headquarters moved to Voinjama (15-02-0544, 0546).

The Court considers as a matter of law:

1. Jurisdiction

1.1 Jurisdiction of Switzerland

1.1.1 Until December 31, 2010, violations of humanitarian law were punishable under Articles 108 and 109 of the Swiss Criminal Code and subject to military jurisdiction. On 1 January 2011, a legislative amendment anchored in the Swiss Criminal Code the offenses of genocide, crimes against humanity (Title 12^{bis}) and war crimes (Title 12^{ter}) as well as provisions common to all three offenses (Message on the amendment of federal laws in view of the implementation of the Rome Statute of the International Criminal Court of 23 April 2008 [hereinafter: Message on the implementation of the Rome Statute], FF 2008 3461). On this occasion, Article 264^m of the Swiss Criminal Code came into force, the marginal heading of which is titled "Acts committed abroad". This provision states that anyone who commits abroad one of the acts referred to in Titles 12^{bis} and 12^{ter} or in Art. 264^k is punishable if he or she is in Switzerland and has not been extradited or surrendered

to an international criminal court whose jurisdiction is recognized by Switzerland (para. 1). According to para. 2, if the offender is not a Swiss citizen and the act committed abroad was not directed against a Swiss citizen, the authorities may suspend or waive criminal proceedings, subject to the preservation of evidence, in the following cases: a foreign authority or an international criminal court whose jurisdiction is recognized by Switzerland is prosecuting the offense and the offender is extradited or surrendered to that court (letter (hereafter let.) a); the offender is no longer in Switzerland and is unlikely to return (let. b). Art. 7 (4) and (5) of the Swiss Criminal Code apply, unless the acquittal, the remission of the sentence or the limitation of the sentence abroad was intended to protect the perpetrator unduly from any punishment (para. 3). Art. 7 para. 4 of the Swiss Criminal Code states that, subject to a serious violation of fundamental principles of constitutional law and the ECHR, the offender may no longer be prosecuted in Switzerland for the same act if he or she has been acquitted abroad by a final judgment (let. a) or if the penalty imposed on him or her abroad has been remitted or has become time-barred (let. b). Art. 7 para. 5 Criminal Code adds that if the offender has been sentenced abroad for this act and has only served part of the sentence imposed on him there, the judge will deduct this part from the sentence to be imposed. The judge decides whether the measure ordered and partially executed abroad should be continued or deducted from the sentence pronounced in Switzerland.

Art. 264m Criminal Code is a *lex specialis* in relation to Art. 7 Criminal Code (decision of the Federal Criminal Court BB.2011.140 of July 25, 2012 recital 2.3).

- 1.1.2 The principle of non-retroactivity of the criminal norm laid down in art. 2 para. 1 of the Swiss Criminal Code does not apply to procedural rules, in particular to provisions regulating jurisdiction (ATF 117 IV 369, para. 4d). The retroactive application of a procedural rule cannot be accepted if the rule in question relates to the spatial application of the Criminal Code itself, i.e. if it defines the scope of Switzerland's *ius puniendi* (ATF 117 IV 369, para. 4d; HIKMAT MALEH, Commentaire romand du Criminal Code II [hereinafter: CR-Criminal Code II], 2017, no. 51 ad art. 264m Criminal Code). Art. 2 para. 1 Criminal Code thus applies in case of an extension of the scope of application of the criminal law. In other words, provisions such as Art. 264m Criminal Code that extends the application of the Swiss Criminal Code to conduct committed abroad that was previously not punishable in Switzerland can only be implemented for crimes committed after their entry into force, in this case on 1 January 2011. On the other hand, the rules modifying the functional jurisdiction are immediately applicable, unless there is a transitional provision to the contrary (BERNARD BERTOSSA, La lutte contre l'impunité en droit suisse, Compétence universelle et crimes internationaux, 2e éd., n° 5 p.3). In casu, the jurisdiction of Switzerland to judge the facts of the present proceedings cannot therefore be based on art. 264m Criminal Code.

- 1.1.3 On the other hand, it follows from the Swiss Military Penal Code (art. 9 and 108 to 114) that war crimes have been punishable in Switzerland since 1968, regardless of the place where they were committed and the nationality of the perpetrator or the victim. Since June 1, 2004, however, art. 9 para. 1^{bis} former Swiss Military Criminal Law Code required the existence of a "close link" between the foreign perpetrator and Switzerland. This condition has been abandoned as of January 1, 2011.
- 1.1.4 In the present case, Alieu Kosiah, a Liberian national, is accused of war crimes committed during the first civil war in Liberia, between 1993 and 1996. In accordance with article 9 of the former Swiss Military Criminal Law Code in its version in force at the time of the alleged acts, Switzerland has jurisdiction to judge the war crimes attributed to Alieu Kosiah. The requirement of a "close link" is not relevant, as the crimes in question were committed well before 2004.
- 1.1.5 In view of the above, Switzerland's jurisdiction to judge the present proceedings is given.

1.2 Jurisdiction of the civil court

- 1.2.1 According to Art. 3 para. 1 Criminal Code foreign civilians or military personnel are subject to military criminal law if they commit treason by violating national defense secrets (Art. 86), sabotage (Art. 86a), undermining the defensive power of the country (Art. 94 to 96), violating military secrets (Art. 106) or disobeying measures taken by the military or civilian authorities in order to prepare for or carry out the mobilization of the armed forces or to safeguard military secrecy (Art.107) (ch.7), foreign civilians or military personnel who commit acts in accordance with Articles 115 to 179 as employees or agents of the army or the military administration in the context of cooperation with the troops (para. 8); foreign civilians or military personnel who commit any of the acts referred to in Chapters 6 (Articles 108 and 109) and 6^{bis} (Articles 110 to 114) of Part 2 or in Article 114a (para. 9) against a Swiss soldier abroad.
- 1.2.2 It follows from the above-mentioned provisions *a contrario*, as well as from art. 3 and 6 of the Swiss Criminal Code *cum* art. 264 to 264*i* of the Swiss Criminal Code, that in peacetime, i.e. if Switzerland is not a party to an armed conflict, the civil courts are competent to judge acts committed by Swiss and foreign civilians, as well as by foreign military personnel when the victim is not a Swiss military personnel (TORNIKE KESHELAVA/BRUNO ZEHNDER, Basler Kommentar Criminal Code II [hereinafter: BSK-Criminal Code II], 3rd ed, 2013, n° 45 ss ad art. 264b-264j Criminal Code).
- 1.2.3 In the present case, the defendant is a Liberian national and the victims of the acts of which he is accused are Liberian civilians. The acts of which he is accused were committed during the first civil war in Liberia, i.e. in peacetime from the Swiss point of view. 1.2.4 It follows that the jurisdiction to judge the present case falls to the civil courts.

1.3 Jurisdiction of the Court of Criminal Affairs

1.3.1 According to Art. 23 para. 1 letter g of the Swiss Code of Criminal Procedure, the offenses referred to in Titles 12^{bis} and 12^{ter} and in Art. 264k of the Swiss Criminal Code are subject to federal jurisdiction.

1.3.2 Art. 35 para. 1 of the Law on the Organization of the Criminal Authorities of March 18, 2010 (SR 173.71; LOAP) states that the criminal courts rule in the first instance on criminal cases under federal jurisdiction, unless the Federal Prosecutor's Office has delegated the judgment to the cantonal authorities.

1.3.3 The Court of Appeal therefore has jurisdiction to judge the present case.

2. Preliminary and incidental questions

2.1 Preliminary questions

2.1.1 According to article 339 of the Code of Criminal Procedure, the parties may raise, at the beginning of the proceedings, preliminary questions concerning, among other things, the validity of the indictment, the conditions for initiating the public prosecution, the impediments to proceeding, the case file and the evidence collected, the publicity of the debates and the division of the proceedings into two parts (para. 2 letters a to f).

2.1.2 In the present case, Alain Werner, Raphaël Jakob and Dimitri Gianoli raised preliminary questions at the opening of the proceedings. These are dealt with below in the order in which they were pleaded.

2.1.3 Preliminary question raised by Alain Werner

Suspension of the debates

Mr. Alain Werner requested the postponement of the debates to be held from December 3, 2020 (first part of the debates), on the grounds that the conditions for a splitting of the debates due to art. 342 of the Code of criminal procedure was not fulfilled. Such a split would also violate the principle of publicity of the debates.

On its own initiative or at the request of the accused or the public prosecutor, the court may divide the proceedings into two parts and decide that in the first part it will deal only with the facts and guilt, and in the second part only with the consequences of a conviction or acquittal (Art. 342 para. 1 let. a); that in the first part it will deal only with the question of the facts and in the second part only with the question of guilt and the consequences of a conviction or acquittal (let. b).

According to Art. 340 para. 1 let. a of the Code of Criminal Procedure, the fact that the preliminary questions have been dealt with has the effect, among other things, that the proceedings must be brought to a conclusion without unnecessary interruption.

The parties have the right to be present during the taking of evidence by the public prosecutor and the courts and to ask questions of the persons appearing in court (art. 147 para. 1 ab initio code of criminal procedure).

According to art. 69 para. 1 code of criminal procedure, the proceedings before the court of first instance and the court of appeal [...] are public, with the exception of the deliberations. The principle of publicity represents both a fundamental right of the parties and a right of the public in general, and in particular of journalists. Publicity for the general public is sometimes exercised by means of the judicial chronicle (ATF 122 V 47 consid. 2c).

According to Art. 5 para. 1 of the code of criminal procedure, the criminal authorities shall initiate criminal proceedings without delay and complete them without undue delay.

In this case, due to the health situation caused by COVID-19, the Court decided that the proceedings would take place in two parts, with the first part devoted to the preliminary questions and the examination of the defendant and the second to the hearing of the other participants in the proceedings and the pleadings. This is not a split defined by Article 342 of the Code of Criminal Procedure. Indeed, a split requires the delivery of a judgment for each part of the proceedings, which is not the case here. It is a question of the organization of the debates.

With regard to the violation of the principle that the procedure should not be interrupted unnecessarily, the Court notes that an interruption justified by the preservation of the health of the participants in the procedure is not unnecessary and is even indispensable in order to avoid exposing them to significant health risks. The present procedure involved the arrival of many people from Liberia to Switzerland. At the time of the decision to hold the proceedings in two stages, the risks inherent in COVID-19 were much greater in Switzerland than in Liberia (at least according to international statistics, which was the only basis on which the Court could rely). By inviting the Liberian participants to the proceedings in December 2020, the Court would have exposed them to health risks, so it chose to postpone their attendance until a later date, which turned out to be February 2021.

The principle of expediency justified starting the proceedings with the prejudicial questions and the questioning of the accused without the presence of the complainants, since he had been in pre-trial detention for six years. Proceeding in two stages offered the advantage that the second part of the proceedings would be shorter, facilitating their organization, which was already highly complicated by COVID-19.

In regards to the adversarial nature of the proceedings, it should be noted that this was ensured. The plaintiffs had the possibility, if they really wanted to, to attend the first part of the proceedings at their own expense. The Court only refused to cover the costs of their travel to Switzerland, as their presence was not desirable from a health point of view. In addition, the lawyers of the plaintiffs attended the first part of the proceedings. Furthermore, Alieu Kosiah was heard again for a full day after the hearing of the complainants (except for Coralie, which had to be heard a day later for organizational reasons). During this day, the complainants were able to ask the defendant any questions they deemed necessary. In addition, the parties were given the opportunity to question Alieu Kosiah again, in a complementary manner, before the close of the evidentiary proceedings. Finally, the Court agreed to audio and video record the December 2020 interview of Alieu Kosiah, so that the plaintiffs could review it with their counsel if they so desired. However, the Court attached several conditions to the consultation of the video recordings, in application of article 102, paragraph 2 of the Code of criminal procedure (cf. supra, para.A.34).

Finally, with regards to the question of the public nature of the proceedings, more specifically from the point of view of the plaintiffs, it should be pointed out once again that the latter had the opportunity to attend the first part of the proceedings. As the Court did not consider their presence necessary, or even desirable in view of the health situation, it only refused to pay the costs of their travel and stay in Switzerland, without however preventing them from coming to Switzerland if they so wished. The principle of publicity for the general public was restricted for the first part of the debates by a partial closure due to the health situation (cf. Federal Council Order on measures to combat the COVID-19 epidemic in a particular situation in its version in force on December 3, 2020, RS 818.101.26). Journalists, on the other hand, were able to attend the debates, so that the principle of publicity for the public was assured.

In view of the above, the request for an adjournment of the proceedings made by Mr. Alain Werner was rejected.

2.1.4 Preliminary questions raised by Mr. Raphaël Jakob

2.1.4.1 Application of art. 264a of the Criminal Code (crimes against humanity) to the facts alleged in the indictment

Mr. Raphaël Jakob requested the application of art. 264a Criminal Code relating to crimes against humanity to the facts reproached towards Alieu Kosiah in the indictment.

Article 9 of the Swiss Criminal Code establishes the indictment principle. According to this provision, an offense can only be judged if the public prosecutor has filed an indictment with the competent court against a specific person on the basis of precisely described facts. Indeed, the

accused must know exactly what he is accused of and the penalties and measures to which he is exposed, so that he can explain himself and prepare his defense effectively (ATF 143 IV 63, para. 2.2; 141 IV 132, para. 3.4.1). The principle of accusation also derives from art. 29 para. 2 of the Swiss Constitution (right to be heard), art. 32 para. 2 of the Swiss Constitution (right to be informed promptly and in detail of the accusations against one) and art. 6 para. 3 letters a and b of the European Convention on Human Rights (right to be informed of the nature and cause of the accusation).

Art. 324 ff Code of criminal procedure regulates the indictment, in particular the strict content of the indictment. According to art. 325 code of criminal procedure, the indictment must indicate the acts of which the defendant is accused, the place, date and time of their commission, as well as their consequences and the way in which the perpetrator proceeded (let. f); the offenses committed and the legal provisions applicable in the opinion of the public prosecutor's office (let. g). In other words, the indictment must contain the facts which, in the opinion of the public prosecutor, correspond to all the elements of the offense with which the accused is charged (ATF 143 IV 63, para. 2.2; Federal Court decision 6B_665/2017 of 10 January 2018, para. 1.1). It allows, on the one hand, to delimit the extent of the referral to the criminal court and, on the other hand, to inform the defense in order to allow it to intervene effectively in the proceedings (ATF 140 IV 188, para. 1.3). Inaccuracies regarding the place or date are irrelevant, as long as the defendant cannot have any doubts about the conduct of which he is accused (Federal Court decisions 6B_696/2019 of September 24, 2019 recital 1.2.1; 6B_275/2016 of December 9, 2016 recital 2.1).

The court is bound by the state of facts described in the indictment (principle of immutability of the indictment), but it can deviate from the legal assessment made by the public prosecutor (art. 350 para. 1 code of criminal procedure), provided that it informs the parties present and invites them to give their opinion (art. 344 code of criminal procedure). The latter provision is only applicable if the change in legal qualification does not justify a change in the description of the facts retained in the indictment (Federal Court decision 6B_702/2013 of 26 November 2013 para. 1.1).

The crime of crime against humanity has as its constitutive element "a systematic or widespread attack against the civilian population" (cf. art. 264a para. 1 Criminal code). A widespread or systematic attack against the civilian population is distinguished either by its scope (large number of victims) or by its degree of organization, although the two often coincide (Message on the implementation of the Rome Statute, FF 2008 3516 ff. and the references cited). Two recurrences emerge from international criminal jurisprudence: on the one hand, the general character of the attack (which is interpreted quantitatively) presupposes the massive nature of the attacks and a multitude of victims, thus excluding a priori any isolated act; on the other hand, the systematic

character (which is interpreted qualitatively) implies a minimum of planning, excluding any chance act. According to the International Criminal Court (hereafter: ICC), the adjective "widespread" means that the attack was carried out on a large scale and that it produced a certain number of victims, while the adjective "systematic" denotes the organized nature of the acts of violence and the improbability of their being random (SÉVANE GARIBIAN, CR-Criminal Code II, no. 12 ad art. 264a Criminal code and the jurisprudence cited). A generalized attack must be part of the policy of an organization, i.e. it must have been carefully organized according to a regular pattern. It must also be carried out within the framework of a concerted policy using public or private means. Such a policy may be implemented by groups of people ruling a given territory or by any organization capable of carrying out a generalized or systematic attack against the civilian population. An attack must therefore be planned, directed or organized, and not consist of spontaneous or isolated acts of violence, in order to meet this criterion (ICC, Katanga Case, Judgment of September 30, 2008, para. 396 and the case law cited). In order to be punishable, it is sufficient that the perpetrator of an act within the meaning of Art. 264a para. 1 Criminal code has caused a single victim, provided that his act is part of a generalized or systematic attack against the civilian population. The criterion of organization or large numbers of victims characterizes the general context and not the individual case. From a subjective point of view, the perpetrator must have acted with knowledge of the attack. This does not mean that he must have been aware of all the details of the attack, but only that he must have been aware that he was committing his crime in the general context of an attack against the civilian population. The circumstances in which the act was committed may be sufficient to establish this fact (Message on the implementation of the Rome Statute, FF 2008 3516 ff. and the references cited). These circumstances include the perpetrator's position in the military hierarchy, the fact that he or she played an important role in the criminal campaign as a whole, his or her presence at the scene of the crimes, the fact that he or she refers to the superiority of his or her group over the enemy, the general historical and political context in which the acts were committed, the scale and gravity of the acts committed, or the nature of the crimes committed (ICC, Katanga Case, Judgment of 30 September 2008, para. 402; ICTY, Blaškić Case, Judgment of 3 March 2000, paras. 258 f.).

In this case, the indictment of March 22, 2019, only qualifies the acts of which Alieu Kosiah is accused as a war crime. It does not contain any description of a systematic or generalized attack that would have been launched against the civilian population during the first civil war in Liberia and which would allow the facts to be considered also from the point of view of a crime against humanity. It is true that, according to the Truth and Reconciliation Commission in Liberia (TRC), "civilians were deliberately and systematically targeted throughout the conflict" (p. 4) and that the conflict caused tens of thousands of casualties, many of them civilians (p. 2). These are, however, very general statements that do not, on their own, allow for the existence of a systematic or widespread

attack against the civilian population necessary to establish crimes against humanity. In particular, the indictment lacks the facts to establish the existence of such an attack. Thus, the indictment does not specify whether it was the armed group to which the defendant belonged that caused the death of tens of thousands of victims. Nor does it quantify the number of victims, the expression "tens of thousands of victims, many of them civilians", being far too imprecise to be able to conclude that an attack against the civilian population was widespread. Nor does it describe the organized, planned or directed nature of a possible attack against civilians by the armed group to which Alieu Kosiah belonged, or the pursuit of a concerted policy by the armed group using public or private means. However, these are necessary elements to retain a systematic attack. As for the acts specifically attributed to Alieu Kosiah, the indictment does not state at any point that they were part of a systematic or generalized attack against the civilian population.

Nor does it mention the fact that the accused had knowledge of such an attack and that he was aware of committing the crimes that would be part of the said attack. The circumstances in which the acts were committed do not allow for the conclusion that he was aware that he was committing the crimes complained of as part of a systematic or generalized attack against the civilian population. On the contrary, a reading of the indictment suggests that the crimes were committed in a random and fortuitous manner, according to the desires or needs of the individual, or in order to assert his power and impress the population where Alieu Kosiah was.

In view of the above, the Court finds that the indictment of March 22, 2019 does not contain the factual elements to assess the acts committed by Alieu Kosiah from the point of view of the crime of crime against humanity within the meaning of art. 264a Criminal Code. As the Court is bound by the facts as submitted by the Office of the Attorney General, the preliminary question raised by Mr. Raphaël Jakob was rejected.

2.1.4.2 Referral of the indictment (Article 333 of the Swiss Criminal Code)

Following the rejection of the preliminary question concerning the qualification of the facts of which Alieu Kosiah is accused under article 264a of the Swiss Criminal Code, Raphaël Jakob requested that the indictment be returned to the Office of the Attorney General so that the latter could complete the facts of the case in such a way that the Court could decide on the application of article 264a of the Swiss Criminal Code.

Under certain conditions, art. 329 and 333 of the Swiss Criminal Code derogate from the accusatory principle (cf. supra recital 2.1.4.1) by allowing the court to give the public prosecutor the possibility of modifying or completing the indictment. Article 329 para. 1 of the Swiss Code of criminal procedure provides that the management of the proceedings shall examine whether the indictment and the file have been properly

drawn up (let. a), whether the conditions for the institution of public proceedings have been fulfilled (let. b) and whether there are any obstacles to proceeding (let. c). If it appears during this examination or later in the proceedings that a judgment on the merits cannot yet be rendered, the court suspends the proceedings; if necessary, it returns the accusation to the public prosecutor's office for completion or correction (art. 329 para. 2 code of criminal procedure). However, this provision does not give the public prosecutor's office any right to have the charge returned. The purpose of art. 329 code of criminal procedure is to prevent a clearly insufficient charge from leading to unnecessary debates, but it is not intended to give the Public Prosecutor's Office the freedom to modify its charge because it considers that it could have been different (Federal Court decision 6B_177/2019 of 18 March 2019, para. 3.2).

Furthermore, according to Article 333 paragraph 1 of the Code of Criminal Procedure, the court gives the public prosecutor the possibility of amending the indictment when he considers that the facts set out in the indictment could constitute the elements of another offense, but that the indictment does not meet the legal requirements.

Art. 333 para. 1 code of criminal procedure refers to situations in which an indictment sets out facts that relate to only one offense, disregarding the elements that would make it possible to envisage that the same facts constitute another offense (JEREMY STEPHENSON/ ROBERTO ZALUNARDO-WALSER, Basler Kommentard StPO [hereinafter: BSK-StPO], 2nd ed., 2014, no. 6 ad art. 333 Criminal Code). This provision cannot force the court to give the public prosecutor the opportunity to modify or extend the charge (Federal Court decision 6B_177/2019 of March 18, 2019, para. 3.3). If the public prosecutor fails from the outset to indicate in his indictment all the factual elements that would, if necessary, lead to the conclusion that an offense has been committed, there can be no obligation on the part of the court to give him the opportunity to amend or extend the indictment (Federal Court decision 6B_963/2015 of 19 May 2016, para. 1.5). Furthermore, the court can only give the public prosecutor the opportunity to amend the charge. It cannot force it to do so (LAURENT MOREIL-LON/AUDE PAREIN-REYMOND, Petit Commentaire du code of criminal procedure, n° 3 ad art. 333 code of criminal procedure).

In this case, the indictment of 22 March 2019 as submitted to the Court satisfactorily describes the constituent elements of the offense of war crimes. When it analyzed the indictment in the light of the requirements of article 329 paragraph 1 letter a of the Swiss Criminal Code, the Court considered that it was in a position to rule on possible war crimes and that there was therefore no reason to refer the indictment to the Office of the Attorney General for supplementation or correction within the meaning of article 329 paragraph 2 of the Swiss Criminal Code. The question of the double characterization of the facts with which Alieu Kosiah is charged was raised on numerous occasions during the investigation. Since the beginning of the proceedings, the Office of the

Attorney General has always refused to prosecute Alieu Kosiah for crimes against humanity in view of the principle of non-retroactivity enshrined in Art. 2 para. 1 Criminal code, considering that Art. 264a Criminal code, which entered into force on January 1, 2011, cannot be applied retroactively by means of Art. 101 para. 3 Criminal code. The decision of the Office of the Attorney General to refuse to extend the investigation to the qualification of crimes against humanity was appealed to the Complaints Court of the Federal Criminal Court, which was declared inadmissible (decisions BB.2016.376/377/378/379-384 of February 2, 2018). Even at the time of the notification of the forthcoming closure, Mr. Raphaël Jakob asked the Office of the Attorney General to draft his indictment in such a way that the Court would be able to retain, if necessary, the qualification of crime against humanity (15-02-0970 f.). Thus, the Office of the Attorney General deliberately decided to submit to the Court an indictment that dealt only with the crime of war crimes. During the debates, the Court asked the Office of the Attorney General whether it wished to complete the indictment so that it could examine the question of the qualification of crimes against humanity. The Court cannot force the Office of the Attorney General to amend its indictment; a referral of the indictment imposed on its author would amount to a reversal of roles and would allow the Court to influence the content of the indictment, which would not be admissible. The Court also noted that a referral would not have involved only "cosmetic changes" to the indictment, but would probably have required additional evidence to be administered by the Office of the Attorney General. The defendant was never specifically heard on some of the facts that could be classified as a crime against humanity, nor on his intention in relation to these facts. The same is true for the other participants in the proceedings, as the investigation was always conducted from the perspective of war crimes and not crimes against humanity. The question would probably have arisen as to whether it would not have been necessary to hear an expert opinion on the question of a possible widespread or systematic attack against the civilian population by the armed group to which the defendant belonged, namely the ULIMO (United Liberation Movement of Liberia for Democracy), during the first civil war.

In view of the foregoing, the preliminary question raised by Mr. Raphaël Jakob has been dismissed and the Court will assess the state of facts submitted to it from the perspective of war crimes only.

2.1.4.3 Application of Art. 264b ff Criminal code

Raphaël Jakob also raised a preliminary question asking for the application of art. 264b et seq. of the Swiss Criminal Code (new provisions on war crimes introduced on January 1, 2011) instead of art. 108 and 109 of the Swiss Criminal Code (provisions on war crimes in force at the time the acts were committed), through art. 101 para. 3 of the Swiss Criminal Code.

According to Art. 2 para. 1 Criminal code, the criminal law applies only to acts committed after its entry into force (principle of non-retroactivity of the criminal law). However, according to the *lex mitior* rule in Art. 2 para. 2 Criminal code, the new law is applicable to crimes and misdemeanors committed before the date of its entry into force, if the perpetrator is only tried after this date and if the new law is more favorable to him than the law in force at the time of the offense. It follows that, in principle, the law in force at the time the act was committed is applied, unless the new law is more favorable to the perpetrator. The *lex mitior* rule is an exception to the principle of non-retroactivity. It is justified by the fact that, due to a modified legal concept, the conduct in question no longer appears or appears to be less punishable under criminal law (ATF 134 IV 82, para. 6.1). The determination of the most favorable law is made by a concrete comparison of the situation of the accused, depending on whether he is judged according to the old or the new law. In principle, the legal conditions of the offense in question must be examined first. If the conduct is punishable under both the old and the new law, an overall comparison of the penalties incurred must be made. The amount of the maximum penalty plays a decisive role (ATF 135 IV 113, para. 2.2). The old and new laws cannot be combined. Thus, it is not possible to apply the old law to determine which offense has been committed and the new law to decide whether and how the offender should be punished, based on one and the same factual situation.

If the two laws lead to the same result, the former is applicable (Federal Court decision 6B_442/2012 of March 11, 2013 recital 3.1). Only substantive law rules are affected by the *lex mitior*, while procedural rules are subject to the principle of *tempus regis actum*, which makes them applicable as soon as they have entered into force (ATF 117 IV 369 recital 4d).

In this case, the preliminary question argued by Mr. Jakob concerns the question of whether the legal provisions on war crimes that were applicable at the time the offenses were committed (art. 108 and 109 former Swiss Military Criminal Law Code) or the new legal provisions that came into force on January 1, 2011 (art. 264b ff Criminal Code) should be applied. This is in fact a question of the implementation of the *lex mitior* principle, which cannot be dealt with at the stage of the preliminary questions, but which will have to be dealt with after the evidence has been taken, with the examination of the merits of the case.

The plea for a preliminary ruling was therefore rejected at that stage, as the question raised had to be dealt with in conjunction with the merits of the case.

2.1.4.4 Application of art. 264k of the Criminal Code

Raphaël Jakob finally requested the application of art. 264k of the Swiss Criminal Code (responsibility of the superior) to certain actions of Alieu Kosiak described in the indictment.

According to art. 264k para. 1 of the Swiss Criminal Code, a superior who is aware that a subordinate is committing or is about to commit one of the acts referred to in titles 12^{bis} (genocide and crimes against humanity) and 12^{ter} (war crimes) of the Swiss Criminal Code and who does not take appropriate measures to prevent it, is liable to the same punishment as the perpetrator. If he acts negligently, he is punished by a custodial sentence of up to three years or a pecuniary penalty. A superior who is aware that a subordinate has committed one of the acts referred to in Titles 12^{bis} and 12^{ter} and who does not take appropriate measures to ensure the punishment of the perpetrator shall be punished by a custodial sentence of up to three years or a monetary penalty (para. 2). This provision came into force on 1 January 2011.

The question raised by Mr. Raphaël Jakob is twofold: on the one hand, whether new offenses should be charged against Alieu Kosiiah in relation to the offenses charged in the indictment, i.e., omissions, and on the other hand, which law, if any, is applicable to these passive behaviors. With regard to the first issue, Mr. Raphaël Jakob did not specify which of the behaviors described in the indictment could be considered under Art. 264k of the Swiss Criminal Code.

The Court informed the parties that it reserved the right, pursuant to article 344 of the Swiss Criminal Code (cf. supra, para. 2.1.4.1), to assess the passive behavior of Alieu Kosiiah described in the indictment with respect to the ill-treatment of civilians by soldiers during forced transportation from the perspective of article 264k of the Swiss Criminal Code possible omissions. The second issue, that of the law applicable to these offenses, will be determined when the Court disposes of the merits of the case, as the parties may express their views on this issue at the stage of final pleadings.

It follows from the foregoing that the Court will rule in part on the third and final question raised by Mr. Raphaël Jakob.

2.1.5 **Preliminary questions raised by Mr. Dimitri Gianoli**

2.1.5.1 Capacity of the lawyers of Civitas Maxima to represent the plaintiffs in the proceedings

Mr. Dimitri Gianoli has requested the "recusal" of Mr. Alain Werner and his associate Mr. Romain Wavre in the present proceedings for violation of art. 12 of the Federal Law of June 23, 2000 on the free movement of lawyers (Law on lawyers, LLCA; RS 935.61).

According to Art. 127 para. 4 of the Swiss Code of Criminal Procedure, the parties may choose as their legal counsel any trustworthy person who has legal capacity and is of good reputation; the law on lawyers is reserved.

According to art. 12 LLCA, the lawyer is subject to the following professional rules: he exercises his profession with care and diligence (let. a); he exercises his professional activity independently, in his own name and under his own responsibility (let. b); he avoids any conflict between the interests of his client and those of the persons with whom he has a professional or private relationship (let. c). Art. 12 letters b and c of the LLCA set forth the rule of material independence, according to which the lawyer must ensure, in each case entrusted to him, that he carries out his activity independently, avoiding in particular any conflict of interest (ATF 138 II 440 recital 3).

According to art. 8 para. 1 LLCA, in order to be entered in the register, the lawyer must meet the following personal conditions: he must have the right to exercise civil rights (let. a); he must not be the subject of a criminal conviction for acts incompatible with the profession of lawyer, unless this conviction no longer appears on the private extract of the criminal record (let. b); he must not be the subject of a certificate of default (let. c); ; be able to practice independently; he may only be employed by persons who are themselves registered in a cantonal register (let. d). A lawyer who is employed by an organization that is recognized as being of public interest may apply to be entered in the register provided that he meets the conditions set out in para. The lawyer employed by a non-profit organization may apply for entry in the register, provided that he meets the conditions set out in paragraph 1 letters a to c and that he limits his activities as an advocate to mandates strictly related to the purpose of the organization (para. 2).

The law does not define the concept of a public benefit organization, and the work of the commission did not go into this question in depth (PHILIPPE MEIER/CHRISTIAN REISER, *Commentaire romand de la LLCA* [hereinafter: CR-LLCA], no. 68 ad art. 8 LLCA). The term "public utility organization" refers to legal persons who pursue public service or purely public interest objectives. The parliamentary work shows that the notion of a recognized non-profit organization must be interpreted as in art. 56 let. g LIFD and art. 23 al. 1 let. f LHID. The concept adopted is therefore relatively narrow. In principle, economic purposes are not recognized as being of public interest (PHILIPPE MEIER/CHRISTIAN REISER, CR-LLCA, n° 69 ad art. 8 LLCA; FRANÇOIS BOHNET/VINCENT MARTENET, *Droit de la profession d'avocat*, 2009, n°1346). According to the jurisprudence related to these provisions, a legal person pursues goals of pure public utility when it provides services in a selfless manner, in the general interest, for the benefit of a circle of recipients that is in principle unlimited. It pursues public service purposes if it performs tasks closely related to the tasks of the state (ATF 127 II 113, § 6b). The pursuit of public utility goals within the meaning of art. 56 let. g LIFD presupposes the fulfillment of two specific conditions: the exercise of an activity of general interest in favor of an open circle of recipients and selflessness (Federal Court decision 2C_484/2015 of December 10, 2015 consid. 5.3). The case law that once accepted the independence of a lawyer working for a trade union is no longer relevant,

since a trade union is a non-profit organization, but not an organization recognized as being in the public interest (ATF 130 II 87 recital 5.1.1). A lawyer working for an association for the defense of tenants' interests (ATF 130 II 87 recital 5.1.1) or for a group active in the field of social insurance (ATF 132 V 200 recitals 5.2.3 and 5.2.4) does not meet the criterion of public utility either. It is not necessary for the organization to have been officially recognized and certified; it is sufficient that it is generally considered to be of public benefit. The fact that the lawyer does not have to comply with the "institutional" independence required for entry in the register does not exempt him from complying with the general professional rules, in particular those relating to independence in the actual exercise of the mandate (art. 12 letters b and c LLCA) (PHILIPPE MEIER/CHRISTIAN REISER, CR-LLCA, no. 68 ad art. 8 LLCA).

Art. 62 para. 1 code of criminal procedure states that the management of the proceedings shall order the measures necessary for the proper conduct and legality of the proceedings. In a decision 1B_226/2016 of September 15, 2016, the Federal Court noted that the authority in charge of the proceedings must rule ex officio and at all times on the capacity to postulate a professional attorney. Indeed, the prohibition to apply in a concrete case - to be distinguished from a provisional or definitive suspension - is in principle not a matter of disciplinary law, but of the control of the lawyer's power to apply. Article 62 of the Code of criminal procedure provides that the management of the proceedings must take the necessary measures to ensure that the proceedings are conducted properly and lawfully. However, the question of whether the lawyer must withdraw from his mandate in accordance with, among other things, the LLCA, is precisely a question of the legality of the procedure and its proper conduct (see recital 2).

In the present case, the Court finds that it has jurisdiction, in view of the above-mentioned case law, to rule on the capacity to act of Alain Werner and Romain Wavre in the present proceedings.

Alain Werner, assisted by his associate Romain Wavre, was appointed free legal counsel for the plaintiffs Paul, Louis Z., Antoine W. and Georges (15-01-0008 ff, 0017 ff, 0020 ff, 0301 ff). Alain Werner and Romain Wavre are employees of the Civitas Maxima association. According to the Commercial Register of the Canton of Geneva, this association, created in 2012, pursues the following goals: "assistance and legal representation of victims of international crimes in order to preserve evidence and eventually obtain the trial of suspected perpetrators of these crimes, either before the International Criminal Court or before another national or international criminal prosecution authority; to create a legal and factual file for each represented victim and to preserve these files until they are transmitted to a national or international prosecuting authority; to work towards creating awareness, in Switzerland and at the international level, of the imperative need for international criminal justice to be fair, effective and impartial and not motivated by political or other interests". It follows that the association

Civitas Maxima pursues an ideal goal of public utility (the defense of the victims of international crimes and the sensitization to the need for an adequate international criminal justice), in the general interest, in favor of an open circle of (any person who claims to be a victim of an international crime), selfless individuals. There is nothing in the file to suggest that Civitas Maxima is pursuing a profit-making or partisan goal, which the defense does not maintain. Civitas Maxima must therefore be considered as a public interest organization within the meaning of Article 8, paragraph 2 of the Federal Law on Civil Liability. By representing the interests of persons who denounced Alieu Kosiah for war crimes committed during the first civil war in Liberia, it must be noted that Alain Werner and his associate Romain Wavre limit their activities to mandates that strictly concern the goals of Civitas Maxima. Moreover, it is not disputed that both lawyers meet the conditions set out in letters a to c of art. 8 para. 1 LLCA. Mr. Alain Werner and his associate Mr. Romain Wavre thus meet the requirements for entry in the register of attorneys. Moreover, Mr. Alain Werner produced, during the debates, the decision of the Commission of the Geneva Bar Association, dated October 19, 2013, which admitted his registration in the register of lawyers pursuant to Art. 8 para. 2 LLCA (40.721.003 f.). It follows that the mere fact that Mr. Alain Werner and his collaborator Mr. Romain Wavre are both employees of the association Civitas Maxima and representatives of the alleged victims in the present proceedings is in no way contrary to the law.

It remains to be determined whether the violation of art. 12 letters b and c LLCA can be imputed to the two lawyers. With regard to the criterion of independence, apart from the fact that they are both employed by the association Civitas Maxima, which is permitted by law, the defense does not invoke any concrete reason to conclude that there is a lack of independence in the present proceedings. With regard to a possible conflict of interest, it should be noted once again that the mandates carried out by Mr. Alain Werner and his collaborator Mr. Romain Wavre are in line with the goals of the association for which they work, the interests of their principals not being in any way in contradiction with the said goals. A possible conflict of interest could therefore only result from conditions imposed by Civitas Maxima on the lawyers which would prevent them from fulfilling their mandates. However, such conditions have not been demonstrated, nor are they apparent.

In view of the foregoing, the Court considers that the activities of Alain Werner and his associate Romain Wavre in the context of the present proceedings meet the requirements of the LLCA. The first prejudicial question raised by the defense was therefore rejected.

2.1.5.2 Use of the evidence on file

Dimitri Gianoli requested, as a second preliminary ruling, that all the testimony and evidence collected on behalf of Civitas Maxima through its sister organization RRR, based in Monrovia, Liberia, be removed from

the case file, because of the dependency and subordination of the latter to the former.

Art. 139 para. 1 of the Swiss Criminal Code states that the criminal authorities shall use all lawful means of proof which, according to the state of scientific knowledge and experience, are suitable for establishing the truth. Coercion, the use of force, threats, promises, deception and means likely to restrict intellectual faculties or free will are prohibited in the administration of evidence (art. 140 para. 1 code of criminal procedure). These methods are prohibited even if the person concerned has consented to their use (para. 2). Evidence administered in violation of Art. 140 cannot be used under any circumstances (Art. 141 para. 1 ab initio code of criminal procedure). Evidence that has been unlawfully or improperly obtained by the criminal authorities is not admissible, unless it is essential for the investigation of serious offenses (para. 2).

Individuals, including parties and other participants in the proceedings, may seek and produce evidence in criminal proceedings. The code of criminal procedure does not contain any provision regulating the fate of evidence illegally obtained by an individual. Case law has filled this gap by holding that evidence obtained illegally by a private individual can only be used if its use is essential to the investigation of a serious offense, if a balance of interests justifies its use and if it could have been obtained legally by the criminal authorities (see ATF 147 IV 16, 147 IV 9, 146 IV 226 and 143 IV 387). According to some authors, this jurisprudence cannot be applied to evidence obtained by force or threat (see in particular NIKLAUS SCHMID/DANIEL JOSITSCH, Schweizerische Strafprozessordnung: Praxis of the Swiss Criminal Procedure Code). NIKLAUS SCHMID/DANIEL JOSITSCH, Schweizerische Strafprozessordnung: Praxiskommentar, 3rd ed., 2018, no. 3 ad art. 141 code of criminal procedure). Others argue in favor of absolute non-exploitability when evidence obtained was in violation of art. 140 code of criminal procedure (YVAN JEANNERET/ANDRÉ KUHN, Précis de procédure pénale, 2nd ed., 2018, no. 9011 and the references cited in footnote 35).

In the present case, the defense requests that "all of the testimony and evidence collected on behalf of Civitas Maxima through its sister organization RRR." be excluded from the case file, without, however, specifying exactly which exhibits in the proceedings are targeted. The wording of this request does not comply with the duty of the parties to make clear submissions in the context of the preliminary questions so that the Court is in a position to rule on them. In this case, the Court does not see what "testimony and evidence collected" by the RRR. and Civitas Maxima would be affected by the defense request. In any event, the question for a preliminary ruling, if admissible, is unfounded. There is nothing in the file to suggest that evidence was illegally administered or collected in the proceedings by the prosecuting authorities or by private individuals. In fact, it appears that in its argument, the defense is challenging the material validity of certain means of evidence rather than their formal validity, i.e. their content and probative value. However, only

the formal validity of a piece of evidence can be challenged at the stage of the preliminary questions, the assessment of the evidence taking place with the examination of the merits of the case.

The preliminary question raised by Mr. Dimitri Gianoli was therefore rejected to the extent that it was admissible.

2.1.5.3 Identification of witnesses Victor X. and Didier X. by the plaintiffs Louis Z. and Antoine W.

Dimitri Gianoli requested that "the identification of witnesses Victor X. and Didier X." by the plaintiffs Louis Z. and Antoine W., carried out at the request of the Court, be removed from the file on the grounds that it was carried out in violation of the rights of the defense.

According to art. 107 para. 1 of the Swiss Criminal Procedure Code, a party has the right to be heard; as such, he or she may participate in the proceedings (let. b). The parties have the right to be present during the taking of evidence by the public prosecutor and the courts and to ask questions of the persons appearing (art. 147 para. 1 ab initio code of criminal procedure).

In this case, the Court sent a letter to Maître Alain Werner on March 4, 2020 (40.400.132 f.), in which it asked him to submit two photographs to his principals Louis Z. and Antoine W. and to indicate whether they recognized the persons represented and, if so, who they were. The two photographs in question were those of Victor X. and Didier X., two witnesses whose testimony was requested by the defense and for whom the Court had doubts as to whether they really had a link with the present proceedings. In a letter dated March 27, 2020, Maître Alain Werner replied to the Court that the two persons had been identified by Louis Z. and Antoine W. as being two inhabitants of Pasolahun, specifying that they were not the victims mentioned during their respective hearings (40.551.435). The letter from the Court addressed to Maître Alain Werner on 4 March 2020 was not intended to establish that the persons named Victor X. and Didier X. cited in the indictment had indeed been killed by the accused, as the Office of the Attorney General maintains, and that it was therefore not possible to summon them. The only purpose of the identification was to ensure that the summonses were addressed to persons involved in the proceedings and not to homonyms who should not be brought to Switzerland from Liberia because of a mistake. This identification was done only in the context of the organization of the proceedings, so that they could be carried out in the best possible way. Indeed, given the particularity of the case and the exceptional organizational measures that it generated, the Court had to ensure, as far as possible, that the persons it brought from Liberia to Switzerland had a link, however tenuous, with the facts of the present proceedings. The Court was unable to draw any conclusions from the response obtained from the two complainants Louis Z. and Antoine W. as to the existence of the two victims allegedly mentioned in the indictment and

the events they had experienced. The summonses of the two witnesses requested by the defense were thus maintained despite the doubt that remained and the defense was invited to carry out further verifications in order to avoid the Court incurring unnecessary steps and costs. The plaintiffs were then questioned during the proceedings about the two photographs that their counsel had submitted to them, and the defense was able to ask them any questions it deemed appropriate in this regard, so that the rights of the parties were fully respected.

In view of the foregoing, the preliminary question raised by Mr. Dimitri Gianoli was rejected.

2.1.5.4 Admissibility of the document submitted by Maître Dimitri Gianoli

At the stage of the preliminary questions, Maître Dimitri Gianoli wished to submit a document listing, from the point of view of the defense, all the contradictions in the statements made by the witness Benoît during the investigation procedure.

According to art. 66 of the Code of Criminal Procedure, the procedure before the criminal authorities is performed orally, unless the present code provides for the written form.

In this case, the writing that the defense wished to place on the record did not constitute pleadings that would have been filed in support of a preliminary issue raised and argued. Rather, it was an anticipated written pleading on the merits, and more specifically on the assessment of certain evidence in the record. As the criminal proceedings are in oral form, the Court refused to place the document of Mr. Dimitri Gianoli in the file. The latter was invited to file it later, in support of his plea on the merits if he so wished, provided that all the elements contained in his writing were also pleaded orally in order to respect the right to be heard of the other parties.

The inclusion of the defense writing in the file was therefore refused at the preliminary questions stage.

2.2 Incidental questions

According to art. 339 para. 4 of the Swiss Criminal Code, if the parties raise incidental questions during the proceedings, the court shall treat them as preliminary questions.

In this case, the Office of the Attorney General, Alain Werner, Raphaël Jakob, Zeina Wakim and Dimitri Gianoli raised incidental questions during the proceedings.

2.2.1 Incidental issues raised by Alain Werner

2.2.1.1 Request for a waiver of appearance for the complainant Georges on February 19 and 20, 2021

By correspondence dated January 22, 2021, Maître Alain Werner requested a dispensation from appearing for his client Georges on February 19 and 20, 2021, because of a university course he was taking "online" (40.551.586 f.).

According to art. 338 para. 1 code of criminal procedure, at the request of the plaintiff, the management of the proceedings may dispense with the plaintiff's personal appearance, if his presence is not necessary.

Insofar as Georges' hearing was scheduled for February 17, 2021, and that the days of February 19 and 20, 2021, were to be devoted to the hearing of complainants who had not denounced facts that overlapped with those denounced by the person concerned, the Court granted Alain Werner's request, subject to a possible delay in the program, which could not be totally excluded at the time of the opening of the second part of the proceedings.

2.2.1.2 Request that the plaintiffs be allowed to ask questions of the defendant before being heard by the Court

By letter dated January 22, 2021, Maître Alain Werner requested that the plaintiffs be heard after having had the opportunity to ask the defendant questions (40.551.586 f.). According to art. 107 al. 1 let. b code of criminal procedure, a party has the right to be heard and can, in this capacity, participate in the proceedings. Art. 147 of the Code of criminal procedure gives concrete form to this provision by providing that the parties have the right to be present during the taking of evidence by the public prosecutor and the courts and to ask questions of those appearing (para. 1 ab initio).

In this case, the Court proceeded to hear Alieu Kosiah during the first part of the proceedings in December 2020. As the plaintiffs were not present at this hearing, their lawyers asked to be allowed to reserve their questions to the defendant for the second part of the proceedings; the Court responded favorably to this request.

The code of criminal procedure does not impose an order in which the parties should be heard during the proceedings. In this case, the plaintiffs' lawyers had the opportunity to question Alieu Kosiah during the first part of the trial and did not make use of this option. The defendant was questioned extensively during the trial, and four additional days were devoted to his hearing by the court, which totaled nearly 800 pages of transcripts. The plaintiffs are aware of the defendant's position on the accusations made against him in the indictment, since they have all the minutes drawn up during the trial, as well as the one drawn up by the Court during his hearing. They were also able to view the interrogation of Alieu Kosiah with their respective lawyers. They were thus able to make

an informed decision on the statements made by the defendant. Finally, an additional day of questioning of Alieu Kosiah is planned at the end of their interrogations so that they can ask him any additional questions. In these conditions, it is clear that the adversarial nature of the procedure is respected.

Alain Werner's request was therefore rejected.

2.2.1.3 Request for corrections to the minutes of the hearing of Alieu Kosiah of December 3, 2020

In a letter dated January 27, 2021, Mr. Alain Werner sent the Court a list of corrections and additional translations of the minutes of the examination of Alieu Kosiah (40.551.597 ff).

According to art. 78 para. 1 of the Code of Criminal Procedure, the statements of the parties, the witnesses, the persons called to give information and the experts are recorded in the minutes from the start. If a hearing is recorded by technical means during the proceedings, the court may waive the reading of the minutes to the person heard or give them to him or her to read and sign. The recordings must be placed in the file (para. 5^{bis}).

The management of the proceedings and the person in charge of the recordings correct obvious errors; they inform the parties of this (art. 79 para. 1 of the Code of Criminal Procedure). The direction of the proceedings decides on the requests for correction of the minutes (para. 2). The rectifications concern errors in the designation of persons, amounts or currencies of money, spelling errors, syntax errors or errors due to false computer manipulations (GIORGIO BOMIO/DAVID BOUVERAT, Commentaire romand du code of criminal procedure [hereinafter: CR-code of criminal procedure], 2nd ed., 2019, n° 1 ad art. 79 code of criminal procedure).

In this case, the request of Mr. Alain Werner concerns both the correction of transcription errors and the completion of the translation. The Court agrees to correct typos and obvious errors. However, it rejects requests for improvements or additions to the translation. The translation remains the responsibility of the translator. The translation is not intended to be exhaustive, but rather to convey the essence of what was said by the person being heard, in summary form. The Court cannot therefore go back on the work done by the interpreter in this case in a completely satisfactory manner. If necessary, the parties had to intervene immediately to obtain additional information so that the translator himself could decide on their requests.

It follows from the above that the Court accepts the corrections of obvious errors, but rejects the requests for additions to, or improvements of, the translation of the minutes of the interrogation of Alieu Kosiah of December 3, 2020.

2.2.2 Incidental questions raised by Mr. Raphaël Jakob

2.2.2.1 Request that the plaintiffs be allowed to ask the defendant questions before being heard by the Court

By letter dated January 26, 2021, Mr. Raphaël Jakob requested that the plaintiffs be allowed to ask the defendant questions before being heard by the Court (40.555.061 f.).

This request was rejected by the Court. Please refer to recital 2.2.1.2 above for the statement of reasons.

2.2.2.2 Request that the video recordings of the hearing of Alieu Kosiah by the Court during the first part of the proceedings be placed on file

In a letter dated January 26, 2021, Mr. Raphaël Jakob requested that the video recordings of the hearing of Alieu Kosiah by the Court during the first part of the proceedings be placed in the file (40.555.061 f.).

If, during the proceedings, a hearing is recorded by technical means, the court may waive the reading of the record to the person heard or give it to him or her to read and sign. The recordings must be placed in the file (Art. 78 para. 5bis Criminal code).

Art. 102 para. 1 code of criminal procedure states that the management of the proceedings decides on the consultation of the files. It shall take the necessary measures to prevent abuses and delays and to protect the legitimate interests in maintaining secrecy (Art. 102 para. 1 code of criminal procedure). The files are consulted at the headquarters of the criminal authority concerned or, through mutual legal assistance, at the headquarters of another criminal authority. As a rule, they are handed over to other authorities and to the parties' legal advisors (para. 2). In accordance with this last provision, the management of the proceedings may prohibit the defense counsel from taking a document away or making a photocopy. The legitimate protective purpose of this measure does not constitute a disproportionate infringement of the right to inspect the case file (Federal Court judgment 1B_439/2012 of November 2, 2012, para. 2.3).

In this case, the video recordings of the hearing of Alieu Kosiah will be placed in the file. However, the Court sees an important interest in the fact that the said recordings are only consulted at the seat of the Federal Criminal Court in order to preserve the security of the defendant, which could be compromised on the day he is released. Indeed, in view of the seriousness of the facts of which he is accused, the risk of reprisals cannot be excluded. The Court therefore wishes to prevent the images of Alieu Kosiah from being revealed to the general public and allow anyone to recognize him.

It therefore imposes restrictions set out in recital A.34 on access to the video recordings of the defendant's hearing.

2.2.2.3 Requests relating to the provision of the minutes

In a letter dated January 26, 2021, Mr. Raphaël Jakob asked the Court to provide him with the minutes of the hearings held during the second part of the proceedings before the pleadings began. He also requested that the Court provide the parties with the minutes of the hearings concerning the first part of the proceedings, and in particular the preliminary questions raised (40.555.061 ff.).

If a hearing is recorded by technical means during the proceedings, the court may dispense with reading out the minutes to the person heard or hand them over to him or her to read and sign. The recordings must be placed in the file (Art. 78 para. 5^{bis} Criminal code). This provision implements the principle of procedural economy by reducing the length of the proceedings, particularly in the case of large-scale trials and when statements must be translated into the language of the proceedings before being recorded. The fact that the statement must be entered into the record immediately in accordance with Article 78 paragraph 1 of the Code of criminal procedure remains unaffected by the use of technical means. In practice, especially in the case of complex proceedings, the courts very often opt for recording and do not read out the minutes. In any case, the minutes are drawn up and signed by the director of the proceedings and by the court clerk. The handing over of the minutes to the parties entitled to them can take place even after the closure of the proceedings, but in any case before the notification of the written judgment (GIORGIO BOMIO/DAVID BOUVERAT, CR-code of criminal procedure, n° 6a ad art. 78 code of criminal procedure).

The constant practice of the Criminal Court of the Federal Criminal Court is to record the proceedings and to communicate the minutes to the parties at the end of the proceedings, once they have been finalized. In this case, given the extent of the minutes of the hearings, the Court is not in a position to finalize them and give them to the parties before the start of the pleadings. The parties will therefore receive them after the close of the hearing. The minutes of the hearing will be given to the parties at the same time as the minutes of the hearing, once they have been completed.

Raphaël Jakob's requests are therefore rejected.

2.2.3 **Incidental issues raised by Maître Zeina Wakim**

2.2.3.1 Request that the plaintiffs be allowed to put their questions to the defendant before being heard by the Court

By letter dated January 26, 2021, Maître Zeina Wakim agreed with the request of Maîtres Alain Werner and Raphaël Jakob that the plaintiffs be allowed to ask the defendant questions before being heard by the Court (40.552.033 f.).

This request was rejected by the Court. See recital 2.2.1.2 above for the reasons.

2.2.3.2 Request to amend the December 3, 2021, hearing minutes of Alieu Kosiah

By correspondence dated January 28, 2021, Attorney Zeina Wakim requested three additions to the December 3, 2021 hearing minutes of Alieu Kosiah (40.552.036 f.).

With regard to the legal developments, please refer to recital 2.2.1.3 above.

In addition, Zeina Wakim requests two additions or corrections to the translation, as well as the addition of an injunction by the president of the Court to the journalists not to disclose Coralie's name when the facts related to the rape she denounced (para. 1.3.23 of the indictment) were discussed. The translation additions or corrections are rejected, and reference can be made to what has already been stated in recital 2.2.1.3. As for the addition of the injunction to the journalists, the Court agrees to add it to the minutes of the hearing of the accused, it being specified that this injunction was already included in the minutes of the hearing.

The request of Zeina Wakim is thus partially admitted.

2.2.4 Incidental questions raised by Maître Dimitri Gianoli

2.2.4.1 Request to modify the minutes of the hearings of Rémy and Coralie by the Office of the Attorney General

By letter dated February 8, 2021, Mr. Dimitri Gianoli requested changes in the translation of the minutes of the hearings of the witness Rémy (formerly the complainant) and the complainant Coralie (40.521.378 ff; 40.521.384 ff).

As to the legal developments, reference is made to recital 2.2.1.3 above.

In the present case, the minutes of which the defense requests modification were drawn up by the Office of the Attorney General and not by the Court. The Court does not intend to make any corrections to the records that it did not create. Furthermore, and in any case, the corrections requested concern translation issues. It was up to the defense to intervene at the hearing before the Office of the Attorney General, in the presence of the interpreter, if it wished to contest the

translation that the interpreter had carried out, and not four years later, before the Court.

Mr. Dimitri Gianoli's request is therefore rejected.

2.2.4.2 Request that Alieu Kosiah be allowed to intervene at the hearing to make changes to the minutes of his hearing that took place during the first part of the hearing in 2020

By letter dated February 8, 2021, Mr. Dimitri Gianoli requested that his client be allowed to intervene in the hearing to make changes to the minutes of the hearing that took place during the first part of the hearing (40.521.368 ff.).

As regards the legal developments, we refer to recital 2.2.1.3 above.

In the interests of economy of means and efficiency (saving time by avoiding unnecessary translations), it is up to the defense counsel to request changes to the minutes of the hearing of the accused, it being specified that only corrections of obvious errors are allowed.

The request of Mr. Dimitri Gianoli is therefore rejected.

2.2.5 Incidental question raised by the Office of the Attorney General

Following the hearings of Paul and Raoul, the Office of the Attorney General requested that the indictment of March 22, 2019 be amended on two points:

- Modification of the date of the offense referred to in paragraph 1.3.2, in that it would have been committed between February and April 1993 (and not March 1993);
- In addition, paragraph 1.3.6 of the indictment mentions Pierre, alias Pégase, as a possible author of the stabbing of the accused, with the consequence of reclassifying, in the alternative, the form of participation of the latter as a co-activity or as an accomplice.

For legal developments on the accusatory maxim (art. 9 code of criminal procedure) and the possibilities of amending the indictment (art. 333 code of criminal procedure), we refer to recitals 2.1.4.1 and 2.1.4.2 above.

If no new facts or offenses other than those in the indictment are put forward, art. 333 of the code of criminal procedure does not apply. This is particularly the case for amendments that relate only to temporal elements or quantities. Mere temporal or quantitative changes must therefore be corrected, without Art. 333 code of criminal procedure applying, as if they were clerical errors (Federal Criminal Court decision SK.2010.33 of 5 May 2011, in: JdT 2013 IV 279, consid. 1.4.3; PIERRE-

HENRI WINZAP, CR-code of criminal procedure, n° 6a ad art. 333 code of criminal procedure). The Federal Court also considered that an incorrect designation of the location of an offense, which no one discusses, is an imprecision of lesser importance, or even a clerical error, which cannot be qualified as an addition or modification within the meaning of art. 333 of the Code of Criminal Procedure. As long as the judges of the first and second instance could have made this correction ex officio and that it does not hinder the defense of the accused, who was able to discuss this point during the debates and prepare his defense accordingly, the principle of indictment is respected and the indictment can be amended (Federal Court decision 6B_760/2013 of November 13, 2013, recital 1.3).

Art. 333 para. 1 code of criminal procedure does not cover situations in which a person other than the accused could have committed the facts described in the indictment (Federal Court decision 6B_688/2017 of February 1, 2018 recital 2.5).

In this case, the Office of the Attorney General first requests the extension of the period during which the offense referred to in paragraph 1.3.2 of the indictment was committed. This amendment does not constitute a departure from the adversarial principle. Indeed, this modification does not introduce any uncertainty or ambiguity as to the event in question, i.e. as to the accusation against the accused. The Court therefore accepts this first request. As for the second request, which aims to add the mention of Pierre, alias Pégase, as the possible author of the stabbing initially accused, it amounts to adding another possible author to the offense referred to in paragraph 1.3.6 of the indictment. This is not possible according to the above-mentioned jurisprudence. Moreover, even if Pierre, alias Pégase, will probably be judged in France, it is not impossible that a delegation of jurisdiction by France intervenes. Furthermore, it cannot be excluded that such a modification of the indictment would require further investigation or that it would justify a request for a postponement of the proceedings. The Court therefore rejects this second request for amendment. However, it reserves the possibility of examining the conduct of the accused in the light of the various forms of action, i.e. action (including as a mediate perpetrator), co-action, instigation and complicity, in application of article 344 of the Swiss Criminal Code (cf. supra recital 2.1.4.1). This is a matter of legal qualification and does not require any change in the indictment as to the facts.

The request of the Office of the Attorney General is therefore partially accepted.

3. Requests for evidence

According to art. 107 al. 1 let. e code of criminal procedure, a party has the right to be heard and can, in particular, submit proposals concerning the means of proof.

The right to be heard, as guaranteed by art. 29 para. 2 of the Swiss Constitution, includes in particular the right to obtain the administration of relevant and validly offered evidence, to participate in the administration of essential evidence and to determine the result when this is likely to influence the decision to be rendered (ATF 133 I 270 recital 3.1). The right to be heard does not prevent the judge from putting an end to the investigation when the evidence administered has enabled him to form a conviction and when, proceeding in a non-arbitrary manner to an anticipated assessment of the evidence that is still proposed to him - which implies examining a priori the usefulness of a means of proof (Federal Court decision 6B_676/2015 of 24 April 2017, recital 2.7) -, he is certain that the evidence could not lead him to modify his opinion. The refusal to investigate thus violates the parties' right to be heard only if the judge's anticipated assessment of the relevance of the evidence offered is tainted by arbitrariness (ATF 144 II 427, para. 3.1.3).

According to art. 139 para. 2 of the Swiss Criminal Code, there is no need for evidence to be given on facts that are irrelevant, well-known, known to the criminal authority or already sufficiently proven. This provision codifies, for criminal proceedings, the jurisprudential rule deduced from art. 29 para. 2 Cst. regarding the advanced assessment of evidence (Federal Court decision 6B_1237/2019 of July 3, 2020, recital 2.1).

It also follows from art. 331 para. 2 of the Swiss Criminal Code that a party who submits a request for evidence to the court must give reasons for it.

In this case, the Office of the Attorney General, Alain Werner, Raphaël Jakob and Dimitri Gianoli formulated, during the debates (or their suspension), requests for evidence, which the Court already had before or during the debates, with a motivation appearing in the related minutes.

4. Applicable law

Until December 31, 2010, violations of humanitarian law were only sanctioned by articles 108 and 109 former Swiss Military Criminal Law Code. As of January 1, 2011, a legislative change took place with the introduction of titles 12^{bis} (genocide and crimes against humanity) and 12^{ter} (war crimes) in the Swiss Criminal Code.

4.1 Old law

4.1.1 Article 108 paragraph 1 former Swiss Military Criminal Law Code, in its version in force at the time of the alleged acts (i.e. between 1993 and 1996), states that the provisions of chapter 6 are applicable in the case of declared wars and other armed conflicts between two or more States;

to these conflicts are assimilated the attacks on neutrality, as well as the use of force to repel such attacks. The violation of international agreements is also punishable if the agreements provide for a broader scope of application (para. 2).

- 4.1.2 According to article 109 paragraph 1 former Swiss Military Criminal Law Code, in the version in force at the time of the alleged offense, anyone who contravenes the provisions of international conventions on the conduct of war and the protection of persons and property, or who violates other recognized laws or customs of war, shall be punished by imprisonment, unless more severe provisions are applicable. In serious cases, the penalty will be imprisonment. The offense will be punished by disciplinary measures if it is not very serious (para. 2). In accordance with art. 28 para. 1 former Swiss Military Criminal Law Code in the version in force at the time of the alleged offense, imprisonment is the most serious form of imprisonment. The term of imprisonment is at least one year and at most twenty years. When the law expressly provides for it, imprisonment is for life. According to Art. 29 para. 1 former Swiss Military Criminal Law Code in force at the time of the alleged offense, the term of imprisonment is at least three days and, unless the law expressly provides otherwise, at most three years.
- 4.1.3 Article 109 paragraph 1 former Swiss Military Criminal Law Code contains a general clause that refers to international humanitarian law (Message on the implementation of the Rome Statute, FF 2008 3527), and in particular to article 3 common to the Geneva Conventions of 12 August 1949 (hereafter: GC). According to this provision, in the event of an armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each of the parties to the conflict shall be bound to apply the following provisions: ch. 1: Persons not taking direct part in the hostilities, including members of armed forces who have laid down their arms and persons who have been rendered hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (let. a); the taking of hostages (let. b); outrages upon personal dignity in particular humiliating and degrading treatment (let. c); sentences pronounced and executions carried out without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees known to civilized peoples to be indispensable (let. d); ch. 2: the wounded and sick shall be collected and cared for.
- 4.1.4 Additional Protocol II to the Geneva Conventions of 12 August 1949 (hereinafter AP II) develops and supplements article 3 common to the GCs. Art. 4 states that all persons who are not, or are no longer, taking a direct part in hostilities, whether or not they are deprived of their liberty,

are entitled to respect for their person, their honor, their convictions and their religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is forbidden to order that there be no survivors (par. 1). Paragraph 2 states that, without prejudice to the general character of the preceding provisions, the following are and shall remain prohibited at any time and in any place whatsoever with respect to the persons referred to in paragraph 1: violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any other form of corporal punishment (let. a); collective punishment (let. b); hostage taking (let. c); acts of terrorism (let. d); outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e); slavery and the slave trade in all their forms (let. f), pillaging (let. g); the threat to commit the aforementioned acts (let. h). According to paragraph 3 letter c, children under the age of fifteen shall not be recruited into armed forces or groups, nor allowed to take part in hostilities.

4.2 New law

4.2.1 According to Art. 264c para. 1 Criminal code, which entered into force on 1 January 2011, anyone who, in the context of an international armed conflict, commits a grave breach of the Geneva Conventions of 12 August 1949, i.e. one of the following acts against persons or property protected by one of these Conventions, shall be punished by a custodial sentence of at least five years: murder (let. a); hostage taking (let. b); infliction of great suffering or serious injury to a person's physical or mental health, in particular by torture, inhuman treatment or cruel and unusual punishment (let. c); or the use of force against a person or property (let. d). b); infliction on a person of great suffering or serious injury to body or to mental or physical health, in particular by torture, inhuman treatment or biological experiments (let. c); destruction or appropriation of property not justified by military necessity or carried out on a large scale (let. d); coercion of a person to serve in the armed forces of an enemy power (let. e); unlawful deportation, transfer or detention of persons (let. f); denial of a fair and impartial trial prior to the infliction or execution of a severe punishment (let. g). The acts referred to in para. 1 that are committed in the context of a non-international armed conflict are considered to be serious violations of international humanitarian law if they are directed against a person or property protected by that law (para. 2). If the act is particularly serious, in particular if it affects a large number of people or if the perpetrator acts with cruelty, the judge may impose a sentence of life imprisonment (para. 3). In cases of lesser seriousness under para. 1 letters c to g, the judge may impose a custodial sentence of at least one year (para. 4).

4.2.2 According to Article 264e paragraph 1 letter b of the Criminal Code, anyone who, in the context of an armed conflict, rapes a female person protected by international humanitarian law, detains her while she is pregnant against her will with the intention of altering the ethnic

composition of a population, or forces a person protected by international humanitarian law to undergo a sexual act of comparable gravity, or forces her into prostitution, or forcibly sterilizes her, shall be punished by a custodial sentence of not less than three years.

4.2.3 Article 264*f* paragraph 1 of the Swiss Criminal Code states that anyone who conscripts or enlists children under the age of fifteen into the armed forces or armed groups, or who uses them in an armed conflict, shall be punished by a prison sentence of at least three years.

4.2.4 According to Article 264*g* para. 1 letter c of the Swiss Criminal Code, anyone who, in the context of an armed conflict, as a method of warfare, pillages, unlawfully appropriates property in any other way, destroys or unnecessarily confiscates property belonging to the enemy, deprives civilians of goods indispensable to their survival or prevents the provision of assistance, shall be punished by a custodial sentence of at least three years.

4.2.5 Article 264*b* clarifies that articles 264*d* to 264*j* are applicable in the context of an international armed conflict, including in a situation of occupation, and, if the nature of the offense does not exclude it, in the context of a non-international armed conflict.

4.3 Law applicable to the case

4.3.1 With regard to the developments in connection with the principle of *lex mitior*, reference is made to recital 2.1.4.3 above.

4.3.2 In contrast to Art. 108 and 109 former Swiss Military Criminal Law Code, the new provisions of the Swiss Criminal Code (Art. 264*c*, 264*e* para. 1 let. b, 264*f* para. 1 and 264*g* para. 1 let. c Criminal code) establish minimum prison sentences of three and five years respectively. In addition, Art. 264*c* Criminal code provides for the possibility of life imprisonment in serious cases, while Art. 109 former Swiss Military Criminal Law Code provides for imprisonment for a maximum of 20 years. It should therefore be noted that from the point of view of the sentence, the old law appears to be more favorable to the accused than the new law.

4.3.3 The question then arises as to whether there could be situations in which a state of affairs would be punishable under the old law, but not under the new law, the only case in which the new law would be more favorable to the accused by virtue of the principle of *lex mitior*. However, this situation can be excluded. Indeed, in order not to restrict the scope of application of the Geneva Conventions and their Protocols, the Swiss Criminal Code provides, in art. 264*j*, that anyone who, in the context of an armed conflict, violates, in a manner not punishable under arts. 264*c* to 264*i*, a norm of international humanitarian law, the violation of which is punishable under customary international law or an international convention recognized as binding by Switzerland, is punishable by

deprivation of liberty for a maximum of three years or by a pecuniary penalty. It follows from this last provision that, by definition, there can never be cases in which an act would be punishable under art. 108 and 109 former Swiss Military Criminal Law Code (which refer to the Geneva Conventions and Protocol II) and not under the current Criminal code. This being the case, if art. 264j criminal code were to be applied, it could, by hypothesis, be more favorable to the accused than arts. 108 and 109 former Swiss Military Criminal Law Code, insofar as it provides for a maximum penalty.

- 4.3.4 In the present case, the acts alleged against the accused in the indictment of 22 March 2019 can all be covered by art. 264c, 264e, 264f or 264g of the Criminal Code. These provisions have the same scope of application as the equivalent rules contained in art. 3 common to the GC and art. 4 AP II (cf. Message on the implementation of the Rome Statute, which states that "Swiss norms must faithfully and without restriction reflect the international law in force [...] and will have to be inspired by the content and wording of the most restrictive norms" [FF 2008 3480 f.]). Thus, although the conduct of which Alieu Kosiah is accused is punishable under both the old and the new law, the old law appears to be more favorable to the defendant, insofar as, contrary to the new provisions that came into force on January 1, 2011, the old law does not impose a minimum sentence of deprivation of liberty, nor does it allow for the imposition of a sentence of deprivation of liberty for life. The new law therefore appears to be more severe than the old law in terms of sanctions, and the conditions of the *lex mitior* do not seem to be met, so that the conduct of which Alieu Kosiah is accused must be assessed in the light of articles 108 and 109 former Swiss Military Criminal Law Code.

4.4 Scope of application of art. 108 and 109 former Swiss Military Criminal Law Code

Since art. 108 and 109 former Swiss Military Criminal Law Code refer to art. 3 common to the GC and art. 4 AP II, it is necessary to examine the applicability of these international agreements to the present case.

4.4.1 Spatial and temporal scope of application

According to art. 1 common to the GCs, the High Contracting Parties undertake to respect and ensure respect for the Conventions in all circumstances.

In the present case, the four Geneva Conventions of 12 August 1949 have been ratified by Switzerland and by Liberia. They entered into force for Switzerland on 21 October 1951 and for Liberia on 29 September 1954.

According to Art. 1 para. 1 AP II, the Protocol applies to armed conflicts not covered by Protocol I (international armed conflict) which take place in the territory of a High Contracting Party (...).

In this case, both Switzerland and Liberia have ratified Additional Protocol II, which entered into force for the former on 17 August 1982 and for the latter on 30 December 1988.

Since the acts of which the defendant is accused took place between 1993 and 1996, article 3 common to the GCs and article 4 AP II are applicable *ratione loci* and *temporis* to the present proceedings.

4.4.2 Material scope of application

Common Art. 3 of the GCs covers armed conflicts "not of an international character", as opposed to Art. 2, which covers confrontations between states. The term "international armed conflict" is used when one or more States uses armed force against another State (International Committee of the Red Cross [hereinafter: ICRC], How is the term "armed conflict" defined in international humanitarian law, Position Paper, 2008, p. 3). Armed conflicts not of an international character are those in which at least one of the parties involved is not a government. Depending on the case, hostilities are either between armed group(s) and state forces or only between armed groups (ICTY, Tadic Case, Judgment on the Defense Appeal on the Preliminary Objection of Jurisdiction of 2 October 1995, para. 70).

An "armed conflict" exists whenever there is recourse to armed force between states or prolonged armed conflict between governmental authorities and organized armed groups or between such groups within a state. International law applies from the outset of such armed conflicts and extends beyond the cessation of hostilities to the general conclusion of peace; or, in the case of internal conflicts, until a peaceful settlement is reached. Until then, international humanitarian law continues to apply throughout the territory of the belligerent States or, in the case of internal conflicts, throughout the territory under the control of a party, whether or not actual fighting is taking place (ICTY, Tadic Case, Judgment of 7 May 1997, para. 560; ICTY, Tadic Case, Judgment on the Defense Appeal on the Preliminary Objection to Jurisdiction of 2 October 1995 para. 70; ICC, Bemba Gombo Case, Judgment of 21 March 2016, para. 128). For there to be an "armed conflict", the situation must reach a level that distinguishes it from other less serious forms of violence to which international humanitarian law does not apply, such as internal disturbances or tensions, riots or acts of banditry (ICRC, How is the term "armed conflict" defined in international humanitarian law, Position Paper, 2008, p. 3; ICTY, Limaj Case, Judgment of 30 November 2005, para. 84). The threshold of violence required for a non-international armed conflict is higher than for an international armed conflict (Sylvain Vité, *Typologie des conflits armés en droit international humanitaire: concepts juridiques et réalités*, *Revue internationale de la Croix-Rouge* 873/2009, p. 6). In practice, specifically that of the International Criminal Tribunal for the former Yugoslavia (hereafter: ICTY), shows that this threshold is reached each time the situation can be qualified as

"protracted armed violence" (ICTY, Tadic case, Judgment on the defense appeal concerning the preliminary objection to jurisdiction, para. 70). The requirement of the existence of an armed conflict must be assessed against two fundamental criteria: the intensity of the violence and the organization of the parties to the conflict (ICTY, Tadic Case, Judgment of 7 May 1997, para. 562; ICTY, Limaj Case, Judgment of 30 November 2005, para. 84; ICTY, Boskoski Case, Judgment of 10 July 2008, para. 175).

In terms of the intensity of the violence, the severity of the attacks and the increase in the number of armed clashes, the spread of the clashes over a given territory and period of time, the strengthening and mobilization of government forces, the collective nature of the struggle, the fact that the state is forced to resort to its army (the police forces are no longer able to deal with the situation alone), the territorial control exercised by the opposition forces, the duration of the conflict, the frequency of acts of violence and military operations, the nature of the weapons used (in particular the use of heavy weaponry and other military equipment, such as tanks and other heavy vehicles), the blockade or siege of cities and their intensive shelling, the extent of destruction and the number of victims caused by the bombing or fighting (dead, wounded, displaced, etc.), the number of soldiers or units deployed, the existence of front lines between the parties and the movement of these front lines, the closure of roads, the existence of ceasefire orders or agreements, and the extent of efforts by representatives of international organizations to obtain and enforce ceasefire agreements. These are evaluative factors, which determine whether the threshold of intensity is met on a case-by-case basis, and not conditions that should be met cumulatively (ICTY, Boskoski Case, Judgment of 10 July 2008, para. 177; ICTY, Limaj Case, Judgment of 30 November 2005, para. 168; ICTY, Haradinaj Case, Judgment of 3 April 2008, para. 49; cf. also Report of the Commission of Experts on Assistance to Victims of Internal Conflicts, International Review of the Red Cross 530/1963, pp. 78 ff.)

With regard to the criterion of organization, the actors of armed violence must have reached a minimum level of organization. Government forces are presumed to meet this requirement, without the need for an assessment in each case (ICTY, Haradinaj Case, Judgment of 3 April 2008, para. 60). As for non-governmental armed groups, indicative elements that are relevant include the existence of an organizational chart expressing a command structure, the power to launch operations coordinating different units, the ability to recruit and train new fighters, or the existence of internal regulations (ICTY, Boskoski Case, Judgment of July 10, 2008, paras. 199-203; ICTY, Limaj Case, Judgment of 30 November 2005, para. 168; ICTY, Haradinaj Case, Judgment of 3 April 2008, para. 49). When either of these conditions is not met, a situation of violence will eventually be qualified only as internal disturbance or internal tension. The latter two notions, which refer to forms of social instability, do not fall under the heading of armed conflict (Sylvain Vité, *Typologie des conflits armés en droit international humanitaire: concepts*

juridiques et réalités, *Revue internationale de la Croix-Rouge* 873/2009, p. 7).

As far as AP II is concerned, it is an instrument which complements and develops common Art. 3; it is an extension of it and is based on the same economy (ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 1986, No. 4437). The threshold for the application of Protocol II is determined by the criteria set out in its Article 1. According to art. 1 par. 1 AP II, which develops and completes art. 3 common to the GCs without modifying its current conditions of application, AP II applies to all armed conflicts not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 2 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), which take place in the territory of a High Contracting Party between its armed forces and dissident forces or organized armed groups and which under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations. Under para. 2, Protocol II does not apply to situations of internal tensions, internal disturbances, such as riots, isolated and sporadic acts of violence and the like, which are not considered armed conflicts.

AP II therefore applies to non-international armed conflicts. The definition of AP II is narrower than that of common Art. 3 of the GCs in two aspects. First, it introduces the requirement of control over territory, specifying that non-governmental parties must exercise control that "enables them to conduct sustained and concerted military operations. Second, the application of AP II is expressly limited to armed conflicts between state armed forces and dissident armed forces or other organized armed groups. Unlike common Art. 3, Protocol II does not apply to armed conflicts between non-state armed groups only. As with common Art. 3, there can only be a non-international armed conflict within the meaning of AP II if the situation reaches a certain degree of violence that distinguishes it from cases of internal tensions or internal disturbances. The scope of application of this instrument is, however, narrower than that of Art. 3 common to the GCs. It requires that non-governmental forces attain a particularly high level of organization, since they must be placed "under responsible command" and exercise territorial control that allows them "to carry out continuous and concerted military operations".

While common Art. 3 of the GCs also presupposes that armed groups have a certain degree of organization, it does not require that they be able to control a portion of the territory. In practice, therefore, it may happen that a conflict falls within the scope of common Art. 3, but does not meet the conditions set out in AP II. On the other hand, all armed conflicts covered by AP II are also covered by common Art. 3 of the GC (Sylvain Vité, *Typologie des conflits armés en droit international humanitaire: concepts juridiques et réalités*, *Revue internationale de la Croix-Rouge* 873/2009, p. 9). In particular, the degree of territorial control required may be assessed differently from case to case. If one adopts a

broad interpretation, the notion of non-international armed conflict within the meaning of AP II comes close to that of common Art. 3 of the GC. In this case, even a temporary and geographically limited control would suffice. On the other hand, if Art. 1 para. 1 of AP II is interpreted strictly, the situations covered by it are limited to cases where the non-governmental party exercises a control similar to that of a State and where the nature of the confrontation is similar to that of an international armed conflict (Sylvain Vité, *Typologie des conflits armés en droit international humanitaire: concepts juridiques et réalités*, *Revue internationale de la Croix-Rouge* 873/2009, p. 9 and the references cited). The ICRC seems to adopt an intermediate position on this point, admitting that territorial control may sometimes be "relative, for example when urban centers remain in government hands while rural areas escape their authority". It considers, however, that the very nature of the obligations formulated in Protocol II presupposes "a certain stability in the control of even a modest portion of the territory" (ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1986, Nos. 66 to 118*).

In this case, the acts of which Alieu Kosiah is accused are part of the first civil war that took place in Liberia between 1989 and 1996.

With regard to the non-international character of the conflict, it is a war that remained within the borders of Liberia, which consisted first of a confrontation between the government army (AFL) and the dissident group NPFL, and eventually involved other armed groups in the country, including the ULIMO faction (for more details, see *supra* recital C). The non-international character of the conflict is not disputed by the parties.

The armed nature of the conflict is not contested either. In this respect, the following elements can be noted.

In terms of the intensity of violence, the war lasted from December 1989 until August 1996, a period of seven years. There were many clashes, particularly around Monrovia (10-01-0249 ff.) and in Lofa County (10-01-0260 ff.). The various forces involved clashed and successively controlled parts of the country. Certain events particularly marked the conflict, namely the assassination of President Samuel Doe in September 1990 (10-01-0249) and the "Octopus" operation (10-01-0250) led by the NPFL in October 1992. The various armed factions thus competed for control over the various territories of Liberia. By mid-1990, the NPFL controlled 80 per cent of the country. ECOMOG and the AFL have long controlled Monrovia and its environs (10-01-0249). ULIMO conquered the western part of the country, especially Lofa County (10-01-0250). The government army (AFL) was deployed as soon as the NPFL arrived in Liberia and became one of the main forces (10-01-0249, 0253). From August 1990, it received support from ECOMOG, an intergovernmental interposition force set up by the countries of the West African region (10-01-0249). In terms of weaponry, both the ULIMO and the NPFL used heavy artillery after the ULIMO took Zorzor (10-01-0265).

During the seven-year civil war, several cease-fire agreements were reached, which were broken by renewed hostilities, until the last agreement, the Abuja II Agreement, was signed in August 1996 and ended the first Liberian civil war (10-01-0250 ff.). There are no official figures on the number of casualties caused. However, all sources mention several hundred thousand victims (10-01-0331, 0319 ff.). In addition to the large number of victims, the first civil war in Liberia also saw a great deal of looting and destruction of towns, villages and infrastructure by the various warring factions. For example, the NPFL destroyed most of the houses in the town of Voinjama in early 1993, and the ULIMO were accused of destroying villages in Lofa as well as traditional shrines and generators or power plants (10-01-0265, 0269, 0282). Many civilians were also forced to flee the combat zones. For example, according to the TRC, more than 160,000 civilians fled Liberia into Guinea and Côte d'Ivoire between January and May 1990 (14-01-0089). In its December 16, 1992 edition, the Monrovia Daily News reported that more than 700,000 people had fled Liberia since the start of the war and 750,000 were internally displaced (10-01-0348ff.). In December 1993, Agence France Presse reported more than 200,000 displaced persons, while other sources reported about 250,000 refugees (10-01-0317, 0319).

In the case of the organizational criterion, it should be noted that the ULIMO, of which the defendant was a member, also had a command structure. Alhaji Kromah was the spokesperson for this faction, whilst Albert Karpeh was the head of the operational command. Following the assassination of Albert Karpeh June 1992, Alhaji Kromah became the undisputed leader of the ULIMO. The latter established the headquarters of the ULIMO organization in Tubmanburg, the capital of Bomi County (10-01-0256). When ULIMO split in March 1994, ULIMO-K and ULIMO-J each had a leader, Alhaji Kromah for the former and Roosevelt Johnson for the latter (10-01-0256 ff). Although the chain of command fluctuated during the seven years of the ULIMO civil war and the combatants self-assigned their military ranks, the fact remains that the ULIMO, and later the ULIMO-Ks and ULIMO-Js, were organized along military lines and had common interests and objectives, which enabled them to take control of many territories, especially those in Lofa County. Thus, the ULIMO were able to carry out operations, in an organized manner, that led to the conquest of this county (10-01-0260 ff). In terms of strength, the ULIMO accounted for 6,000 men before their split, then the ULIMO-Ks had 4,000 and the ULIMO-Js had 3,000 (10-01-0253 ff). The ULIMO recruited new members from the civilian population, including children (10-01-0279 f.). For weapons, they could obtain them from Sierra Leone and Guinea (10-01-0253). The soldiers were also trained in Sierra Leone (10-01-0256).

It follows from the above that an armed conflict did take place during the first civil war in Liberia, given both the intensity of the violence that occurred and the organization of the factions, in particular the ULIMO group, of which the defendant was a member.

Since the existence of a non-international armed conflict must be recognized, common article 3 of the GC and article 4 AP II are materially applicable to the acts alleged against Alieu Kosiah in the indictment of March 22, 2019, provided that they were actually part of the said conflict, which will be examined on a case by case basis.

4.4.3 Personal scope of application

Persons not taking a direct part in hostilities, including armed members who have laid down their arms and persons who have been put hors de combat by sickness, injury, detention, or any other cause, are protected by common Art. 3 GC (para. 1).

All persons not taking or no longer taking part in hostilities, whether or not they are deprived of their liberty (para. 1), as well as children (para. 3), are protected by Art. 4 AP II.

Also, killing a combatant who is neither captured nor hors de combat, or a civilian directly participating in hostilities is in principle lawful under international humanitarian law and is therefore not criminally punishable (ICTY, Stanišić and Zupljanin Case, Judgment of 27 March 2013, para. 42; ICC, Bemba Gombo Case, Judgment of 19 October 2016, paras. 92-94).

In this case, the acts alleged against Alieu Kosiah in the indictment were committed either against civilians who were not participating in the hostilities, or against captured soldiers, or against a child, so that GC common article 3 and article 4 AP II apply, *ratione personae*, to the alleged victims of the crimes at issue.

4.4.4 Conclusion

Common article 3 of the GC and article 4 of AP II apply to the facts alleged against Alieu Kosiah in the indictment of March 22, 2019.

5. Prescription

According to art. 56^{bis} former Swiss Military Criminal Law Code in its version in force at the time of the alleged acts, war crimes were not subject to the statute of limitations. The current art. 59 al. 1 let. c CPM also provides for the imprescriptibility of this category of crimes.

It should therefore be noted that the criminal proceedings in this case are not time-barred for all the crimes of which the defendant is accused.

6. Issues relating to the so-called testimonial evidence

During the proceedings, the defense made a number of general arguments that concern all the complainants and all the so-called

prosecution witnesses. The issues raised are dealt with in this chapter, as they relate to several of the allegations against the accused that will be examined below.

6.1 Quality of the work done by Civitas Maxima and GJRP

6.1.1 Throughout the proceedings, Alieu Kosiah has tried to demonstrate that the opening of a criminal investigation against him was the result of a relentless attack on him by Hassan Bility as director of the GJRP, Alain Werner as director of the organization Civitas Maxima, the complainants, and their counsel, as well as the so-called prosecution witnesses. His position has always been to deny the facts of which he is accused and to pose as the victim of a general conspiracy. According to him, it is because of his residence in Switzerland that Mr. Alain Werner and Hassan Bility have investigated him. Moreover, the complainants would not have come forward on their own to denounce him, since they would have been recruited on purpose, with the aim of building a case against him, which would be proof of the reality of a conspiracy.

6.1.2 Alain Werner and Hassan Bility are both directors of organizations involved in the fight against impunity for international crimes. One of their main tasks is to investigate, on their own scale, the crimes that may have been committed in the different regions of the world that have been affected by war and in which these crimes remain totally unpunished due to the inability and unwillingness of the country concerned to prosecute them. This is clear in the statutes of such organizations. Mr. Alain Werner and Hassan Bility thus build up files allowing them to issue denunciations or penal complaints with authorities likely to be competent, in particular in virtue of the principle of universal prosecution. It is known that crimes under international law are denounced with great difficulty by the victims. There are several reasons for this, including the fear of reprisals by the perpetrators or their relatives, or even by the State in which the victims of international crimes live. Thus, victims often do not report the violence they have suffered on their own. Frequently, investigators must seek them out and find them so that they can then assert their rights in court.

6.1.3 In this case, it was explained on several occasions in the proceedings that JRP sent members to cafes or hatay shops (public establishments) in Liberia to collect testimony about crimes committed during the war and about the perpetrators. Several plaintiffs in the proceedings said they were approached in this way. Given the specificities of international crimes and the difficulty of prosecuting them, this method of work does not appear to be objectionable, but rather useful *in casu* to shed light on events that occurred in Liberia during the civil war. Moreover, if it seems to be established, based on the exchange of e-mails between Alain Werner and Hassan Bility (see 15-01-0273 ff.), that the latter instructed the second to investigate the defendant, the Court does not see what argument the defense intends to draw from this finding. Indeed, knowing that Alieu Kosiah had been involved in the first civil war in Liberia with the ULIMO faction and that he resided in Switzerland, Alain Werner probably

saw the opportunity to assert the rights of some of the victims in the context of a Swiss procedure, provided that a concrete participation of the defendant in the war crimes could be established. Based on this conviction, Alain Werner and the other lawyers of the plaintiffs filed criminal complaints on behalf of their respective clients. This approach is not open to criticism, and the defendant cannot therefore draw any conclusions from the circumstances in which the GJRP investigations against him were carried out, or even from the way in which the complainants were approached. There is nothing wrong or objectionable about approaching people in hatay shops. Moreover, the defendant does not provide any concrete reason to believe otherwise.

- 6.1.4 The defense also challenges the reliability of the testimony taken by the GJRP, particularly because of the working methods used during the hearings, which are, according to the defense, largely unknown to them. They have also pointed out a number of alleged contradictions in the narrative of the director of the organization in this regard.

Hassan Bility, director of the GJRP, was questioned extensively during the investigation as a witness about the work of the organization. In particular, he explained in detail how the GJRP went about collecting testimonies. That said, the work done before the criminal charges are laid is not a determining factor in assessing the credibility of the complainants. Of course, it is essential that the complainants were not influenced in their denunciations by any actor. In this case, there is no evidence in the file to suggest that they were influenced in any way. If the defendant accuses Hassan Bility of being directed or prejudiced, he does not provide any concrete reason to be convinced of this. Moreover, the plaintiffs were questioned twice in the course of the proceedings and the Court was able to assess the facts they denounced in light of the explanations they provided on those occasions. In these circumstances, there is no need to examine Hassan Bility's statements in depth, since it is not his credibility that must be evaluated in order to assess the facts of the case, but that of the complainants and the witnesses who denounced the accused

- 6.1.5 In conclusion, the defense cannot draw any decisive argument from the manner in which the activities of Alieu Kosiah were uncovered by the GJRP investigators, nor from the work done by the GJRP in collecting the various statements that led to the filing of the criminal charges, it being specified that these statements remain subject to the free assessment of the evidence.

6.2 Criminal denunciation

- 6.2.1 The defense also raised the question of the credibility of the complainants because of the contradictions that it detected between the content of their respective criminal denunciations and their subsequent depositions before the Office of the Attorney General. According to the defendant, these are also indications of the conspiracy of which he claims to be a

victim. However, the defendant has always remained unclear about the identity of the various perpetrators of this conspiracy, as well as about their aims and means.

6.2.2 A criminal report is an act by which a person brings to the attention of the competent authority the commission of an offense (by which he or she may or may not be harmed) and which makes it possible to initiate a criminal investigation (cf. art. 301 code of criminal procedure). If the criminal denunciation is an element that can be taken into consideration to appreciate the facts related and the credibility of its author, it must, in all cases, be confirmed (or invalidated) by the hearing of the latter on the reproaches formulated in it.

6.2.3 In this case, the circumstances in which the complainants related the facts that gave rise to their criminal complaints mean that the probative value of the latter must be put into perspective. In fact, it appears from the file that the said reports were not necessarily read back to the complainants, or even translated. In addition, their counsel had difficulty communicating with them, given that they speak Liberian English, which does have some differences from international English. In addition, the lawyers appear to have had little time to confer with their principals before drafting their criminal information. In view of these circumstances, little precision and accuracy could be attributed to the said information, which was likely to contain errors, inaccuracies, and approximations. What the Court considered decisive, however, was the coherence of their statements made before the Office of the Attorney General and during the trial. The plaintiffs were able to express themselves extensively on the facts they accused the defendant of. The Court also had the opportunity to test the credibility of their respective statements by confronting them with the contradictions that remained between their criminal accusations and the statements they made during the investigation. Thus, the consistency of the complainants' statements, the explanations they were able to give regarding existing contradictions, and the corroboration of their statements by other participants in the proceedings were decisive in this case in assessing the reality of the facts described in the indictment. These elements of assessment were particularly important because the evidence in the file was based essentially, if not exclusively, on testimony. These elements will be examined in depth in the context of the analysis of each of the offenses with which Alieu Kosiah is charged.

The above-mentioned argument of the defense is therefore not decisive.

6.3 Contradictions in the testimonies of the complainants and prosecution witnesses

6.3.1 Throughout the proceedings, including during the debates, the accused has focused his defense on all the contradictions that he believes he has been able to detect in the accounts of the complainants and the witnesses for the prosecution, believing that this is proof that they are

lying and have conspired against him. The Court will only deal with the contradictions that it considers relevant to the analysis of the facts with which the accused is charged. At this point, it is already appropriate to state some of the principles that guided the Court in its assessment of the statements of the plaintiffs and the witnesses for the prosecution.

- 6.3.2 The presumption of innocence, guaranteed by art. 10 Code of criminal procedure, art. 32 para. 1 Cst., art. 14 para. 2 UN Pact II and art. 6 para. 2 ECHR, as well as its corollary, the principle *in dubio pro reo*, concern both the burden of proof and the evaluation of evidence in the broad sense. As a rule, on the burden of proof, it requires, at the stage of innocence, that the judge should not declare himself convinced of the existence of a fact unfavorable to the accused if, from an objective point of view, there are doubts as to the existence of this fact. It does not matter if there are only abstract and theoretical doubts, which are always possible since absolute certainty cannot be demanded. It must be a matter of serious and irreducible doubts, in other words, doubts that are imposed on the mind by the objective situation (Federal Court decision 6B_1274/2020 of July 2, 2021, para. 1.1).
- 6.3.3 As regards the assessment of the facts, even if the existence of contradictions or errors in the statements of the plaintiffs and the so-called prosecution witnesses may raise questions about their credibility, it is necessary to take into account the fact that they have experienced bloody and traumatic events. In fact, when such events occur in their accounts, certain contradictions and inaccuracies are to be expected (Ruling of the Military Court of Cassation, 12 1997.2005] Nr. 21 recital 6b).
- 6.3.4 In addition, it should be noted that in the light of scientific knowledge, traumatic events are processed differently from everyday events. On the one hand, memory distortions and memory loss can occur, especially due to attempts at repression. On the other hand, for some victims, a large number of details of the traumatic experience remain engraved in the memory. The abundance of details, especially on secondary aspects, is indeed a common feature of memories to be taken into account in the analysis of statements. The court must therefore take this knowledge and theoretical background into account when assessing the statements of the participants in the proceedings (ATF 147 IV 409, section 5.4.2 and references cited).
- 6.3.5 Furthermore, general credibility as a lasting personal characteristic of an individual is of little importance. The credibility of concrete statements is much more important for the search for the truth (ATF 147 IV 409, section 5.4.3).
- 6.3.6 It is thus in the light of the above-mentioned principles that the Court will assess the testimonies of the complainants and witnesses, as well as any contradictions, insofar as they are relevant to the facts of the case. In any

case, it cannot be inferred from these contradictions that they contain a total lack of credibility, as the defense maintains.

6.4 Identification of the accused

6.4.1 The defense also argued a conspiracy theory because some of the complainants and prosecution witnesses were unable to identify the defendant on the photographic plates presented to them by the Office of the Attorney General during the investigation. In this case, this question is all the more decisive since the accused denies having committed the acts of which he is accused, claiming that he was not on the spot when they took place.

6.4.2 While it is true that in most criminal proceedings the credibility of a complainant or witness depends to a large extent on his or her ability to identify the alleged perpetrator of the crime, this is not so in this case, given the particularities of the case in question. Indeed, the denounced facts date back to the years 1993 to 1995 and the hearings of the complainants, respectively of the so-called prosecution witnesses, took place between 2015 and 2017, that is to say more than 20 years later. The length of time that has elapsed already explains in part the difficulty in identifying the accused. Moreover, it is also necessary to consider the nature of the facts that are denounced, namely war crimes committed in a climate of terror. Most of the complainants and witnesses only saw Alieu Kosiah a few times during the war, and often in a furtive manner. Several of them spontaneously stated that they tried to avoid contact with the defendant, out of fear of him (see in particular 40.755.018). In this respect, the defense cannot be followed when it compares the identification easily made by the former bodyguards of the accused and by former ULIMO soldiers heard in the proceedings with the much more uncertain identification made by the complainants and the so-called prosecution witnesses. The former were in daily contact with the defendant for months, while the latter met him only once, twice or three times for the majority of them. No useful comparison can therefore be made between these two categories of people and, whatever the defendant may say, it cannot be inferred from the inability of certain complainants, or certain so-called witnesses for the prosecution, to identify the defendant without any hesitation; that their statements are not credible. In addition, the question of the quality of the photographs, particularly with regard to their color, was raised by some participants in the proceedings. As many of them described Alieu Kosiah by mentioning the color of his very dark skin, if the colors of the photograph were not faithful to reality, it was more difficult for these complainants and

witnesses to easily recognize the accused on the photographic plates that were presented to them during the investigation, especially since the photographs were old and not very clear.

6.4.3 Finally, it should be noted that the difficulty with which the complainants identified Alieu Kosiah shows that they were not prepared to recognize the accused and that their denunciations are therefore not precisely conspiracy-related. It would have been easy for their counsel to show them the photographic plates (which were in the file) in advance of their respective hearings by the police or the Office of the Attorney General, so that they would be able to identify Alieu Kosiah.

6.4.4 In view of the above, the fact that some of the parties to the proceedings did not recognize Alieu Kosiah in the photographs submitted to them cannot, in itself, constitute a sufficient element to call into question the credibility of their statements in general.

6.5 Lack of testimony in support of the criminal denunciations

6.5.1 The defense was surprised by the lack of witnesses that the complainants called to corroborate the facts they denounced.

6.5.2 It is true that the file contains few testimonies to support the theses supported by the complainants. However, this small number must be seen in the context of the case. Indeed, the present proceedings concern war crimes committed in Liberia, a country that has not, to date, wanted its criminal authorities to take up the issue of atrocities committed during the war. All of the complainants interviewed emphasized the courage they had had to show in coming to Switzerland on two occasions. Some even hid their coming to Switzerland from their families to avoid worrying them. They also expressed a certain fear of returning to their country after filing against the defendant. It is therefore easy to understand the difficulty they had in finding people willing to travel to Switzerland to testify, most likely at the risk of their lives. One complainant stated that he had proposed to third parties to come and testify and that he had been refused by them because of the fear they had of testifying (40.757.017.025). In addition, most Liberians try to put this part of their history behind them and avoid recalling the traumatic events.

6.5.3 In addition, some complainants expressed reluctance during the debates to talk to certain Liberian nationals about the proceedings in Switzerland, not knowing the affinities and intentions of the latter. Finally, it is also a question of events that took place more than 20 years ago.

6.5.4 It cannot therefore be concluded from the small number of witnesses that the complainants are lying about the facts they accuse the accused of.

6.6 Ethnicity of the defendant

6.6.1 During its plea, the defense attempted to demonstrate the harassment to which people of Mandingo ethnicity were subjected before the war. This harassment is also said to be the reason for the criminal charges brought against the accused.

6.6.2 The Court does not know whether there may have been discrimination against persons of Mandingo ethnicity in Liberia before the war. However, it notes that the question is not relevant to the facts of this case. Indeed, Alieu Kosiah is not accused of having taken part in the first civil war as a member of the ULIMO faction, composed mainly of Mandingos, but of having violated the law of war during the war, in other words of having, during the hostilities, violated the law of war by attacking persons protected by international humanitarian law (children, civilians and soldiers who had laid down their arms). Such behavior cannot be the result of his membership in a group, the ULIMO, composed mainly of Mandingos or be explained by the defense of their interests. Consequently, the reasons why the war broke out and why the defendant decided to join the ULIMO need not be examined in this judgment, since they are not relevant.

6.6.3 With regard to the claim that Alieu Kosiah was the victim of a plot because of his ethnicity, it must be noted that this is imaginary and that it is not based on any element in the file. In particular, it has not been made plausible that the complainants and the witnesses for the prosecution could have animosity towards people of Mandingo ethnicity. As for the thesis that the Mandingos were victims, during and after the war, of jealousy that their success, in particular in commercial matters, had aroused, this was not corroborated either by the evidence in the case file or by the people who were heard at the debates.

6.6.4 In conclusion, the argument developed by the defense on the injustices endured by the Mandingo ethnic group can be set aside to assess the reality of a possible conspiracy.

6.7 Motivations of the complainants to denounce the accused

6.7.1 Finally, it should be noted that the defendant accused the complainants throughout the proceedings of having denounced him in order to obtain money or asylum in Switzerland.

- 6.7.2 The Court notes that none of the complainants applied for asylum when they were in Switzerland. The same is true for the so-called prosecution witnesses. They all went back to Liberia, as agreed with the Office of the Attorney General during the investigation and with the Court during the debates. The only participant to have filed an asylum application in Switzerland was Olivier, the former child soldier who belonged to the defendant's bodyguard, who is not a complainant.
- 6.7.3 With regard to the financial claims of the complainants, the Court notes that the amounts claimed by their lawyers were quite moderate. Moreover, it should be emphasized that the amounts awarded for non-pecuniary damage (cf. infra, para. 10) will in any event be very difficult to recover, as the defendant has no assets and the Act on Assistance to Crime Victims of 23 March 2007 (LAVI; RS.312 .5), which could have allowed the plaintiffs to receive compensation, was inapplicable since the offenses were not committed in Switzerland and the plaintiffs were not domiciled at the time of the commission of the offenses (cf. articles 3 and 17 LAVI). The only participants who made exorbitant financial claims to come to Switzerland were Victor X., Didier X. and Robert, three people who were designated by the defense to testify.
- 6.7.4 In conclusion, the defense's argument is false.

7. Facts alleged against Alieu Kosiah

7.1 Recruitment and use of a child soldier

7.1.1 Charge

According to section 1.3.1 of the indictment, Alieu Kosiah is accused of having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1996 and as a member of the ULIMO armed faction, recruited the child Olivier (born on [...]) and authorized him to take part in hostilities in the Lofa region, from January 1993 to [...], the date of Olivier's fifteenth birthday.

7.1.2 Means of proof

During the investigation

- 7.1.2.1 When interviewed as a witness by the Office of the Attorney General, Olivier stated that the ULIMO group arrived in the locality of Todee during

the rainy season in 1992 (12-16-0010). The NPFL had retreated, and Olivier was among the civilians who were captured by the ULIMO group's Zebra Battalion (12-16-0014ff.). This is how he joined the ULIMO, when he was about twelve years old (12-16-0015). It was then that he met Alieu Kosiah, who was one of the ULIMO commanders who entered Todi (or Todee). The defendant then took him as a child soldier (12-16-0010). According to Olivier, when the ULIMO wanted to kill the group of captured civilians, the defendant prevented them from being executed (12-16-0015, 0021). He said he voluntarily joined the ULIMO group because of the benefits of not seeing his sister raped in front of him, not seeing his brother killed, and not having to carry a load. It was also safer for his own life to carry a weapon. He also wanted to be able to defend his country. There was a lot of destruction in the country because of the NPFL. It was about overthrowing Charles Taylor and stopping the NPFL from destroying a lot of things in the country, raping people and killing (12-16-0016). Olivier became a small soldier of Alieu Kosiah (12-16-0010). Alieu Kosiah was his personal commander and Olivier was assigned to him directly. Wherever Alieu Kosiah went to the front line, Olivier went with him (12-16-0021). It was not against his will that Olivier was assigned to Alieu Kosiah. He decided to be assigned five to six months after he was recruited (12-16-0021). According to Olivier, Alieu Kosiah was someone who loved and cared for children (12-16-0022). For Oliver, Alieu Kosiah took care of him like a father (12-16-0022). He stated that when he met him, the defendant did "good things in his presence" (12-16-0017). After being recruited, Olivier had to undergo some three months of training, during which he was taught how to handle weapons, how to take cover, and how to hide. During this training, he was taught the "SOP" principles, i.e. the behaviors to avoid as well as the behaviors that soldiers should adopt. These principles had to be respected or they would be punished. Alieu Kosiah did not act as Olivier's trainer. Upon completion of his training, Olivier received his first weapon, an AK-47. Afterwards, he received other weapons (12-16-0019 ff).

- 7.1.2.2 Regarding his role with the defendant, Olivier stated that he served as his bodyguard. Anyone who wanted to meet Alieu Kosiah had to go through him. So, for example, when they went to the front, Olivier would always precede Alieu Kosiah to make sure it was safe to go forward. He always inspected the place before Alieu Kosiah went there. He also tasted the food before Alieu Kosiah ate it. His job, for which he was not paid, was to make sure that Alieu Kosiah was safe (12-16-0022 f.). When Olivier stood at the entrance of a room where the defendant was, he carried a weapon, an AK-47 (12-16-0023). The witness also said that Alieu Kosiah sometimes ordered him to go to the front line to fight. He then corrected himself by saying that he did not go to the front line at the

request of Alieu Kosiah, but that he went there to fight for the organization. It was the organization that asked him to go and fight (12-16-0024). Olivier said he fought alongside Alieu Kosiah in Tenebu, John's Town, and Bokassa Junction (12-16-0054). When he went to the front line with Alieu Kosiah, Alieu Kosiah would give him instructions (12-16-0054). Defendant was the person who took him to the front lines the most (12-16-0041).

- 7.1.2.3 Regarding where Olivier traveled with the Defendant, he stated that he followed the Defendant to Monrovia as well as all of his other travels (12-16-0010). When Olivier left Todi with the ULIMO, they went to the town of Tubmanburg, Bomi County, where the ULIMO' headquarters were located. Olivier stayed there for five to six months before moving to Lofa County. He puts this period at the beginning of 1993. He stated that by the time they arrived in Lofa County, the towns in that county had already been taken over by the ULIMO (12-16-0010). There, he went to Zorzor, Voinjama, Kolahun, Foya, Niandehun, Vahun, Salayae in Uper Lofa County, and finally Kanglu's Town. After Kanglu's Town, they returned to Voinjama, where the ULIMO group was headquartered, then to Zorzor and finally to Foya. Olivier finally returned to Monrovia with the ULIMO group in 1996, when the war ended. He spent all of 1996 in Monrovia, with Alieu Kosiah. It was at this time that Kosiah was reportedly appointed CID Director (12-16-0011).
- 7.1.2.4 Regarding Alieu Kosiah's role within the ULIMO group, Olivier indicated that he was part of the staff, i.e., the big men, the bosses (12-16-0011). He also said that Alieu Kosiah never had a key position in the ULIMO organization until 1996, when he became CID director (12-16-0021). In Todi, he was a frontline commander; all soldiers reported to him and he reported directly to J.a., who was a battalion commander (12-16-0016, 0021). Olivier explained that part of the frontline commander's role was to divide tasks among the soldiers during the fighting on the frontline. The frontline commander had to tell the soldiers what to do and what not to do. He was responsible for everything that happened on the front line. He not only gave orders, but he also fought. (12-16-0024).
- 7.1.2.5 Olivier reported that he was wounded twice during the war. He was wounded the first time in 1993 by a bullet in the back of his left shoulder in Lofa County, at Bokassa Junction, between Zorzor and Bong County. Alieu Kosiah was wounded on the same occasion and in the same place as him. It was a bullet fired by the NPFL. Alieu Kosiah took Olivier to the hospital in Voinjama, where he stayed for nine months. Alieu Kosiah was treated in the same hospital as him (12-16-0011 f.). The second event occurred three or four months after Olivier returned from the hospital to

the front. He was in a pickup truck, when the car exploded. Olivier was injured in both hands and in the buttocks. Alieu Kosiah was in a vehicle in the back, which was not hit. Olivier was sent to the hospital in Voinjama, then to Guinea, in Nzérékoré. He remained in the hospital throughout 1995 (12-16-0012).

7.1.2.6 When questioned about the facts of the case, Alieu Kosiah said that the ULIMO had taken Olivier prisoner at the beginning of the war, towards the end of 1993, when they were going around the river to the Todi military training camp, near Kakata (13-01-0059, 0073, 0204). Alieu Kosiah was then in charge of the capture of the Todi camp (13-01-0199). When the ULIMO soldiers left Bomi to take the Todi camp, there was a river to cross and it was after crossing it that they captured Olivier, alias Centaure. It was by the river. There was no town nearby (13-01-0198). The ULIMO soldiers suspected that Olivier was a child soldier of the NPFL (13-01-0059). According to Alieu Kosiah, Olivier was about fifteen years old at the time (13-01-0059). He later stated that the child was only thirteen or fourteen years old (13-01-0198). Alieu Kosiah stated that there was no reason to kill him, so he took him with him to the Lofa (13-01-0059).

7.1.2.7 Regarding the route taken with Olivier, Alieu Kosiah gave several explanations that do not all coincide with each other, so that it is difficult to establish such a route from his statements.

In essence, he first stated that he picked up Olivier after his capture and took him to Lofa, and that Olivier followed him for most of his journey in that county (13-01-0059).

He then said he went to Monrovia with Olivier after Olivier was captured near Todi. He reportedly stayed with Alieu Kosiah until the first time Kosiah went to Lofa, in mid-June 1994. At that time, Zorzor and Voinjama had just been captured by ULIMO (13-01-0073).

Alieu Kosiah also stated that after Olivier's capture, the group went to a town that was on the main road to Todi. There, they dispersed. The group's commander, M., then left for the main road between Kakata and Monrovia with Olivier. Alieu Kosiah went to the Todi camp to take him. He stayed there for one to two months. According to him, he was not with Olivier at that time (13-01-0199). Following an incident that resulted in the arrest and incarceration of M., the town commander of Todi, Alieu Kosiah was called in to replace him (13-01-0199, 0200). It was there that he saw Olivier again. He reported spending at least six months in the city of Todi Junction with Olivier. Alieu Kosiah places this period in 1993 (13-

01-0200). Afterwards, Alieu Kosiah would have gone with Olivier to Lofa. They went first to Tubmanburg, then to Voinjama, when the city was already in ULIMO hands (13-01-0202). When he left Todi, he went with him to Tubmanburg, then to Voinjama. Olivier then left for Lofa with Officer Sextant to capture the city of Foya. Alieu Kosiah went back and forth between Voinjama and Foya. Finally, Olivier joined the defendant in Voinjama. Towards the end of the war, Alieu Kosiah sent Olivier to his parents' home in Lola, Guinea. Olivier stayed there for about six months and then joined Alieu Kosiah in Lofa at Voinjama or Foya. When the defendant left for Zorzor as battalion commander, Olivier would not have followed him. He saw him again when he went to Monrovia, after his tour of duty in Zorzor (13-01-0203).

Finally, the defendant explained that after Todi was captured, the ULIMO commander M. went with Olivier to a village called "Number 7" on the main road leading from Monrovia to Kakata. Three months later, M. was incarcerated and Alieu Kosiah took his place. It was then that he met Olivier for the second time. They then traveled together to Monrovia and Alieu Kosiah dropped him off at one of his aunts' houses, and then left for Bomi Hill. Since Olivier did not like the aunt's house, the defendant took him with him to Bomi Hill. There, Olivier was free to do whatever he wanted. Sometimes he would go away for two or three weeks and then come back (13-01-0233).

- 7.1.2.8 Regarding Olivier's injuries, Alieu Kosiah said that Olivier was shot in the neck in the Gbarnga attack. Alieu Kosiah was angry that Olivier went to the front without telling him. The day he was wounded, he took him to his mother in Guinea, where he stayed for nine months (13-01-0059). Once he had recovered, he sent him to his parents' home in Lola, Guinea, so that he could attend school (13-01-0202, 0234).
- 7.1.2.9 Regarding Olivier's role, Alieu Kosiah admitted that he was one of his boys or his small soldier (13-01-0203, 0158). Everyone considered him his bodyguard (13-01-0203). Olivier was one of his five "boys" (13-01-0059). Alieu Kosiah admitted to giving him a gun, an AK-47, which was his personal weapon and which he was required to carry (13-01-0204, 0158). Olivier would never have used his weapon to engage in combat. Alieu Kosiah testified that he would entrust him to carry his weapon during marches and then take it back. The defendant also said that the two times Olivier went to the front, it was without his knowledge. According to Alieu Kosiah, Olivier probably fought in Foya when the city was taken, but according to his recollection, he went there with Sextant (13-01-0204). Alieu Kosiah maintained that he never asked Olivier to kill anyone and that he never saw a ULIMO commander order a small soldier

to kill anyone. According to the defendant, the small soldiers carried their commander's weapon or were sent to buy cigarettes (13-01-0158). Alieu Kosiah said he constantly tried to keep Olivier from going to the front, but he would hide and go anyway. Alieu Kosiah said he did everything to protect him. He was like a brother or son to him (13-01-0233 f.). His relationship with him was personal and not "through the ULIMO hierarchy." Their relationship would have been based on love. They were trying to survive the war together. When Olivier went to the front line, it would have been of his own accord, but never under orders from the defendant (13-01-0245 f.). When confronted with Olivier's statements that he was acting as a bodyguard for Alieu Kosiah, Kosiah argued that saying he was watching him while he slept was "a bit of an exaggeration". Olivier "could do whatever he wanted. He could even go to the front lines. He could even go without telling [him]" (13-01-0263).

- 7.1.2.10 Alieu Kosiah further disputed that he recruited Olivier. According to his understanding, recruiting someone is the act of picking them up and bringing them to the training camp (13-01-0233). He never saw ULIMO soldiers recruiting small soldiers and said he did not know how small soldiers other than Olivier got into the group. He never heard that young people were being forced to join the ULIMO faction. According to him, some joined the group on their own to survive, to get food. Alieu Kosiah estimated that he saw about five small soldiers in Voinjama among the ULIMO. He also said he did not know what the motivation was for the ULIMO to take in young people (13-01-0158). Alieu Kosiah has no idea when and where Olivier would have trained. According to Alieu Kosiah, many people claim to have trained when they did not. In general, ULIMO soldiers did not undergo training. It was impossible to do so in three months, given the unstable situation caused by the war. Sometimes soldiers were trained for a week while they learned to handle a weapon (13-01-0233).

During the debates

- 7.1.2.11 During the debates, Olivier, questioned as a witness, stated that he joined the ULIMO in 1992, when he was twelve or thirteen years old (40.761.007, 011). He joined them in Todi (or Todee) and Alieu Kosiah and Olivier went to Tubmanburg, then to Lofa, then to Bong County. Then they returned to Tubmanburg and finally to Monrovia when Alieu Kosiah was appointed director of CID in 1996 (40.761.007, 008). He said he was in Lofa in 1993 and stayed there with Alieu Kosiah half the time. From Tubmanburg, they traveled to Voinjama. Sometimes they went to Kolahun, Foya or Massabolahun (40.761.015). Afterwards, Alieu Kosiah

left for Tubmanburg when the split took place in 1994, leaving Olivier in Lofa. Olivier was then in Voinjama (40.761.015).

- 7.1.2.12 Olivier stated that at the time of his capture, he was in the midst of armed NPFL men and Alieu Kosiah allegedly saved his life by preventing him from being killed (40.761.011). The witness said he was captured by the ULIMO (40.761.012). He then decided to join the ULIMO immediately because of the mistreatment by the NPFL. He said he was not forced to join them, but voluntarily took up arms. He confirmed that he joined the ULIMO because he saw his father killed by the NPFL and his mother die during the war. At that time, the only way to have a safe life was to carry a gun. That is why he joined the ULIMO (40.761.012). He stated that at that time, no one could complain about being forced into the draft (40.761.012ff.). He also stated that when a commander wanted to assign a small soldier to himself, the soldier had to obey. He confirmed that he received military training at Klay (40.761.013). The main lessons were weapons handling, camouflage to avoid being killed by the enemy, and "SOP" principles (40.761.014). Alieu Kosiah did not participate in this training, but he knew that Olivier was taking part (40.761.014). The witness said he received an AK-47 from ULIMO after the training (40.761.017). Alieu Kosiah taught him how to use a weapon to defend himself. Upon completion of training, Olivier's first commanding officer would have been M. (40.761.014). He stated that he was first taken by Alieu Kosiah, then placed under M. and finally followed Alieu Kosiah again (40.761.014). He testified that he was with the defendant from 1992 to 1998, until the defendant left Liberia (40.761.015). The witness also testified that he received a gun from ULIMO, not from Alieu Kosiah (40.761.016).
- 7.1.2.13 Regarding his role with Alieu Kosiah, Olivier confirmed in court that he was his main bodyguard and that he was assigned to him. He had to follow him everywhere (40.761.015, 016). He confirmed that he would precede the defendant to the front line to make sure it was safe to move forward and that he would inspect the area before Alieu Kosiah went there (40.761.016). He also confirmed that his role was to provide security for him and that he sometimes stood outside with an AK-47 while Alieu Kosiah was inside (40.761.016). He also confirmed that he would taste the food or drink before giving it to the defendant when "it was not safe", i.e. when there was a risk of poisoning (40.761.016). In his opinion, it is accurate to say that he was taking some of the risks in place of Alieu Kosiah (40.761.016). Alieu Kosiah took him to the front line many times. It was Olivier's duty to follow him. Both times he was injured, the defendant was present (40.761.017). The witness was usually with the defendant, but sometimes he was away for up to a month (40.761.018).

- 7.1.2.14 Olivier said that he was wounded for the first time at the end of 1993 in Lofa, at Bokassa Junction, when they were ambushed by the NPFL (40.761.023 and 024). This injury forced him to go to Guinea for treatment. A bullet was lodged in his neck (40.761.024). He returned to the front lines in 1994, before the ULIMO split, after eight to nine months of recovery (40.761.024). His second injury was also inflicted in Lofa, near the border between Lofa and Bong County, following a mine explosion. Olivier placed it at the beginning of 1995 (40.761.024).
- 7.1.2.15 When questioned during the debates, Alieu Kosiah stated that he first met Olivier in Todi, after crossing the river, in February or March 1993. The ULIMO soldiers and Alieu Kosiah captured Olivier because they suspected him of being an NPFL small soldier (40.731.036). The defendant estimated his age at thirteen years old (40.731.037). Alieu Kosiah took him from Todi to Klay, then they went to Lofa. It was Olivier who chose to follow him. The accused denied having recruited him. According to him, recruiting someone means forcing him to join the group (40.731.037). He argued that a child under the age of fifteen was able to choose to join an army and had enough autonomy to choose (40.731.037 and 038). Defendant also testified that he was not present when Olivier decided to join the ULIMO (40.731.038). He allegedly was Olivier's commander when they went to Lofa (40.731.039). The defendant also disputed that he used Olivier as a child soldier. However, he admitted that he was "his guy" (40.731.040). Olivier was considered his bodyguard from the time they went to Lofa until he was injured (40.731.040). Alieu Kosiah stated that they went to the front line together and the rest of the time they relaxed (40.731.040). He stated that he never sent the witness to the front lines and that if he went, it was voluntarily. He recalled going there on one occasion with him between Zorzor and the bridge (40.731.042), but not giving him orders on the front line (40.731.042). He also contested Olivier's statements that Olivier preceded him to the front line to make sure that it was not too dangerous, that he inspected the place before his boss went there, that he made sure that he was safe, that he stood in front of the room where he, Alieu Kosiah, was, with an AK-47 and that he tasted the food before Alieu Kosiah ate it (40.731.040 and 041). The defendant did admit that he may have given an AK-47 to Olivier (40.731.041).
- 7.1.2.16 Alieu Kosiah denied being present when Olivier was injured at Bokassa Junction (40.731.042). However, he admitted that he was present during his second injury, on the main road from Lofa County to Bong County (40.731.042). Following this injury, he allegedly sent Olivier to his parents in Guinea, where he remained until the end of the war (40.731.043).

7.1.2.17 To the knowledge of the defendant, Olivier did not receive any military training; at least, he did not give him any (40.731.039). Regarding the route taken, Alieu Kosiah stated that Olivier was with him when he first went to Lofa. When he was injured, he sent him to his parents' home in Guinea to attend school. He stayed there until the end of the war. Except for Lofa and Guinea, Alieu Kosiah did not, to his recollection, make any other trips with Olivier (40.731.039).

7.1.3 Law and evaluation of evidence

7.1.3.1 According to Art. 4 para. 3 let. c of Protocol II, children shall receive the care and assistance they need and in particular, children under the age of fifteen shall not be recruited into armed forces or groups, nor allowed to take part in hostilities.

7.1.3.2 Children are particularly vulnerable. They require special treatment compared to the rest of the civilian population; this is why they are entitled to specific legal protection (ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1986, No. 4544). Intentionally, the legislator has not given a precise definition of the term "child". The moment when a human being ceases to be a child and becomes an adult is not universally defined in the same way. Depending on the culture, it can vary from the age of 15 to about 18. With regard to the recruitment and use of children in an army, the Protocol has set fifteen years as the lower limit (ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1986, No. 4549). The prohibition of the use of children in military operations is a fundamental mechanism for their protection. This practice is unfortunately frequent, and children are most often ready to follow adults without weighing the consequences of their actions. Thus, the principle of non-recruitment also includes a prohibition on accepting voluntary recruitment (ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1986, No. 4556). Not only can the child not be recruited or enlisted, but he or she will not be "allowed to take part in hostilities. Voluntary incorporation and forced incorporation thus represent two variants of the offense of recruitment under the Second Additional Protocol, the latter being an aggravated form of the offense (Special Court for Sierra Leone [hereinafter: SCSL], Fofana Case, Judgment of 2 August 2007, paras. 191 f.; SCSL, Taylor Case, Judgment of 18 May 2012, paras. 442).

7.1.3.3 The prohibition on the recruitment and use of child soldiers aims at the protection of the physical and psychological integrity of children from the

risks of armed conflict, the protection of all from actions perpetrated by child soldiers in armed conflict, as well as, like all war crimes offenses, peace (ICRC, Commentary on the Protocols Additional of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1986, No. 3183; TOR-NIKE KESHELAVA/ BRUNO ZEHNDER, BSK-Criminal Code II, n° 2 ad art. 264f Criminal Code; ROMAN D. GRAF/ANTOINE KABORÉ, CR-Criminal Code II, n° 3 ad art. 264f Criminal Code and the cited references). The protection of children from the risks of armed conflict is intended not only to protect them from violence and injuries sustained in combat, but also from potential trauma, such as separation from family, disruption of schooling, or exposure to an atmosphere of violence and fear (ICC, Lubanga Case, Judgment of March 14, 2012, paras. 605 and 619; ELISABETH SCHAUER/THOMAS ELBERT, *The Psychological Impact of Child Soldiering*, pp. 7 ff, in: ERIN MARTZ (ed.), *Trauma rehabilitation after war and conflict*, 2010).

- 7.1.3.4 The recruitment, conscription and use of children under the age of fifteen constitute three distinct criminal acts (ICC, Katanga Case, Judgment of 7 March 2014, par. 1041; ICC, Lubanga Case, Judgment of 14 March 2012, par. 609 and 620). Each of these acts, on its own, constitutes the offense (ICC, Lubanga Case, Judgment 14 March 2012, para. 609; SCSL, Brima Case, Judgment 20 June 2007, para. 733; SCSL, Fofana Case, Appeal Judgment 28 May 2008, para. 139). Although theoretically different, conscription and enlistment are generally referred to as "recruitment" and can be considered together insofar as they are carried out whenever a child is incorporated into an armed group or armed force in the context of an armed conflict, voluntarily or involuntarily (ROMAN D. GRAF/ANTOINE KABORÉ, CR-Criminal Code II, No. 4 ad art, 264f Criminal Code; ICC, Lubanga Case, Judgment of 14 March 2012, para. 618). The decisive criterion that distinguishes the two forms of recruitment is consent, respectively coercion (ROMAN D. GRAF/ANTOINE KABORÉ, CR-Criminal Code II, n° 5 ad art. 264f Criminal Code). Conscription is coerced recruitment, whereas enlistment is voluntary (ROMAN D. GRAF/ANTOINE KABORÉ, CR-Criminal Code II, No. 5 ad art. 264f Criminal Code; ICC, Lubanga Case, Judgment of 14 March 2012, para. 607). Where the armed group is not a conventional military organization, recruitment does not necessarily consist of a formal act. Enlistment must be understood in a broad sense, including any conduct by which a child is accepted as a member of an armed group (SCSL, Fofana Case, Judgment of 28 May 2008, para. 144; SCSL, Taylor Case, Judgment of 18 May 2012, para. 442). The offense of recruitment is thus consummated when a child under the age of fifteen is incorporated into an armed force or group or joins its ranks, whether forced or not (ICC, Lubanga Case, Judgment of March 14, 2012, para. 61).

- 7.1.3.5 The distinction between conscription and enlistment, which is obvious in theory, has practical difficulties, particularly because children under 15 years of age do not appear to be capable of giving informed consent. Psychologist Elisabeth Schauer, interviewed as a witness by the International Criminal Court in the Lubanga case, explained that, from a psychological perspective, children have a limited understanding of the consequences of their choices and are therefore unable to give "informed" consent when joining an armed group; they do not have full control and understanding of the structures and forces they are dealing with; and they have insufficient knowledge and understanding of the medium- and long-term consequences of their actions. In this particular context, children are not capable of determining their best interests (ICC, Lubanga Case, Judgment of 14 March 2012, para. 610; ELISABETH SCHAUER/THOMAS ELBERT, *The Psychological Impact of Child Soldiering*, pp. 7 f., in: ERIN MARTZ (ed.), *Trauma rehabilitation after war and conflict*, 2010). As a result, girls and boys under the age of fifteen are often not in a position to give valid and informed consent when enlisting in an armed force or group (ICC, Lubanga Case, Judgment of 14 March 2012, para. 613). The manner of recruitment of the child and whether the child was recruited under duress or on a "voluntary" basis are circumstances that may, however, be taken into consideration at the sentencing or reparations stage. The child's consent to recruitment is not, however, a defense (ICC, Lubanga Case, Judgment of 14 March 2012, para. 617; SCSL, Brima Case, Judgment of 20 June 2007, para. 735; SCSL, Fofana Case, Judgment of 28 May 2008, para. 140; SCSL, Sesay Case, Judgment of 2 March 2009, para. 187 and note 349).
- 7.1.3.6 The use of a child soldier is, like recruitment, an independent offense that can be committed even in the absence of recruitment. Thus, a child may be considered to have been "used" without proof of prior "conscription" or "enlistment" into the armed force or group in question (ICC, Lubanga Case, Judgment of March 14, 2012, paras. 619ff.). The prohibition on the use of child soldiers also seeks to protect children from the risks associated with armed conflict. AP II states that children under the age of fifteen are not permitted to "take part in hostilities." This is a broad formulation, which lends itself to extensive interpretation (ICC, Lubanga Case, Judgment of March 14, 2012, para. 627 and note 1801). This norm was drafted to allow for a broad interpretation of taking part in hostilities, with acts such as gathering intelligence, transmitting orders, transporting ammunition and supplies, and acts of scuttling also covered by this notion (ICRC, *Commentary on the Protocols Additional of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 1986, No. 4557). Article 8 of the Rome Statute refers to the act of "using children under the age of fifteen

years to participate actively in hostilities". The ICC has held that the conduct covered by the term "active participation in hostilities" should be interpreted broadly. The notion of active participation under Art. 8 of the Rome Statute thus overlaps with that contained in Art. 4 AP II, the basic criterion being that the child must be, at the very least, a potential target in the course of hostilities. It is thus crucial to determine whether the child's support to combatants exposes him or her to real danger, making him or her a potential target (ICC, Lubanga Case, Judgment of March 14, 2012, para. 628; ICC, Katanga Case, Judgment of March 7, 2014, para. 1045; see also SCSL, Brima Case, Judgment of June 20, 2007, para. 736 f.; SCSL, Taylor Case, Judgment of May 18, 2012, para. 444). In this regard, the ICC has held that the employment of children in support functions at the front, including as porters, falls within the notion of activities related to hostilities. In addition, guarding military objectives or performing bodyguard or escort duties also constitute such activities, particularly when they have a direct impact on the level of logistical resources or on the organization of operations to be conducted by the other party to the conflict in order to attack military objectives (ICC, Katanga Case, Judgment of 7 March 2014, para. 1045). The ICC further cites as examples of activities in connection with hostilities include reconnaissance, espionage, sabotage, the use of children as decoys, messengers or human shields or their use at military checkpoints, carrying loads for combatants and finding and/or acquiring food or equipment for them. In contrast, the delivery of food to an airbase or the employment of domestic staff in officers' quarters does not constitute active participation in hostilities (ICC, Lubanga Case, Judgment of March 14, 2012, paras. 621-626; ICC, Katanga Case, Judgment of March 7, 2014, paras. 1043 and 1045). The SCSL takes an even broader view of participation in combat, considering any logistical support to the armed forces as part of it. Thus, providing ammunition for combat, finding or procuring ammunition or equipment, acting as a decoy, delivering messages, building roads or accesses, managing checkpoints or acting as human shields are examples of active participation (SCSL, Brima Case, Judgment of June 20, 2007, para. 737; SCSL, Taylor Case, Judgment of May 18, 2012, para. 444). On this basis, and in the context of the armed conflict in Sierra Leone, the SCSL has thus ruled that crimes committed against civilians (SCSL, Sesay Case, Judgment of March 2, 2009, para. 1724), protection of military objectives (*idem*, para. 1725), espionage (*idem* para. 1729) and the function of bodyguarding commanders (which makes children potential targets because a commander is a target himself; *idem*, para. 1731) are activities that fall within the notion of active participation in hostilities. In contrast, the use of children for domestic work (*idem*, para. 1730) and missions to supply

soldiers with food (idem, para. 1743) do not constitute hostilities-related activities.

- 7.1.3.7 In this case, with regard to recruitment, it has been established that Alieu Kosiah was present at the time of Olivier's capture, the statements of the two participants being concordant on this point. It is also established that Olivier was less than fifteen years old at the time of his arrest by the ULIMO. In fact, according to the statements of the defendant and the witness, their meeting took place between the end of 1992 and March 1993. Born on [...], Olivier was then twelve years old. Moreover, the fact that Olivier voluntarily wanted to join the ULIMO armed faction to escape the abuse of the NPFL rebels is not such as to exonerate the defendant, since recruitment punishes both the fact of forcing a child to join the ranks of an army and the fact of accepting that the child joins a military entity on his own. At most, this circumstance could be taken into account in the sentencing of Alieu Kosiah.
- 7.1.3.8 The Court notes, however, that the indictment of March 22, 2019 does not describe how Alieu Kosiah was involved in the recruitment of Olivier. It is not enough that the accused was present at the time of the child's capture to draw the conclusion that he participated in his recruitment, especially since it seems that he was not the highest-ranking commander at the time of the capture. It was in fact M., who had attained the rank of Major General (see 12-29-0023). The statements of the defendant and Olivier before the court did not clarify the question of the former's involvement in the recruitment of the child. Even if the recruitment was not a formal act, in order to impute this action to Alieu Kosiah, it would still be necessary to establish that he played a determining role. However, the Court could not be convinced that Alieu Kosiah actually took part in the recruitment of Olivier, as his mere presence on the premises was not sufficient in this respect. It will also be noted that Olivier was not immediately assigned to the defendant after joining the ULIMO faction, which could have been an indication of Alieu Kosiah's participation in the recruitment. He first underwent military training, then served under M., before finally joining the defendant. The latter is therefore acquitted of the charge of recruiting a child soldier.
- 7.1.3.9 The offense of using Olivier as a child soldier can, however, be upheld. The witness's statements regarding the role he played alongside the accused were consistent throughout the proceedings. He confirmed before the court the statements he had made before the Office of the Attorney General, namely that he had served as a bodyguard for the defendant. He would precede the latter to the front line to make sure that it was not too dangerous, he would inspect the place before his boss went

there, he would stand with an AK-47 in front of the room where Alieu Kosiah was and he would taste the food before the latter ate it. His role included making sure the defendant was as safe as possible. He also testified that the defendant took him to the front lines on several occasions and gave him instructions while he was there. The witness further explained that he was wounded twice in the presence of Alieu Kosiah. The defendant was more reserved about the role that Olivier played with him. However, he admitted that he was one of his boys or his small soldier and that he was "considered" as his bodyguard. He also admitted that he went, at least on one occasion, to the front line with Olivier. He also admitted that it was possible that he had given him an AK-47. However, he disputed the details given by the witness about his role as a bodyguard, although he did admit half-heartedly that the child was watching him while he slept. Alieu Kosiah further admitted that he was present on at least one occasion when the child was injured. The Court finds Olivier's statements about his role under the defendant's command, partially confirmed by the defendant, to be credible. The fact that Alieu Kosiah used him as a bodyguard, provided him with a weapon and took him to the front line are all elements that exposed Olivier to a real and concrete danger and made him a prime target. This danger became a reality on two occasions, as the child was injured quite seriously.

- 7.1.3.10 Subjectively, Alieu Kosiah acted purposely. He knew that Olivier was only twelve or thirteen years old at the time.

Furthermore, the facts of the case occurred in the context of the first civil war in Liberia, which Alieu Kosiah knew.

The offense of using a child soldier is therefore completed.

- 7.1.3.11 It remains to be determined the period during which the offense took place. In this respect, the statements of the persons concerned as to the route they took together were not always consistent and are not compatible with each other. The indictment considers the period from June or July 1993 to [...] 1995, the date of Olivier's fifteenth birthday, as the decisive period. To retain the months of June or July 1993 as the dies a quo, the Office of the Attorney General based itself on Olivier's statements, according to which he was assigned to the defendant five to six months after his recruitment.

The Court notes that Olivier's capture occurred when the ULIMO arrived in Todee. The Liberian newspapers dated the capture of Todee to January 1993 (see supra recital C. 16). Olivier placed his encounter with

the ULIMO in 1992, during the rainy season. The defendant, for his part, first mentioned the end of 1993 for the taking of Todee, before speaking in court in February or March 1993. Since Olivier's version is consistent with the information published in Liberian newspapers, the court finds that he was arrested by the ULIMO in December 1992 or January 1993. As to the precise moment when Olivier was assigned to the defendant, it is difficult to determine, as a certain period of time elapsed between his recruitment and his assignment to Alieu Kosiah. However, the Court is bound by the factual situation described in the indictment, which refers to the period of June or July 1993 as the starting point of the offense. This is the version that is most favorable to the defendant. The Court will therefore retain the period between June and July 1993 and [...] 1995 for the commission of the offense of using a child soldier.

7.1.3.12 In conclusion, Alieu Kosiah is acquitted of the offense of recruiting a child soldier and is found guilty of using a child soldier for the above-mentioned period (art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum art. 4 para. 3 let. c AP II).

7.1.4 Error on illegality

7.1.4.1 During the pleadings, the defense argued that the defendant, at the time of the events, was not aware that the use of a child soldier constituted a criminal offense.

7.1.4.2 Under Article 17 former Swiss Military Criminal Law Code, the judge may freely mitigate the sentence (Article 47) for a person who has committed a crime or an offense when he or she had sufficient reason to believe that he or she was entitled to do so. The judge may also exempt the accused from any sentence.

7.1.4.3 The recruitment and use of child soldiers is an offense under customary international law. It is also customary to recognize that victims must be under 15 years of age at the time of the crime. International custom does not depend on the particular practice of each state. For this reason, State practice creating an appearance of lawfulness cannot be used as a defense to a violation of international law (SCSL, Brima Case, Judgment of June 20, 2007, paras. 731 ff).

7.1.4.4 In the present case, even if, as the defendant suggested, children under the age of fifteen were sometimes recruited into the army in Liberia, this practice would not call into question customary international law. Alieu Kosiah never claimed, during his numerous hearings, that he was unaware at the time that the use of a child soldier constituted a criminal

offense. On the contrary, he must have been aware of this, since he stated that he had received military training in the regular army. And even if he had not received training in this regard, the use of a child soldier constituting, at the time of the events, an offense recognized under customary international law, Alieu Kosiah has not convinced the Court of his ignorance of the wrongfulness of his conduct.

7.1.4.5 In view of the foregoing, the error on illegality must be set aside.

7.2 Ordering the killing of seven civilians in Zorzor

7.2.1 Charge

According to section 1.3.2 of the indictment, Alieu Kosiah is charged with having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1996 and as a member of the armed faction ULIMO, ordered the murders of seven civilians in Zorzor, including N., in March 1993.

7.2.2 Means of proof

During the investigation

7.2.2.1 It appears from Paul 's criminal complaint of July 3, 2014, that he was in the town of Zorzor in Lofa County in 1994 when the ULIMO faction, under the command of Alieu Kosiah, invaded the town. Paul spent three months in Zorzor when the city was under the control of Alieu Kosiah's forces. After the capture of Zorzor, seven civilians, including Paul's brother, were executed on the orders of Alieu Kosiah and another ULIMO commander. Complainant saw and heard Alieu Kosiah give orders to kill these seven people (05-01-0012).

7.2.2.2 During his interrogation by the Office of the Attorney General, Paul stated that he had a very clear image of the defendant in his mind. During the revolution, Alieu Kosiah was thin and tall, with big eyes. The defendant had darker skin than he did (12-28-0018). When he saw him, Alieu Kosiah was dressed in military clothes, with a military jacket and pants and boots on his feet. He was not wearing a cap or sunglasses. He did not carry a weapon. The people around him, on the other hand, were carrying weapons (12- 28-0019). On the first photographic plate submitted to him, on which was a wartime photograph of the defendant, Paul recognized Alieu Kosiah. On the second, which showed a more recent photograph of the defendant, he appeared to see him in two places, one of the two people named being Alieu Kosiah. When Alieu

Kosiah entered the courtroom, the complainant confirmed that he recognized him and was overcome with emotion (12-28-0020).

Initially, Paul stated that he had filed a complaint against Alieu Kosiah after seeing a picture of him in a newspaper during his arrest (12-28-0006). When questioned by the Office of the Attorney General about the chronology of these two events, he retracted his statement, considering that he had probably made a mistake under the effect of stress and that he had perhaps filed a complaint before seeing Kosiah's photo in a newspaper (12-28-0011, 0012).

7.2.2.3 With regard to the facts of the case, Paul stated that when the ULIMO took Zorzor, everyone had to gather at the town's gas station (12-28-0018). Alieu Kosiah, who was at the center of the gathering, pointed to seven civilians, including N., Paul's brother, and ordered their execution (12-28-0020, 0021). The seven civilians were first beaten with rifle butts until they were unconscious. They were then beaten on the head with a sledgehammer. They had no chance to escape because some soldiers were holding them. Alieu Kosiah accused them of being NPFL rebels. They disputed this, but Alieu Kosiah maintained that they were rebels and ordered his boys to kill them (12-28-0021). To give the order, Alieu Kosiah allegedly uttered the phrase "kill these people, because they are NPFL fighters" (12-28-0022). Paul stated that he heard Alieu Kosiah give the order. According to the complainant, Alieu Kosiah was the leader of the group because everyone called him "Chief Kosiah." However, he did not know if there was anyone hierarchically superior to him (12-28-0023). Paul testified that he heard the names of two other soldiers during the murder scene, Patrick and Bertrand, both of whom were bodyguards for Alieu Kosiah (12-28-0023, 0018). Following the execution, Alieu Kosiah and the ULIMO soldiers jumped up and down with their arms in the air and fired shots in celebration. They were gloating, jumping and shouting. Regarding the bodies, Paul said that when he returned to the scene, the bodies were gone; he could not say what happened to them (12-28-0022). Regarding the presence of an "other commander" mentioned in Paul's criminal complaint, he indicated that it was Pascal. However, he stated that Pascal was not at the gas station and that there may have been a misunderstanding when he told his story for the criminal complaint (12-28-0025).

7.2.2.4 When questioned about these facts, Alieu Kosiah disputed them, claiming that he arrived in Lofa after the capture of Foya, which occurred six months after the capture of Zorzor. According to him, he could not have been in Zorzor at the time the city was captured by the ULIMO. Furthermore, he stated that he had never met Paul before the present

proceedings (13-01-0637). Regarding the capture of Zorzor, the defendant stated that it was Pascal who captured the town in late 1993 or early 1994. After the capture, Vincent was sent to Zorzor as the Lofa (area commander). He then left to take the town of Voinjama. Two or three months later, he went to Monrovia, where Alieu Kosiah was, and asked Kosiah to follow him into the Lofa. The defendant thus allegedly traveled to Lofa between June and July 1994 (13-01-0022 f., 0117). Alieu Kosiah also later stated that he arrived in Voinjama in early 1994 with Vincent (13-01-0103). He further claimed to have accompanied Vincent when the latter went to Lofa, first mentioning that it was before the ULIMO split, and then stating that it was after the split (13-01-0033, 0365). At his first hearing before the Office of the Attorney General, Alieu Kosiah stated that he had spent all of the war years, until 1994, in the Grand Cape Mount region or in the Lofa region (13-01-0010).

7.2.2.5 During his hearing before the Office of the Attorney General, Olivier stated that he had traveled to Lofa with Alieu Kosiah between the end of 1992 and the beginning of 1993. They allegedly traveled first to Zorzor, then to Voinjama, then to Kolahun, and finally to Foya (12.16-0011, 0027).

7.2.2.6 O., former deputy chief of staff of the ULIMO, heard by rogatory commission with the United States, indicated that the first commander of Lofa County was Pascal (referred to as "Pascal" in the transcript). Then Vincent would have been sent to Lofa (18-03-01-173). Vincent would have arrived in Lofa when Voinjama had not yet been taken by the ULIMO. When he arrived in Lofa, he went first to Zorzor, where he replaced Pascal, and then from there to Voinjama to take the town (18-03-01-0120, 0345). The witness also testified that Alieu Kosiah did not go to Lofa when Pascal was commander. The defendant was in Bomi at that time. However, when Vincent went to Lofa, specifically Zorzor, Alieu Kosiah allegedly disappeared from Bomi and went to Lofa (18-03-01-0333). O. also stated, during his hearing, that Bertrand was a battlefield commander in Zorzor (18-03-01-0202).

During the debates

7.2.2.7 In court, Paul confirmed his denunciation. He stated that his brother was among the seven civilians killed and that he did not know who the other six victims were. He also stated that it was not possible for him to provide a date for the event, but that it had occurred during a heavy rainstorm (40,757,013). According to him, the soldiers asked the civilians, including Paul, to gather around the gas station. Among the soldiers there were Bertrand, Patrick, P. and Q. (40.757.014). Alieu Kosiah was also present.

He was the boss. He was in charge of the gathering because he gave orders, and his orders were carried out. He did not take orders from anyone (40,757,014). Paul said that he saw and heard Alieu Kosiah giving orders in English to his boys to execute seven civilians he had designated because he suspected them of being NPFL soldiers (40.757.014, 015). He is said to have stated the following words: "They are rebels. Execute them. Kill them" (40.757.016). The distance between the complainant and Alieu Kosiah was then about six meters (40.757.015). The latter did not specify how the civilians were to be executed. The soldiers "smashed their heads" with the help of hammers (40.757.016). Bertrand, Patrick, P. and Q. participated in the execution (40.757.016). Paul reported personally witnessing the executions (40.757.016). The soldiers then ordered the civilians who witnessed the scene to return to their homes and the bodies were left on the road (40.757.016). Paul confirmed that Pascal was not present during this scene (40.757.015). When asked about his relationship with his brother N., the complainant stated that he was living with him at the time he was killed. He was the oldest brother in the family (40.757.016). Paul's father had invested money in his oldest son's project so that he could go to school. Following his death, the siblings had no one to care for them (40,757,017).

7.2.2.8 Following an untimely intervention by the defendant during the hearing of Paul, during which the former expressed his anger in a loud voice, the complainant no longer wished to remain in his place, in the center of the courtroom, facing the court, but wanted to move back to his place next to his lawyer. He said that he was afraid because Alieu Kosiah expressed his anger in court by shouting in the same way that he did when giving orders during the war (40.757.038).

7.2.2.9 When questioned by the Court, Alieu Kosiah persisted in disputing the accusation made against him. He stated that he was not in Zorzor when it was captured. It was only in 1995, after the capture of Gbarnga, that he was assigned to this region, while the town of Zorzor had been taken by the ULIMO in January 1993. In March 1993, the defendant was reportedly in Todi (or Todee) and never went to Zorzor. He confirmed that in 1993 a soldier named Patrick was part of the ULIMO. According to him, however, he did not know him (40.731.044). As for Bertrand, he was one of the most important officers in the Foya region. The defendant stated that he met him once or twice during the war (40.731.045). Alieu Kosiah further testified that Vincent brought him to Lofa in May 1994 (40.731.062).

- 7.2.2.10 During his hearing before the Court as a person called to give information, Pierre stated that Alieu Kosiah arrived in Zorzor with Vincent after the capture of the town. They then went together to Voinjama and then to Foya to conquer these two cities (40.771.014, 016).

Material evidence

- 7.2.2.11 It appears from the Liberian press that the town of Zorzor was conquered by the ULIMO in February 1993 (10-01-0266). On March 8, 1993, Pascal announced at a press conference in Monrovia that on the weekend of March 6-7, Voinjama was retaken from the NPFL (10-01-0266, 0321).

7.2.3 Law and evaluation of evidence

- 7.2.3.1 According to Art. 3 para. 1 (1) (a) common to the GC, violence to life and person, in particular murder in all its forms, mutilation, cruel treatment, torture and torment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.

According to Art. 4 para. 2 (a) AP 11, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not, or are no longer, taking part in hostilities, whether or not they are deprived of their liberty.

- 7.2.3.2 In order to determine whether the crime of murder has been committed, it must be proved that an individual, by act or omission, caused the death of one or more persons hors de combat, civilians or medical or religious personnel not taking an active part in hostilities. The death must result from the conduct of the accused, such that a causal link between the conduct and the result is established (ICC, Katanga Case, Judgment of 7 March 2014, para. 767), with the intent to cause death or the knowledge that death would occur in the ordinary course of events (ICC, Katanga Case, Judgment of 30 September 2008, para. 423). In addition, there must be a causal link between the perpetrator's action and the victim's death (ICC, Bemba Gombo Case, Judgment of 15 June 2008, para. 132). The prosecution must establish a causal link between the murder and the death of the victim (ICC, Bemba Gombo Case, Judgment, 15 June 2008, para. 132). It is not necessary to find and/or identify the body; however, the prosecution must indicate, to the extent possible and among other elements, the place where the murder was allegedly committed, its approximate date, the means by which it was committed (with sufficient

precision), the circumstances surrounding the murder and the link between the perpetrator and the crime (ICC, Bemba Gombo Case, Judgment of 15 June 2008, par. 133).

7.2.3.3 Civilians may be defined as persons who are not part of the armed forces, State or non-State (ICC, Katanga Case, Judgment of 7 March 2014, paras. 784 ff).

7.2.3.4 According to art. 18 para. 1 of the former Swiss Military Criminal Law Code, if the execution of an order constitutes a punishable act, the chief or superior who gave the order is punishable as the author of the offense.

The objective constitutive elements of art. 18 of the former Swiss Military Criminal Law Code are the following: a leader or superior (1) must give a subordinate or a person inferior to him (2) a service order (3), the execution of which constitutes an offense (4) and which causes the subordinate or the inferior person to decide to act with the aim of committing the offense (5) (STEFAN FLACHSMANN/PATRICK FLURI/BERNHARD ISENRING/STEFAN WEHRENBURG, *Tables du droit pénal militaire*, 2^o ed, 2010, p.63).

The subjective constitutive elements that must be fulfilled in order to apply Art. 18 of the former Swiss Military Criminal Law Code are: the perpetrator must know that he/she is ordering his/her subordinate or inferior person to commit a concrete offense and that he/she is inducing a decision to act (1); the perpetrator must know the objective and subjective characteristics of the offense that he/she is causing his/her subordinate or inferior person to commit (2); the perpetrator must want the subordinate or the person below him to carry out the requested crime with all its characteristics (3) (STEFAN FLACHSMANN/PATRICK FLURI/BERNHARD ISENRING/STEFAN WEHRENBURG, *op. cit.* at 63).

7.2.3.5 In the present case, Paul gave elements of description of Alieu Kosiah that were often used in the proceedings to portray the defendant at the time of the war: slim (by which he presumably means slender), very dark skinned and with large eyes. The plaintiff also correctly identified the defendant on the two photographic plates that were submitted to him (although he hesitated between two images on the second plate). He was also very emotional when he was confronted with Alieu Kosiah for the first time, as well as at the debates, when Alieu Kosiah shouted his anger during his hearing, which frightened him. These elements have already convinced the Court that the complainant was in contact with the defendant during the war.

7.2.3.6 Moreover, Paul's statements in relation to the alleged facts were constant throughout the proceedings. He stated unequivocally, both before the Office of the Attorney General and before the Court, that he had seen and heard Alieu Kosiah give the order to the soldiers to execute the seven civilians, including his brother. The complainant was also consistent as to how the civilians were executed, that Alieu Kosiah did not give a specific order in this regard and that they were beaten with rifle butts and maces, resulting in their deaths. Paul also stated consistently that Alieu Kosiah was the chief (the soldiers called him "Chief Kosiah") and that his orders were carried out.

7.2.3.7 For his part, Alieu Kosiah has always contested the facts of which he is accused, arguing that he arrived in Lofa when the town of Foya had already been captured by the ULIMO. However, since the capture of Foya occurred nearly six months after the capture of Zorzor, he could not have been in Zorzor at the time of the capture of the latter town. However, Pierre, a former ULIMO soldier based in Lofa, contradicted the defendant's version in court. He said that Alieu Kosiah went with Vincent to Zorzor after the capture of the town and that they then went together to Voinjama and then to Foya to take them. O., deputy chief of staff of ULIMO, also made statements to this effect, saying that when Vincent went to Zorzor, Alieu Kosiah had disappeared to go to Lofa. The defendant himself confirmed that he went to the Lofa with Vincent. As for the date when Alieu Kosiah went to Zorzor, it is established that the city was captured in January 1993 and that Vincent then left to take the city of Voinjama, which fell on March 6 or 7, 1993. Alieu Kosiah's statements that he was in Todee during the conquest of Lofa are not credible. In fact, these statements are in contradiction with those he made at the beginning of the proceedings, when he did not yet know the charges against him. At that time, he admitted to having spent the war years, until 1994, between the Great Cape Mount and the Lofa region. Moreover, his presence in Todee would have been of no military use as the war raged in Lofa and there is no reason to believe that Vincent would have come to get him to join Lofa after all the towns had been captured. On the contrary, it must be admitted that Vincent took him as a reinforcement to go to Lofa and conquer Voinjama and then Foya. With regard to the statements of Alieu Kosiah's two bodyguards, Olivier and Bertrand, to the effect that the accused arrived in Lofa only after all the towns in the county had been captured (see 12-16-0010, 0011; 12-19-0015, 0018, 0031, 0045, 0058), the Court notes that they are not credible. Indeed, it was able to convince itself that the two witnesses, out of loyalty to Alieu Kosiah, had agreed to give this answer during their respective interrogations, thus allowing the defendant to give credence to his alibi, for the vast majority of the facts with which he is charged. This conviction

was born out of the fact that both witnesses each found it useful to spontaneously indicate this element to the Office of the Attorney General on several occasions, even though the question did not deal with this subject (see 12-16-0010; 0011; 12-19-0015, 0031, 0045, 0058). For Bertrand, this was almost an obsession. In the case of Olivier, the attempt to mislead the criminal authorities was obvious because he gave dates and a route that were inconsistent with the version he was supposed to support, namely that Alieu Kosiah arrived in Lofa after Foya's capture. In fact, the route that the witness reported to have taken in the Lofa and the dates that he gave coincide precisely with the various other testimonies and the material evidence in the file, which rendered the witness's approach of supporting the defense's version inoperative. In view of the above, the Court finds it established that the accused was in Zorzor at the time of the murder of the seven persons, which took place between February and March 1993.

7.2.3.8 Objectively, in view of the constant statements made by Paul, it must be assumed that Alieu Kosiah ordered the ULIMO soldiers present in Zorzor to execute the seven persons, including the complainant's brother, and that they carried out this order by killing them with rifle butts and maces. The fact that the persons killed were civilians must be accepted. Indeed, there is nothing in the description given by Paul to suggest that they were soldiers. They were chosen at random, with a deliberate desire to spread terror and allow the ULIMO to impose their authority in the village they had just conquered. The alleged membership of the victims to the NPFL was only a pretext for their execution. This pretext for committing the murders was, moreover, recounted on several occasions during the proceedings (cf. in particular *infra* recital 7.4). With regard to the superior status of Alieu Kosiah, there is no need to establish concretely what the defendant's hierarchical position was at the time of the events. It would be impossible to do so, since it is clear from the preliminary proceedings and the debates that the ULIMO was a rebel faction and not a state faction, that the ranks were not clearly defined and that the soldiers used unofficial ranks and functions. In order to hold the defendant responsible, it is sufficient to be able to establish that he was in a superior position to the soldiers to whom he gave the order to kill. In this case, Paul clearly stated that the soldiers called the defendant "Chief Kosiah" and that the orders he gave were carried out. These elements are sufficient, objectively, to hold Alieu Kosiah responsible on the basis of Article 18 of the former Swiss Military Criminal Law Code.

7.2.3.9 Subjectively, Alieu Kosiah acted intentionally. He knew that by giving the order to the soldiers to execute the seven civilians, they would carry it out. Moreover, the defendant could not have been unaware that the

victims were civilians and it was not lost on him that the order he gave occurred in the context of the armed conflict that constituted the first civil war in Liberia.

- 7.2.3.10 Alieu Kosiah must therefore be found guilty of the order given to kill seven civilians within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum 3 para. 1 letter a common to the GC and 4 para. 2 letter a AP II.

7.3 Murder of civilian B. in Babahun

7.3.1 Charge

According to section 1.3.3 of the indictment, Alieu Kosiah is charged with having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1995 and as a member of the armed faction ULIMO, killed civilian B. in Babahun, between March and May 1993.

7.3.2 Means of proof

During the investigation

- 7.3.2.1 It appears from Remy's criminal complaint of July 3, 2014, that when the ULIMO were around Kolahun in Lofa District, Remy was with his uncle in a village, located in the forest, which is about an hour and a half from Kolahun. Remy saw ULIMO fighters arrive with their commander, whom they all called "Alieu Kosiah". The latter ordered Remy's uncle to show him where the steel mill was, which was located 30 minutes away from the village, because they wanted to dismantle it and take it to Kolahun. During the trip, Alieu Kosiah ordered his men to tie up Remy's uncle and they took him away. Remy then heard two bangs and saw Alieu Kosiah return with a gun in his hand and put it back in its holster. Alieu Kosiah told Remy to leave and Remy never saw his uncle again (05-01-0013 f.).

- 7.3.2.2 At his hearing with the Office of the Attorney General, Remy described Alieu Kosiah as he remembered him from the war, i.e., as relatively tall, black (i.e., dark skinned) and with pop eyes (12-22-0006). On the first photographic plate submitted to him (which shows a wartime photograph of the defendant), Remy indicated a photograph other than that of Alieu Kosiah. He did, however, recognize the defendant in the second photographic plate (which shows a more recent photograph of the defendant) (12-22-0007). When Alieu Kosiah entered the room, Remy confirmed that this was the person he had reported (12-22-0008).

7.3.2.3 When asked about the events he reported, Remy stated that his story dates back to 1992 or 1993, during the dry season in Lofa, when ULIMO attacked his village of Babahun Town, near Kotohun (phon.), in Kolahun District (12-22-0008, 0010). One day, while returning to the village between eleven and noon, Remy heard Alieu Kosiah come into the village and ask for money from the various plantations (sugar cane, cocoa, etc.). The soldiers, who numbered approximately ten, came from the direction of Foya with a Toyota Landcruiser pickup (12-22-0010, 0011, 0012). Remy said he clearly heard the name "Chief Kosiah" because everyone was repeating it (12-22-0008, 0013). It was Alieu Kosiah who was leading the group (12-22-0012). The soldiers told everyone to get out, on the orders of Alieu Kosiah (12-22-0011, 0012). Alieu Kosiah said that the man who owned the sugar cane plantations, Remy's uncle B., should come (12-22-0013, 0014). Alieu Kosiah then asked B., who did have coffee, cocoa, and sugar cane plantations and who could also distill alcohol, for money. B. replied that he had no money (12-22-0009, 0011, 0013, 0014). Alieu Kosiah and his men then told him to go behind the village. When the soldiers took his uncle away on the orders of Alieu Kosiah, Remy was in the house and was able to watch the scene from the back door. From there, he could hear Alieu Kosiah and his soldiers asking B. questions. When they took him away, he followed them from a distance because he knew shortcuts (12-22-0009, 0011, 0014, 0015, 0016). His uncle was not tied up when he was taken away (12-22-0016). The soldiers left behind the village, on a road that leads to Foya. Alieu Kosiah and his soldiers went with B. behind a straw fence, surrounded by bush. Remy was on the other side looking through the bush (12-22-0016). During his interview, Remy initially stated that he heard a gunshot and saw Alieu Kosiah holster his gun (12-22-0016). Later, he stated that he saw the execution (12-22-0014, 0016). He stated that Alieu Kosiah shot his uncle in the torso while he was standing in front of his uncle, approximately 10 feet away (12-22-0016 f.). Following his uncle's execution, Remy went into the bush to join his aunt in Kolahun (12-22-0014).

7.3.2.4 When questioned about the facts of which he is accused, Alieu Kosiah contested them, stating that it was during the present proceedings that he first heard Babahun's name. It was also the first time he saw the plaintiff Remy. The defendant further testified that Remy's statements about his wartime travels were not credible. Indeed, the latter indicated that he was in Kolahun and that he had gone to Babahun on vacation. He then saw ULIMO arriving from the Foya road. He said that Babahun is between Foya and Kolahun, so if the ULIMO soldiers were coming from Foya, it would mean that Foya had already been conquered. But this

would be inaccurate, because Foya was captured later. Similarly, Alieu Kosiah argues that there is an inconsistency when Remy stated that he left Kolahun to go to Monrovia and met NPFLs in Voinjama and Zorzor on the way, which would not be possible given the PJF report that Zorzor and Voinjama were taken before Kolahun (13-01-0638, 12-22-0099ff).

- 7.3.2.5 Bernard, a former bodyguard of Alieu Kosiah, testified before the Office of the Attorney General that the defendant carried a pistol on his right side when they were at Lofa (12-19-0069). Olivier also testified that Alieu Kosiah had a gun (12-16-0018).

During the proceedings

- 7.3.2.6 During his court hearing, Remy confirmed his criminal denunciation against Alieu Kosiah for the murder of his uncle B. According to his explanation, the latter was a farmer; he owned a sugar cane press and grew cocoa and coffee (40.762.006). The witness could not date the day his uncle died, but said he was killed on the day of the ULIMO attack on Babahun in 1993 (40,762,004, 006). The killing reportedly occurred during the afternoon (40.762.007). Alieu Kosiah allegedly asked who owned the sugar cane press, coffee and cocoa. B. was in front of his house at the time. Remy stated that he was hiding in the bush behind the house. From there, he could hear everything that was going on (40.762.007). B. told Alieu Kosiah that he had no money. Alieu Kosiah said, "Let's go," and they went towards the end of the village. They tied B. up and took him away, because they had not gotten what they wanted. They walked for about three or four minutes. Remy followed them through the bush to the side. When they arrived at the crime scene, Alieu Kosiah shot B. with the gun he was carrying on his side (40.762.007, 010). The witness, who was hiding behind a tree at the time, testified that he saw the defendant shoot his uncle (40.762.007 f.). He heard a gunshot. Alieu Kosiah shot "in the side of the chest" of B. According to Remy, no one other than him witnessed this execution (40.762.008). After seeing his uncle killed, Remy took a bush road to Kolahun to join his aunt, unbeknownst to the defendant, who did not notice his presence (40.762.008 f.). He did not know what happened to the body of the deceased (40.762.010).
- 7.3.2.7 Alieu Kosiah, for his part, persisted in disputing the facts of which he is accused. He stated that he only learned of the existence of the village of Babahun after he was arrested in the present proceedings (40.731.045 f.). Between March and May 1993, he said he was in Todee (40.731.046). According to him, Remy's account does not fit the reality, as the ULIMO did not come from Guinea to attack. They could not have come from Foya

to attack the village of Babahun, because that would have meant that the ULIMO were already in control of Foya, which was not the case (40.731.046).

7.3.3 Law and evaluation of evidence

7.3.3.1 With regard to legal developments, reference is made to paragraphs 7.2.3.1 to 7.2.3.3 above.

7.3.3.2 In the present case, Rémy's description of Alieu Kosiah at the time of the war is consistent with many other statements made in the proceedings: the defendant was quite tall, very dark-skinned and had pop eyes. Remy also recognized Alieu Kosiah on one of the two photographic plates that were submitted to him. It is true that he was mistaken in his identification of the defendant on the first plate that was presented to him. However, as noted in recital 6.4 above, at the time these photographs were submitted to him, Remy had not seen the accused for almost 20 years. Moreover, he had only seen the latter on one occasion during the war. Therefore, he could not be expected to have a very clear memory of Alieu Kosiah's face. When confronted with the latter, Remy confirmed without the slightest hesitation that he was the author of his uncle's murder. The description made, the partial recognition on photograph and the confirmation of the recognition in person are enough to make it very credible that Remy was indeed confronted with Alieu Kosiah during the war.

7.3.3.3 With respect to the facts of the case, Rémy's statements to the Office of the Attorney General and the Court were consistent on many points: he stated that it was the defendant who had killed his uncle by shooting him in the chest with a pistol on the day of the capture of Babahun, in a remote corner at the back of the village. Certainly, as the defense has pointed out, there are some discrepancies in Remy's testimony as to the motives for the murder, as to whether B. was tied up to be taken away, and as to the number of shots fired by the defendant to kill him. In this respect, the Court notes that these are differences of detail, which are not such as to call into question the credibility of the witness' testimony. As for the motives for the murder, they are not apparent from the original complaint, but are not contradicted by it. That said, as we have seen (cf. supra recital 6.2), the content of the criminal information filed in the present proceedings must be taken into account with caution. Moreover, the question of whether or not the victim was tied up before being killed remains clearly independent of the question of whether or not she was killed. Whether or not the perpetrator used one or two bullets to kill the victim is a question that relates to one of the circumstances of the crime,

the memory of which may well have faded over time. Finally, the fact that the alleged perpetrator was shot twice rather than once does not allow the Court to assume that the informant was trying to mislead the justice system about the reality of the reported crime. In the end, the Court finds that the consistency of Remy's account of the essential points of his uncle's murder makes his testimony entirely credible.

- 7.3.3.4 The defense contests the facts with which it is charged, indicating that between March and May 1993, the period chosen by the Office of the Attorney General in its indictment, Alieu Kosiah was in Todee. In its indictment, the Office of the Attorney General justified the period indicated in the indictment, i.e. between March and May 1993, by the fact that the dry season in Liberia lasts until February and is followed by a transitional period that extends until May, the month of May generally corresponding to the beginning of the rainy season. Also, the Office of the Attorney General justified this period by referring to the advance of ULIMO into Lofa. Voinjama was captured by the ULIMO at the beginning of March 1993 and Foya, which is located a little farther along the main road than Voinjama, was captured at the end of June or beginning of July 1993 (see above recital C.16). The capture of Kolahun, a town near Babahun, is not mentioned in the newspapers. However, since it is located between Voinjama and Foya, it must have been captured by the ULIMO between March and June or July 1993. The reasoning of the Office of the Attorney General, which is based, on the one hand, on Rémy's statements and, on the other hand, on media sources, makes sense. The Court therefore endorses it and places the facts denounced by Rémy between March and July 1993.

It remains to be determined whether the defendant could have been in the vicinity of Babahun during this period. As already noted, the alibi of the accused, who claims to have been in Todee during the period of conquest of Lofa by the ULIMO, is not credible and the Court thus finds that Alieu Kosiah accompanied Vincent to Lofa in March 1993 and that he participated, at his side, in the capture of the towns of the county (except for Zorzor, which had already been taken by Pascal upon their arrival) (cf. supra recital 7.2.3.7 for the development) In view of the role of floating officer that the defendant assumed when he was in Lofa, his presence in Babahun between March and June or July 1993 is perfectly credible and can be accepted.

- 7.3.3.5 With regard to the defense's argument aimed at calling into question Remy's credibility, given that the geographic references he gave during his hearings did not correspond to the history of the war, this is not relevant. Indeed, it is not clear what would allow one to consider that it is

excluded that the ULIMO arrived at Babahun from the Foya road simply because the town had not yet been taken. It is also possible that the witness was mistaken on this point, which is not relevant to the facts of which Alieu Kosiah is accused. With regard to the list of NPFL checkpoints made by Remy to describe his trip from Kolahun to Monrovia, which according to the accused does not correspond to reality, the Court finds it difficult to understand what the defense could deduce from this, as this detail is not related to the facts of the case.

7.3.3.6 In view of the foregoing, it is held that, objectively, Alieu Kosiah shot civilian B. with a pistol, at least on one occasion, in the torso, which caused his death.

7.3.3.7 Subjectively, Alieu Kosiah acted on purpose. He knew and intended that by shooting B. in the torso at close range with a firearm, he would cause his death. Furthermore, there is no doubt that Alieu Kosiah knew the civilian status of the victim, since he was addressing a farmer.

Finally, the murder committed by the defendant occurred in the context of the armed conflict of the first civil war in Liberia, which Alieu Kosiah knew.

7.3.3.8 Alieu Kosiah will therefore be found guilty of the murder of civilian B. within the meaning of art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GC and 4 para. 2 letter a AP II.

7.4 Ordering the cruel treatment of seven civilians in Foya, killing six of them and stabbing civilian Raoul

7.4.1 Charge

According to section 1.3.4 of the indictment, Alieu Kosiah is accused of having, in the context of the aforementioned internal armed conflict, as a member of the armed faction ULIMO, ordered the cruel treatment of seven civilians, including Raoul, in Foya in July 1993. He is also accused of having subsequently ordered the murder of six of the seven civilians, including R. and S. (section 1.3.5 of the indictment) and of having stabbed the civilian Raoul, attempting to kill him (para.1.3.6 of the indictment).

7.4.2 Means of proof

During the instruction

7.4.2.1 The criminal complaint of Raoul of July 30, 2014, relates the following facts: in 1994, during the rainy season, the ULIMO group carried out an attack on Foya, where the complainant resided. Out of fear, Raoul took refuge with others in the forest around Foya. ULIMO members searching the area captured them and separated them into three groups: women, elderly people, and men. The ULIMO members, led by Alieu Kosiah, designated Raoul and six other captured men and accused them of belonging to the NPFL. They tied their arms behind their backs so that their elbows were touching. Raoul protested on behalf of the entire group, explaining that he had nothing to do with the NPFL and that they were all students. The ULIMO members grabbed Raoul by his feet, dragged him on his back to the Foya market, and then dragged him back into the forest to the group of detainees, causing him great pain and injuries all over his body. One of the ULIMO members present, under the command of Alieu Kosiah, interceded on his behalf. It was a man named Cassiopée, who knew Raoul's cousin. An altercation ensued between Cassiopée and Alieu Kosiah, during which the latter pulled out a knife and stabbed Raoul in the back, saying, "Once we kill the six men, I will take care of this one". Alieu Kosiah then issued orders to kill the other six people and throw their bodies into a well, which was done in front of Raoul by a dozen men. As a result of the altercation between Alieu Kosiah and Cassiopée, Raoul's life was spared. However, the latter was later forcibly recruited into the ULIMO ranks for several months and was stationed in Foya (05-02-002 ff).

7.4.2.2 During his interrogation by the Office of the Attorney General, Raoul described Alieu Kosiah at the time of the incident as being younger than him. He had pop eyes, "like someone who is mad at you". He was slim, with no fat. He was about the same height as him. He didn't have glasses. He had a round face and did not have a beard. The complainant did not remember his hair, because Alieu Kosiah was wearing a military cap. His skin was dark. He wore a glove on his right hand. Someone had told Raoul that Alieu Kosiah had been wounded on the front lines. Raoul could not describe the glove or its color. However, he said it was not a glove with fingers, only the palm of the hand was covered. On the occasions when the complainant saw Alieu Kosiah, the latter wore a military winter jacket, like a long coat, and military pants. Sometimes he wore camouflage pants, with two or three colors (brown-black camouflage) or "fiti" pants, which are plain green pants. He sometimes wore military boots, sometimes *brown clamers*, a kind of brown boots of the same height as military boots (calf height). Raoul could not say if Alieu Kosiah had a tattoo or a scar. He sometimes wore two grenades on his jacket and a weapon, a 45 pistol, on the side of his right leg (12-08-0010). On the first photographic plate submitted to him (which included a relatively recent photograph of Alieu Kosiah), Raoul indicated that it was not clear to him and pointed to the defendant and said that this person reminds him of something. On the second photographic plate (which included a wartime photograph of Alieu Kosiah), however, Raoul pointed to another person whom he thought was the defendant. Raoul pointed to someone other than Alieu Kosiah and said that he could not put the face into

context (12-08-0011). When confronted with the defendant, Raoul claimed to recognize him (12-08-0011).

7.4.2.3 In connection with his denunciation, Raoul reported the following: while he was with other civilians at a farm to look for food, the ULIMO entered Foya (12-08-0015). Raoul placed this event in 1993, during the rainy season, around May (12-08-0017). He stayed with the other civilians in the farmhouse for two weeks, afraid to go to the town of Foya because of gunfire there (12-08-0015, 0017). However, the ULIMO entered the farm through the bush and brought the civilians back to Foya. The civilians were in three columns: women, children, and men (12-08-0015). There were seven men, including Raoul and his two cousins, R. and S., who traveled together. Raoul first heard the name "CO Kosiah" when the soldiers brought the civilians from the bush and separated them into three groups (12-08-0018). The soldiers were singing a song in Mandingo called "Kele Kele". According to the complainant, when the civilians heard this song, it meant that the soldiers were coming to kill. In this song, the names of Alieu Kosiah, Vincent and other great commanders were mentioned (12-08-0018). The ULIMO soldiers, including one named Pégase and Alieu Kosiah, considered the seven men brought back to Foya as rebels. The soldiers tied the arms of the seven civilians tightly behind their backs using the "tabé" method (12-08-0015, 0026), which consisted of tying the person with a rope, both arms behind their back, above the touching elbows (12-08-0020, 0021). Only the six men and Raoul were tied using the "tabé" method, the others being older men (12-08-0026). Alieu Kosiah then gave the order to put them down (12-08-0015) and drag them to the ground (12-08-0021). The seven men walked to the market and once there, Pégase pulled Raoul by his legs across the ground to the marketplace and then dragged him back (12-08-0015, 0021). He was bleeding from his legs and had blood on his hands (12-08-0015). Raoul estimated the distance he was dragged to be approximately 60 meters to the front and 60 meters to the back (12-08-0021). His skin had rubbed on the ground, and he still had his arms tied behind his back. He was sitting on his buttocks when he was pulled. The flesh of his buttocks was exposed (12-08-0026). The other soldiers were present and watching the scene (12-08-0021). Raoul was the only civilian who was dragged away because he dared to speak up. The other civilians did not say anything because they were afraid (12-08-0021). When Raoul was dragged to the well at the marketplace, Alieu Kosiah was standing a little behind on the road (12-08-0021). Kosiah then gave the order to kill the seven civilians and put them in the well, which was located just before the market (12-08-0015). It was when he was dragged from the well in the direction of Alieu Kosiah on the way to the market that Raoul heard him give the order to kill them. Raoul was lying on the ground and Alieu Kosiah was behind him (12-08-0021). The civilians were tied up with tight ropes. One of the soldiers then took a large rock and smashed it on the head of one of the seven civilians (12-08-0015, 0021). At this point, Raoul thought they were all dead because no one was moving on the ground. Shocked, the complainant then closed his eyes. He could not see anything but heard people screaming and crying

and gunshots ringing out (12-08-0015, 0021). When he opened his eyes, he no longer saw the six civilians who were with him (12-08-0015). Pégase then came from the well to him and lifted him up. At this point, Raoul heard an S2 soldier, a contact soldier between the civilians and the soldiers, called Cassiopée, tell the other soldiers that they were not allowed to kill civilians, even if they were rebels (12-08-0015, 0021). Pégase and Alieu Kosiah then discussed the death of Raoul. They both pulled him, each from a different side. They both wanted to kill him. Cassiopée then tried to help him (12-08-0022, 0026). CO (commandant officer) Sextant, Foya's ground commander, who was in charge of the soldiers based at Foya, was also present. After being untied by Pégase, who cut the rope with which he was held, Raoul was stabbed in the back (12-08-0015, 0022). He specifically stated that "before he felt the pain in [his] back, [he] saw a knife in the hand of Alieu Kosiah. Pégase also had a knife in his hand at that time" (12-08-0022). This was the first time he saw Alieu Kosiah with a knife. It was a bayonet knife (*benknife*) that can be put on an AK rifle. After receiving the stab wound, Raoul heard CO Sextant and Cassiopée objecting to civilians like Raoul, even rebels, being killed (12-08-0022). The complainant stated that he did not know at the time whether Alieu Kosiah or Pégase did the stabbing (12-08-0016). He was then taken by Cassiopée to his office. He was bleeding heavily. He had to be treated for two months, which was done by his cousin, a nurse, at home (12-08-0015, 0022). A few days after this event, Raoul saw that the well had been closed by the civilians who lived nearby. According to him, the well had been closed because the soldiers had deposited the bodies of the six civilians killed there (12-08-0023). A few weeks later, Raoul learned from Cassiopée, who turned out to be his cousin's boyfriend and was visiting her, that he was very lucky because the other six civilians had been killed. At the time, Raoul did not know who had stabbed him in the back. It could have been Alieu Kosiah or Pégase. In a conversation with Cassiopée and his cousin, Raoul heard Cassiopée say that it was Alieu Kosiah who stabbed him (12-08-0016). Cassiopée thought it was Alieu Kosiah because Alieu Kosiah had told him during a discussion at headquarters that he wanted Raoul dead (12-08-0028). Following this event, on Cassiopée's advice and to protect himself, Raoul became a ULIMO soldier because "he had no other option" (12-08-0016, 0028). Raoul stated that he retained marks on the inside of his left forearm from the "tabby" treatment he received (12-08-0026). Regarding the stabbing he received, he reported that he still experiences pain in his back at times, as well as in his right arm, when he performs physical labor (12-08-0022).

- 7.4.2.4 With regard to the hierarchical position of Alieu Kosiah at the time of the facts, Raoul indicated that he did not know it. He heard that he was "H&H", which means headquarter and headquarter commander (12-08-0022). That being the case, he did not hear a person giving orders to the defendant (12-08-0023). Raoul also stated that he was the highest-ranking officer and that he did not have to go through CO Sextant to give an order to a soldier (12-08-0025).

- 7.4.2.5 Photographs of the complainant's left forearm and the scar on his back are on file with the Office of the Attorney General (12-08-0052 ff). The latter also contacted the Institute of Forensic Medicine of the University of Bern to obtain technical information about Raoul's scar. The Office of the Attorney General wanted to know whether a medical examination of a scar would allow conclusions to be drawn about the age of the scar (11-01-0001 f.). Dr. T. answered this question as follows: "A scar is the result of the healing of a skin wound. From the moment that the defect in the dermal tissue is consolidated by collagen fibers that replace the original tissue, we speak of a scar. At the beginning, this connective tissue is still capillarized, which gives it a pink appearance that disappears after a few months. After this phase, it is no longer possible to estimate the age of a scar" (11-01-0005).
- 7.4.2.6 Questioned several times during the investigation about the facts denounced by Raoul, Alieu Kosiah always disputed them. He stated that he did not know Raoul and was not in Foya in May 1993 when the city was taken (13-01-0639, 0182). He also denied that he ordered his soldiers to kill prisoners in Foya and throw them into a well. He further stated that he had never witnessed a scene in which a soldier smashed a prisoner's head with a rock, nor had he heard that the bodies of some civilians had been thrown into a well by combatants (13-01-0183). He also denied carrying a knife and said he had never seen a soldier with a knife (13-01-0262). The defendant indicated that he had never stabbed anyone in his life. Since he had firearms, he did not see why he would have used a knife (13-01-0183). Alieu Kosiah also disputed that he was "H&H." He could not have been a "General" in Foya and then a battalion commander with the rank of colonel in Zorzor, because technically that would have made no sense according to him (13-01-0187). Regarding Pégase, Alieu Kosiah indicated that he knew him very well. He would have been a middle rank in the ULIMO, below the rank of commander. Alieu Kosiah said he met him in the towns of Voinjama and Foya. The defendant believes that Pégase was mostly in Foya during the war, but he does not know what exactly he did (13-01-0182). Regarding Cassiopée, Alieu Kosiah indicated that he probably heard of him, but that he did not come in contact with this person in the ULIMO groups he frequented (13-01-0179).
- 7.4.2.7 During his interrogation by the Office of the Attorney General, Olivier stated that Alieu Kosiah carried a knife. The knife was in a holster attached to his belt (12-16- 0023).

French proceedings against Pierre for war crimes and/or crimes against humanity

- 7.4.2.8 During his interrogation by the French authorities, Raoul made the following statements: Pégase tied his hands on the orders of Alieu Kosiah. All the men they had brought from the bush were tied up (0555/3). The other soldiers said to Pégase, referring to Raoul: "You have to tie him up because the guy is strong, he can run away" (0555/3). When

Raoul was dragged by his legs across the ground, he was on the same level as the S2 office (0555/3). After killing the other six civilians, Pégase said that Raoul also had to be killed, because he could testify to what had happened (0555/4). Cassiopée, who was the lover of the complainant's cousin, later told the complainant that it was because of him that he was not killed (0555/4). It was Pégase who cut the rope that tied the hands of Raoul's hands with a knife. Pégase then left, as he was offended. After the rope was cut, Raoul was stabbed. He said that at the time he did not feel any pain, as it came on gradually. It was when fluid came out of his wound that he realized he was injured. When he received the blow, Raoul did not know who had hit him. Later, when he went to Bomi to join ULIMO, Cassiopée told him that Pégase had stabbed him. The French investigating judge, having drawn Raoul's attention to the fact that he had always maintained that Cassiopée had told him that it was Alieu Kosiah who stabbed him, replied that he did believe that it was Alieu Kosiah who stabbed him. However, when he arrived in Bomi, Tubmanburg, Cassiopée reportedly told him that Pégase was responsible, not Alieu Kosiah. While Raoul was still tied up, Alieu Kosiah and Pégase were arguing behind him. The complainant thought it was Alieu Kosiah who gave him the blow because he was upset, while Pégase was calmer (0555/4). A girl in Foya by the name of AA. also told him: "You thought it was Kosiah who stabbed you, but it was Pégase" (0555/5).

- 7.4.2.9 Questioned by the French authorities as a witness, AA stated that one day in Foya, when the town had been taken by the ULIMO, Alieu Kosiah and Pégase went to the surrounding area and brought back many men. Eight people showed up behind the market in Foya. They were tied up and dragged to the ground (0556/2). Pégase gave the order to kill them (0556/2 and 3). AA heard "the bodyguards" say that Chief Pierre gave the order to kill (0556/3). She said she saw Pégase kill these men, who were then thrown into a well that was next door (0556/2 and 3). The eighth person was fat, buff. He was pleading to avoid being killed. They then asked him, "You are asking us not to kill you, do you think you can get into our ranks?". The person answered yes. This is how the man joined the ranks of the ULIMO (D556/2). In a second step, AA stated that she was not present when the young man agreed to join the ULIMO forces. It was one day, when he arrived in the neighborhood with a gun, that he explained that he was one of the eight people but that his physical condition was good, which is why he was spared and joined ULIMO (D556/3). AA also stated that at the time of the killing she was in her house, which was located about ten meters from the scene, at the end of the Foya market (D556/2). Regarding the way in which the people were tied, AA said that they used the "tabé" method, tying their arms "behind" them, with ropes or strings that go into the skin. After learning that these men had been killed, she went to the well and saw the corpses on top of each other (D556/3). When asked if she had witnessed the executions, she replied, "I saw them where these people were killed near the well. That is how they said that they are killing people but God was with the eighth one because he was spared" (sic) (D556/4). AA then said that she saw the seven people who were killed and described how they were

killed, by being shot right next to the well. She also said she saw the eighth man being freed (D556/4). Alieu Kosiah and Pierre did not kill, but they gave the order to kill, and they asked that the one who was spared be taken away (D556/4). AA stated that Pierre did not drag any of the men to the ground. He was not doing anything. He was only giving orders (D556/5). Regarding the person who stabbed Raoul, AA disputed that she told Raoul that Pierre was the one who stabbed him (D556/5).

7.4.2.10 At a confrontation hearing between Raoul and AA, the latter stated that she recognized the former as the person who was rescued (D570/2). She added that she had seen him undergo the "tabé" method and be dragged by a rope (D570/2). Raoul confirmed that AA told him that Pégase was the one who stabbed him. She reportedly told him that while he thought it was Alieu Kosiah who stabbed him, it was actually Pégase (D570/2). AA confirmed this (D570/3). She noted that the soldiers were all masked and wore wigs on their heads, which Raoul confirmed this (D570/3). From her house, which was a short distance away, she could see the scene clearly (D570/3). The French investigating judge then noted that AA had stated, during his first interrogation, that Pierre only gave orders. The latter replied that everything that happened came from Pierre. He gave the orders and the others carried them out (D570/3).

7.4.2.11 When questioned about these facts by the French authorities, Pierre disputed them, stating that he was innocent. He said that Alieu Kosiah was above him, but that he was not under his orders. They did not have the same directives; they did not do "the same things" (0471/10). Pierre said that he was facing the same political charges as Alieu Kosiah (D471/10).

During the debates

7.4.2.12 In court, Raoul confirmed his criminal indictment against Alieu Kosiah for ordering the "tabé" treatment against seven civilians, including himself, and for ordering the killing of six civilians (40.755.010, 015). However, with respect to the stabbing, he indicated that he did not know who stabbed him (40.555.016). Raoul testified that the events took place in 1993, but he could not give a more precise time frame (40.755.010 f.). When the fighting began in Foya between the NPFL and the ULIMO, civilians fled into the bush. After the ULIMO succeeded in taking control of Foya, they sent patrols into the vicinity of the town to bring back civilians to work for them. Raoul was captured in this context while on his aunt's farm near Foya (40,755,011). He was taken, along with many other civilians, to Foya. When they arrived in front of the S2 office, Raoul and six other civilians were then taken to the marketplace and it was there that they were subjected to the "tabé" treatment. Their hands were tied behind their backs with ropes and their elbows were also tied behind them, with the effect of making their chests stick out. The complainant alleged that this treatment was inflicted on him by CO Kosiah and other men, including CO Pégase (i.e., Pierre), because he and six other civilians were suspected of being rebels (755.011, 012, 014, 015).

Among the other civilians who were attached, the grievant knew two of them, R. and S., his cousins (40.755.014). The soldier Cassiopée was in the S2 office and wrote down the names of the civilians who were brought in from the bush (40.755.012). It was CO Kosiah who gave the order for them to be "tabés" and it was the soldiers who tied them up. For Raoul, CO Kosiah was the most important because he had his men with him and when he gave orders, they carried them out. After being tied up, Raoul was dragged along the ground by his feet by a soldier because he kept saying he was not a rebel (40.755.013, 014). The order for him to be dragged was given by CO Kosiah. Raoul was still tied up when he was dragged. He ended up bleeding (40.755.015). As for the other six civilians, Alieu Kosiah gave the order that they be killed because he suspected them of being rebels. Raoul then saw a soldier "smash" the head of one of them with a large stone. He then closed his eyes and heard gunshots. He thought he was going to be next (40,755,015 s.). When the shots rang out, Cassiopée and Sextant arrived. Pégase and Alieu Kosiah then asked why they should spare Raoul when they had already killed the other six. At that point, the complainant received a stab wound but did not see from whom it came (40.755.016). When he opened his eyes, he saw the pools of blood resulting from the execution of the six civilians. Their bodies had been thrown into the well in the market square through a maintenance opening. Raoul did not see the bodies when they were thrown into the well, but he knew they were there because the next day and following days swarms of flies swirled around due to the decomposition of the bodies and the well had to be closed (40.755.016). Regarding the stabbing he received, the complainant said he later learned who the perpetrator was. One day, while he was cleaning the office of the S2, a task he had to perform because he was suspected of being a rebel, Cassiopée, the S2, explained to him that it was Alieu Kosiah who had stabbed him. When asked if there were any other witnesses to the stabbing, Raoul said that a woman named AA witnessed the stabbing and that she gave a statement to the RRR. He added that he did not know what she had told the French authorities (40.755.017). When confronted with the fact that he had stated before the French authorities that the stabbing had been inflicted on him by Pégase, the complainant replied that he was a night security guard at the time and that he had been questioned in the morning by the French authorities while he was still half asleep. The communication was very bad and he would not have understood anything that was said to him because of translation problems. He said that he was shocked by the statements that were given to him, as transcribed in the French proceedings. He stated that he was not able to reread the statements that were put on the record and that the correct version of the facts was the one he had reported to the Swiss authorities (40.755.017). Raoul stated that he did not know if what Cassiopée had told him was the truth or not. Regarding the weapon used, he stated that it was a bayonet (40.755.017). The wound required nearly ten stitches (40.755.018). Alieu Kosiah, Pégase and the other soldiers left him there as he bled to death. The complainant's cousin treated him. The latter said that he had suffered from the after-effects of the stabbing, as he has not been able to do any physical work since then.

In addition, due to the "tabé" treatment, he has difficulties with his left arm and his right leg. The complainant stated that he has no money for adequate treatment (40.755.013, 018).

7.4.2.13 When questioned by the Court on these facts, Alieu Kosiah again disputed them, claiming that they were a fabrication by Raoul (40.731.0047, 0049). He indicated that he was probably between Todee and Bomi in July 1993. According to him, the ULIMO would have taken Todee in January or February 1993 and would have stayed there for at least four to five months. He then went to Bomi and stayed there until the end of 1993 or the beginning of 1994 (40.731.0047). As for Pierre, alias Pégase, he would have been a soldier, based in Foya, who was inferior to him (40.731.048). Alieu Kosiah confirmed that a soldier named Cassiopée was indeed part of the ULIMO but said he did not know him. He heard that he was S2. Cassiopée must have been lower than him in the hierarchy, otherwise he would have known him better. Alieu Kosiah also confirmed that he knew the song "Kele Kele", which was sung when the soldiers went to the front line. With regard to the stabbing that he is accused of, the defendant indicated that the Court had proof, with the documents from the French proceedings in the file, that it was a conspiracy (40.73.0049).

7.4.2.14 When heard by the Court as a witness, Jean, alias Cassiopée, confirmed that he had been appointed S2 in Foya in 1993, within the ULIMO faction (40.769.004). At the time he was appointed, he said there was a good atmosphere between ULIMO soldiers and civilians and everything was under control (40.769.004). Foya was taken in 1993. When the ULIMO entered the town, under the command of Sextant, there was no fighting (40,769,004ff). As S2, he received complaints from civilians and notified the area commander, who took action (40.769.005). Jean stated that he knew of the "tabé" treatment, which consisted of tying a person up, but stated that he had never seen anyone subjected to this treatment. He also said he knew Alieu Kosiah during the civil war. He saw him in Foya after the capture of the city in 1994 or 1995. According to him, the defendant went to Foya from time to time, but he was not assigned there (40.769.006). He was on the staff of Voinjama under Vincent. During the war, he would have been assigned to Voinjama and Zorzor only. Jean also claimed to know Pierre, aka Pégase, who was a battlefield commander at Foya and who was below the rank of Alieu Kosiah (40.769.007). Confronted with Raoul, Jean said he did not know him. He also stated that he did not know Raoul's cousin, whose name is BB. according to him. His two girlfriends during the war were named CC. and DD. according to him. The witness said he never witnessed any violence inflicted on civilians by Alieu Kosiah or ordered by him. Nor would he have heard of them (40.769.008). He confirmed that he was in Foya in 1993, but never heard of the mistreatment of seven civilians, including Raoul, whom he does not know. He also had no knowledge of the killing of some of them. He did, however, say that he saw many cases come through his office and did not know all of the people on whose behalf he intervened. Jean also denied any knowledge of a stabbing of Raoul. He

claimed that he did not remember telling Raoul who had stabbed him (40.769.010). Certainly, some soldiers may have engaged in misconduct that involved his intervention, but to his knowledge, it was not Alieu Kosiah (40.769.009). The witness repeated several times that it could not have been Alieu Kosiah (40.769.010). He stated that he was sure that Alieu Kosiah was not there in 1993, when civilians were allegedly being abused by some soldiers (40.769.010).

7.4.2.15 When a photograph of Jean's redacted ID was submitted to Raoul during the proceedings, he immediately identified him correctly (40.755.055). Furthermore, when confronted with the witness, he confirmed that he recognized him (40.769.008).

7.4.2.16 Alfred, alias Persée, a former ULIMO soldier based in Foya during the war, was also heard during the proceedings. He stated that until the disarmament, everything went well in Foya, which was a commercial town (40,767,005 s.). He himself participated in the capture of Foya, under the command of Maurice, alias Sextant (40,767,006 f.). The soldiers would then have taken good care of the civilians (40.767.007). Alfred stated that he captured Zorzor, Voinjama, Kolahun and then Foya in 1993. At that time, Alieu Kosiah would have been in Bomi. He would have joined them in 1994, as a floating officer. He was not part of the unit that went to take Lofa. He remained as a military commander in Bomi, the town he took. When he arrived at Foya, Alieu Kosiah was not Headquarter & Headquarter commander (H&H) (40.767.009). He was under the command of Maurice, alias Sextant (40.767.010). When questioned about the facts denounced by Raoul, the witness said he had no knowledge of them and repeated that Alieu Kosiah was not in Foya in 1993 (40.767.011). Regarding Pégase, he remembered him as being very young during the war, as a child soldier (40.767.011).

7.4.3 Law and Evaluation of Evidence

Order to inflict ill-treatment

7.4.3.1 According to art. 3, para. 1, subpara. 1 (a) of the GC, violence to life and limb, in particular murder of all kinds, mutilation, cruel treatment, torture and torment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not directly participating in hostilities.

According to Art. 4 para. 2 letter a AP II, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not or are no longer taking part in hostilities, whether or not they are deprived of their liberty.

7.4.3.2 The Geneva Conventions do not contain any definition or explanation of the offenses of torture and cruel treatment. The ICTY defines the latter

as an intentional act or omission, i.e. one that is objectively deliberate and not accidental, that causes great physical or mental suffering or pain, or that constitutes a serious violation of human dignity (ICTY, Delalic et al. case, Judgment of 16 November 1998, para. 552).

7.4.3.3 With regard to torture, the ICTY noted that international law, both conventional and customary, prohibits torture in times of peace as well as armed conflict. This offense is characterized by the following elements: 1) it consists of the infliction, by an act or omission, of severe pain or suffering, whether physical or mental; 2) the act or omission is deliberate; 3) the act must serve another purpose, i.e. the pain must be inflicted in order to achieve a specific aim. According to the ICTY, the following purposes are part of customary international law; to obtain information or a confession, to punish, intimidate or coerce the victim or a third party, to discriminate against the victim or a third party for any reason. It is sufficient that the defended purpose was one of the motives for the act, but it is not necessary that it was the only or the main purpose. Finally, the ICTY considers that under international humanitarian law, the presence of a state agent or any other person in authority is not required for torture to be constituted under international humanitarian law. The characteristic features of the crime of torture are to be found in the nature of the act committed, and not in the status of the perpetrator (ICTY, Kunarac Case, Judgment of 22 February 2011, paras. 465 ff).

The ICC defines the crime of torture as a crime against humanity or a war crime committed by act or omission; regardless of the category in which it is classified, the crime of torture always has the characteristic that "The perpetrator inflicts severe pain or suffering, physical or mental, to one or more persons". The severity implies a significant degree of pain and suffering and can result from a single act or from a multiplicity of acts considered as a whole. It is not necessary to prove that the pain or suffering is related to a physical injury, the removal of a bodily organ or death. The consequences of torture need not be visible, and the injury do not need to be permanent. In the case of torture as a war crime, the detention or control element is not required. The war crime can thus also be committed against persons who do not take an active part in the hostilities, including members of armed forces who have abandoned their weapons and have been put out of action. From a subjective point of view, the crime against humanity also requires that the perpetrator inflicted pain or suffering for a specific purpose, such as to obtain information or a confession, to punish, intimidate or coerce the victim or for any other reason based on discrimination of any kind. This specific purpose must be part of the reason for the perpetrator's conduct, but it need not be the main or only purpose. The perpetrator must also be aware of the factual circumstances that establish the status of the victim (ICC, Ongwen Case, Judgment of February 4, 2021, par. 2700 ff).

In connection with the introduction of Art. 264a para. 1 let. f and Art. 264c para. 1 let. c of the Swiss Criminal Code, which punish torture as a crime against humanity, respectively as a war crime, the Federal Council,

inspired by the position of the ICC, has defined torture as "the intentional infliction of severe physical or mental pain or suffering on a person in one's custody or control". According to this conception, it is not necessary that the torture be carried out for a specific purpose, what matters is not the objective, but the intensity of the pain or suffering caused (Message on the implementation of the Rome Statute, FF 2008 3521).

7.4.3.4 With regard to the legal developments in connection with art. 18 of the former Swiss Military Criminal Law Code concerning the order given by the superior, they appear in recital 7.2.3.4 above.

7.4.3.5 In the present case, Raoul gave, during his hearing by the Office of the Attorney General, elements of description of the accused that were often cited by other participants in the proceedings, namely his pop eyes, his build without adiposity, his dark skin, the wearing of a cap, as well as the glove he wore on one hand. He pointed to the photograph of Alieu Kosiah on one of the photographic plates submitted to him, saying that the face reminded him of someone. When he was confronted with the latter, he also confirmed that it was the author of the facts he had denounced. These elements already make it possible to consider the fact that the complainant was in contact with the defendant during the war to be credible.

7.4.3.6 With regard to the ill-treatment that he and six other civilians suffered, the complainant was consistent in his accounts before the Office of the Attorney General and the Court on many points: the place where he was when he was questioned, the circumstances in which he was questioned (the soldiers went to look for the civilians who were hiding in the bush to bring them back to town), the ill-treatment suffered, i.e. the "tabé" treatment, the reason why the seven civilians were subjected to the "tabé" treatment, namely that they were suspected of being rebels, the fact that he was the only one to be dragged to the ground because he had tried to defend himself by saying that he was not a rebel, as well as the names of some of the soldiers present. During the debates and upon questioning by the court, Raoul said that it was Alieu Kosiah who ordered that the civilians be tied up and that he himself be dragged to the ground. His statement during the trial only implied that Alieu Kosiah was the one who ordered it. The Court considers Raoul's account to be credible. Indeed, in his explanations, he clearly distinguishes between what he saw and heard and what he did not see or what was reported to him (in particular in regards to the execution of the civilians and the stabbing he received). In this case, the complainant stated unequivocally that it was Alieu Kosiah who issued the order to tie him up and drag him to the ground. The defendant did not take orders from anyone, and his orders were carried out. The motive for the attack on the seven civilians also echoes other events related in the proceedings (cf. supra, par. 7.2: the fact of designating civilians at the time of the capture of a city in order to mistreat or execute them by accusing them of being part of the NPFL rebel faction, the real goal being to spread terror in order to establish the authority of the ULIMO). Although he could not be more precise, the year

1993 that Raoul indicated is quite plausible in view of the account he gave, Foya having been taken in June or July of that year. It should also be noted that these statements are corroborated by photographs on file of his left forearm which attest to the injuries he sustained. Finally, the fact that Raoul immediately recognized Jean on the latter's redacted identification document (which had never been submitted to any party to the proceedings until then), adds further credence to his account. On the basis of the foregoing, the explanations given by Raoul's explanations were convincing to the Court as to their credibility.

- 7.4.3.7 The few contradictions that could be found in Raoul's words are not such as to call into question this conviction. It is true that the complainant stated in the French proceedings that it was Pierre, alias Pégase, who tied him up, whereas according to his statements in Switzerland, it was the soldiers who tied him up and Pierre, alias Pégase, who dragged him. These discrepancies can easily be explained by the age of the memories and are not relevant for judging the reality of these mistreatments.
- 7.4.3.8 As for the witness AA, heard by the French authorities, her account must be assessed with great caution. Indeed, she does not seem to distinguish between what she saw and what she was told. She also went back on her version of the facts during the confrontation with Raoul. The Court therefore considers that her statements to the French authorities are not sufficiently reliable to be taken into account in establishing the facts.
- 7.4.3.9 In his statement, the defendant contests having been in Foya at the time the town was taken by the ULIMO, claiming that he was between Todee and Bomi at the time. This argument is not accepted by the Court, as already noted in paragraphs 7.2.3.7 and 7.3.3.5 above. The Court considers that Alieu Kosiah accompanied Vincent to Lofa in March 1993 to support the latter in the capture of the towns in the county (with the exception of Zorzor, which had been captured before their arrival). The statements of witnesses Jean and Alfred do not call into question his assessment. Indeed, the former was imprecise in his answers and repeatedly asked the president of the court to repeat the questions, some of which were extremely simple, that were put to him. On the other hand, with regard to the elements of the answer that concerned Alieu Kosiah, his involvement in the atrocities of the war and his presence in Lofa, Jean answered very quickly and without the slightest hesitation. He also located Alieu Kosiah at the time of the capture of Foya in 1993 between Zorzor and Voinjama, while the defendant insisted that he was between Bomi and Todee at that time. The defendant and the witness therefore do not agree in their versions. The questioning of Alfred was not more convincing, as he too seemed to have learned his lesson and recited it in court. In both cases, the Court could see that both witnesses, although they knew Alieu Kosiah rather vaguely, were able to assert, without the slightest doubt, that the defendant could not have been in Foya at the time of the capture of the city or shortly afterwards. As for their position regarding the facts denounced by Raoul, it is not credible either: they stated that Foya was peaceful during the war, whereas it is established

that it was a city that was the scene of countless violations of the laws of war against civilians (see 14-01-0187). The Court therefore rejected the defense alibi and found that Alieu Kosiah was indeed in Foya in July 1993, a presence that was corroborated not only by the statements of Pierre, alias Pégase, but also by the testimony of another complainant in the proceedings, namely Georges (see below, recital 7.7).

7.4.3.10 As regards the superior status of the defendant who gave the order, this can be deduced from the circumstances: the fact that Alieu Kosiah gave an order and that it was carried out demonstrates his hierarchical superiority. The question of what rank Alieu Kosiah actually held is not relevant for the application of art. 18 of the former Swiss Military Criminal Law Code, especially since the military hierarchy of the ULIMO remained rather approximate.

7.4.3.11 It is thus considered to be established that Alieu Kosiah ordered his soldiers to tie up seven people and to drag one of them, namely Raoul, across the ground, over a distance of several dozen meters, and that it was this order that determined the soldiers to act. The civilian status of the said persons is also established, insofar as there is nothing in the file to suggest that these persons could have been armed. With regard to the legal characterization of the treatment of Raoul and the six other civilians, one might ask whether it could fall within the definition of torture used by the ICTY and the ICC, i.e. the deliberate infliction, by an act or omission, of severe pain or suffering, physical or mental, for the purpose of intimidation. However, as the indictment does not describe the specific motive that the perpetrator must have pursued in order to carry out the offense of torture, this question may be left open. In any case, tying a human being in a "tabé", i.e. tying his elbows behind his back and his hands in front (for an illustration of this treatment, see video under exhibits 40.551.428 to 430) and dragging him across the ground, are acts that are likely to cause great physical pain and therefore constitute cruel treatment.

Subjectively, Alieu Kosiah acted purposely. He knew that the order given, which consisted of the commission of an offense, i.e. cruel treatment, would be carried out by the soldiers. He also knew the civilian status of those who were mistreated, and the accusation that they belonged to an enemy faction was only a pretext to enforce terror and establish his authority.

The facts were part of the internal armed conflict that took place in Liberia during the first civil war, which the defendant knew.

7.4.3.12 In conclusion, Alieu Kosiah must be condemned for having ordered the cruel treatment of seven civilians within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GC and 4 para. 2 letter a AP 11.

Order to kill the six civilians

- 7.4.3.13 For the legal considerations on the killing (art. 3 para. 1 let. a common to the GC and 4 para. 2 let. a AP II) and the order of the superior (art. 18 of the former Swiss Military Criminal Law Code), see paragraphs 7.2.3.1 to 7.2.3.4 above.
- 7.4.3.14 Regarding the order to kill the six civilians, Raoul was once again consistent in his explanations on many points. He thus indicated, both before the Office of the Attorney General and in court, that he had heard the defendant give the order to kill the seven civilians. He described the scene in the same detail during his hearings, in particular as to the way in which the first civilian was executed and the fact that he had then closed his eyes and heard gunshots. Raoul distinguished between what he saw and what he did not see. For example, he reiterated in court that he could not observe the killing of the other six civilians, but only heard gunshots. He also admitted that he did not see the corpses, but only noticed blood stains on the ground that testified to the murders that were committed. He also admitted that he did not see the bodies in the well. This distinction made by the complainant between what he perceived visually and what he heard or inferred, as well as the consistency over time of his statements, give credence to his account, which the Court considers very reliable.
- 7.4.3.15 With regard to AA's statements, reference is made to recital 7.4.3.8 above. The Court cannot rely on her statements to establish the facts, even if it can be acknowledged that she was at least aware of the facts reported by Raoul.
- 7.4.3.16 With regard to the statements of the witnesses Jean and Alfred in relation to the alleged facts, reference is made to recital 7.4.3.9 above.
- 7.4.3.17 The defense considers that it is not logical that the six civilians were killed and the complainant was spared when he was the only one to protest against the ill-treatment inflicted. In this case, the Court was able to see that the acts committed by the armed factions against the civilians did not follow any logic and were, on the contrary, largely arbitrary and random, so that the argument advanced is not such as to shake the Court's conviction.
- 7.4.3.18 This being the case, the Court considers it established that Alieu Kosiah ordered the soldiers to kill the six civilians and that it was because of this order that they did so. It is true that Raoul was an eyewitness to only one execution. However, the scene he described leaves no room for doubt that the murders occurred. Indeed, when he reopened his eyes, after having closed them in the face of horror, he saw the pools of blood that attested to the killing of the six civilians.
- 7.4.3.19 Regarding the superiority of Alieu Kosiah, we refer to the above-mentioned 7.4.3.10 above.

7.4.3.20 Subjectively, Alieu Kosiah acted deliberately. He knew that by ordering the soldiers to kill the six civilians, the order would be carried out. It can also be assumed that he knew that the victims were civilians, insofar as there were no factual circumstances that would allow one to deduce that they belonged to the NPFL faction, nor to any other faction, this argument having served as a pretext to justify these gratuitous executions.

Finally, these facts were part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.4.3.21 In conclusion, Alieu Kosiah will be found guilty of having ordered the murder of six civilians within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GC and 4 para. 2 letter a AP II.

Stabbing

7.4.3.22 According to art. 3 para. 1 letter a of Protocol 11, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who do not take a direct part in hostilities.

In accordance with Article 4 para. 2(a) of Protocol 11, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not, or are no longer, taking part in the hostilities, whether or not they are deprived of their liberty.

7.4.3.23 The penalty may be reduced (art. 46 of the former Swiss Military Criminal Law Code) in the case of a person who has pursued his or her culpable activity to the end, but without achieving the result necessary for the crime or offense to be consummated (art. 19a para. 1 of the former Swiss Military Criminal Law Code).

7.4.3.24 According to art. 23 of the former Swiss Military Criminal Law Code, the sentence may be mitigated (art. 46 of the former Swiss Military Criminal Law Code) for the person who intentionally assists in the commission of a crime or offense.

According to case law, an accomplice is a secondary participant who assists in the commission of a crime or misdemeanor (art. 25 Criminal Code). Complicity requires that the participant makes a causal contribution to the principal perpetrator in such a way that the events would not have taken place in the same way without this assistance. It is not necessary that this assistance be a prerequisite for the commission of the crime. It is sufficient that it increases the chances of success of the

main act (ATF 132 IV 49, § 1.1). The contribution of the accomplice can be achieved by material assistance and support (physical complicity) (ATF 121 IV 109, para. 3). Complicity can also be of a psychological nature, in the form of intellectual or moral assistance (MARC FORSTER, Basler Kommentar Criminal Code 1 [hereinafter: BSK-Criminal Code 1], 4th ed., 2018, no. 23 ff. on Art. 25 Criminal Code and the references cited). However, mere approval of the act committed by a third party does not constitute mental complicity (ATF 113 IV 84, para. 4). A person who is merely present at the scene of the planned crime, thereby showing approval to the other participants and reinforcing their willingness to commit the act, must be qualified as an accomplice (Federal Court decision 6P.40/2005 of September 1, 2005, section 2.2).

- 7.4.3.25 As opposed to an accomplice, who intentionally assists the perpetrator in the commission of a crime or misdemeanor through accessory participation, a co-perpetrator is one who intentionally and decisively collaborates with other persons in the decision to commit an offense, its organization or its execution, to the point of appearing to be one of the principal participants. In the circumstances of the specific case, the co-perpetrator's contribution must appear essential to the execution of the offense. It is not sufficient to have the will to carry out the act, but it is not necessary that the co-perpetrator actually participated in the execution of the act or was able to influence it. Coactivity presupposes a joint decision, which does not have to be expressed, but can also be the result of conclusive acts, with the possible fraud as to the result being sufficient. It is not necessary for the co-author to participate in the design of the project; he can join in later. Nor is it necessary that the act be premeditated; the co-perpetrator may join in during the execution of the act. What is decisive is that the co-perpetrator was involved in the decision that gave rise to the offense or in its implementation, under conditions or to an extent that make him or her appear to be not a secondary, but a principal participant (ATF 135 IV 152, para. 2.3.1; 130 IV 58, para. 9.2.1; 125 IV 134, para. 3a).
- 7.4.3.26 In this case, given the contradictory statements made by Raoul before the Swiss and French authorities as to the identity of the person who stabbed him, there is still some doubt, and this doubt must benefit the defendant.
- 7.4.3.27 During the hearing, the Court reserved the right, in application of article 344 of the Code of Criminal Procedure, to assess the acts of which the accused is accused also from the point of view of coactivity, complicity or action by omission.

With regard to co-activity, the indictment does not describe in what way Alieu Kosiah collaborated in a decisive way in the commission of the crime or associated himself with the decision to commit it, or even with which other perpetrator the crime was perpetrated. The presence of Alieu Kosiah at the scene and the manifestation of his contentment would not be sufficient to retain any coactivity.

The facts described in the indictment would also not allow for Alieu Kosiah's complicity. On the one hand, there is no mention of Pierre, alias Pégase, as the main perpetrator of the crime, and there is doubt as to who committed the stabbing. On the other hand, it is not stated in what way, in this case, the accused would have provided assistance or material support to the commission of the crime.

Finally, with regard to the action by omission, it should be noted first of all that the former Swiss Military Criminal Law Code, in its version in force at the time of the alleged facts, did not expressly penalize this form of offense. It would then be necessary to determine whether the action by omission could be retained on the basis of the jurisprudence in force at the time of the facts. However, this question can be left open in this case. Indeed, the commission of an offense by omission presupposes a position of guarantor. However, the indictment does not reproach the accused for not having prevented the commission of the offense, nor does it specify what he should have done and by virtue of what duty to act.

7.4.3.28 In conclusion, Alieu Kosiah was acquitted of the attempted murder of a civilian, in the alternative of the offense against bodily integrity, respectively against health and physical well-being according to art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GC and art. 4 para. 2 letter a AP II.

7.5 Ordering and directing the forced transport of coffee, cocoa and palm oil by civilians from Foya to Solomba and from there to the Guinean border

7.5.1 Charge

According to section 1.3.7 of the indictment, Alieu Kosiah is accused of having ordered and directed the forced transport of coffee, cocoa and palm oil by civilians from Foya to Solomba, between July and August 1993.

7.5.2 Means of proof

During the investigation

7.5.2.1 During his interrogation by the Office of the Attorney General, Raoul stated that two weeks after the event that led to the death of the six civilians and his back injury (see supra, para. 7.4), he was asked to transport coffee, cocoa and palm oil with other civilians. Since there were no more cars in Foya, S2 Cassiopée, who was responsible for liaising between the civilians and the soldiers, went from house to house looking for civilians who could carry the goods (12-08-0015, 0027). Raoul was at his cousin's house when Cassiopée came looking for him. Cassiopée

reportedly told him that he had received orders from the “Headquarter Headquarter”, or Alieu Kosiah, to transport the merchandise with civilians to Solomba, on the border with Guinea (12-08-0027, 0011). Raoul then went with Cassiopée to the ULIMO headquarters, where the merchandise to be transported, which came from the homes of civilians, was located (12-08-0027). The transport was apparently organized by Alieu Kosiah, Cassiopée and Sextant. The orders were given by Cassiopée, S2. Raoul was forced to carry a bag of coffee on his head. To lift it and place it on his head, the complainant stated that he had to use both hands (12-08-0027). The fifty or so civilians, consisting of men and boys of around fifteen years of age, had to walk in lines, with the soldiers flanking them (12-08-0015, 0027). The soldiers accompanying them were less numerous than the civilians (12-08-0028). They had to march from Foya to the border with Guinea at Solomba, near the Makona River (12-08-0015). They left in the morning and arrived at the border around 4:00 p.m. the same day. Raoul estimated the march to be between eight and nine hours. The soldiers behaved "badly" when the civilians did not walk fast enough. They whipped them with a rattan, a flexible stick. For his part, Raoul, who still had a back injury (see above, para. 7.4), tried to walk quickly to avoid being hit. Alieu Kosiah, Sextant and Cassiopée walked behind the civilians with their bodyguards. Raoul said the trio did not hit any civilians. Instead, they saw from the rear of the column soldiers beating them to move faster, but they did not intervene to stop them. When they arrived at the border, the civilians waited, watched by a few soldiers, while Alieu Kosiah, Sextant, Cassiopée and their bodyguards crossed the river by ferry to Guinea to sell their merchandise (12-08-0015, 0028). They left their weapons with the Guinean soldiers after recording their serial numbers in order to find them on their return. Sextant, Cassiopée, and their bodyguards returned from Guinea one to two hours later with ammunition, which the civilians were to carry to Foya (12-08-0015, 0028). Raoul reported that he did not see Alieu Kosiah return (12-08-0015). Cassiopée reportedly told him that Alieu Kosiah had gone to Voinjama. The civilians then left for Foya with the ammunition brought from Guinea and arrived late at night (12-08-0028).

7.5.2.2 When questioned several times about the facts denounced by Raoul, Alieu Kosiah disputed them. He stated that he did not know Raoul, whom he had seen for the first time during the proceedings (13-01-0641). In response to Raoul that he saw, when he was a soldier himself, Alieu Kosiah crossed the border with his side gun strapped to his leg on one occasion (12-08-0028), the defendant countered that soldiers could not cross the border with their weapons (13-01-0432). Indeed, if they had, they would have been arrested by Guinean soldiers, since they were on their territory (13-01-0102). The defendant believes that Raoul is trying to take revenge "against anyone" because he was captured as an NPFL soldier by the ULIMO (13-01-0105).

7.5.2.3 When asked about the issue of forced civilian transports during the war, Olivier admitted that all factions, including the ULIMO, had used them.

Since there were no vehicles, soldiers made civilians carry their weapons and ammunition to the front line. Civilians also had to carry food or other goods (rice, oil, plantains, salt, etc.). There were also small generators. Civilians were forced to make these transports because the soldiers were armed. The trips took between three and six hours, according to the witness. The ULIMO soldiers would use the civilians they found on site when transportation was needed (12-16-0032). In particular, goods were transported to the border with Guinea (at Guéckédou, Macenta, and Nzérékoré) to be sold and to buy food (12-16-0032ff). The civilians stopped at the border and the soldiers brought the goods across the border. The civilians would carry the goods to the Makona River at Solomba and from there they would be dropped off on canoes to reach the other side. According to Olivier, the need to use civilians to carry out the transport was due to the fact that because of the war, there were no cars in some places. In addition, a car made noise and could therefore be spotted by the enemy. There were also places that were not accessible by road. For travel in Solomba, the ULIMO used civilians because they did not always have cars. Olivier recalled taking a transport from Foya District to Solomba. The trip took about two hours. The civilians carried oil and bags of coffee or cocoa. According to the witness, when a civilian was tired, he would put his load down to rest and the group would wait for him. The convoy was not organized. Some walked on the left side of the road, others on the right side, and still others in the middle of the sandy road (12-16-0033). Olivier claimed that Alieu Kosiah never participated in a civilian transport of goods (12-16-0035).

- 7.5.2.4 Bernard, the defendant's former bodyguard, also admitted the existence of cargo and ammunition transports during the first civil war in Liberia. However, he stated that he was not aware that Alieu Kosiah participated in any convoys in which civilians were forced to carry loads (12-19-0072).

During the debates

- 7.5.2.5 When heard by the Court, Raoul confirmed his accusation against Alieu Kosiah. He indicated that the transport had taken place one morning in 1993, without being able to be more precise about the date (40.755.018 f.). According to his explanation, he was requisitioned by the S2, while he was in the office of the S2 and was cleaning. The S2 told him that he had to transport loads to Solomba. The loads were already there, at the S2 office, and the convoy left from there for Solomba. The complainant stated that the transport was arranged by S2 and H&H (i.e. Alieu Kosiah), but the order to carry out the transport was issued by S2. However, since Alieu Kosiah was one of the big men in the Strike Force (a battalion of the ULIMO), from the time he was there, he was clearly the commander giving orders. Raoul testified that he did not see Alieu Kosiah give the transport order (40.755.019). However, he was present during the trip to Solomba and did not return with the group of civilians to Foya (40.755.019 f.). There was no one with a higher ranking than him during the transport. Raoul stated that he had no choice but to participate in the transport because if he had refused, "he would have lost his life"

(40.755.020). The civilians had to transport cocoa, coffee and oil. This merchandise, which belonged to them, was taken from them to be sold in Guinea. Cassiopée, the S2, was responsible for finding civilians when the soldiers needed labor. He was the one who organized the transportation and accompanied the civilians (40,755,020 f.). He also assembled the soldiers to supervise the civilians during the transport. During the transport, the civilians had to carry their loads and walk fast or else "they would put themselves in danger" (40.755.021). Soldiers received orders from S2. For his part, Raoul said he had to carry coffee on his head. He estimated the weight at 25 kilos (40.755.021). According to the complainant, the journey required about seven hours of walking, round trip. The road was passable but had been overgrown by bush. The civilians could take breaks during the transport when the soldiers stopped to rest. When they passed a river, they could drink some water, but then they had to leave. Soldiers were positioned at the front, middle and back of the convoy to protect the civilians and the goods. The convoy moved in column. Raoul said that some soldiers behaved in a very arrogant manner towards the civilians. Some would beat or whip civilians who wanted to stop, while others were more understanding and let them drink (40.755.022, 024). When asked about Alieu Kosiah's behavior, Raoul stated that he behaved badly with civilians (40.755.022). When asked whether he beat civilians, the complainant's response was unclear: he appeared to say he did (using the singular, i.e., "he"), and then used the plural to refer to soldiers. (40.755.022 s.). The soldiers were armed with RPGs (grenade launchers), AK-47s and heavy machine guns. Raoul claimed that he was threatened during transport by the ULIMO soldiers. In particular, he was warned, even before departure, that if he asked to stop or hung around, he would be beaten. The complainant does not remember anyone being killed during the transport. According to him, Alieu Kosiah did not intervene during the transport to prevent civilians from being mistreated or beaten by soldiers (40.755.023). Once the civilians dropped off the merchandise in Solomba, they immediately returned to Foya and arrived at about 10 or 11 o'clock in the evening (40.755.022). The complainant added that he was not paid for this transport, since it was "forced labor" (40.755.024).

- 7.5.2.6 When heard by the Court on these facts, Alieu Kosiah disputed them, stating that if he had made this transport, he would have done so by car. He said he did not remember whether he went to Foya between July and August 1993. If he went there during that period, it was to relax when he was not on the front line, because there was, according to him, no fighting. But he would never have been based there. He would only go there once in a while, for a day or two. Alieu Kosiah said he was based in Voinjama. When asked about the distance between Foya and Solomba, the defendant gave an estimate of 18 to 20 kilometers. He was not able to indicate how long it would take to walk from Foya to Solomba, since if he had made the journey, it would have been by car or motorcycle. With regard to the quality of the road, the defendant stated that it was narrow and that there were many ditches to cross. For example, it was impassable with a truck during the rainy season

(40.731.050). With a four-wheel drive vehicle, however, it might be possible, he said. In Liberia, during the rainy season, especially from June to August, the roads are really difficult because of the heavy rainfall. More specifically in relation to the facts of the case, Alieu Kosiah indicated that he had never heard of this transport because it never existed in his opinion. With regard to the transport of goods between Foya and Solomba in general, the defendant stated that there was "regular civilian activity that involved going back and forth across the border" (40.731.051). However, he never saw civilians being forced to participate in transports (40.731.051 f.). He did not deny that it was possible that soldiers forced civilians to transport things, but he said that he had never seen this and never participated in it. He would never have heard that under ULIMO, civilians were beaten to carry goods. According to him, the ULIMO certainly did not wage a clean war, but the bottom line is that they were ethnic Mandingos (40.731.053).

- 7.5.2.7 When asked by the Court about civilian transport of goods, Olivier confirmed that it was "obvious" that ULIMO soldiers used it because they did not have vehicles. Civilians were forced to participate in such transports because the soldiers were armed (40.761.009). Sometimes civilians received rice as compensation for transportation, but they never received money (40,761,010). The witness testified that he never saw Alieu Kosiah participate in or order the transportation of goods with civilians (40.761.009ff). According to him, he was a commander who had empathy for people (40.761.009).
- 7.5.2.8 When questioned by the Court, Jean, alias Cassiopée, a former ULIMO soldier in charge of liaison between soldiers and civilians in Foya, stated that some civilians had come to him during the war to complain that they had been forced to transport loads from Foya to the Guinean border. According to him, these transports took place shortly after the capture of Foya, but soon stopped. Thereafter, if a soldier wanted a civilian to carry something, he had to talk to the civilian and agree on a price and the conditions of the transport (40,769,005). Specifically, regarding the facts denounced by Raoul, Jean indicated that the transport of goods in Guinea by civilians had indeed taken place from Foya (40.769.011). The goods, which had been purchased in Kolahun in particular, were brought there to be sold (40,769,011 ff.). These transports were allegedly based on an agreement between the commissioner and the civilians, and the civilians were paid for their participation. The witness testified that he did not know whether the civilians were treated poorly during the transports (40,769,011). Asked how the ULIMO acquired goods and sold them in Guinea, Jean said that as far as he was concerned, it was his wife who did the business and made the money. As for the other soldiers, he said he could not answer (40,769,012).
- 7.5.2.9 When questioned by the Court on the issue of civilian transport of goods during the first civil war in Liberia, Alfred, a former ULIMO soldier based in Foya, stated that civilian transport of goods did take place, but that civilians were not forced to take part. These transports were reportedly

the result of arrangements between soldiers and civilians, with the former paying the latter for the service. The civilians were also given food and drink during the trips (40,767,007). With regard to Alieu Kosiah, the witness said he was "nice" to the civilians and gave them money and food, for example (40,767,010). He also stated that he did not recall Alieu Kosiah or any other military member mistreating civilians (40.767.011).

7.5.2.10 Finally, Pierre, alias Pégase, also a former ULIMO soldier based in Foya, stated that he had never heard of any transportation of goods by civilians during the war (40.771.007). With respect to Alieu Kosiah, he stated that he did not know if he participated in or ordered any such transports (40.771.009).

7.5.3 Law and evaluation of evidence

7.5.3.1 According to Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (subpara. a) and outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.

7.5.3.2 According to Art. 4 para. 2 AP 11, violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and the slave trade in all their forms (let. f) and the threat to commit the above-mentioned acts (let. h).

For legal developments in relation to cruel treatment, see recital 7.4.3.2 above.

7.5.3.3 Common article 3 of the GCs proscribes inhuman treatment in general (ICTY, Aleksovski case, Judgment of 25 June 1999, para. 51). Within the category of inhuman treatment, outrages upon personal dignity constitute a particularly abominable category of acts causing more severe suffering than most of the acts prohibited under this framework. It is indisputable that the prohibition of acts constituting an offense to the dignity of persons contributes to the respect of an important value. Indeed, respect for the human person is one of the most important values. The whole edifice of international human rights law and the development of international humanitarian law is based on this fundamental principle. The protection of the individual from inhuman treatment is certainly one of the essential principles enumerated in Article 5 of the Universal Declaration of Human Rights of 1948, a principle also enshrined in the prohibitions contained in regional and international human rights instruments, which led to the adoption by consensus of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the UN General Assembly on 10 December 1984. In addition, the constitutions

and laws of most countries contain provisions to protect individuals from torture and other cruel or inhuman treatment (ICTY, *Aleksovski Case*, Judgment of June 25, 1999, paras. 51 and 54). According to the commentaries of the four Geneva Conventions, outrages upon personal dignity concern acts which, without directly affecting the physical and mental integrity and well-being of the persons concerned, tend to humiliate and ridicule them (ICRC, *Commentary on the Protocols Additional of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 1986, No. 3074). The violation of the dignity of persons is an act motivated by contempt for the dignity of another person. Such an act must be gravely humiliating or degrading to the victim. It is sufficient that the act inflicts real and lasting suffering on the victim as a result of humiliation or ridicule. The degree of suffering that a victim can endure naturally depends on his or her temperament. Sensitive people are more likely to see the treatment as humiliating and, therefore, to feel the effects of it more severely. On the other hand, it is more difficult for the person inflicting such treatment to cause real suffering to people with a certain strength of character, who are not as concerned about how others treat them and who, even if they feel they are being subjected to humiliating treatment, are generally more able to cope with it through indifference. The same act is thus likely to cause terrible suffering to sensitive people and, on the other hand, negligible inconvenience to more impervious people. This difference in result is due to subjective elements. In the context of criminal proceedings, the subjective element must be mitigated by objective factors, otherwise it would be unfair to the accused: his or her guilt would then depend not on the seriousness of the act committed but only on the sensitivity of the victim. Thus, the humiliation of the victim must be sufficiently intense for any sensible person to feel outraged (ICTY, *Aleksovski Case*, Judgment of 25 June 1999, para. 56). With regard to the subjective element, according to the *Commentary on the Geneva Conventions*, the accused must have committed the offense with the intention of humiliating or ridiculing the victim. The perpetrator must thus have acted intentionally. Culpable negligence is not sufficient; the perpetrator must have acted deliberately or deliberately omitted to act. It is not necessary that the perpetrator had the express intention of humiliating the victim or subjecting him or her to degrading treatment; it is sufficient that he or she was aware of the foreseeable and logical consequences of his or her actions (ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 1986, No. 3074; ICTY, *Aleksovski Case*, Judgment of 25 June 1999, para. 56). The degree of seriousness of an act and its consequences may arise either from the character of the act itself or from the repetition of an act or a series of acts which, individually, would not constitute a crime. The form of the violence inflicted, as well as its duration and degree of severity, or the intensity and duration of the physical or mental suffering, will serve as criteria for assessing whether the acts committed can be qualified as an affront to the dignity of a person (ICTY, *Aleksovski Case*, Judgment of 25 June 1999, para. 57).

- 7.5.3.4 Slavery is the exercise of proprietary powers over a person. Indicators of slavery are: elements of control and ownership, restriction or control of an individual's autonomy, freedom of choice or movement, gain to the perpetrator, the fact that the victim's consent or free will is rendered impossible by the threat of force or other means of coercion, abuse of power, the victim's vulnerable situation, detention or captivity, psychological oppression or socio-economic condition. Other indications are exploitation, forced or compulsory labor, often without remuneration and usually involving physically difficult work (ICTY, Kunarac Case, Judgment of February 22, 2001, paras. 539 ff; SCSL, Sesay Case, Judgment of March 2, 2009, para. 197). Not all work by civilians during armed conflict is necessarily prohibited; the prohibition only applies to forced or involuntary labor. Thus, it must be established that the person was not given the opportunity to decide whether or not to work (SCSL, Sesay Case, Judgment, March 2, 2009, para. 202). The fact that the person merely felt coerced is insufficient; concrete evidence of coercion is required (SCSL, Taylor Case, Judgment of 18 May 2012, para. 448). Slavery can exist even without mistreatment and involuntary servitude, even with decent treatment, is still slavery (SCSL, Sesay Case, Judgment of March 2, 2009, para. 203). In the Brima and Sesay cases, the SCSL addressed the issue of civilians forced to carry loads for the armed forces under duress, with those who refused to take part being beaten or killed (SCSL, Brima Case, Judgment of June 20, 2007, paras. 1369 ff; SCSL, Sesay Case, Judgment of March 2, 2009, paras. 1215 ff). It has already been held that the use of civilians for forced labor can meet the criteria of slavery (SCSL, Brima Case, Judgment of June 20, 2007, para. 1374; SCSL, Sesay Case, Judgment of March 2, 2009, para. 1323). The SCSL, on the other hand, has held that forcing civilians on a single occasion to dig a trench to obstruct another armed faction constitutes an incident of forced labor of short duration that does not involve the exercise of property rights over the victims and therefore does not constitute slavery (SCSL, Brima Case, Judgment, June 20, 2007, para. 1392).
- 7.5.3.5 With regard to the legal developments in relation to art. 18 of the former Swiss Military Criminal Law Code concerning the order given by the superior, reference is made to recital 7.2.3.4 above.
- 7.5.3.6 In the present case, the statements of Raoul, both before the Office of the Attorney General, were consistent on many elements. He explained that he had been requisitioned by Cassiopée, the S2 of Foya, to transport cocoa, coffee and oil from Foya to Solomba, at the Guinean border, and that he had carried a load of coffee on his head. According to him, the convoy moved in column, with soldiers surrounding the civilians, and those who did not move fast enough were whipped by the soldiers. The plaintiff, striving to walk as fast as possible, was able to avoid the blows. Raoul estimated the duration of the journey to be between seven and nine hours. Once they arrived at the border near the Makona River, the civilians dropped the charges and headed back to Foya. Some of the soldiers crossed the river by ferry to Guinea to sell the merchandise. The

civilians returned to Foya, where they arrived late at night. Regarding the role played by the defendant, Raoul stated during his two interrogations that he participated in the transport, that he was at the back of the convoy and that although he did not hit the civilians himself, his position allowed him to see soldiers beating them. However, he did not intervene to stop the violence. As for the order to carry out the transport, Raoul admitted that he did not hear Alieu Kosiah give such an order. Before the Office of the Attorney General, he stated that Cassiopée was ordered to carry out the transport by Alieu Kosiah and that he was responsible for relaying it to the civilians. In court, Raoul testified that the transport was arranged by Alieu Kosiah and Cassiopée, but that the order was issued by Cassiopée. In any case, since the defendant had been a big man in the Strike Force, from the moment he was there, he was the one who gave the orders. The consistency of Raoul's consistency in his statements, as well as his propensity not to accuse the defendant at all costs, taking care to distinguish between what he saw or heard and what was reported to him, made his speech appear very credible to the Court. The Court also noted that the distance between Foya and Solomba was some 20 kilometers, so that the walking time estimated by the complainant, between seven and nine hours, seems perfectly plausible and adds credibility to his account.

7.5.3.7 In addition, Raoul's statements are corroborated by other complainants in the proceedings, who reported the same type of transports, organized in the same way, and during which the accused played the same role each time: he gave the order for the transport and, more often than not, supervised it (cf. in particular, *infra* recital 7.7). Moreover, the explanations given by Olivier on the transport of goods by civilians during the first civil war largely confirmed those of Raoul. The former child soldier admitted that all factions during the war used such methods to transport arms, ammunition, and goods for sale. He said civilians were forced to take part because the soldiers were armed and the goods were transported to the Makona River at Solomba, on the border with Guinea, to be sold. He explained that the ULIMO were forced to use civilians to transport goods for several reasons: there were no cars anywhere during the war; a car could make noise and be spotted by the enemy; and there were no passable roads anywhere. The witness stated that he remembered taking part in a transport of oil, bags of coffee and cocoa from the Foya district to Solomba. These statements further support the denunciation of Raoul.

7.5.3.8 It should be added that, in the Court's view, the statements of the former ULIMO soldiers heard in the proceedings, all of whom stated that they had never seen or heard that Alieu Kosiah had taken part in or ordered the transport of goods by civilians, cannot be accepted. Indeed, Jean and Alfred were not considered by the Court to be credible witnesses, particularly because they denied throughout their respective interrogations that they had witnessed ill-treatment of civilians by soldiers in Foya during the war, even though it is established that Foya was the scene of innumerable crimes committed against civilians (see 14-01-

0187). Their status as former military personnel undoubtedly helps explain their denial. In particular, their statements that the soldiers made arrangements with civilians for transportation and paid them for their work are implausible. Indeed, these statements appear implausible in the context of the civil war in which these transports took place. As for Pierre, insofar as he is the subject of criminal proceedings in France for acts similar to those alleged against Alieu Kosiah in the present case, his denials regarding the ill-treatment of the civilians of Foya are devoid of any credibility, as he is clearly trying not to incriminate himself. Finally, Olivier and Bernard, former members of the defendant's bodyguard, have maintained the same version of events throughout their hearings, namely that Alieu Kosiah had done nothing and was never there when crimes were committed, systematically seeking to exonerate their former leader.

It should be noted that Olivier's statements repeatedly show that he is clearly trying to protect his former leader Alieu Kosiah by not admitting that he committed any crime. However, because of his personal military experience in the ULIMO, his obvious perceptiveness, and his willingness to make a good impression before the Court in order to later seek asylum, Olivier provided a great deal of information that appears to be accurate and reliable, particularly about the forced transports carried out by the different factions.

7.5.3.9 The statements of the defendant must also be disregarded. Indeed, on the question of the crossing of the Guinean border by armed ULIMO soldiers, Raoul explained himself convincingly. The soldiers did not travel to Guinea with their weapons, but they crossed a few meters onto Guinean soil before being able to deposit them with Guinean customs officers (see 40.755.032), so that the case mentioned by the defendant is not one in which Liberian combatants entered Guinea with weapons. As for Alieu Kosiah's argument that, if he had carried out such a transport, he would have used a car, it is false in view of the relevant explanations provided by Olivier as to the reasons why civilians were requisitioned instead of vehicles. Moreover, in his clarification of the quality of the road from Foya to Solomba during the rainy season, the defendant provided the court with additional justification for the use of civilians for transportation rather than cars. Finally, with regard to the defendant's alibi hammered home throughout the proceedings, namely that he was not based in Foya when the town was taken, the Court notes that it was not necessary for Alieu Kosiah to be based in that town in order to commit the offense with which he is charged in this case. For the rest, reference is made to recital 7.4.3.9 above with regard to the presence of Alieu Kosiah in Foya in July 1993.

7.5.3.10 The Court further notes that the role attributed to the accused during the transport described by Raoul, as well as during the other transports of which he is accused (see, in particular, *infra*, para. 7.7), can be linked to his position as H&H (headquarter headquarter commander) which was attributed to him by several participants in the proceedings (Raoul: 12-08-0012; Antoine W.: 12-07- 0009; André: 12-18-0006; confirmed by

Olivier: 12-16-0042; 40.761.019). Indeed, Olivier defined the H&H as the person responsible for military supplies, ammunition, and food (12-16-0042). Even if it cannot be considered established from the record that Alieu Kosiah actually officially assumed the function of H&H, the fact remains that the role that is described as his during the transportation by civilians is very similar to that of an H&H. He organized the transport of goods, accompanied it to make sure that everything went according to his expectations and stayed on site once the destination was reached to sell the goods and, if necessary, to buy ammunition with the proceeds of the sale (cf. (cf. supra recital 7.5.2.1). This convergence between the function that was attributed to him and the role that he actually played during the transports adds further credence to the accusation made against him in the indictment.

- 7.5.3.11 In view of all the foregoing considerations, the Court finds that the statements of the complainant are much more credible than the denials of the accused, so that it considers it established that the latter participated in the transport of goods from Foya to Solomba denounced by Raoul. These facts can be qualified as both an attack on the physical and psychological integrity, constituting cruel treatment, and an attack on the dignity of the person, in the form of humiliating and degrading treatment.

Forcing civilians to walk for hours with a heavy load, without giving them food or water, and threatening them with death or beating them if they do not move at the required pace, is likely to cause great suffering. This suffering is first of all physical, because of the length of the march that the civilians had to make while carrying a heavy load and the blows that they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that the civilians felt throughout the journey, as they were accompanied by armed soldiers threatening them with death. It should be pointed out in this respect that, even if the defendant did not inflict blows or make death threats himself, these facts can still be imputed to him. Indeed, in order to be the author of the offense, it is not necessary that he himself has accomplished all the acts constituting the said offense. In this case, it was a joint plan carried out by various actors, who thus acted as co-perpetrators of the offense (on the concept of co-action: cf. supra recital 7.4.3.25).

The acts of which the defendant is accused must also be qualified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, by threatening him with death or by beating him if he does not move at the required pace, is tantamount to violating his quality as a human being and constitutes a very serious form of humiliation. Any person of average sensitivity would feel deeply humiliated and ridiculed by such treatment.

Moreover, as the beating of civilians and death threats are considered components of the offenses of cruel, humiliating and degrading

treatment, they do not constitute separate offenses that should be retained in addition.

Finally, it is specified that, despite the seriousness of the facts, the offense of slavery was not committed, insofar as the transport lasted a few hours and that this period of time is not sufficient to establish the exercise of powers of ownership over the civilians used.

7.5.3.12 With regard to the order of the transport, Raoul stated that he did not personally hear the defendant give the order. However, he also stated that, when Alieu Kosiah was somewhere, he was the one who gave the orders, as the big man. He also stated before the Office of the Attorney General that Cassiopée told him that the order came from the defendant. However, in cases of international criminal law, indirect testimony from persons to whom the defendant's statements were reported cannot be disregarded as a matter of principle. These witnesses can attest to the reality of orders or exhortations issued publicly in order to be disseminated and carried out (Ruling of the Military Court of Cassation vol. 12 [1997-2005] Nr. 21 con sid. 6c). Insofar as Raoul always distinguished in his hearings between what he saw and what he heard, the Court finds it credible that he could have heard from Cassiopée that an order had been given by Alieu Kosiah. Furthermore, in view of the other transports of goods denounced by the plaintiffs in the proceedings, it is expected that Alieu Kosiah not only took part in the transport, but that he also ordered it. His position in the convoy, at the back, is also a clear indication of his role as leader supervising the progress of the group. It thus appears perfectly likely that Alieu Kosiah gave the order for the transport to Cassiopée and the soldiers, who were responsible for carrying it out. This order involved the commission of offenses, i.e. the infliction of cruel, humiliating and degrading treatment against civilians, because it led Cassiopée and the soldiers to commit the said offenses. Therefore, the Court also finds that objectively, the offense by order of the superior officer, pursuant to art. 18 of the former Swiss Military Criminal Law Code, is realized.

7.5.3.13 With regard to the subjective element, Alieu Kosiah acted intentionally, both with regard to his participation in the transport and the order he gave to carry it out. He knew that by instructing Cassiopée and the soldiers to organize the transport, they would carry it out. The defendant also knew that the people forced to be transported were civilians.

Finally, these facts are part of the armed conflict that took place in Liberia during the first civil war, of which Alieu Kosiah knew.

7.5.3.14 In conclusion, Alieu Kosiah must therefore be condemned for having inflicted cruel, in particular humiliating and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a and c common to the GCs and art. 4 ch. 2 let. a and e AP II).

7.6 Participation in the murder of civilian Joseph in Foya and desecration of his body

7.6.1 Charge

According to number 1.3.8 of the indictment, Alieu Kosiah is accused of having participated as an accomplice in the murder of the civilian Joseph in Foya, between July and October 4, 1993. He is also accused of having desecrated his body by eating his heart (number 1.3.9 of the indictment).

7.6.2 Means of proof

During the investigation

7.6.2.1 During his interrogation by the Office of the Attorney General, Georges described Alieu Kosiah at the time of the events as being of black complexion, not very large and of average height. He had bulb eyes. He was dressed in a military uniform or jeans and a t-shirt. He did not have a unique way of dressing; he sometimes wore his jeans with a military shirt. Georges was unable to tell if Alieu Kosiah had a tattoo, as he did not see all of his body parts. He saw him carrying a pistol, an AK and a knife on his belt. Georges did not remember a scar on the body of Alieu Kosiah (12-20-0021 f.). On the first photographic plate submitted to him, the complainant could not recognize Alieu Kosiah "with 100 percent certainty". Therefore, he did not indicate a photograph. On the second photographic board, the complainant persisted that he was not 100 percent sure (12-20-0022). When the defendant entered the room, Georges indicated that it was Alieu Kosiah. He stated, "With the eyes, it is very clear" (12-20-0023).

7.6.2.2 In connection with the facts, Georges stated that he witnessed the murder of Joseph, a teacher at L. The complainant explained that the latter was on the main road in Foya when he was asked to get into a vehicle by aid workers (presumably from Médecins Sans Frontières or the Red Cross), who took him up a hill to the «L.a. Mission» which had been looted and damaged. This mission had a school and a hospital. The aid workers asked Joseph who was responsible for looting the mission. He reportedly told them it was the ULIMO. The aid workers then returned to Foya with Joseph, whom they dropped off in the center of town (12-20-0028). Georges explained that when he got out of the vehicle, Joseph was intercepted by ULIMO commanders who were in the center of Foya, near the old police station (12-20-0029). They then took him to an office for questioning (12-20-0066). Joseph told them that the aid workers had asked him who had looted the mission and that he had replied that it was the ULIMO (12-20-0029). Once these words were spoken, the ULIMO commanders allegedly grabbed him and tied his wrists and pulled his elbows back with great force (12-20-0029). From what Georges heard, the ULIMO soldiers claimed that Joseph had been used as a spy and

called him a traitor (12-20-0066). Joseph was then reportedly taken to the airstrip by Céphée, Sextant, CO Kosiah, CO Pégase, Bertrand and other commanders, with people shouting "tabé, tabé". It was Céphée who led the way (12-20-0029, 0066). According to Georges, the soldiers were like rampaging warriors. They reportedly tied Joseph's wrists in front and pulled his elbows back until they touched, putting pressure on his rib cage, which was close to "exploding" (12-20-0066, 0068). The soldiers threw Joseph to the ground and stepped on him (12-20-0066). Alieu Kosiah was present with the other commanders, other soldiers, and bodyguards during this scene. According to Georges, as a leader, if Alieu Kosiah had not agreed with what was happening, "he would have had every opportunity to stop it" (12-20-0068). However, the defendant was proud of what was happening and showed no remorse or regret (12-20-0068). The complainant stated that this was the first time he had witnessed such a ferocious scene (12-20-0066). In front of CO Kosiah, Sextant, Pégase and Bertrand, and in the midst of all the soldiers, Céphée allegedly held up Joseph's body, cut open his chest with an ax and ripped out his heart, which he placed on a metal plate (12-20-0067, 0069). According to Georges, the scene was "terrible to see" (12-20-0067). Again, Alieu Kosiah did not do anything "to stop this butchery" (12-20-0069). The only thing he did was to raise his arms in the air in jubilation (12-20-0069). Then, the ULIMO allegedly left Joseph's body behind and headed for Céphée's house, which was close to the airstrip, taking Joseph's heart with them (12-20-0029, 0067, 0069). According to Georges, they openly declared that they were going to eat his heart and cut it into pieces (12-20-0069); CO Kosiah was one of the people who ate Joseph's heart; they did it openly, in plain sight (12-20-0067). They ate the heart raw. Georges said he saw Alieu Kosiah eat part of Joseph's heart (12-20-0070). The commanders were gloating about killing a man and eating his flesh (12-20-0029). The event that occurred was, according to the complainant, intended to send a signal that anyone who spoke out against the ULIMO would receive the same treatment (12-20-0067). Georges stated that this was the first time he had seen a human being rip the heart out of another person and called the act "unbelievably cruel". It was also the first time he had seen a human being eaten (12-20-0029).

Regarding the perception of the scene, Georges said that when Joseph left Foya with the humanitarian group, he himself was not there, but on the other side of the air strip. So what happened at that time was reported to him. However, he said that when Joseph was dropped off at the Foya center, he was able to see everything that was happening there (12-20-0066, 0069). Georges witnessed the scene with other civilians (12-20-0066). The complainant estimated the number of civilians present at between 50 and 60. The soldiers and bodyguards numbered between 30 and 50 (12-20-0069).

When asked about the hierarchical position of Alieu Kosiah, Georges stated that he had never known the structure of the ULIMO group. He never knew where everyone was in the hierarchy. Alieu Kosiah was

called CO (for commander). The complainant stated that at times Sextant seemed to give orders to Alieu Kosiah, but that "it was not very clear depending on the circumstances" (12-20-0029).

- 7.6.2.3 Alieu Kosiah disputed the facts of the case. He stated that he had never met a person named Joseph, nor the complainant who denounced him. According to him, it is possible that Joseph was killed by an ULIMO, but he has no knowledge of this. Alieu Kosiah said that one should be wary of what the newspapers say. In fact, according to him, they reported that the death of Joseph occurred because he was a Christian. However, Georges gave another explanation as to the reason for the murder. The defendant added that he was a traditional Muslim who did not eat pork, so it would be inconceivable that he would eat human flesh (13-01-0642 f., 0184) and that he had never known of any acts of cannibalism among the ULIMO (13-01-0184).

French proceedings against Pierre

- 7.6.2.4 During his interrogation by the French authorities in the context of the criminal proceedings against Pierre, alias Pégase, Georges confirmed the statements he had made before the Swiss the Office of the Attorney General. He specified that it was the ULIMO command that had captured Joseph, namely "a certain Monsieur Sextant", "EE.", "CO Pégase", "Céphée" and "a certain Bertrand". Georges repeated that Joseph had been killed and that his heart had been removed and put on a plate. Céphée then said: "If anyone tries ULIMO, we eat your heart". The murder occurred in the open air, at the airstrip. They then took Joseph's heart to Céphée's house to eat it. Georges said he "felt" the scene personally. He had never seen that before. It was "too horrible." Georges said that all the leaders were present at the airstrip. He saw Pierre, among other commanders, kicking, hitting and stomping Joseph several times. Joseph was tied to the ground, completely vulnerable. He was on his side, sometimes on his back. Georges said that he himself was on the side of the runway, not far from Céphée's house, when the scene on the runway took place. Many civilians were there. The complainant estimated the distance between the scene and his location to be between 100 and 250 feet but could not be more specific (0245/3). Georges said he saw Pierre with a piece of heart. He also confirmed that he heard him say the sentence: "If anyone tries ULIMO, we will eat your heart". Regarding the time of Joseph's arrest, Georges said that he was at that time in a store owned by a Lebanese. A humanitarian organization reportedly visited Foya that day. However, Georges said he was not present when the organization arrived and took Joseph away. Instead, he heard that the humanitarian group asked him to take them to the L.a mission, where there was a hospital, a school and a church. According to the story George heard, a member of the humanitarian organization asked Joseph how the mission had been looted. He reportedly replied that the looting was done by the ULIMO. Georges explained that when the vehicle returned to Foya, he saw Joseph being dropped off (0245/4). As Joseph got out of the vehicle, the ULIMO commanders rushed to him

for questioning. Joseph reportedly confessed that he had revealed that the ULIMO were responsible for looting the mission. For this reason, he was allegedly taken to the airstrip to be mistreated and killed (D245/5).

7.6.2.5 When interviewed by the Liberian National Police at the request of French authorities, FF., Joseph's widow, stated that before his death, her husband worked for the faith-based organization L.b . They were living in New Foya at the time. One day, "some white people" came to Foya to try to determine which rebel faction had destroyed the Hospital L.a and the church. When the "whites" arrived, the "ULIMO commander" sent a message to all the residents, ordering them to gather at the police station because the "whites" wanted to talk to them. Joseph served as a Kisi-English interpreter at this gathering. A "white" man asked who had destroyed the L.a hospital and the church. Joseph replied that it was the rebel faction ULIMO. After the rally and the departure of the "whites", ULIMO fighters reportedly arrested Joseph and took him to the police station. Joseph reportedly remained in custody for two days. On the third day, he was taken out of his cell (D428/3). Joseph had his hands tied behind his back with rope and was taken to the old airfield, where commander Pierre was located (D428/7). According to FF., Commander Pierre then ordered his men to kill "that dog" (D428/3). The soldiers cut the flesh from his body with axes, knives, pans, etc.; his body, including his testicles, were cut into pieces (D428/3 and 7). FF. said that she then ran "away from the place" (D428/7). She said she did not see commander Pierre attack her husband (D428/7). A few days later, FF.'s brother, GG., brought some clothes and placed them on Joseph's body, before burying the body in the center of Foya. FF. stated that she left Liberia after this episode to seek refuge in Guinea (D428/4). When asked about Joseph's clothing at the time of the murder, FF. stated that he was wearing short pants and a tank top (D428/8).

7.6.2.6 During her interrogation by the French authorities, FF. confirmed, in substance, the statements she made to the Liberian National Police (D55713 and 4). She said she "thought" her husband had been detained for two days (0557/3). She explained that Joseph was picking up his mother, who was blind, when he was arrested. He was with her when she was arrested. FF. received information that her husband had been arrested for revealing that the ULIMO were responsible for "robbing" the hospital and church. FF. said that while she was hiding in the bush, she saw her husband being taken to the police station at Airfield (D557/4). She said she heard from her hiding place that CO Pégase had given the order to kill Joseph. She described Joseph's body after his death as having both forearms and both legs lacerated; "the flesh was fresh" and his chest open. She said that "there was nothing in his chest" (0557/4). He was bound by cables (D55715). FF. said she saw the soldiers take her husband's heart, put it in a bag and leave. She did not see them eat the heart (D55714). FF. disputed the French translation of her hearing by the Liberian National Police regarding the alleged cutting of her husband's genitals. She said the soldiers did not touch them. They

slashed both forearms and both legs at the calf level and his chest was "empty" (D557/5).

FF. said she fled to Guinea with her children the day her husband died. Her brother, GG., stayed to bury Joseph's body (D557/5). FF. stated that she did not have a death certificate for her husband, as no such document exists in Liberia (D557/6).

7.6.2.7 During the confrontation hearing before the French authorities between Georges and FF., Georges stated that he had not seen FF. on the day of Joseph's murder. Georges said that when NGOs arrived, the villagers were curious to know who was there because the NGOs were helping them. Georges came out of his house and heard that Joseph had been taken to the "Brama Mission" hospital. Shortly thereafter, he saw the car that had taken Joseph return. Joseph got out in front of JJ.'s store. He was arrested and taken to the police station. Around him were all the ULIMO commanders, namely Pégase, Kosiah, Céphée and others. The latter, accompanied by their bodyguards, approached Joseph and took him away. The ULIMO commanders reportedly accused Joseph of betraying their faction. The villagers later learned that Joseph had admitted that the ULIMO faction was responsible for the destruction of the hospital. After spending a few minutes at the police station, the soldiers went down with Joseph to the airport where Céphée was staying. According to Georges, they then beat Joseph and killed him. They then cut open his chest to remove his heart (D560/2). French authorities confronted Georges with statements by FF. that Joseph had been held for two days. Georges said that "to his knowledge" Joseph had not been detained. Confronted with this claim, FF. said that an "old woman" had sent "someone" to talk with the ULIMO faction and convince them to release Joseph. After two days, the "old woman" reportedly told Joseph's family that he was already dead. To this, Georges retorted that in the ULIMO era, it was "absolutely impossible" to send someone to try to negotiate the release of a person. He said that FF.'s explanation was not plausible. FF. then conceded that if someone tried to negotiate with the ULIMO faction, they would be killed. She also indicated that it was possible that her husband was killed on the day of his arrest, but if so, she was not informed. Georges indicated that "Céphée" was the meanest of the group. He gave the orders and the others carried them out. When confronted with FF.'s statement that Pierre gave the order to kill Joseph, Georges said that he saw Céphée cut open Joseph's chest, causing his death, and that Pierre was present and gave the blows (D560/3). There were also Sextant, Fine Boy and Alieu Kosiah. The latter were gloating, saying "if anyone tries ULIMO we eat your heart" (D560/4).

7.6.2.8 When questioned by the French authorities, GG., Joseph's brother-in-law, said that he was at home when one of Joseph's students came to inform him that Joseph had been arrested. GG. then went to the police and was able to have a few words with Joseph, who was deprived of his freedom. Joseph told him that he was with some "white people" who took him to the hospital and asked him who had destroyed him. Joseph

reportedly told him that he had not said anything, but some people accused him of revealing that it was the ULIMO. These people took Joseph to the power plant (LEC Liberia Electric Cooperation). GG. said he later heard that Joseph was the person who had exposed ULIMO. After Joseph was arrested, GG. went to see him in jail at the police station the same day. While Joseph was in custody, GG. sent him food through a "guy" who had links to the fighters. While Joseph had been detained for three days, a girl reportedly told the food delivery person that "they" had killed him. GG. said that on the third day, around evening, Joseph's body, which was in the house where Céphée lived, was rotting and smelling. He stated that he heard Céphée give orders to his bodyguards to bury Joseph's body. GG. said he saw the body and recognized it. Joseph was lying down with his hands tied behind his back. The rebels asked GG. to cover the body of the deceased with soil (D561/2). GG. reported that Joseph's chest was open and that he had cuts on his legs and forearms. He also stated that he placed clothes on his brother-in-law's body, which he buried. He also stated that once his sister learned of her husband's death, she left for Guinea. Asked if he knew whether the fighters had ripped out Joseph's heart, GG. said he saw the wound on his chest, but did not know if they had taken his heart (0561/3).

7.6.2.9 Before the French authorities, HH., a Liberian national, testified that she witnessed the killing of Joseph and saw him when he arrived with the Red Cross. The rebels pulled him out of the car and asked him what he had told the Red Cross staff. They then tied him up and took him behind the tailor's store "II", which was next to JJ. Store, and then behind the office of the head of parliament. Joseph was then taken away and HH. did not see him again. She said that Joseph was "kept" for two days. She saw his body, with the chest open; the heart was gone. HH. stated that the man named Céphée had an ax, without specifying whether Céphée was the perpetrator (0559/2). In a second step, HH. said she was not present when Joseph was captured. She only saw him tied up, after hearing people shouting: "Joseph is tied up". She then said that she did not say that Joseph had been held for two days but thought that he had been killed the same day he was arrested. It is on the other hand two days after his arrest that "one" would have asked to recover his body. She still specified that she did not see the murder, but only saw the dead body two days later. When asked what she knew about Commander Pierre, she indicated that he was the leader, along with Céphée, Bertrand and KK. (0559/3).

7.6.2.10 When questioned by the French authorities about the facts denounced by Georges, Pierre stated that he did not know Georges and that he knew nothing about the event he described. He invoked "political jealousy" against him (0245/5). Pierre also said he did not know who Joseph was or what had happened to him. According to him, a normal person could not commit a murder of this kind and he would never have seen such a scene occur when he was a member of ULIMO. Pierre accused his informants of being criminals and of making accusations against him in order to reach Europe and stay there (D206/15). He said he had heard

rumors of cannibalism in Liberia, but did not know exactly what it meant. He disputed that he himself was a cannibal (0206/16). Regarding his role, Pierre stated that he was a commander on the front lines during the first civil war in Liberia (0245/4, 0206/3).

During the debates

7.6.2.11 In court, Georges confirmed his denunciation of the defendant. He stated that the events had taken place in the second half of 1993, without being able to be more precise. According to his explanation, Joseph was a resident of Foya, a member of the L. and a teacher. He confirmed that Joseph had gone with aid workers to the looted "L.a Mission" (40.751.012). He repeated that he did not see him get into the aid workers' vehicle, but he did see him get out. When Joseph got out, the ULIMO saw him and approached him to ask him what he had done with the aid workers. Joseph reportedly said that he had told the aid workers that the ULIMO were responsible for the looting of the "L.a Mission". The ULIMO then allegedly seized him and took him to the office of the former police station. Considered a traitor, he was then taken to S2. Georges stated that he and other civilians witnessed the entire scene from the moment the victim got out of the vehicle (40.751.012, 013). He was in the center of Foya, in front of the JJ store. Among the high-ranking military personnel present were CO Kosiah, Céphée, Pégase, CO Sextant and CO Cassiopée. According to the complainant, the highest-ranking commander was Alieu Kosiah. They took Joseph to the airfield near Céphée's house (40,751,013 s.). It was Alieu Kosiah who gave the order to take Joseph. Georges claimed to have heard him give the order. Once they arrived at the airstrip, the soldiers allegedly tied the victim in a "tabé" position, so that he could barely breathe (40.751.014). They then tortured, beat and kicked him. According to the complainant, it was "a horror" (40.751.013, 014, 015). Xavier, alias Céphée, then allegedly cut Joseph's body open with an ax. This scene would have taken place in the presence of Alieu Kosiah. Regarding the role of Alieu Kosiah, Georges said that he kicked the victim with the other soldiers. According to him, the defendant participated in the murder as the highest-ranking officer on the scene. Georges considers that Alieu Kosiah gave the order to Céphée to kill Joseph "since he was the one who said to pick him up and take him away". He knew that Céphée was capable of killing people the way he did and the complainant assumes that Alieu Kosiah could foresee that the victim would be executed in this way (40.751.015). However, the defendant did not intervene to stop him, even though he would have been the most appropriate person to do so, in his capacity as overall commander (40.751.015, 018). The soldiers present then allegedly extracted Joseph's heart and took it near Céphée's house to eat it (40.751.015ff.). Georges said he saw Alieu Kosiah and Pierre take a piece of the heart and eat it. He was a few meters away from them. The body of the victim, undressed, was left at the airfield for all to see. The body was then covered with a bit of soil by civilians (40.751.016). When confronted with the statements of certain witnesses to the French proceedings, according to which Joseph had been detained for several

days before being killed, the complainant maintained his version of the facts, asserting that the events had taken place on the same day (40.751.017).

- 7.6.2.12 During the debates, the Court submitted to Georges a redacted copy of Jean's identity document and asked him to identify the person shown in the photograph. Georges stated that he did not know him (40.751.060).
- 7.6.2.13 When questioned by the court on the facts of the case, Alieu Kosiah stated that Georges was lying, because he claimed that he had captured Foya when this was not the case. The defendant stated that he was in Bomi during the period mentioned in the indictment, between July and October 4, 1993. He allegedly heard about Joseph and what happened to him for the first time when he was arrested (40.731.052 f.). The defendant considers that Georges denounced him because he belongs to the Mandingo ethnic group. Furthermore, he indicated that if he had to eat a human heart, he would have cooked it first, but would not have eaten it raw. Alieu Kosiah also denied any knowledge of acts of cannibalism during the war and referred to the inconsistency between the complainant's explanation of the reasons for Joseph's death and those reported in the newspapers, namely that He was killed because of his Christian religion and the fact that he owned a bible (40.731.054).
- 7.6.2.14 When questioned about these facts by the court, Pierre stated that he did not know Joseph and that he did not know what had happened to him (40.771.010 ff.).
- 7.6.2.15 Jean, alias Cassiopée, stated that he had never heard of the murder of Joseph (40.769.012). He stated that he had only heard of one murder during the entire war, which allegedly occurred in Foya in 1993 and was committed by Bertrand (40.769.013).
- 7.6.2.16 Many participants in the proceedings reported acts of cannibalism that allegedly occurred during the war (Paul: 40.757.007 f.; Raoul: 40.755.007; Louis Z.: 40.754.005; Antoine W.: 40.756.007; Alfred: 40.767.007; Olivier: 40.761.011).

Material means of proof

- 7.6.2.17 It appears from the TRC report that cannibalism is an offense that has been clearly listed and denounced on many occasions (14-01-0144). According to this source, it was a widespread practice among combatants and their leaders during the war (14-01-0141). This type of crime contributed to the climate of terror that the combatants created (14-01-0140).

7.6.3 Law and Evaluation of Evidence

Participation in the murder of Joseph

- 7.6.3.1 During the proceedings, the Court reserved the right, pursuant to article 344 of the Code of Criminal Procedure, to assess the facts with which Alieu Kosiah is charged in relation to the murder of Joseph not only from the standpoint of complicity, but also from that of co-activity and action by omission.
- 7.6.3.2 With regard to the legal developments in relation to the murder, reference is made to paragraphs 7.2.3.1 to 7.2.3.3 above.
- 7.6.3.3 According to art. 23 of the former Swiss Military Criminal Law Code, the sentence could be mitigated (art. 46 of the former Swiss Military Criminal Law Code) for those who intentionally assist in the commission of a crime.
- 7.6.3.4 For legal developments in relation to complicity and co-activity, we refer to recitals 7.4.3.24 and 7.4.3.25 above.
- 7.6.3.5 In the present case, the indictment does not describe precisely what behavior Alieu Kosiah adopted as participation in the murder. It is understood from the description of the scene that Joseph died as a result of Céphée cutting open his chest with an ax and ripping out his heart. As far as the defendant is concerned, it is mentioned that he was present, that he was proud of what was happening, that he was gloating about having killed or seeing a human being killed and that he did nothing to stop this murder.

The facts as they appear in the indictment do not allow for complicity against Alieu Kosiah. Indeed, it is not stated in what way he would have given assistance or material support to the commission of the murder. As for complicity of a psychological nature, it is not enough that the defendant was present at the time of the murder to retain it. It is true that the indictment mentions that he was jubilant after the murder. However, it is not specified in what way the attitude of the defendant would have reinforced Céphée in the realization of the offense, which is an indispensable element for retaining psychological complicity. A simple approval of the murder not being sufficient, complicity cannot be retained.

With regard to co-activity, the indictment does not describe in what way Alieu Kosiah collaborated in a decisive way in the commission of the murder or associated himself with the decision to commit it. Again, his presence at the scene and his expression of contentment are not sufficient to establish coactivity.

Finally, with regard to the commission by omission, it should be noted that the former Swiss Military Criminal Law Code, in its version in force at the time of the alleged acts, did not expressly penalize this form of offense. It would then be necessary to determine whether the action by omission could be retained on the basis of the jurisprudence in force at the time of the facts. However, this question can be left open in this case.

Indeed, the commission of an offense by omission presupposes a position of guarantor. If the indictment accuses the accused of not having prevented the murder, it fails to specify in what way he had a duty to act (for example, as a superior) and what he should therefore have done.

- 7.6.3.6 Consequently, Alieu Kosiah must be acquitted of complicity in the murder of a civilian within the meaning of art. 109 para. 1 and 108 para. 2 in connection with art. 23 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GCs and art. 4 para. 2 letter a AP II.

Desecration of the corpse of Joseph

- 7.6.3.7 According to art. 3 common to the GC, para. 1, letter c, attacks on the dignity of persons, in particular humiliating and degrading treatment, are and remain prohibited at all times and in all places with respect to persons not taking a direct part in hostilities.

In accordance with Art. 4 (2) (e) AP II, outrages upon personal dignity, in particular humiliating and degrading treatment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who do not take a direct part in hostilities or who are no longer taking part in hostilities (...).

- 7.6.3.8 For the legal concepts relating to outrages upon personal dignity, reference is made to paragraphs 7.5.3.3 and 7.5.3.4 above.

- 7.6.3.9 The victim of the offense of outrages upon personal dignity may be a person who has already died (see, inter alia, ICC, Elements of Crimes, 2013, p. 24 note 57; International Criminal Tribunal for Rwanda [hereinafter: ICTR], Bagosora case, Judgment of 18 December 2008, para. 2224; ICTR, Bagosora case, Appeal judgment of 14 December 2011, para. 729).

- 7.6.3.10 In the present case, when describing the defendant to the Office of the Attorney General, Georges mentioned several elements that have often emerged in the proceedings to identify him, namely his dark complexion, medium build, the way he dresses (sometimes military, sometimes civilian) and his bulging eyes. These are clues that the complainant was indeed confronted with the defendant during the war. It is true that he was not able to identify him on the two photographic plates that were submitted to him. However, this is not decisive, as explained in recital 6.4 above. Georges explained to the Court that he was confused by the color of the photographs. As he recognized the defendant by his skin tone, he could not recognize him in the photographs. The complainant, on the other hand, was categorical when confronted with the defendant in person, stating that he recognized him by his eyes. The description provided by Georges, as well as his recognition of Alieu Kosiah during their confrontation, makes it credible in the Court's opinion that he saw him during the first civil war in Liberia.

- 7.6.3.11 Moreover, Georges' statements, whether before by the Office of the Attorney General, before the French authorities in the proceedings against Pierre, or before the Court, have been consistent as to the circumstances in which Joseph was killed and his body desecrated. Even when confronted with versions that differed somewhat from his own, he always maintained his statements with confidence. The complainant distinguished between what he was told and what he personally saw. These elements make his denunciation very credible. In particular, he unequivocally stated that he witnessed the murder of Joseph and saw Alieu Kosiah eat part of his heart. The circumstances of Joseph's murder that he described were also largely corroborated by the testimony of the witnesses in the French proceedings, especially regarding the way the victim was killed and the fact that his chest had been cut open with an ax to remove his heart. As for the contradictions that could be detected between Georges' testimony and that of the witnesses in the French proceedings, they concern elements that are not relevant (detention of Joseph). Furthermore, it should be noted that both FF, the victim's widow, and HH, did not have a direct perception of the murder but reported hearsay. As for GG, his account largely overlaps with Georges, especially the fact that Joseph's chest had been cut open. It is true that the witnesses in the French proceedings did not mention Alieu Kosiah in their testimony. However, it cannot be inferred that he was not present. Indeed, insofar as it is possible that Alieu Kosiah was not based in Foya in 1993, it cannot be excluded that the civilians did not recognize him, unlike Pierre, Céphée and Bertrand, who were soldiers based in that town. Finally, the fact that Georges was unable to identify Jean, alias Cassiopée, in a photograph submitted to him during the proceedings does not invalidate the credibility of his statements. Indeed, nearly 28 years have passed since the events and it is not unusual or surprising that an individual could not recognize a person after such a long period of time, especially since Cassiopée was not part of Georges' close circle. In this respect, the fact that Raoul's ability to immediately recognize him may be explained by his assignment as a ULIMO soldier in Foya; he must therefore have been in close contact with Cassiopée on several occasions.
- 7.6.3.12 The statements of Pierre and Jean, alias Cassiopée, are not at all credible. Indeed, the former apparently seeks to exonerate himself, insofar as the same facts as those imputed to Alieu Kosiah in the present case are alleged against him in the French proceedings against him. As for Jean, his statements are once again devoid of any credibility, as he claims to have witnessed only one murder of a civilian in Foya during the entire first civil war, while many sources report a real massacre against the civilian population in this city in 1993 (see in particular TRC report, 14-01-0137).
- 7.6.3.13 Finally, the denials of the accused must also be rejected. His alibi, according to which he could not have captured Foya and therefore could not have committed the acts of which he is accused, is false. The Court

considers it established that the accused was present in Lofa as early as March 1993 (cf. supra recital 7.2.3.7). Furthermore, Pierre claimed to have captured the town of Foya together with the defendant. It is difficult to see what interest the defendant would have had in lying about a fact as trivial as that, in view of the accusations made against him by the French authorities. In addition, the capture of Foya does not constitute a prerequisite for the facts denounced to be imputed to the defendant. As for the argument that the latter is setting himself up as a victim because he belongs to the Mandingo ethnic group, this is not relevant either. In this respect, reference is made to recital 6.6 above. Finally, the defendant disputes that acts of cannibalism were committed in Liberia during the first civil war, while many participants in the proceedings (including former ULIMO soldiers) maintain the opposite. The TRC report is also very explicit about cannibalism. The defendant's line of defense, claiming not to have seen or heard anything related to crimes committed against civilians during the first civil war, is again not credible.

7.6.3.14 The Court therefore considers that it is established that the civilian Joseph was killed with an ax by Céphée and that his heart was extracted to be eaten. It is also established that Alieu Kosiah was present during the murder and that he ate part of the victim's heart. Eating a part of the body of a deceased person is an act that seriously violates human dignity and expresses humiliation. It must therefore be qualified as inhuman and degrading treatment within the meaning of art. 3 common to GC para. 1 letter c and 4 para. 2 letter e AP II.

7.6.3.15 Subjectively, Alieu Kosiah acted intentionally. He was also aware of the victim's civilian status.

The offense was committed in the context of the armed conflict that took place in Liberia during the first civil war, which the accused knew.

7.6.3.16 In conclusion, Alieu Kosiah will be convicted of having inflicted humiliating and degrading treatment on a deceased civilian within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 let. c common to the GC and art. 4 para. 2 let. e AP II.

7.7 To order and direct a forced transport, by civils from Foya to Solomba, and from there to the Guinean border

7.7.1 Charge

According to paragraph 1.3.10 of the indictment, Alieu Kosiah is accused of having ordered and directed the forced transport of goods (in particular coffee) by civilians from Foya to Solomba during the second half of 1993, respectively at the end of 1993.

7.7.2 Means of proof

During the investigation

- 7.7.2.1 It appears from Georges' criminal denunciation dated 23 June 2016 that he and other civilians were forced several times to carry a shipment for the ULIMO faction from Foya to the Guinean border. The journey took several hours. The cargo was very heavy and had to be carried on the head, Georges says he had to make at least two of these forced transports in the presence of Alieu Kosiah (05-02-0017 s.).
- 7.7.2.2 At the hearing by the Office of the Attorney General, Georges stated that in the second half of 1993 he was forced by Alieu Kosiah to transport coffee from Foya to the Guinean border at Solomba. He was initially taken to the front of Alieu Kosiah's house, where many civilians were present. Georges estimated the number of civilians involved in the transport to be between 20 and 30. The complainant stated that he had to carry a very heavy load of coffee on his head (12-20-0057, 0059). During the transport, Kosiah, who was the only commander, did not walk with the civilians. He was accompanied by his bodyguards 'who were no less than sixteen', either in front or behind the group (12-20-0059). Georges said that he was continually threatened by Alieu Kosiah's soldiers that if he could not carry the load, he would be killed. On other transports, he saw people being killed by other commanders for not being able to carry their load and dropping it (12-20-0057, 0059). Georges was also threatened by Kosiah during the transport. Kosiah allegedly told the civilians, brandishing his gun, that 'everyone must line up and if anything happens, (they will die) ("if any bush shake, you die") (12-20-0060). Georges explained that under such terror, he had no choice but to find the strength to carry his load no matter what. He said that under normal circumstances he would never have been able to carry such a weight. By the time he reached the border, Georges was completely exhausted. His muscles and neck were very stiff. The complainant said he was not given any food and had to drink impure water from the Makona River with the palm of his hand. In Solomba, Alieu Kosiah crossed the border. The civilians gathered and returned to Foya, accompanied by the soldiers and bodyguards who had not crossed the border (12-20-0058). Georges said the transport was a terrible experience for him. He said it could have killed him and that he was traumatized by being forced to carry heavy loads over a long distance (12-20-0032).
- 7.7.2.3 When questioned about the facts of which he was accused, Alieu Kosiah disputed them. He stated that he had never walked from Foya to Solomba. He said that he had already gone there by motorbike or car, but never by foot (13-01-0643).
- 7.7.2.4 With regard to the statements of Olivierand Bernard on the transport of goods by civilians during the war, reference is made to paragraphs 7.5.2.3 and 7.5.2.4 above.

At the hearings

7.7.2.5 During his hearing before the Court, Georges confirmed his denunciation against Kosiah, indicating that the transport had taken place in the second half of 1993 (40.751.018 f.). He explained that the defendant's soldiers had come to get him one morning to take him to the defendant to transport a load of coffee to the Guinean border. He was living in Foya at the time. The complainant stated that he saw and heard Kosiah give the order for the transport. The goods to be transported had been looted from civilians by Alieu Kosiah (40.751.019). There were cocoa, coffee, and other valuables that came from a hospital or an oil mill. The destination was Solomba, because it was a commercial area in Guinea where goods could be sold (40.751.021). Georges estimated the number of civilians who participated in the transport to be between 25 and 30. According to him, the civilians had no choice but to participate. They would have been killed on the spot if they had refused (40,751,020). He affirmed that he personally saw Alieu Kosiah participating in the transport. It was the latter who led the group. He was accompanied by his soldiers and bodyguards. According to the complainant (40.751.021), there were no soldiers who were superior to him. The trip would have taken about six or seven hours according to Georges, depending on the load the civilians were carrying. The road used was passable. The civilians were allegedly not given a break, nor were they given food or drink during the transport. The plaintiff carried his load on his head. When it became too heavy, he would place it on his shoulders for a while to rest his head. He stated that the load was very heavy. The soldiers accompanying the convoy were very hard on the civilians and beat or hit them with their weapons if they did not move at the imposed rate (40.751.022). The soldiers were armed with AKs or knives (40.751.023). They were positioned at the front, middle and back of the convoy (40.751.024). The defendant was also harsh, according to Georges, his only concern being to get to the Guinean border. The complainant admitted that he did not see him hit civilians but said that he felt threatened during the transport by the noise of the weapons, which was terrifying. In terms of physical violence, he said he was pushed. Other civilians also felt threatened and were also pushed (40,751,023). Georges stated that he was not sure if Alieu Kosiah, who was sometimes at the front, sometimes at the side, and sometimes at the back of the convoy, could see everything that was happening during the transport. He did not intervene when his soldiers threatened or hit civilians. The complainant stated that he was in fear for his life during the entire journey. As the soldiers were armed there was no possibility of escape. The convoy arrived at the Guinean border in the late afternoon (40.751.024). When asked why Alieu Kosiah did not use vehicles rather than civilians to transport the goods, the complainant replied that there were no more cars available because of the looting (40.751.025).

7.7.2.6 When questioned by the Court on the facts of which he is accused, the defendant persisted in disputing them. He stated that to his recollection he had not visited Foya between July and December 1993 (40.731.054). He said he was the victim of a conspiracy. Georges would not know him

since he was unable to identify him in a photograph from 1996 (40.731.055).

7.7.2.7 With regard to the statements of former military personnel in connection with the transportation of goods by civilians, reference is made to recitals 7.5.2.7 to 7.5.2.10 above.

7.7.3 Law and evaluation of evidence

7.7.3.1 According to Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture, and torment (subpara. a), as well as outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.

7.7.3.2 According to Art. 4 para. 2 AP II, it is and remains prohibited at any time and in any place whatsoever, with respect to persons who are not or are no longer taking part in hostilities, whether or not they have been deprived of their liberty, to commit any violence to the life, health or physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (subpara. e), slavery and slave trade in all their forms (subpara. f) and the threat to commit the above-mentioned acts (subpara. h).

7.7.3.3 Regarding the legal developments related to cruel treatment, violation of human dignity and slavery, we refer to recitals 7.4.3.2. 7.4.3.3 7.5.3.3 and 7.5.3.4 above.

7.7.3.4 With regard to the order given by a superior within the meaning of art. 18 of the former Swiss Military Criminal Law Code reference is made to recital 7.2.3.4 above.

7.7.3.5 In the present case, Georges' statements before the Office of the Attorney General and before the Court have always been consistent as to the circumstances in which the transport took place and as to the involvement of the accused. The complainant affirmed before the Office of the Attorney General and repeated during the debates that he had heard Alieu Kosiah give the order for the transport and that he had seen him take part in it as the leader of the convoy. In view of the consistency of his account, it already appears to be very credible. Furthermore, Georges was measured in what he said about the defendant's involvement and did not try to blame him at all costs. He admits, for example, that he did not see Alieu Kosiah beating civilians and that the latter may not have seen everything that happened during the convoy. This precaution adds credence to his words.

- 7.7.3.6 Georges' description of the transport also largely overlaps with that given by Raoul's description of the events described in paragraph 7.5, in particular with regard to the goods transported, the manner in which they were transported, i.e. on the head, the way in which the convoy was organized, the route taken, the time required to walk, the physical and psychological violence inflicted on the civilians and the role played by the defendant. Georges' story is also corroborated by Olivier's explanation of the transportation of goods by the ULIMO during the war. (see supra recital 7.5.2.3).
- 7.7.3.7 The facts denounced by Georges can also be related to the role of H&H attributed to Alieu Kosiah (see above, recital 7.5.3.10).
- 7.7.3.8 Concerning the denials of the former ULIMO soldiers and their lack of credibility, reference is made to recital 7.5.3.8 above.
- 7.7.3.9 The defendant's argument that he was not in Foya during the second half of 1993 must be rejected, as the Court considers it established that Alieu Kosiah was in Lofa from March 1993 and that he participated in the conflict (see para. 7.2.3.7 above). The fact that the accused was not based in Foya is not relevant, as he could have gone there to carry out the transport in question. As for the conspiracy of which he claims to be a victim, this has not been established, notwithstanding the sum of the arguments put forward by the defense in support of this thesis (see above, recital 6). Finally, with regard to the photographs, reference is made to recitals 6.5 and 7.6.3.10 above.
- 7.3.10 In view of the foregoing, the Court considers the statements of Georges to be much more credible than those of the accused, and thus finds that it is established that Alieu Kosiah gave the order for the transport of goods denounced by the complainant and that he participated in it. These facts can be qualified as both an attack on physical and mental integrity, in the form of cruel treatment, and an attack on personal dignity, in the form of humiliating and degrading treatment.

Forcing civilians to walk for hours with a heavy load, without giving them food or water, and threatening them with weapons or beating them if they do not move at the imposed pace, is likely to cause great suffering. This suffering is first of all physical, because of the long walk that the civilians had to perform carrying a heavy load and the blows that they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that the civilians felt throughout the journey, as they were accompanied by armed soldiers. Once again, it is specified that, even if the accused did not inflict the blows himself or threaten the civilians with his weapon, these facts can be imputed to him. In fact, in order to be considered as the author of the offense, it is not necessary that he himself has carried out all the acts constituting the said offense. It was a plan to which he adhered, carried out by different actors, who thus acted as co-perpetrators of the offense (on the concept of co-action: cf. supra, 7.4.3.25).

The acts of which the defendant is accused must also be qualified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, threatening him with death or beatings if he does not move at the imposed pace, is tantamount to flouting his quality as a human being and represents a very serious form of humiliation. Any sensible person would feel deeply humiliated and ridiculed by such treatment. On the other hand, beating civilians and threatening to kill them are offenses of cruel, humiliating and degrading treatment, and are therefore not separate offenses that should be added.

Finally, it is specified that in spite of the seriousness of the facts, the offense of slavery is not retained, insofar as the transport lasted a few hours and that this lapse of time is not sufficient to admit the exercise of powers of property right on the implied civilians.

7.7.3.11 With regard to the order given for the transport, Alieu Kosiah's status as chief can be retained in view of the statements made by Georges, according to which the defendant was the highest-ranking officer present during the transport. His position at the rear of the convoy also indicates his hierarchical superiority, because from there he could monitor the transport. Moreover, the fact that his order was carried out also demonstrates his status as the leader of the convoy. The order given was for the commission of offenses, namely the infliction of cruel, humiliating and degrading treatment. It was because of the order they received from Alieu Kosiah that the soldiers accompanied the civilians on the transport in the circumstances described above. The objective conditions of art. 18 of the former Swiss Military Criminal Law Code are thus realized.

7.7.3.12 Subjectively, Alieu Kosiah acted intentionally. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would carry it out. Moreover, the accused knew without a doubt that the persons involved were civilians. Finally, these facts are part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.7.3.13 In conclusion, Alieu Kosiah must therefore be condemned for having ordered to inflict, respectively for having inflicted himself a cruel, respectively humiliating and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a and c common to the GC and art. 4 ch. 2 let. a and e AP II).

7.8 Ordering the looting of the Foya power plant

7.8.1 Charge

According to number 1.3.11 of the indictment, Alieu Kosiah is charged with having ordered the looting of the Foya power plant between July and December 1993 or between March 1994 and December 1995.

7.8.2 Means of proof

During the investigation

- 7.8.2.1 In his criminal denunciation dated June 23, 2016, Georges reported that the ULIMO systematically looted property and other valuables and forced civilians to transport them to the Guinean border to sell them (05-01-0017).
- 7.8.2.2 During his interrogation by the Office of the Attorney General, Georges stated that Alieu Kosiah, Pégase, Xavier, alias Céphée, Bertrand and Sextant had looted the power station in the center of Foya, located at Kpormbu Road. This was the only source of electricity for a district of one hundred thousand people. They looted the engine of the power station and the structure of the building. According to the complainant, this was no ordinary looting, as the commanders themselves were involved (12-20-0031). The engine, of the "Black Stone" type, was dismantled first. Georges said he saw Alieu Kosiah give the order to loot the plant to his men, as well as to other people who had come from Guinea to reinforce him (12-20-0049). Because of this looting, Foya was still without electricity at the time Georges was interviewed by the Office of the Attorney General in 2016 (12-20-0031).
- 7.8.2.3 When interviewed by the Office of the Attorney General, Raoul mentioned the existence of a generator used to produce electricity in Foya that had been looted and whose parts were transported to Solomba (for details, see infra recital 7.9).
- 7.8.2.4 When questioned about the facts of which he is accused, Alieu Kosiah disputed them. He stated that there was nothing in the file to establish that there was indeed a power plant in Foya, except for the statements of two complainants (13-01-0650). According to him, the witness LL. stated that there were private generators in Foya, but that there was no central generator to provide electricity to the town (13-01-0640).

During the debates

- 7.8.2.5 During his hearing in court, Georges confirmed his denunciation against Alieu Kosiah (40.751.025). He was unable to date the event. He explained that the power plant was located on Bombu Road, the road leading to Foya Tengia, and that it was the only source of electricity for the Foya district, providing lighting, among other things. According to the complainant, Alieu Kosiah, who was the most important person, Sextant, the ground commander of Foya, Pégase, Céphée, Bertrand, Cassiopée, and other rebels were present during the looting. The looting was not done by one individual, but by the entire ULIMO leadership that was present. According to Georges, Alieu Kosiah was the highest-ranking member of the military. When asked if he was the one giving the orders, he replied, "Yes, he was there". Georges admitted that he did not see

and/or hear Alieu Kosiah give the order for the looting; however, since he was the highest-ranking commander for the Foya zone, and since he witnessed and participated in the looting, "he was completely aware of it". The complainant explained that there was a Black Stone generator that was fixed in cement and therefore could not be taken away. However, there was a back-up generator next to it. It was this one that was taken away, as well as some parts of the main generator that could be detached (40.751.026). Georges said that it was not civilians who dismantled the two machines. It was the soldiers who did this and brought in people from Guinea to help them. The civilians were, however, then requisitioned to transport the parts of the two generators. The complainant stated that he had not been present during the dismantling of the generators but had only been involved in taking out the parts for transport. To the question of whether Alieu Kosiah was present during the dismantling, Georges stated that he could not answer this question because he was not present, but that when it was necessary to put the parts on the truck, the defendant was present. He also said that Foya had been totally deprived of electricity since the looting (40,751,027).

- 7.8.2.6 When questioned by the Court about this looting, Raoul confirmed that before the war, Foya had a power plant, which was located just before the entrance to the town from Foya Tengia and which provided electricity to the entire Foya district. He also confirmed that this power plant was looted by the ULIMO during the war, when he was a soldier. The looting was allegedly ordered by the Strike Force command, namely Alieu Kosiah and Sextant. It was the Strike Force staff. However, he said he did not know if the order came from them or if they themselves had executed an order. In any case, it was the ULIMO who were responsible for the looting, according to Raoul. (40.755.024). According to him, it was a certain Commander MM. who had the idea of this looting. Then, the looting would have been done by the ULIMO hierarchy, namely CO Kosiah, CO Vincent and CO Sextant. The complainant stated that when the ULIMO arrived in Foya, the power was already gone, but the machine was still there. He also stated that the machine, when running, provided power for the entire Foya district (40,755,025).
- 7.8.2.7 When questioned about these facts, Alieu Kosiah denied having given the order for this looting. However, he acknowledged that during the period of time considered in the indictment, between July and December 1993 or between March 1994 and December 1995, he was in Lofa, in the vicinity of Foya. He stated that he went to Foya during this period to relax when he was returning from the front line. He stated that he did not know if there was a power plant in Foya during the war (40.731.055).
- 7.8.2.8 In relation to looting, Olivier indicated that the ULIMO were supported "only by themselves" and in particular had no international support. Thus, when they arrived somewhere, if they saw something of value, they would take it and then buy ammunition or equipment (40.761.009).

- 7.8.2.9 Jean, alias Cassiopée, confirmed that there was a power plant in Foya, but said he was not aware that it had been looted, and that he did not know whether it was the NPFL or the ULIMO. When asked if he agreed that the power plant had been looted, he replied, in an unclear manner, that he had seen the power plant but that it was not working when he was in Foya (40,769,012). Alfred and Pierre stated that they had no knowledge of looting during the war (40.767.007; 40.771.006).

Material evidence

- 7.8.2.10 Mr. Alain Werner has submitted photographs to the proceedings, which show a base from which a machine appears to have been removed and the remains of another machine (40.751.068).

7.8.3 Law and evaluation of evidence

- 7.8.3.1 According to Art. 4 para. 2 lit. g AP it is and remains prohibited at all times and in all places with respect to persons who are not or are no longer taking part in hostilities, whether or not they are deprived of their liberty, to pillage.

- 7.8.3.2 The prohibition of looting covers both organized looting and looting resulting from individual acts of indiscipline. It is prohibited to order or authorize looting. The prohibition is general in scope and applies to all categories of property, whether private or State-owned (ICRC, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949, 1986, No. 4541).

The offense of pillage is a deliberate and illegal appropriation of property (ICTY, Naletili Case, Judgment of 31 March 2003, para. 612). The prohibition of pillage is considered part of customary international law (ICC, Bemba Gombo Case, Judgment of March 21, 2016, para. 114). Under international law, appropriation does not have to occur on a large scale, nor does it have to be of great economic value. Spoliation, a common way for individual soldiers to acquire booty, is considered a most traditional war crime. Singular cases of theft of personal property have been characterized as war crimes in a number of trials before French military tribunals and other courts following World War II, even though in each of these cases the value of the property stolen was modest (ICTY, Naletili Case, Judgment of 31 March 2003, paras. 612 ff). Pillage as a war crime requires the appropriation of certain property by a person in order to be carried out. The act of "appropriating" property implies that "the property (...)" has passed under the control of the perpetrator (ICC, Bemba Gombo Case, Judgment of 21 March 2016, para. 114).

- 7.8.3.3 With regard to the developments in relation to art. 18 of the former Swiss Military Criminal Law Code concerning the order given by the superior, reference is made to recital 7.2.3.4 above.

- 7.8.3.4 In the present case, the statements of Georges and Raoul are consistent as to the existence of a power plant in Foya during the war. Both plaintiffs located the power plant in the same place, on the road leading to Foya Tengia. Both also claimed that the power plant had been looted by the ULIMO during the first civil war. The existence of this power station, as well as the fact that some of its elements were taken away, are also attested to by the photographic clichés submitted by Maître Alain Werner. Indeed, one can clearly distinguish on these pictures a place where a machine must have been located in the past, as well as some parts that apparently could not be detached. Olivier, for his part, confirmed the commission of looting during the war by the ULIMO, motivated by the desire to obtain money, insofar as the faction did not receive any material support from neighboring countries. The denials of Alfred and Pierre are again not considered credible, as they deny any offenses committed by the ULIMO armed faction during the war. With regard to Jean, his statements, insofar as they are understandable, show that he avoided answering the question about looting. As for the defendant, although he contested during the investigation the existence of a power plant in Foya, he did not go back on this argument during the debates; his defense counsel even expressly admitted that its existence was not contested (40.720.053). In view of these elements, the Court considers it established that there was a power plant in Foya before the war and that it was pillaged by the ULIMO faction.
- 7.8.3.5 With regard to the order given to carry out the looting, Georges stated before the Office of the Attorney General in 2016 that he had seen Alieu Kosiah give it. However, during the debates, the complainant went back on his words, indicating that he had neither seen nor heard the accused give the order to loot, which was not the work of one man, but of the entire leadership of the ULIMO. According to him, Alieu Kosiah was the highest-ranking commander for the Foya zone, and insofar as he witnessed and participated in the looting, "he was completely aware of it. Raoul said the order was issued by the Strike Force headquarters, of which Alieu Kosiah was a member, but he did not know if the order came from the headquarters or if the headquarters was executing an order from elsewhere. The fact that the defendant was present during the looting does not necessarily mean that he gave the order himself. If it is established from the statements of Georges and Raoul, that the defendant was involved in this looting, the Court was not convinced that Alieu Kosiah was in fact behind the order to loot the power plant.
- 7.8.3.6 In these circumstances, Alieu Kosiah must be acquitted of the offense of ordering the looting of the Foya power plant under art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code in conjunction with art. 18 of the former Swiss Military Criminal Law Code cum art. 3 GC and art. 4 ch. 2 let. g AP II.

7.9. To order and direct the forced transport of the engine of the Foya power plant by civilians from Foya to Solomba and from Foya to Solomba, and from there to the border with Guinea

7.9.1 Charge

According to section 1.3.12 of the indictment, Alieu Kosiah is accused of having ordered and directed the forced transportation of the engine of the Foya power plant to Solomba by civilians between July and December 1993 or between March 1994 and December 1995.

7.9.2 Means of proof

During the investigation

7.9.2.1 During his interrogation, Georges stated that once the power plant's engine had been dismantled (see above, para. 7.8), a large number of civilians had to be employed to carry it and install it on a truck, given its weight. Tree trunks were cut and placed underneath the machine in order to roll it onto the truck. These logs were then used to lift the machine and place it in the truck (12-20-0049). The truck was a miniature truck, open like a Toyota, with two front wheels and four rear wheels (12-20-0053). The truck could not move on its own, so civilians had to push it (12-20-0049). Georges explained that civilians had to push it from Kpormbu Road, which is just outside of Foya, almost on Tengia Road, to the Solomba border. The complainant claimed that he was one of the civilians forced to lift the engine and place it on the vehicle and push it. The complainant estimated that between 50 and 100 civilians were requisitioned (12-20-0050). He stated that during the transport, the ULIMO commanders, including Alieu Kosiah, walked with the civilians. Georges estimated that the distance traveled was between 16 and 18 miles (between 25 and 28 kilometers), requiring about six hours of walking at a normal pace. The civilians spent most of the day pushing the truck. Some of them also carried other loads, such as spare parts, leftover metal or aluminum plates. Even the galvanized metal of the roof of the power plant had been torn off. Others were carrying coffee, cocoa, and all kinds of equipment. These goods were placed on the heads of civilians (12-20-0054). According to the complainant, during the transport, civilians who did not want to push the truck were whipped and if one did not push forcefully, he was beaten by the soldiers. The commanders, including Alieu Kosiah, were either at the front or at the back of the group, as they did not keep the same position during the entire transport (12-20-0053). Alieu Kosiah's soldiers, his bodyguards, were positioned along the convoy and beat "those who did not participate". Their motto was "till go" (12-20-0054). To terrorize the civilians and keep them moving, the soldiers also fired shots in the air (12-20-0054). The complainant did not remember the exact time the convoy arrived in Solomba, only that "it was almost approaching the evening" (12-20-0050). He explained that once they arrived in Solomba, the civilians had to take the engine down to the main road, whereupon

the crossing of the Makona River at the border was arranged by a businessman by the name of OO. (or OO.a.) (12-20-0051), a Guinean who organized the sale of goods (12-20-0061). He was often with Alieu Kosiah, Sextant, and the other commanders, and served as their go-between, going back and forth between Guinea and Liberia (12-20-0047). The river crossing was made on two very large canoes connected by boards. After the engine was moved to the other side of the river, most of the commanders, including Alieu Kosiah, also crossed. The civilians remained on the Liberian side of the river. Some of them entered Solomba, only to make their way back to Foya the next day (12-20-0051).

- 7.9.2.2 Before the Office of the Attorney General, Raoul also briefly described this transport, which he placed in late 1993 (12-08-0030). At that time, he had become a ULIMO soldier and had been ordered by a commander named MM. to escort civilians who were to transport goods from Foya to Solomba. According to Raoul, the organization of the soldiers for the transport had been planned by the headquarter headquarter, namely Alieu Kosiah (12-08-0030 f., 0011). Other soldiers were with him when he received this order. There were many of them because they had to transport the generator from Foya. There were two vehicles to push, one of which had no engine (12-08-0030 f.). Raoul had been instructed by MM. that if any of the civilians were tired, they should be given water. Indeed, some of them were living with MM., which is why MM. wanted them to be treated well and protected (12-08-0031). Regarding the generator to be dismantled, commander MM. told him that it produced electricity for the town of Foya before the war. It was located on the outskirts of Foya, but not in the bush. The generator had been dismantled into several parts, which were placed in a vehicle without an engine. The goods to be transported had been collected at headquarters. When Raoul arrived, the civilians were already assembled. The convoy left Foya in the morning and moved for several hours, arriving in Solomba in the afternoon. Raoul explained that during the transport, the civilians were tired of pushing the cars (12-08-0031). They were given food; some people were indeed carrying food and preparing food for everyone (12-08-0040). On the road from Foya to Solomba, Raoul reported seeing Alieu Kosiah. Also present were Sextant, Cassiopée and NN., Alieu Kosiah's bodyguard (12-08-0031). According to him, the leaders of the escort were CO Kosiah and CO Sextant (12-08-0032). The commanders were at the rear of the convoy. They did not patrol the convoy, but gave instructions (12-08-0040). During his interrogation, Raoul reported the death of a civilian, killed by NN. because he was too tired to push the vehicle. NN. allegedly used an AK to kill the civilian. He reportedly fired one shot into the victim's forehead and then left his body by the side of the road. When the civilian was killed, CO Kosiah and CO Sextant were in the back of the escort. According to Raoul, they saw the body on the way out. The body was still on the side of the road when they made their way back (12-08-0031 f.).

7.9.2.3 When questioned about the facts of the case, Alieu Kosiah disputed them. He noted contradictions between Raoul's version and that of Georges. While the former stated that a civilian had died during the transport, the latter never mentioned it (13-01-0650). Similarly, Raoul reportedly stated that there were two vehicles in the convoy, while Georges stated that there was only one truck (13-01-0424). Regarding the boat that was used to cross the Solomba River, Alieu Kosiah said that the boat he had seen on the occasions when he went to Solomba was 10 to 12 meters long and at most 1.5 to 2 meters wide in the middle. Sitting in it, it was possible, according to the accused, to stand at the edges of the boat with one hand on each side. For Alieu Kosiah, it is therefore impossible that a car could have been transported on this kind of boat (13-01-0104). He added that he did not know any OO. (or OO.a) (13-01-0606 and 0607). Regarding NN., Alieu Kosiah stated that he knew him very well, but that he had never been his bodyguard. He was just a ULIMO soldier, whom he met in Voinjama or Monrovia, before going to Lofa. He said he never met him during the war in the area between Foya and Guinea, but rather in Voinjama. Alieu Kosiah never heard that NN. shot a person in the head in the Foya area, as Raoul stated. The defendant said he did not know who NN.'s superior was during the war (13-01-0179).

7.9.2.4 With regard to the statements made by Olivier and Bernard in relation to the transport of goods by civilians during the war, reference is made to recitals 7.5.2.3 and 7.5.2.4 above.

During the debates

7.9.2.5 In court, Georges confirmed his denunciation against Alieu Kosiah for this transport. He explained that the looting of the power plant had taken several days and that afterwards the pieces had been transported. He had been requisitioned by "the commanders" (40.751.027). He was requisitioned at his home in the morning (40.751.028, 031). In response to the question as to why he could say that Alieu Kosiah gave the order for this transport, the complainant indicated that the defendant was the highest-ranking officer and that he was there. He admitted that he did not hear or see him give the order. However, he inferred from the presence of the defendant, who was the highest-ranking officer at the time, that the order came from him. Georges confirmed the estimate he had given to the Office of the Attorney General as to the number of civilians who took part in the transport, i.e. between 50 and 100. He himself was one of them (40.751.028). The soldiers were also numerous because the goods transported were "important. The complainant indicated that Alieu Kosiah was present during the transport, as was Pégase (40.751.029). He explained that the emergency generator, as well as the various parts of the main generator that could be detached, were placed on logs in order to be placed on the truck with the help of metal parts. Georges was one of the civilians who had to push the truck. The soldiers also took advantage of this transport to bring other goods they had looted to the border. When asked if there were other vehicles besides a truck, Georges

replied that he did not know what was in front of him and that he and other civilians had pushed a truck with a non-functioning engine (40.751.030) to Solomba. According to the complainant, this task was very difficult. The merchandise had to be transported to Solomba because it was the place where trade was conducted. The journey would have taken approximately six to eight hours. Georges explained that when one group of civilians got tired, another would take over. He said the civilians were not given food or water during the trip (40.75.031). The soldiers wanted to show their power and repeated the same phrases: "any bush shake your heart" and "till go". They were armed and fired shots, which was described as "horrifying" by the complainant. Alieu Kosiah had a gun. According to Georges, this second transport was worse than the first one (discussed in 7.7 above) in terms of threats and violence, especially because of the shots fired. As the objects being transported were valuable, the soldiers made sure to speed up the movement to their destination. Georges said that as far as threats were concerned because there were more civilians involved than in the first transport, the stress was lessened somewhat. For his part, he focused on the task at hand, which was to move the vehicle forward, so he was not pushed by the soldiers as other civilians may have been. Asked if he had seen a civilian killed during the journey, Georges said he had not noticed anything like that, but could not rule it out because the convoy was large. Regarding Alieu Kosiah, the complainant said that he could not see everything that was happening during the journey, but that he had at least heard the shots (40.751.032). The defendant allegedly did not intervene to stop the soldiers from threatening or beating civilians. Georges stated that he was very afraid for his life during the transport and was unable to flee for fear of being killed. Regarding the shape of the convoy, the complainant explained that the group extended over several dozen meters. Alieu Kosiah, as well as the other officers, did not occupy a fixed position. The convoy arrived at the border in the late evening. The civilians deposited the goods on the bank of the river and left the truck there as well. To get the goods across, there were large canoes as well as barrels attached to each other to float, like a ferry. The civilians, however, did not bother to get the goods across the river (40,751,033). Once they had deposited it on the bank, they were able to return to Foya, which they reached very late (40.751.033, 034). Georges reported that he was not paid for participating in this transport (40.751.035).

- 7.9.2.6 During the debates, Raoul testified that the parts of the power plant were transported on a vehicle without an engine, a Mercedes truck, which was pushed by civilians to Solomba to be sold. Coffee and cocoa were also loaded onto the truck. The transport was reportedly ordered by the ULIMO hierarchy (40.755.025). Raoul claimed to have seen Alieu Kosiah participate and give orders, as the second in command of the Strike Force. No one was hierarchically superior to the defendant during the transport, with the defendant controlling the Lofa (40.755.025 f.). Raoul, in discussing Alieu Kosiah's participation in the transport, stated, "It was something that was expensive, so obviously he wanted to be part of it."

He explained that it took a few days to gather the looted objects, before the transport was made. For his part, Raoul participated in the transport as a ULIMO soldier to protect the looted goods that were being taken to Solomba. The civilians, for their part, were requisitioned by the S2, in charge of liaising between them and the soldiers (40.755.026). The convoy left between 7:00 and 8:00 a.m. (40.755.027, 029). Raoul was unable to quantify the number of civilians who took part in the transport but indicated that there were many and that they had no choice but to participate. The soldiers were also numerous (40,755,027). Alieu Kosiah, who took part in the entire movement of the convoy, was at the back during the journey to supervise what was happening. He was the leader of the group, as the highest-ranking officer (40,755,027 f.). As to what parts of the power plant were transported, Raoul stated that he did not know, but that he had heard that they were important parts of the machine that allowed it to be started and power to be made. These parts were put on a vehicle, which was pushed to Solomba. He said that two vehicles left from Foya, a pick-up and a truck. He added that there was also a van. For his part, he said he only saw the truck and the van. He was told that there was a pickup truck, but he did not see it himself because it had already crossed the river to Guinea when he arrived. The truck had no engine, unlike the van. The van, however, had no gasoline, so it also had to be pushed (40.755.028). In addition to the power plant parts, other goods produced in Lofa were transported, including oil, cocoa and coffee. The trip reportedly took between six and seven hours. The civilians who had to push the two vehicles had a little rest on the downhill sections but had to push again on the uphill sections. The road was not paved (40.755.029). The soldiers accompanying the convoy were armed. Alieu Kosiah had a handgun on his side. According to Raoul, civilians were "more than threatened". Those who stopped were whipped by the soldiers. Raoul confirmed that one civilian was killed during the transport by NN., one of the defendant's bodyguards, because he complained of being tired (40.755.030). Alieu Kosiah could see and hear civilians being beaten or threatened during the transport. However, he would not intervene to prevent these actions. According to Raoul, Alieu Kosiah was present when the civilian was killed and did nothing. During the transport, Alieu Kosiah was positioned in the back and the ULIMO soldiers in the front. The truck arrived at the Guinean border in the late evening. There, the truck was placed on a ferry. People were present at the border to recover the looted goods. The civilians remained in Solomba and only a few soldiers crossed the border (40,755,031). Alieu Kosiah crossed the border. Raoul does not know what happened to the vehicles that were pushed. He said he returned to Foya in the middle of the night. He finally clarified that the civilians were not paid for their participation in the transport (40.755.032).

- 7.9.2.7 When questioned by the court about the facts of which he was accused, Alieu Kosiah persisted in disputing them, indicating that he had first heard of this transport when he was arrested. He admitted that he knew NN., who he knew was a "tactical driver" for Vincent. He would never have been under his command.

7.9.2.8 With regard to the statements of the former military personnel in connection with the transport of goods by civilians, reference is made to recitals 7.5.2.7 to 7.5.2.10 above.

Material evidence

7.9.2.9 Mr. Alain Werner added to the file pictures on which one can distinguish makeshift boats allowing the crossing of the Makona River (40.751.069).

7.9.3 Law and evaluation of evidence

7.9.3.1 According to Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (subpara. a), as well as outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.

7.9.3.2 According to Art. 4 para. 2 AP II, It is and shall remain prohibited at any time and in any place whatsoever against persons who are not, or are no longer, taking a direct part in hostilities, whether or not they are deprived of their liberty, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and the slave trade in all their forms (let. f) and the threat to commit the above-mentioned acts (let. h).

7.9.3.3 With regard to the legal developments in connection with cruel treatment, violation of human dignity and slavery, reference is made to recitals 7.4.2.2, 7.4.3.3, 7.5.3.3 and 7.5.3.4 above.

7.9.3.4 Concerning the order given by a superior within the meaning of article 18 of the former Swiss Military Criminal Law Code, reference is made to recital 7.2.3.4 above.

7.9.3.5 In the present case, the narratives of Georges and Raoul's accounts overlap in many respects, including the manner and duration of the transport, the form of the convoy, the threats and abuse of civilians by the soldiers during the transport, the manner in which the goods were deposited at the border, and the method of transporting the goods across the river, which is evidenced by photographs. The role of the defendant in the transportation is also described in the same manner by Georges and Raoul: Alieu Kosiah was the highest-ranking person in the convoy and was positioned at the back of the convoy to supervise it. The differences in their narratives can be described as marginal and were convincingly justified during the debates. For example, in relation to the number of vehicles involved in the transport, Georges and Raoul

explained that the findings of the study were not sufficiently clear. Raoul explained that the different findings they were able to make stemmed from the fact that the convoy was large and spread over a long distance. The length of the convoy also helps explain why only Raoul saw a civilian killed. These differences do not call into question the reality of the transport and the role played by Alieu Kosiah in it. The fact that the two participants maintained their versions of the facts before the Court, without trying to make them correspond in every respect to each other, reinforces the credibility of their statements. The Court thus considers the denunciations of the two plaintiffs to be very credible. Finally, the fact that they both distinguish between what they saw and what they deduced from it is an additional indicator of their credibility.

- 7.9.3.6 The statements of Georges and Raoul are also corroborated by their own accounts of other transports, as well as by those of other complainants in the proceedings (cf. in particular, *infra* recital 7.10). The defendant always plays the same role as a transport supervisor. He made sure that the goods reached their destination as quickly as possible, in complete safety, and he never threatened or beat up civilians during the convoy, this lowly task being performed by the lower-ranking soldiers. The reality of this transport is also supported by Olivier's statements to the Office of the Attorney General and to the Court when he speaks of the need for the ULIMO to loot and forcibly transport goods to Guinea to finance their movement.
- 7.9.3.7 The facts denounced by Georges and Raoul can also be linked to the role of H&H attributed to Alieu Kosiah (cf. *supra* recital 7.5.3.10).
- 7.9.3.8 The denials of the accused are not such as to call into question the Court's assessment. Indeed, as already noted, Georges and Raoul convincingly explained the differences between their respective accounts. As for the defendant's assertion that he did not know NN. well, this is not true. Indeed, before the Office of the Attorney General, Olivier stated that he was part of the same group of fighters as the defendant and that he was a driver for Vincent (12-16-0042). Even if NN. was not necessarily a bodyguard of Alieu Kosiah, it seems credible that he participated in this transport given the number of soldiers who were involved.
- 7.9.3.9 Finally, with regard to the denials of the former ULIMO soldiers heard in the proceedings and their lack of credibility, please refer to recital 7.5.3.8 above.
- 7.9.3.10 It has therefore been established that Alieu Kosiah participated in the above-mentioned transport. These acts can be characterized as both an attack on physical and mental integrity, in the form of cruel treatment, and an attack on personal dignity, in the form of humiliating and degrading treatment. Forcing civilians to walk for hours with a heavy load to push or carry, without giving them food or water, and threatening them by firing

shots in the air, pushing or whipping them if they do not move at the imposed pace, is likely to cause great suffering. This suffering is first of all physical, because of the long march that the civilians had to endure while carrying or pushing a heavy load and the blows they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that the civilians experienced along the way, as they were accompanied by armed soldiers. Even if the defendant did not himself inflict blows or threaten civilians with his weapon, these acts can be imputed to him. Indeed, in order to be the perpetrator of the offense, it is not necessary that he himself has performed all the acts constituting the said offense. It was a common plan that was carried out in different ways and by different actors, who thus acted as co-perpetrators of the offense (on the notion of co-action: cf. supra recital 7.4.3.25).

The acts of which the defendant is accused must also be qualified as humiliating and degrading treatment. Forcing a person to carry a load in extremely difficult conditions, threatening him with death or beatings if he does not move at the imposed pace, is tantamount to flouting his quality as a human being and represents a very serious form of humiliation. Any sensible person would feel deeply humiliated and mortified by such treatment. Moreover, the beating of civilians and the death threats were retained as elements of the offenses of cruel, humiliating and degrading treatment, and do not constitute other offenses that should be retained in addition. Finally, it is specified that, despite the seriousness of the acts, the offense of slavery was not committed, insofar as the transport lasted for a few hours and that this period of time is not sufficient to establish the exercise of powers of ownership over the civilians involved.

- 7.9.3.11 With regard to the order to carry out the transport, Georges and Raoul both admitted that they did not see and/or hear the defendant give the order. However, this transport can be compared with some of the others also related to Alieu Kosiah; in each case, the role played by the latter is the same, that of supervisor of the transport. He does not threaten the civilians, he does not beat them, but he makes sure that the soldiers do. This role can again be put in perspective with his (de facto at least) H&H duties. It is thus inconceivable that the defendant could have been only an executor during this transport. Also, while the Court could not be convinced that the looting was actually ordered by the defendant, as the said order could potentially have emanated from a person of higher hierarchical rank, given the testimony of Georges and Raoul, the same cannot be said of the transportation, where they both agree that Alieu Kosiah was the leader. Therefore, it will be held that Alieu Kosiah not only participated in the transport, but also gave the order to inflict cruel, humiliating and degrading treatment on the civilians.
- 7.9.3.12 Subjectively, Alieu Kosiah acted intentionally, both in terms of his participation in the cruel, humiliating and degrading treatment and in terms of the order given to inflict such treatment. He knew that by ordering civilians to carry out a transport of goods, the transport would be carried out by the soldiers, which would necessarily constitute criminal

offenses. Moreover, Alieu Kosiah was aware of the civilian status of the victims.

Finally, these facts are part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.9.3.13 In conclusion, Alieu Kosiah must therefore be condemned for having ordered the infliction of cruel, humiliating and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a and c common to the GCs and art. 4 ch. 2 let. a and e AP II).

7.10 Ordering the looting of the Pasolahun generator, ordering the forced transportation of the Pasolahun generator by civilians from Pasolahun to Kolahun and the murder of the civilian Victor X. in the vicinity of the Kehair River

7.10.1 Charge

According to paragraph 1.3.13 of the indictment, Alieu Kosiah is accused of having ordered the looting of the Pasolahun generator between October and November 1993, and between March 1994 and the end of 1995. The accused is also charged with having ordered the forced transport of this generator by civilians from Pasolahun to Kolahun (chapter 1.3.14 of the indictment), and with having killed the civilian Victor X. on the banks of the river Kehair during this transport (chapter 1.3.15 of the indictment).

7.10.2 Means of proof

During the investigation

7.10.2.1 It appears from Louis Z.'s criminal complaint of July 3, 2014, that during the civil war in Liberia, he was in his village of Pasolahun when ULIMO fighters came from Kolahun to dismantle and bring to Kolahun a large electrical generator. Louis Z. and about 30 other civilians were forced to carry the various parts of the generator. At a roadblock where there were human skulls stuck on sticks, they met a ULIMO commander named Alieu Kosiah. Louis Z. knows that he was called that because the fighters mentioned his name. During the transport, at one point, a civilian said he was exhausted and could not continue to carry his load. Alieu Kosiah then took a gun and shot him at point blank range. He then stated that anyone who was tired would suffer the same fate (05-01-0013).

7.10.2.2 During his interrogation by the Office of the Attorney General, Louis Z. stated that on the day he saw Alieu Kosiah during the war, Kosiah was wearing a camouflage outfit and carrying a 45 caliber on his side. He was thin, very dark skinned and had big eyes, comparable to his own (12-26-0020). On the first photographic board submitted to him (on which was a

relatively recent photograph of the defendant), Louis Z. indicated that he did not remember any of the men presented to him and that the photographs were old. On the second photographic plate (which included a wartime photograph of the defendant), the complainant did not identify anyone either (12-26-0022). When confronted with the defendant, Louis Z. recognized Alieu Kosiah as the perpetrator of the acts he had denounced (12-26-0030). When asked why he recognized Alieu Kosiah in person but not in the photographs submitted to him the day before, the complainant stated that the photographs were too dark (12-26-0030).

- 7.10.2.3 With regard to the denounced facts, Louis Z. explained that the ULIMO soldiers, who had come from Kolahun, reached Pasolahun in the evening. When they arrived, they asked to see the village chief (*town cryer*) and went to where he lived. They told him that they had been ordered by their chief, Alieu Kosiah, to come and get the village generator (12-26-0015). The soldiers dismantled the generator using tools they had brought with them. Louis Z. stated that the soldiers were armed and could do whatever they wanted. Later that night, the soldiers went to the village chief and told him that all the men had to gather the next morning to transport the generator parts to Kolahun. So, the next day, the civilians gathered. When a piece was too heavy to be carried by one person, it was tied to a stick to be carried by two people, one in front and one in back. The largest piece, which was the one in the center of the machine, was so heavy that it took four people to carry it, one in the back, one in the front, and one on each side. Two sticks were attached in the shape of a cross to carry it (12-26-0017). The core of the current producing part had been removed, revealing a hole through which a stick had been passed. The piece was thus suspended from this stick. Another stick had been placed over the piece, at right angles, and attached so that four men could carry it. The other coins were divided among the men (12-26-0017 c.). Some civilians also had to carry rice, goats, sheep, chickens, and "anything else that pleased the soldiers" (12-26-0040). For his part, Louis Z. took pieces that he could lift himself and carried them on his head (12-26-0018). The convoy left Pasolahun in the morning. There were many civilians because the machine to be transported was very big. The soldiers accompanying them all carried weapons, which discouraged the civilians from running away. During the transport, if a civilian did not walk fast enough, they were beaten by the soldiers, who held sticks to hit them (12-26-0017, 0018, 0039). On the road, before reaching Kolahun, the convoy was very stretched (12-26-0018). Louis Z. was at the back of the convoy. At one point he saw the body of a man, PP.Y., on the road. He had previously heard a gunshot, but did not know who had fired it. As they passed the dead body, the soldiers told the civilians that this was the first example they were showing them and that if anyone said they were too tired and did not want to carry the machine anymore, they would be killed in the same way (12-26-0019). Louis Z. said he knew the dead body was PP. Y.'s after asking Antoine W., another civilian who was part of the convoy, when they arrived in Kolahun. Shortly after seeing the first body, Louis Z. heard another gunshot and then saw another body.

Because he had been beaten by the soldiers to go faster, he had joined Antoine W. André and other civilians who were there when the shot was fired. Louis Z. then asked André in the Gbandi language, so that the soldiers would not understand what had happened. André told him that the situation was bad and that he should not show signs of fatigue. He also told him the identity of the second deceased, QQ. Y.. Louis Z. asked who shot him, but Antoine W. and André never gave him a name (12-26-0019). After these episodes, the convoy continued to advance and arrived at Kolahun in the evening. Just before Kolahun is the village of Samalahun. Between Samalahun and Kolahun there was a hill, which had to be crossed and from the top of which one could see the Kehair river, also called "Mano river". Then you had to go down the hill to cross the river, before arriving at a gate, at the entrance of the rebel cities. It was a piece of wood that they placed on the road (12-26-0020). At this point, Louis Z. indicated that there were skull bones attached to a long piece of wood that was placed on the road to instill fear in the civilians and to remind them that the ULIMO could do whatever they wanted (12-26-0032ff). Next to the fence was the "office" where goods had to be declared when civilians were traveling alone. When Louis Z. passed this checkpoint, he saw Alieu Kosiah for the first and only time. His soldiers greeted him by calling him "Chief Kosiah". (12-26-0020). Louis Z. heard that he was the big man for the soldiers in the Kolahun district, meaning that he controlled them (12-26-0038). The soldiers told the civilians that they had to wait until the last group had crossed before they could head back to Kolahun (12-26-0020). Louis Z. said he saw a Pasolahun man, Victor X., tell Alieu Kosiah that he was too tired to finish the journey. Alieu Kosiah then told him that if he did not carry his load to the center of Kolahun, which was not so far away, he would kill him and one of his soldiers would carry his load to the warehouse (12-26-0020 f.). Later, in his interrogation, Louis Z. stated that it was Antoine W. who explained to him what Victor X. had said to Alieu Kosiah. He also said that Alieu Kosiah said that if Victor X. was too tired, he would stay here ("stay here" meaning he would be killed) (12-26-0048). Following the exchange between Alieu Kosiah and Victor X., Louis Z. reportedly heard a gunshot (12-26-0021, 0048). He reportedly turned and saw Victor X., who had just been shot, in agony (12-26-0021). When the shot rang out, Louis Z. did not see any soldiers near Victor X., except for Alieu Kosiah, with his 45 caliber in his right hand (12-26-0021, 0048). After that, the civilians were lined up to finish the journey and go to the center of Kolahun. There was still 30 to 40 minutes of walking to the warehouse of the community of "Tulila" (phon.), in which warehouse they deposited the goods (12-26-0021 f.). Louis Z. heard that the soldiers had gone to sell the machine in Guinea (12-26-0041). Some of the civilians returned to Pasolahun the same day. Louis Z. went with other civilians to his older sister's house in Kolahun to spend the night. They then left the next day for Pasolahun and saw the bodies of the three civilians killed the day before on the way (12-26-0022).

- 7.10.2.4 In his criminal denunciation of July 3, 2014, Antoine W. also recounted the events described above. According to his denunciation, Antoine W.

was, in 1994, in his village which is located in the forest outside of Kolahun, when Alieu Kosiah sent soldiers to dismantle and bring in a generator that was in the said village. Antoine W. and other civilians were forced to dismantle the generator and had to transport the detained parts to Kolahun. The ULIMO soldiers beat the civilians carrying the equipment with sticks. Antoine W.'s uncle reportedly died of exhaustion while being transported, and two of his brothers, who had tried to escape, were shot by ULIMO fighters. When the civilians arrived near Kolahun, Antoine W. saw Alieu Kosiah waiting for the convoy. It was the first time he had seen him. Antoine W. then saw Alieu Kosiah shoot one of the civilians who was exhausted and said he could no longer carry the equipment at close range (05-01-0012 f.).

Louis Z. stated that after the looting of the Pasolahun generator by ULIMO soldiers, there was no electricity in the village. This was still the case when he was interviewed in March 2017 (12-26-0046). However, he said that when the war started, Pasolahun village did not have gasoline to run the generator and the village did not have a car to go buy gasoline (12-26-0046).

7.10.2.5 During his interrogation by the Office of the Attorney General, Antoine W. described Alieu Kosiah as being, at the time, thin, black and with pop eyes. According to the complainant, the defendant was blacker than him. He was also taller than him. He had very short hair. Antoine W. could not remember if Alieu Kosiah wore a beard, glasses or jewelry, or if he had a tattoo. He also could not remember if the defendant had a physical characteristic. The complainant stated that in Liberia, during the war, "we didn't go near these people". There were a lot of soldiers around Alieu Kosiah, so it was not possible to approach him (12-07-0008). On the occasions when the complainant saw the defendant, he was wearing a camouflage military uniform with long sleeves and a cap, which he pulled down over his eyes. Alieu Kosiah was not carrying a weapon. It was his small soldier, who was next to him, who was carrying one (12-07-0016). Antoine W. was unable to identify the defendant in the two photographic plates submitted to him (12-07-0008ff). When introduced to Alieu Kosiah on screen, Antoine W. stated that he reminded him of someone and that he had seen this man in Kolahun before. However, he could not confirm that the person he saw on the screen was the person he reported (12-07-0009). When Alieu Kosiah returned to the courtroom, Antoine W. said, "That's him. The eyes I told you about, the pop eyes".

7.10.2.6 In connection with the facts, Antoine W. stated that there was a large generator in Pasolahun that provided electricity before the war. When the ULIMO learned of the existence of this generator, they sent "people" to get it. These people dismantled the machine and asked the civilians to transport the parts to Kolahun. The commander of the soldiers who came to dismantle the generator was Serge. He told the civilians that it was Alieu Kosiah who had sent him to get the generator. To get from Pasolahun to Kolahun, it took a whole day of walking. Antoine W. had to carry a military bag on his back, the contents of which he did not know.

The other civilians put the pieces on their heads (12-07-0011). According to the complainant, there were many people involved in this transport, more than one hundred. Antoine W. explained that he was beaten with sticks by the ULIMO soldiers during the march (12-07-0023). On the way, two civilians named QQ. Y. and PP. Y. (who are not related to Antoine W.) were tired and hungry. Antoine W. heard that Serge allegedly warned QQ.Y and PP. Y. that if they were tired and hungry, "they were going to die there" (12-07-0012). He also heard gunfire behind him. The civilians continued on their way to Kolahun. Before Kolahun is a large river called Kehair. The civilians crossed this river by means of a bridge, which was destroyed during the war. Serge then told the civilians that the leader, namely Alieu Kosiah, was waiting for them with the spare parts. When the convoy arrived, Serge called Alieu Kosiah to inform him that the generator had arrived (12-07-0011). The latter was waiting for them in uniform (12-07-0023). Antoine W.'s uncle, called Victor X., was very tired and did not want to go anywhere. As Victor X. repeated that he did not want to continue walking, Alieu Kosiah asked one of his small soldiers to give him his gun, an AK 47, with which he shot Victor X. (12-07-0011, 0023). Antoine W. explained that he saw Alieu Kosiah's face with his pop eyes when he pointed the gun at his uncle (12-07-0023). After that, the complainant and the other civilians continued on to Kolahun, dropped off the generator and returned to Pasolahun (12-07-0011). On the way back, Antoine W. saw the bodies of QQ. Y. and PP. Y. The civilians he was with reportedly told him that Serge had killed them (12-07-0023). Antoine W. also saw his uncle's dead body again, which was beginning to smell. He explained that he could not carry the body because if the soldiers had seen him near his uncle's body, they would have killed him too (12-07-0023).

- 7.10.2.7 During his testimony before the Office of the Attorney General, André gave a description of the defendant at the time of the events and indicated that his skin was black and that he had pop eyes. The witness was not able to specify exactly what color skin Alieu Kosiah had because he "wasn't looking specifically at these people to identify them." He also stated that the defendant was not tall, that is, he was slightly taller than him, but that he was shorter than Federal Prosecutor Andreas Müller, who is 175 centimeters tall. Regarding his build, André said that he was neither fat nor thin, and that he was "well built". He had a pistol on his side and the people around him were carrying different types of weapons, i.e. AKs, UZZIs, etc. Both times André saw Alieu Kosiah, he was in a military uniform, a green camouflage outfit with several colors. André said he did not remember any other details about the defendant, because at the time, he was in a situation where he wanted to pass by him quickly and not interact with him. He did not want to make eye contact with him because he was "scared and there were a lot of people around him, a lot of soldiers" (12-18-0009). When presented with a photography board, André indicated that because the events occurred a long time ago, it was difficult for him to identify the defendant. However, he pointed to the photograph of Alieu Kosiah and said that he resembled him (12-18-

0010). When the defendant entered the room, André confirmed that it was Alieu Kosiah (12-18-0010).

7.10.2.8 In connection with the facts, André stated that one morning, at 5:00 a.m., the ULIMO soldiers had arrived in Pasolahun, where he was staying for a few months. The soldiers took "everyone" into the square and began looting (12- 18-0006). There was a generator in Pasolahun at the time. However, André could not remember whether it was a generator for electricity or for preparing rice (12-18-0006 f.). The witness was unable to indicate whether there was electricity in Pasolahun before the war. In any case, according to him, there was no electricity while he was in Pasolahun (12-18-0029 f.). When asked if there were any streetlights, André said he did not see any electricity poles (12-18-0030). ULIMO soldiers reportedly ordered the young men to transport the generator from Pasolahun to Kolahun. This order was given by the "H&H", Alieu Kosiah. The witness explained that the journey from Pasolahun to Kolahun was more than nine hours of walking. The young, who were numerous, carried the generator on a scaffold. André was in the convoy as a civilian (12-18-0007). Two people complained during the transport that they were tired and hungry: QQ. Y. and PP. Y. Serge, one of the ULIMO soldiers, reportedly told them: "if you are tired, you will stay here" (12-18-0007). The two civilians insisted on going home, saying that they were tired and hungry. Serge then allegedly shot them with a pistol and killed them. The other civilians, including André, continued on their way (12-18- 0007).

At the bottom of a hill, there was a river called "Kehair", which marked the beginning of the town of Kolahun. The latter started just after a bridge. From the hill, it was possible to see Kolahun. The civilians saw, beyond the river, a group of soldiers heading towards the bridge. The civilians went down the hill to the bridge as well. The soldiers accompanying the civilians reported, as another group of soldiers moved in their direction, that the H&H boss-man, Alieu Kosiah, was approaching the river (12-18-0007). He was dressed in a military uniform, in camouflage (12-18- 0009). When he arrived, the soldiers greeted him (12-18-0047). A civilian, Victor X., was at the back of the convoy, detached from the group, and complained that he was tired and hungry. Soldiers beat him and told him to move on. Alieu Kosiah then allegedly asked his soldiers why he was staying behind when everyone else had already crossed the bridge (12-18-0012). The soldiers told him that it was because he was tired and hungry (12-18-0012 f.). When Victor X. crossed the bridge, Alieu Kosiah allegedly blamed him for wasting their time (12-18-0008). He then pulled out his pistol and shot him dead as Victor X. crossed the bridge (12-18-0008, 0013). On the orders of Alieu Kosiah, the civilians continued the transport. Then, in the heart of the city of Kolahun, they dropped the loads they were carrying on the ground and left in the direction of Pasolahun (12-18-0008).

7.10.2.9 When heard as a witness by the Office of the Attorney General, Robert stated that he was the town chief of Pasolahun during the war, from 1992

to 2002. He explained that Pasolahun had a diesel-powered machine to generate electricity from the 1980s onwards, but it was never used until the war broke out (12-34-0013, 0017 f., 0019). The witness said that during the war, in 1995 or 1996, the ULIMO looted this machine. They dismantled it, had some parts carried on people's heads, and the engine was carried on a door by four people to the next village. Robert said that he was not present when this happened, but that it was explained to him that the commander who ordered this was "Chief RR.". When the ULIMO arrived in Gondolahun, "Chief RR." reportedly took the soldiers directly to Pasolahun to pick up the machine. The machine was transported to Kolahun and from there to Guinea (12-34-0020 f.). The witness said that he saw the ULIMO soldiers one morning at about 10:00 a.m., when they had already finished dismantling the machine and were beginning to transport it. They were along the road to Kolahun. Robert saw them on his way back from the farm. The civilians were carrying heavy loads on their heads and behind them armed soldiers were shouting "till go, till go". Robert explained that he then hides (12-34-0021). Regarding the claim that a man named Victor X. was killed during the transport, the witness said this was a lie. In fact, according to him, from the time the ULIMO arrived in Pasolahun, no gun was ever pointed at a civilian in the village. No one would have been shot (12-34-0057). The witness further stated that he knew Victor X., an elderly person who is still in Pasolahun. He was a civilian during the war (12-34-0023) and would work at the farm, but would also be a carpenter and blacksmith (12-34-0039). Robert clarified that at the time the generator was transported from Pasolahun to Kolahun, there was only one Victor X. in Pasolahun, who was still alive at the time the witness was heard in early January 2019 {12-34-0079ff).

7.10.2.10 When asked if there was electricity in Pasolahun before the war, witness SS. stated that there was a generator for the village, but only "for dancing or celebrating important days." It was a "Tiger" or "Honda" type generator (12-33-0028). He also testified that a man named Victor X. lived in 2017 in Pasolahun and was an assistant clan leader (12-33-0030,0031). TT., heard in 2019, said Victor X. was the current chief of Pasolahun (12- 35-0043).

7.10.2.11 When asked about the charges against him, Alieu Kosiah disputed them, saying that at the time there was no electricity in Pasolahun. According to him, 99 percent of Liberia was without electricity at the time. So there was no generator in Pasolahun that would have been carried by civilians. This was also the first time he had heard the name of this village in the proceedings (13-01-0645). He stated that he did not know Kolahun either and that the only thing he knew about it was that one had to go through this town to get to Foya or Massabolahun (13-01-0383). Alieu Kosiah also stated that he had never been based in Kolahun (13-01-0490). For the rest, the defendant defended himself by pointing out inconsistencies between the different accounts of the participants in the proceedings (see especially 13-01-0389 ff.).

During the hearing

7.10.2.12 In court, Louis Z. confirmed his denunciation against Alieu Kosiah regarding the looting of the generator. He placed the event in 1993, during the dry season. The generator was located outside the village of Pasolahun, near the soccer field (40.754.007). He said it was used to provide electricity for the people of the village (40.754.008). Louis Z. explained that ULIMO soldiers, whose leader was Serge, had once gone to Pasolahun and approached the village chief, telling him that Chief Kosiah had sent them to take the machine (40.754.008ff.). Since they were armed, the village chief did not attempt to oppose the operation. The soldiers dismantled the machine with the help of their own mechanic and took away all the parts of the generator. Louis Z. testified that he did not witness the dismantling of the generator and therefore could not indicate whether the pre-competitor was present (40.754.008). According to the complainant, since the looting, the village of Pasolahun has been without electricity (40.754.009). Louis Z. also confirmed his denunciation of Alieu Kosiah for having ordered the transportation of the generator by civilians to Kolahun. He explained that the transportation took place the day after the looting and that the civilians took the machine to the checkpoint, where three human skulls were placed. It was at this point that he saw Alieu Kosiah, accompanied by bodyguards (40.754.009). Louis Z. confirmed that he was forced to participate in the transport and that, if he had refused, he would have been killed (40.754.009 f.). Early in the morning, the day after the looting, ULIMO soldiers gathered the village elders of Pasolahun and asked them to find men to transport the machine or else "they would burn the area" (40.754.009). The soldiers reportedly told the village elders that they had been sent by Alieu Kosiah. Louis Z. reported seeing Antoine W. and André during the transport, whom he knew well because they were from the same village (40.754.010ff). When asked whether Alieu Kosiah was present during the transport from Pasolahun to Kolahun, the complainant replied that he had only seen him at the checkpoint. When the convoy arrived there, the soldiers greeted the defendant. This is how Louis Z. would have learned that it was "Chief Kosiah". The latter was dressed in camouflage. During the transport, Serge was giving the orders. But when the convoy reached the checkpoint, the most important person was Alieu Kosiah because the soldiers greeted him and called him "Chief Kosiah". Louis Z. explained that the civilians carried the goods on their heads and when they got tired, he put them on his shoulders. In addition to the generator parts, the civilians also carried oil and rice. For his part, the complainant carried a metal piece that was heavy. He was unable to specify the weight of the piece, citing the fact that he had not been to school (40.754.012 s.). He explained that the journey from Pasolahun to Kolahun was a day's walk. The road they took was not paved. Civilians who were thirsty could ask the soldiers for permission to drink, but there was no question of stopping to rest. The civilians were also not given any food during the journey. Regarding the convoy's appearance, Louis Z. explained that the soldiers were mixed with civilians to prevent them from running away (40.754.013). According to the complainant, the soldiers, the majority of whom were armed, behaved very cruelly with the civilians. They abused

them by beating them. Louis Z. stated that he was personally hit in the back with a rifle butt during the journey to make him move faster. The soldiers would tell them that "if they didn't walk fast enough, the flies would bring the message to their parents," which meant they would be killed. Louis Z. confirmed in court that two people were killed during the journey, namely PP. Y. and QQ. Y. He said that he did not see them killed but that he saw their bodies on the ground. It was André who allegedly told him that they were killed by Serge (40.754.014). Louis Z. also confirmed that Alieu Kosiah had killed civilian Victor X. (40.754.015). He explained that when they arrived at the checkpoint, the civilians had to wait for the last group to join them. Victor X. was part of this group (40.754.016). He said that he could no longer carry his load because he was tired (40.754.017). Alieu Kosiah then shot him. Louis Z. reported seeing the defendant threaten Victor X. with a gun, telling him that if he complained, he would kill him. Then, Louis Z. allegedly heard a gunshot and saw the civilian lying on the ground in agony. Louis Z. estimated that he was about 15 meters away from the scene. Alieu Kosiah and Victor X. were close to each other, a distance of one or two meters (40,754,016). The civilians then continued their march to the warehouse in the center of Kolahun, where they dropped off the merchandise. Alieu Kosiah was present for the remainder of the journey from the checkpoint. Once the goods were dropped off, the civilians were able to return to Pasolahun freely. Louis Z. stated that he was in fear for his life during the entire transit and that he was not compensated for his participation (40.754.018).

- 7.10.2.13 When questioned in turn by the court, Antoine W. also confirmed his denunciation against Alieu Kosiah for having ordered the looting of the Pasolahun generator in 1993. The generator was located near the Pasolahun soccer field and was used to light the village (40,756,011). Antoine W. explained that as he was returning to his village from the farm, he saw ULIMO soldiers. He was told that Serge, the leader of the soldiers, had informed the village chief that Alieu Kosiah was in Kolahun and that he was seeing them to take the generator with the order that no man should leave the village because the generator had to be transported the next day. The dismantling of the generator was carried out by men led by ULIMO soldiers. Antoine W. said he did not witness the dismantling (40.756.012). According to the complainant, the looting resulted in the village of Pasolahun being deprived of electricity. Antoine W. stated that Pasolahun still had no electricity on the day of his hearing in February 2021. Antoine W. also confirmed his denunciation of Alieu Kosiah for having ordered the transportation of the generator from Pasolahun to Kolahun, which allegedly took place the day after the looting (40.756.012). The complainant further confirmed that he took part in the transport along with many other civilians, which he estimated at more than 50 (40.756.013 f.). They were forced to participate or risk losing their lives. Antoine W. reported seeing Louis Z. and André among the civilians during the transport (40.756.014). The military officer leading the convoy was Serge (40.756.015). Antoine W. explained that the soldiers who dismantled the generator had not been able to dismantle

the main piece, so it had to be carried with sticks. This piece would have been carried by a group of 30 to 40 civilians. The complainant stated that he did not remember any other goods being transported that day. For his part, he carried a military bag, the contents of which he did not know, and which was extremely heavy. Antoine W. said he could not give the weight of the bag because he was not in school at the time. He also confirmed that Alieu Kosiah was not present during the transport and only saw him at the Kehair River, near Kolahun. According to Antoine W., the destination of the convoy was Kolahun because it was the place where everything from the bush was brought before being taken to Voinjama or Foya, and then transported to Guinea (40,756,016). Regarding the duration of the transport, Antoine W. stated that the civilians left in the morning and that the journey took all day, into the evening (40.756.016 f., 022). The road they took was overgrown with bush, so that there was only one road left to cross. The civilians therefore moved in a line, except for those carrying the centerpiece of the generator. The civilians did not take a break during the journey. The pace was so fast that they almost had to run. If the soldiers saw them sitting down, they could be beaten with rifle butts or sticks. They were not given food or water. Antoine W. reported being kicked in the butt and hit with rifle butts on numerous occasions (40.756.017). He even saw a civilian fall to the ground due to the force of a blow (40.756.017 f.). According to the complainant, three civilians died during the transport. He explained that he saw Serge give a gun to a small soldier to kill PP. Y. and QQ. Y. because they were complaining about being tired and being beaten too much. Antoine W. said he heard gunshots and saw the bodies lying on the ground on the way home (40.756.018). Civilian Victor X. was also reportedly killed at the Kehair River by Alieu Kosiah because he was tired. When asked why his criminal complaint stated that Victor X. died of exhaustion, Antoine W. could not explain it, stating that what it said was false. Victor X. was Antoine W.'s uncle and was then 30 or 40 years old. He lived in Bolahun and fled to Pasolahun because of the arrival of the ULIMO (50,756,019). According to the complainant, Victor X. had two children, a boy and a girl (40.756.020). Regarding the circumstances of his uncle's death, Antoine W. explained that he first saw Alieu Kosiah during the transport, after crossing the Kehair River. The plaintiff was part of the first group and had to wait for the rest of the convoy to join them before leaving. Victor X. was in the last group (40,756,021). He would have complained of being hungry, tired and not being able to carry his load, which is why Alieu Kosiah would have killed him. The latter is said to have told him that if he could not continue, he would stay there, implying that he would die (40.756.019, 021). Antoine W., who was about 10 yards from the scene, confirmed that he saw the defendant shoot his uncle, who was sitting on the ground (40.756.021). The complainant stated that it was a "terrible" situation. The body was left behind and the convoy continued on to Kolahun, with Alieu Kosiah, who was in the back seat (40.756.022 f.). The goods were deposited in the center of Kolahun, in a parking lot, after which the civilians were able to return (40,756,022 s.). Regarding Alieu Kosiah's role in the transport, Antoine W. stated that he did not know whether Serge or Alieu Kosiah was superior, but that he saw the former

greet the latter with respect, as was done when soldiers met their commanding officer (40.756.023). Antoine W. stated that he was afraid for his life during the transport on many occasions; the soldiers could decide on the death of the civilians, so the civilians did not have their fate in their hands. It was impossible for them to flee, according to the complainant (40.756.022). When asked if he was paid for the transport, Antoine W. stated that the civilians were treated as slaves and that slaves were not paid (40.756.024).

- 7.10.2.14 Questioned as a witness, André stated that in 1993 there was a machine on the edge of the village of Pasolahun, but it was not connected. André said he did not know if it was a generator and did not know what it was used for (40.763.009). He said he did not know if it was working before it was looted (40.763.011). This machine was taken by ULIMO soldiers, including Serge, who stated that the order to loot came from Alieu Kosiah (40.763.009 f.). The witness said he did not see or hear Alieu Kosiah give the order to loot, but he heard the ULIMO soldiers say that the order came from him. André also said he did not know who dismantled the machine because he only saw it after it was dismantled (40,763,010). After the dismantling, civilians were gathered to go and get the parts of the generator and some other objects that had been looted (40.763.011, 014). André confirmed that he participated in the transportation of the generator from Pasolahun to Kolahun (40.763.011). The order to transport the generator was allegedly given to Pasolahun by a soldier named AAA. (40.763.011 f.). According to the witness, the transport took place on the same day that the soldiers arrived in Pasolahun. According to his explanation, they arrived very early in the morning, before the civilians left for their respective farms. Regarding the civilians who took part in the transport, André said he remembered seeing Antoine W.'s face, but did not know him (40,763,012). He also stated that Alieu Kosiah did not participate in the transport and only saw him in Kolahun. He was then in military uniform. At Kolahun, Alieu Kosiah appeared to be the highest-ranking military officer by expression (40.763.013). He spoke in a shouting, authoritative voice, according to the witness. André said he had to carry a piece of metal that he described as heavy (40.763.014). He said he had difficulty carrying it, but "I had to get it done" (40.763.014ff.). André, however, indicated that while the loads carried by the civilians were heavy, they were not so heavy that they had to use their last bit of strength (40.763.016). The convoy left in the morning and continued for an estimated nine hours or more. The road was passable before the war, but because of the fighting, it was not cleared, so it became a path that could only be traveled on foot. The civilians did not take a break during the journey and were not given food or drink. Regarding the shape of the convoy, André explained that soldiers moved along the convoy to ensure that no one ran away (40.763.015). The civilians carried the pieces on their heads, using wooden structures that were crossed over. According to the witness, the soldiers behaved in an arrogant and brutal manner towards the civilians (40.763.016). The civilians were insulted during transport by armed soldiers (40.763.016 f.). The witness said that he himself was not physically abused, but that other

civilians were slapped and kicked in the butt (40.763.016). In Kolahun, Alieu Kosiah reportedly did not intervene to stop the soldiers from carrying out the violence. When asked how many civilians were killed during the transport, André initially said four, " one Didier, one PP., one QQ. And one Victor ". He stated that Didier and Victor's last name was X. and that he did not know the last name of PP. or QQ. (40.763.017). However, the witness later corrected himself during his hearing, stating that Didier X. had been killed during another transport (40.763.022). PP. and QQ. were allegedly killed by one of the group's leaders, BBB., AAA., or Serge, because they were too tired. André said he heard gunshots but did not see who fired, as he was at the front of the convoy. André also confirmed that Victor X. was killed during the transport (40.763.018). When asked about the identity of Victor X., the witness was unable to provide any information, except that he was about the same age as him. He heard his name when people talked about his death (40,763,019). The event occurred when the convoy arrived at the Kehair River at the Lofa Bridge. Alieu Kosiah was on the other side of the river. This was the first time André saw him. He said that he saw the defendant shoot Victor X. with a pistol as he approached the end of the bridge (40.763.020). The reason for his shooting was that he complained that he was tired of carrying his load and became angry (40.763.021 f.). André estimated his distance from the scene to be about ten meters (40,763,020). Following the killing of Victor X., the civilians made their way back to the Kolahun center (40.763.021). The coins were dropped off in the center of town, where vehicles were waiting to take them to Guinea (40.763.024). The civilians were then allowed to return freely to Pasolahun (40.763.025). The witness said he feared for his life during the transport, as did each of the other civilians. They did not have the option to flee, given the risk of being killed (40.763.022).

- 7.10.2.15 At the hearing, witness Robert testified that Luc (Antoine W.'s nickname) and Louis Z. were his nephews, which the latter two disputed (40.764.002 f.). He claimed to have helped Antoine W. financially so that he could attend school, which Antoine W. also strongly disputed (40.764.003). At the request of the court, Robert was able to correctly list the family members of each of the two plaintiffs (40.764.006ff). The only mistake made, according to Antoine W., was in the name of his mother, who is called CCC. and not CCC.a., as claimed by Robert (40.764.008). In court, the witness indicated that he was the town chief of Pasolahun from October 2001 until 2002 (40.764.010). When confronted with the statements he had made to the Office of the Attorney General, according to which he had been town chief since 1992, Robert replied that at that time he was "part of the chief's group" (40.764.010 ff). When asked about the treatment of civilians in Pasolahun during the war, the witness said he had never seen a civilian treated badly by the ULIMO. With regard to looting, apart from "the machine" the ULIMO reportedly never looted in the village. Robert, on the other hand, said that civilians had to carry loads for the soldiers (40.764.011). They were forced to do so for fear of death because the soldiers were armed and the civilians were not paid to participate in the transport. Civilians reportedly told him that they were

not given food during the transports. With regard to the violence, Robert said he was not aware of it because he would never have carried out such transports himself (40.763.012). He also stated that he had never met Alieu Kosiah during the war (40.764.013). With regard to the specific facts of the case, the witness confirmed the existence of a machine producing electricity that was looted by ULIMO soldiers. Victor X. allegedly told him that the person responsible for the looting was "Chief RR.". The witness said he met the convoy of civilians carrying the machine parts along the way, accompanied by soldiers, and then hid (40.764.014ff.). Robert stated that as the leader of the village, Victor X. had escaped the transport. Asked how many people named Victor X. he knew in Pasolahun at the time of the war, the witness said he knew of only one (40,764,015). He said that the Victor X. in question was Luc's uncle (i.e., Antoine W.), his mother's brother. Robert also said that the Victor X. in question was "much older" than himself. The witness further testified that no one died during the transport of the generator because, according to him, "normally when people go to do a transport like that, those same people come back" (40.764.016).

7.10.2.16 When questioned in turn as a witness, Victor X. identified Antoine W. as his brother, Didier X, and identified Louis Z. as one DDD., his nephew (40.765.002). Since Victor X. appeared to have significant vision problems, the presiding judge asked him to approach the two plaintiffs to identify them. Victor X. then stated that he recognized a man named EEE. as Antoine W. and that he did not know Louis Z. (40.765.003). Both complainants identified Victor X. as Richard, who later became Victor X., i.e., after the civil war (40.765.003 f.). Both stated that they did not know who DDD. or EEE. was. They also stated that they were not related to the witness Victor X. Victor X. is said to be the brother of Didier X., another witness in the case, and is also said to be related to Robert (40,765,004ff.). When confronted by Robert, Victor X. confirmed that he was his nephew. Robert confirmed it in his turn (40.765.006). Antoine W. and Louis Z. further clarified that, to their knowledge, the witness Victor X. did not transport goods during the war (40.765.005 f.). In connection with the charges against the defendant, Victor X. testified that he was in Pasolahun during the first Liberian civil war (40.765.009). He stated that he did not know any other Victor X. in Pasolahun during the war. He confirmed the existence of a generator in Pasolahun that was looted during the war by ULIMO. The looting was reportedly done by three men, the leader of whom was named QQQ. The machine was reportedly placed on a cement slab and transported by people from the village, who were forced to take part in the convoy (40,765,010). Victor X. said that his brother Didier X. was forced to take part in the transport. He added that no one was injured or killed during the transportation of the generator (40.765.012). For his part, during the war he had to take part in an ammunition transport from Gondolahun, during which he allegedly escaped (40,765,011).

7.10.2.17 Didier X. who was also heard as a witness in the proceedings, indicated that he was the brother of Victor X., who was also heard in the present

proceedings (40,766,006). Regarding the people in the courtroom, he correctly identified the witness Robert (remained in the room after his hearing) as his brother. Regarding Antoine W., he said that he was a man named FFF., who was said to be his sister's son. As for Louis Z., he recognized him as his brother-in-law, the latter's sister being, according to him, married to his brother (40.766.002). The two complainants, for their part, denied having any family ties with the witness (40.766.003 f.). Regarding the charges against the defendant, Didier X. testified that he had not witnessed any crimes committed against civilians in Pasolahun during the first civil war, particularly looting (40.766.005). The witness said that soldiers sometimes made civilians carry loads to the next village because of the lack of a passable road (40.755.006). According to Didier X., civilians were not cleared for these transports and could refuse to participate. Civilians were not mistreated or beaten during the transports (40.766.007). Didier X. said he took part in a 1994 ammunition transport from Gondolahun to the Lofa River, which reportedly took nine hours (40,766,007ff.). This is the only ammunition transport in which he is said to have participated (40,766,008 f., 010). Regarding Alieu Kosiah, the witness stated that he did not see him in Pasolahun during the first civil war (40.755.007). Didier X. also confirmed that there was a generator in Pasolahun before the war, but he said it never worked (40.766.009). He explained that one morning two soldiers named QQQ. and SSS. came from Kolahun to take the machine away (40,766,009ff.). The witness said that he did not know where the generator was taken. When asked if he was involved in the transport, Didier X. said he was. Many civilians participated in the transport. Four villagers, including himself, had to carry a piece that they lifted with a crowbar and put on wooden pieces to make it easier to carry. Didier X. said no one else in the courtroom took part in the transport. His brother, Victor X., was also reportedly not involved in the convoy (40,766,010).

- 7.10.2.18 When questioned by the court about the facts of which he is accused, Alieu Kosiah persisted in disputing them. He repeated that he did not know Pasolahun before he was arrested, that he did not know if there was a generator in that village in 1993, and that he had never heard of its looting (40.731.056 f.). He called plaintiffs Louis Z. and Antoine W. liars (40.731.056). When asked if he knew a soldier with the nickname Serge, the defendant answered in the affirmative, stating that he was a very important person in the ULIMO, assigned to the Voinjama region (40.731.056 f.). Alieu Kosiah stated that he was superior to him. He also disputed that he ordered the transportation of the Pasolahun generator to Kolahun by civilians (40.731.057). He further stated that he did not know a person named Victor X. and disputed that he killed him (40.731.057 f.). According to him, according to the statements made by some of the participants in the proceedings, Victor X. had died three times, by asphyxiation, killed by an AK-47 and killed by a pistol. The defendant added that the only Victor X. from Pasolahun is still alive and that it is impossible for two Victor X., whose brothers were both allegedly called Didier X., to have lived in the same village at the same time (40.731.059). Alieu Kosiah also expressed surprise that Antoine W.

stated before the Office of the Attorney General that he did not know either Louis Z. or André, whereas André reportedly said that he knew Antoine W. but not Louis Z., and that Louis Z. said that he knew both Antoine W. and André (40.731.059). Alieu Kosiah referred to the statements of Robert. According to the defendant, as the village chief at the time, he was in a better position than anyone else to give an opinion on the facts. He had stated that there was only one Victor X. in Pasolahun during the war and that there was no W. family in the village (40.731.061).

7.10.3 Law and evaluation of evidence

Order to loot

- 7.10.3.1 Pursuant to Art. 4 para. 2 lit. g AP II, pillage is and remains prohibited at all times and in all places with respect to persons not taking a direct part or no longer taking part in hostilities, whether or not they are deprived of their liberty.
- 7.10.3.2 For legal developments in relation to looting, reference is made to 7.8.3.2 above.
- 7.10.3.3 For the developments in relation to art. 18 of the former Swiss Military Criminal Law Code, which concerns the responsibility of the superior for the order given, reference is made to recital 7.2.3.4 above.
- 7.10.3.4 In the present case, it should first be noted that Louis Z., Antoine W. and André all gave, during their respective questioning by the Office of the Attorney General, elements of description of the accused at the time of the war which were often repeated in the proceedings, namely the color of his skin, the shape of his eyes, his camouflage uniform and the pistol he carried on his right flank. These indications already show that it is likely that they had indeed dealt with the defendant during the war. With regard to the fact that Louis Z. and Antoine W. did not recognize the defendant in the photographic plates that were submitted to them, reference is made to paragraph 6.4 above.
- 7.10.3.5 Also, the existence of a generator in Pasolahun that supplied electricity before the war and its looting are established, as almost all the participants in the proceedings have confirmed, with the exception of the accused. With regard to the circumstances of the looting, Louis Z., Antoine W. and André all gave a version of events that converged with the others. They said that ULIMO soldiers went to Pasolahun one day and said they had been ordered by Alieu Kosiah to loot the village generator. The dismantling was reportedly done by the soldiers themselves, without the use of civilians for this purpose. The three participants admitted that they did not hear or see Alieu Kosiah give the order to loot, but only heard the soldiers say that the order came from him. However, as has already been pointed out, in cases of international criminal law, indirect testimony from people to whom the defendant's statements were related cannot be dismissed as a matter of principle.

Such testimony can attest to the reality of orders or exhortations given publicly in order to be propagated and carried out (Judgment of the Military Court of Cassation vol. 12 [1997-2005] Nr. 21 recital 6c). In the present case, the concordance of the three accounts, to which is added the fact that Alieu Kosiah handed over the machine at its destination, i.e. Kolahun (see below), makes them very credible.

The statements of Louis Z., Antoine W., and André can also be linked to those made by Olivier regarding the justification of the looting during the war (cf. supra recital 7.8.2.8), as well as to the role of H&H that the accused assumed de facto in Lofa (cf. supra recital 7.5.3.10, whose reasoning can also be applied here).

7.10.3.6 The denials of the accused are not such as to undermine the credibility of his informants. Indeed, contrary to what the defense maintains, the administration of evidence in the proceedings did not bring to light any element that would allow for any collusion between Louis Z., Antoine W. and André. The fact that the first two come from the same village and are from the same family does not call into question the credibility of their statements. It is true that they did not spontaneously indicate to the court their family ties and were content to say that they came from the same village. That said, it emerged from their respective hearings that in Pasolahun, family ties between the inhabitants are extremely frequent, so that it seems understandable that a family tie does not have the same importance there as it does in Switzerland, for example, this may explain why the persons concerned did not consider it useful to mention this fact spontaneously. With regard to André who was heard as a witness in the proceedings, it appears that he is not the André that Louis Z. mentioned during his hearing by the Office of the Attorney General (40.754.030). A homonymy is perfectly plausible insofar as the debates made it possible to understand that in Liberia, it is common for several people to have the same first and last names (Paul : 40.757.008; Raoul: 40.755.007; Jérôme: 40.753.008; Georges: 40.751.008; Louis Z.: 40.755.005; Antoine W.: 40.756.008; André: 40.763.004). Thus, the argument raised by Alieu Kosiah, according to which there are no two people in Liberia with the same first and last names, is clearly contradicted by the explanations of many people. It is perfectly conceivable that a person living in Liberia today could have the same first and last name as another person who has lived or is living in that country, without it being the same person.

7.10.3.7 With regard to Robert, his two hearings, first by the Office of the Attorney General and then by the Court, revealed that his statements in relation to the facts of which Alieu Kosiah is accused and the role that the witness played during the war are not credible. Indeed, in 2019, Robert claimed to have been the chief of the village of Pasolahun from 1992 to 2002, and then, in court, claimed that he had only been the chief from 2002 to 2003, and the explanations he gave to resolve this contradiction are not understandable. In addition, before the Office of the Attorney General, Robert had stated that he did not know Louis Z. (12-34-0077), whereas

during the debates he correctly identified the complainant, stating that he was his nephew. Furthermore, while before the Office of the Attorney General, the witness spoke of a Z. family from Pasolahun, by indicating to be able to give only two or three first names of the members of this family, he was able to trace the entire genealogy of this family - a large one - without making any mistakes (40.764.006 ff). Robert also gave peremptory answers, both before the Office of the Attorney General and before the court, without any nuance, as to the number of people called Victor X. in Pasolahun during the war and as to the fact that no one was killed during the transport of the generator. He thus claimed that any statement contradicting his claims was necessarily a lie (12-34-0057, 0077). Given the very different way in which Robert spoke before the Office of the Attorney General and before the Court about such important elements as his alleged links with Louis Z. or the members of the Z. family in Pasolahun, the Court can see that Robert prepared the statements he was going to give in the debates and that he was guided by Alieu Kosiah's entourage to give explanations favorable to him about elements that are difficult to verify. Furthermore, the attitude of the witness during his interrogation by the Office of the Attorney General was surprising. He refused to look at the defendant and to describe him when asked to do so by the defense and then by the Office of the Attorney General (12.34.0087 ff). It should also be noted that Robert made a request to the court, in an e-mail written by a certain Didier X., for compensation for his travel to Switzerland in the amount of USD 10'000. When questioned about this, the witness gave vague and incomprehensible answers. He seemed to admit having made such a request, but without indicating the amount (40.764.020). All of these elements taken together make Robert's statements highly implausible.

7.10.3.8 In light of the above analysis, the Court considers it clearly established that Alieu Kosiah ordered the looting of the Pasolahun generator. As far as his capacity as a leader is concerned, it can be accepted insofar as the order he gave was actually carried out by the ULIMO soldiers; moreover, his choice to wait for the arrival of the convoy at Kolahun (see below) demonstrates his superior hierarchical position. The order he gave resulted in the commission of an offense, namely the looting of property that benefited (or was likely to benefit) an entire population by providing it with electricity. It does not matter whether this was an isolated act of the accused or the execution of a larger-scale plundering strategy. In any case, the objective facts of art. 4 para. 2 letter g AP and art. 18 of the former Swiss Military Criminal Law Code are fulfilled.

7.10.3.9 Subjectively, Alieu Kosiah acted intentionally. He knew that by giving the order to loot, it would be carried out by the soldiers.

For the rest, the facts are part of the internal armed conflict that took place in Liberia during the first civil war, which the accused knew.

7.10.3.10 Alieu Kosiah will therefore be found guilty of having given the order to plunder the Pasolahun generator, within the meaning of art. 109 al. 1 and

108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 common to the GC and art. 4 ch. 2 let g PA II. with art. 18 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 no. 1 common to the GC and art. 4 para. 2 letter g AP II.

Order of transportation

- 7.10.3.11 By virtue of Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (subpara. a), and outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons who do not take a direct part in hostilities.
- 7.10.3.12 According to Art. 4 para. 2 AP II, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and the slave trade in all their forms (let. f) and the threat to commit the above-mentioned acts (let. h).
- 7.10.3.13 With regard to the legal developments in connection with cruel treatment, violation of human dignity and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3 and 7.5.3.4 above.
- 7.10.3.14 Concerning the order given by a superior within the meaning of article 18 of the former Swiss Military Criminal Law Code, reference is made to recital 7.2.3.4 above.
- 7.10.3.15 In the present case, the statements of Louis Z., Antoine W. and André concerning the transport of the generator are in agreement on many points, in particular with regard to the course of the transport. All three stated that the transport took place without the presence of Alieu Kosiah, whom they saw only at Kolahun, near the Kehair River, where he was waiting for the convoy to arrive. They also described an identical route from Pasolahun to Kolahun, on a road that had been overgrown by bush, so much so that only a passage on foot was still possible. They also described the soldiers' attitude towards the civilians in a similar way, with the civilians being beaten if they did not move fast enough, and they were reportedly not given food and water during a journey that lasted many hours. The presence of the military man Serge also appeared in all three of their accounts. The traumatic events that punctuated this transport were also recounted in a concordant manner. Thus, three civilians died during the convoy. Some differences can certainly be noted between the versions they gave. For example, Louis Z. gave the names of PP. and QQ., the two civilians who were allegedly executed by Serge during the transport, while he stated before the court that he did not know their full identity. This discrepancy, however, concerns a detail that is not relevant

to assessing the credibility of the accounts of the transport and, moreover, concerns facts that cannot be held against the defendant in this trial. With regard to the weapon used to kill the third civilian, Victor X., we refer to the analysis below (cf. infra recital 7.10.3.24) in connection with the murder attributed to Alieu Kosiah.

7.10.3.16 The defendant's denials can once again be set aside, for the same reasons as those set out in recital 7.10.3.6 above. As regards his presence in Kolahun, this is entirely plausible insofar as the Court has found that he joined Lofa in March 1993 (cf. supra recital 7.2.3.7) and that he remained there, by his own admission, until 1995 (cf. 13-01-0015). With regard to the credibility of Robert's statements, reference is made to recital 7.3.10.7 above.

7.10.3.17 The witnesses Victor X. and Didier X. were also not considered credible, in the opinion of the Court. First, it should be noted that the examination of the former was extremely laborious, as he apparently did not understand the majority of the questions put to him. He also identified Antoine W. as a man named EEE., which is obviously fanciful. When asked who contacted him to testify, Victor X. replied that he did not know (40.765.008). Furthermore, when the court received an email from a certain Didier X., in which Victor X. claimed USD 10,000 as compensation for his travel to Switzerland, he stated that he did not know anything about it and that after coming to Switzerland he thought that "people could help him", but that "no one made any promises" (40.765.013). The general attitude of the witness does not allow the court to accept his testimony as having any credibility. As for Didier X., he stated, in the course of a question, that he had come to testify because it was said in the proceedings that he had been killed and thrown into the river of Lofa. However, this information had not been given to the witness by the court, so it is likely that he had spoken to someone who knew the facts of the case before he testified (40.766.013 f.). When asked how he had been approached to come to Switzerland to testify, Didier X. stated that his brother had found his name on the internet with the information that he was to come to Switzerland to testify (40.766.011). However, this explanation does not fit the circumstances in which the court contacted the witness. With regard to the email that was sent to the court on his behalf, Didier X. confirmed that he had made a request for approximately USD 9,000 and explained that the email was written by his brother, GGG. (40.766-014). However, he denied having made a request for Robert and Victor X. (40.766.012). Victor X., Didier X.'s brother, stated that he did not know GGG. (40.765.008). These statements undermine the credibility of the witness, as they betray his knowledge of the subjects on which he would be heard even before coming to Switzerland - but to an extent unknown to the Court - as well as a clear desire to enrich himself by coming to our country. The respective hearings of Victor X. and Didier X. gave the impression that they had come to testify in order to demonstrate that they were the only ones to be called that in Pasolahun during the war and that they are still alive. In view of these elements, the Court considers

that the statements of Victor X. and Didier X. do not contain any probative value.

- 7.10.3.18 The Court therefore finds that the corroborating statements of Louis Z., Antoine W. and André are considerably more credible than those of the accused and the witnesses proposed by the defense. It is therefore established that Louis Z., Antoine W. and André participated in the transportation of the generator, along with other civilians, between Pasolahun and Kolahun.

Forcing people to walk for hours with a heavy load, without food or water, and threatening them with weapons or beatings if they do not keep up with the pace, is likely to cause great suffering. This suffering is first of all physical, because of the long march that the civilians had to make carrying a heavy load and the blows that they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that the civilians felt during the entire journey, as they were accompanied by armed soldiers.

These facts must also be qualified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, with threats of death or beatings if they do not move at the required pace, is an affront to their humanity and a very serious form of humiliation. Any sane person would feel deeply humiliated and mortified by such treatment.

The beating of civilians and death threats were considered components of the offenses of cruel, humiliating and degrading treatment, and therefore do not constitute separate offenses that should be retained in addition.

Finally, it is specified that despite the seriousness of the facts, the offense of slavery was not carried out, insofar as the transport lasted a few hours and that this period of time is not sufficient to retain the exercise of powers of ownership over the civilians involved.

- 7.10.3.19 Regarding the role of Alieu Kosiah in this transport, none of the three participants in the proceedings certainly heard or saw him give the order for the said transport. However, his role as leader of the convoy can easily be deduced from his choice of Kolahun as his destination and from the behavior he adopted, giving orders by shouting, as reported by André for example. The fact that he was greeted with respect by Serge and the other soldiers also reinforces the conviction that the defendant was the one in charge of the transport. In view of the above elements, the court finds that Alieu Kosiah gave the order to transport the generator. This order, which was carried out, involved the commission of offenses, namely the infliction of cruel, humiliating and degrading treatment. The objective conditions of art. 18 of the former Swiss Military Criminal Law Code are therefore fulfilled.

7.10.3.20 Subjectively, Alieu Kosiah acted with intent. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would execute it. The accused also knew that the people involved were civilians.

Finally, the facts incriminated were part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.10.3.21 In conclusion, Alieu Kosiah must therefore be condemned for having ordered the infliction of cruel, respectively humiliating and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a etc. common to the GCs and art. 4 ch. 2 let. a and e AP II).

Murder of the civilian Victor X.

7.10.3.22 According to Art. 3 para. 1 para. 1 letter a common to the GCs, violence to life and person, in particular murder in all its forms, mutilation, cruel treatment, torture and torment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who do not take direct part in hostilities

Under Art. 4 para. 2 (a) AP II, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not, or are no longer, taking part in the hostilities, whether or not they are deprived of their liberty.

7.10.3.23 For legal developments in relation to the offense of murder, reference is made to paragraphs 7.2.3.1 to 7.2.3.3 above.

7.10.3.24 In this case, Louis Z., Antoine W., and André all implicated Alieu Kosiah for the murder of civilian Victor X. while transporting the Pasolahun generator. All three testified that they saw the defendant fire a gun at the victim. They also described the location of the murder as being on the banks of the Kehair River in Kolahun. It does not matter where the perpetrator or the victim was located, as this is not a determining factor in establishing the reality of the crime. All three also gave the same reason why Victor X. was killed, namely because he was tired and could no longer carry his load. However, their accounts differ as to the weapon that Alieu Kosiah allegedly used to kill the civilian. While Louis Z. and André say he fired a pistol, Antoine W. says it was an AK-47. According to the defense, this would be evidence of the conspiracy of which the defendant claims to be a victim. The Court notes that if the three participants had wanted, as good conspirators, to agree on their respective accounts of the weapon used by Alieu Kosiah, they would have had ample opportunity to do so between the time they were heard by the Office of the Attorney General and the time they were heard by

the Court. Indeed, Antoine W. could have gone back and said that he was wrong. However, he did not do so. On the contrary, he confirmed, during the debates, that he remembered seeing an AK-47 in the hands of the defendant, and that he could not explain why Louis Z. spoke of a gun. As previously pointed out, contradictions in the accounts of events as old and traumatic as a murder are to be expected, even inevitable (cf. supra recital 6.3.3). It cannot be deduced from these discrepancies that the events recounted did not really take place. On the contrary, in this case, the Court considers that the account of the three participants in the proceedings appears all the more credible since each maintained, before the Court, his version of the facts, without in any way trying to make it coincide with the statements of the others. A pistol and an AK-47 do have differences in shape and size. However, it is not impossible that the AK-47 was folded, thus giving the AK-47 the appearance of a short gun. In any case, all three participants in the proceedings agree that the defendant used a firearm and the type of weapon is not in itself decisive. In a situation as shocking as a murder seen at close quarters, it is not uncommon for witnesses to be unable to describe and remember the weapon used, as their attention was focused on the victim, his body, his screams and the impact of the bullet. In light of this, the Court finds the statements of Louis Z., Antoine W., and André to be highly credible, despite the discrepancy in the weapon used.

7.10.3.25 With regard to the statements of Alieu Kosiah, Robert, Victor X. and Didier X., according to which there was only one Victor X. in Pasolahun during the war, it is first recalled that the three witnesses were not considered credible by the Court for the reasons set out in recitals 7.10.3.7 and 7.10.3.17 above. Furthermore, many participants in the proceedings stated during the debates that it was common in Liberia for several people to have the same first and last name (Paul : 40.757.008; Raoul: 40.755.007; Jérôme: 40.753.008; Georges: 40.751.008; Louis Z.: 40.755.005; Antoine W.: 40.756.008; André: 40.763.004). In addition, several participants recounted the fact that the war resulted in population displacement, so this casts doubt on the peremptory assertion that there could only be one Victor X. in Pasolahun during the war. Antoine W. has explained that his uncle Victor X. came from Bolahun (40,756,059). In view of these elements, the Court is convinced that the Victor X. who testified at the hearing is a homonym of Antoine W.'s uncle and that he has no connection with the facts of the case.

7.10.3.26 Therefore, it is held that Alieu Kosiah killed the civilian Victor X. with a firearm during the transportation of the Pasolahun generator.

7.10.3.27 Subjectively, Alieu Kosiah acted intentionally. He also knew that the victim was a civilian.

Moreover, the facts were part of the internal armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.10.3.28 Alieu Kosiah will therefore be found guilty of the murder of the civilian Victor X. within the meaning of articles 109 para. 1 and 108 para. 2 109 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GC and 4 para. 2 letter a AP II.

7.11 Ordering and directing the forced transportation of ammunition by civilians from Gon Dolahun to Fassama and the killing of the civilian Didier X. on the banks of the Lofa River

7.11.1 Charge

According to section 1.3.16 of the indictment, Alieu Kosiah is accused of having ordered and directed the forced transportation of ammunition from Gondolahun to Fassama by civilians between November and December 1993, or between March 1994 and the end of 1995. He is also accused of having killed the civilian Didier X. in the vicinity of the Lofa River during the said transport (Chapter 1.3.17 of the indictment).

7.11.2 Means of proof

During the investigation

7.11.2.1 It appears from Antoine W.'s criminal information of 3 July 2014 that in 1995 he was forced by ULIMO to transport ammunition from Kolahun to Fassama, Gbarpolu County. On that trip, an uncle of Antoine W. was shot by Alieu Kosiah, who shot him at close range with a gun he took from one of his bodyguards (05-01-0013).

7.11.2.2 During his hearing before the Office of the Attorney General, Antoine W. stated that after returning to Pasolahun following the events discussed in recital 7.10 above, he heard that ULIMO were fighting in Fassama (12-07-0012). ULIMO soldiers then reportedly asked civilians to carry ammunition from Gondolahun to Fassama (12-07-0012). Antoine W. estimated his age at the time of the incident to be sixteen years (12-07-0024). He was allegedly forced to carry a military bag, the contents of which he did not know, while the other, older civilians were forced to carry ammunition (12-07-0012, 0024). Antoine W. reported carrying his load to Sassahun (12-007-0023ff). During transport, he sometimes heard the name J.a., who he thought was the troop commander. He also sometimes heard the name Alieu Kosiah, and other names. The complainant stated that he did not see the commander of the convoy with his own eyes during the transport, as soldiers were surrounding him. He also explained that during the journey there were "people" behind the civilians and beating them (12-07-0024). The road from Gondolahun to Sassahun was narrow, a kind of passage through the bush, so that cars could not use it. The road was dirt and sometimes you had to cut the grass to see it through (12-07-0027). Antoine W. said that his uncle, Didier X., who was his mother's younger brother, participated in the transport (12-07-0024). When the convoy arrived at the river to be

crossed by canoe, Antoine W. saw his uncle very tired from carrying ammunition and with a sore shoulder. The ULIMO soldiers then reportedly called Alieu Kosiah and told him that Didier X., who was carrying iron bars, was tired, that his shoulder hurt, and that he did not want to move forward (12-07-0012, 0024). Antoine W. said that Alieu Kosiah had accompanied the convoy from Gondolahun but that he himself had only seen it at the border because it was surrounded by soldiers until then (12-07-0024). The accused had said that if Didier X. could no longer carry the goods, he should stay there and die there (12-07-0012). Alieu Kosiah then killed Didier X. by shooting him (12-07-0012, 0024). Because he did not count the shots, Antoine W. was unable to say how many times Alieu Kosiah fired. He saw Kosiah fire an AK, a weapon he borrowed from one of his small soldiers who carried it for him. Antoine W. said he recognized Alieu Kosiah at the scene, as he had the same face and eyes as the one who killed his other uncle, Victor X., during the transport of the Pasolahun generator. In addition, the soldiers pronounced his name. The complainant stated that he saw his uncle's body on the riverbank (12-07-0024). Following this event, the civilians crossed the river in canoes. Antoine W. stopped at Sassahun and then returned to Pasolahun (12-07-0012). He further stated that his uncle's body was not buried (12-07-0024). Antoine W. added that on the day of the transport, he had heard that the defendant was from Nimba County, specifically from the town of Sagleipia (12-07-0012).

- 7.11.2.3 It appears from the criminal complaint filed by Louis Z. on July 3, 2014, that on numerous occasions he was forced by the ULIMO faction to carry various loads and that he saw Alieu Kosiah on these occasions (05-01-0013).
- 7.11.2.4 During his interrogation by the Office of the Attorney General, Louis Z. also mentioned the transport of ammunition from Gondolahun to Fassama. He stated that five or six soldiers arrived one evening in Pasolahun and asked to speak to the town chief, whose name was HHH. (12-26-0049,0012). They explained to him that they had received ammunition in Kolahun that needed to be transported to Fassama and that they needed at least thirty men from the village of Pasolahun, which was part of the Hembé clan, composed of twelve localities. The soldiers went around the twelve villages of the clan to requisition men. The requisitioned civilians, including Louis Z., then went to Gondolahun, where they were to gather, and slept there. The next day, everyone was taken to headquarters to carry the ammunition. Since Louis Z. could not lift a box of ammunition, the soldiers strapped two long guns (about 80 centimeters long), each with two magazines, which they gave him to carry on his head (12- 26-0049). There were also cases for RPGs, about 1.5 meters long, and cases, about 60 centimeters by 60 centimeters, containing "sixty's" and AKs (12-26-0089). Louis Z. explained that during the transport, the soldiers were all carrying weapons, so the civilians had no way to escape without being killed. When the complainant, who was at the back of the convoy, arrived at the river, Antoine W., who had also been requisitioned for the transport, reportedly told him that "they" had

just killed a man from Pasolahun, Didier X. Louis Z. then asked Antoine W. and André, another civilian present, who had killed him, but they would never give him a name. Louis Z. said that he did not know if they knew who killed Didier X. Afterwards, the soldiers took boxes of ammunition across the river in large canoes, making four or five trips back and forth. They took turns crossing the ammunition and the civilians. After the crossing, the civilians marched back to Sassahun. Once there, most of them returned that evening. Louis Z. was given shelter, along with other civilians, by a woman and left the next morning (12-26-0049).

7.11.2.5 The witness André stated, during his hearing with the Office of the Attorney General, that he had also taken part in this transport. He explained that while he was in Pasolahun one morning around 5:00 a.m., a group of soldiers entered the town and asked the youth to go to Gondolahun. André and the other civilians therefore left with the soldiers for Gondolahun (12-18-0017). The witness indicated that civilians had no choice but to follow the soldiers because they had guns. André added that "if someone had objected, God only knows what would have happened to him. The soldiers could have beaten him or perhaps killed him" (12-18-0018). In Gondolahun, the witness said he saw a group of soldiers sitting on the porch of a house with one person sitting in the middle. According to the witness, this was "H&H", or Alieu Kosiah, whom he had seen before at the Kehair River. H&H allegedly ordered the soldiers to take the civilians to a room, such as a cell, to make them wait until the other civilians arrived (12-18-0008, 0014, 0019). André testified that he personally heard the defendant give such an order in English (12-18-0019). The cell was a room in which there were beds and people were sleeping. André testified that he stayed in that room for less than an hour (12-18-0018). The civilians then had to carry the ammunition to Kornehun (12-18-0008, 0019). Most of the ammunition was cartridges (guns shots) in metal boxes (12-18-0034). There were also military backpacks (12-18-0019). André stated that during the transport from Gondolahun to Komehun, "H&H", or Alieu Kosiah, commanded the soldiers (12-18-0034). The trip was made on a track in the bush; it was very long, according to the witness. Before arriving at Kornehun, a civilian, Didier X., complained of being hungry and tired. Everyone could hear him complaining, including the soldiers escorting the civilians. At the river, in Kornehun, everyone put down their loads. Didier X., for his part, dropped his load on the ground, which made a noise. Alieu Kosiah then asked who had dropped his load and the soldiers pointed to Didier X. and said, "this is the person". Alieu Kosiah then pulled out his small gun and killed him. Everyone was shocked (12-18-0019). André stated that the sound of the gunshot and the sight of someone dying made his heartbeat faster, but he did not show it outwardly (12-18-0020). The witness added that after this event, the soldiers ordered the civilians to return to Pasolahun (12-18-0020).

7.11.2.6 Witness Robert, who claimed to have been the town chief of Pasolahun during the war, from 1992 to 2002, said he recalled a request for labor to transport ammunition from Gondolahun to Fassama (12-34-0013, 0034).

However, he was unable to identify the year and month of this transport (12-34-0086). He recalled that people left Pasolahun to go to Gondolahun, then to Fassama, and then back. Commander ULIMO, who was in Gondolahun, had sent two soldiers to Pasolahun to tell the town chief that he needed manpower (12-34-0035). Each village was to provide some (12-34-0075). The information that the ULIMO soldiers needed manpower was communicated to all the villages of the Hembé clan, of which there are twelve (12-34-0064). Robert said that he then sent three people, namely III., JJJ. and Didier X.. the latter who was a civilian who worked on a farm (12-34-0037, 0064). The witness said he only knew one Didier X. and that Didier X. was still alive when he left Liberia to testify in Switzerland in January 2019 (12-34-0037ff, 0080). He also explained that when the three civilians returned following the transportation of the ammunition, two of them, III. and Didier X., had told him that the ammunition had been "too heavy to carry" and that "the soldiers had given them a hard time"; since the soldiers did not carry a load, they walked faster and it was difficult to keep up with them. III. and Didier X. reportedly told Robert that they cried and asked him to tell the villagers that they could not do this kind of work again because they were not capable (12-34-0063). The witness said that he knew of only one ammunition transport (12-34-0075).

- 7.11.2.7 When questioned about the facts of the case, Alieu Kosiah disputed them (12-18-0067). In his defense, the accused pointed out some inconsistencies in the statements of the different protagonists. He stated that this was his only way of defending himself, since, according to him, he was not there and did not do anything (12-18-0066).

During the debates

- 7.11.2.8 At the hearing, Antoine W. confirmed his denunciation against Alieu Kosiah. He explained that the transport was to bring ammunition from Gondolahun to Fassama. He said he stopped at Sassahun, after the Lofa River. The complainant was not able to date this transport. He stated that he was in Pasolahun when a ULIMO soldier came from Gondolahun to bring the message to the ground commander and S2 that men should be sent to transport ammunition to Fassama. S2 then went to see the village chief (40.756.025). The latter relayed the information to the young boy chief, who was responsible for finding men for the transport. To do this, he used a call horn. The ammunition was in Gondolahun and the men of the Hembé clan, which includes twelve villages, were called upon to transport it. Antoine W. explained that it was Alieu Kosiah who gave the order for this transport. Indeed, before leaving, he had already received information that Alieu Kosiah was in Gondolahun with the ammunition and when he went there in the evening, he saw him giving orders to the soldiers. The complainant stated that he did not know if there was anyone higher in the hierarchy than the defendant at the time, but that he heard him giving orders to the soldiers, without receiving any himself (40.756.026, 028). Antoine W. clarified that he believed he would have risked death if he had refused to participate in the transport (40.756.027).

The civilians were locked in different houses in Gondolahun, where they spent the night, and left the next morning (40.756. 027 f.).

The complainant stated that he saw Alieu Kosiah give the order to lock them up. He also stated that he was locked in the same room as Louis Z. (40.756.028). According to Antoine W., Alieu Kosiah was present during the transport and directed it. He was wearing a military uniform (40.756.028). The goods to be transported were ammunition for firearms. There were also military bags, the contents of which the complainant did not know. The complainant stated that he had to carry a military bag, which was heavy, on his head. When asked why the ammunition had to be transported to Fassama, the complainant replied that he had heard that the ULIMO were fighting there (40.756.029). He also explained that the convoy was moving in column. The road was passable from Gondolahun to Kehewa, but after that they had to take a very narrow bush trail, inaccessible by car (40.756.030, 035). Soldiers were positioned at the front, middle, and rear of the convoy to ensure that no one dropped the ammunition on the ground. When asked where the defendant was in the group, Antoine W. stated that normally the leaders were at the back of the convoy, but that he did not know if this was the case with Alieu Kosiah. According to the complainant's recollection, the convoy arrived in Sassahun in the evening. He added that the civilians were not given a break because they were "under tension" and were not allowed to eat or drink (40.756.030). Soldiers beat civilians with the butts of their rifles or cut tree branches in the bush and beat them with them to make them move quickly. The soldiers were armed with AKs or G3s, and Alieu Kosiah had a pistol on his side. According to Antoine W., Alieu Kosiah "knew very well" how the soldiers treated the civilians, as it was "routine". He added that the chiefs gave the order for this mistreatment. The defendant did not intervene to stop it. Antoine W. confirmed that his uncle, Didier X., brother of Victor X.(cf. supra recital 7.10) was killed during the transport by Alieu Kosiah (40.756.031, 033). The complainant explained that in order to get to Sassahun from Gondolahun, it was necessary to cross the Lofa River in canoes. During the crossing, Didier X. allegedly said that he was tired, could not go any further and wanted to go home. Antoine W. said he saw the scene of the crime because at the time he was waiting to get on a canoe. He was on the same side of the river as his uncle, about 10 meters away (40.756.033). After Didier X. complained of being tired, the defendant said to him: "Get up off your ass and move". When the victim repeated that he was tired, Alieu Kosiah allegedly killed him by shooting him twice in the head with an AK- 47. Didier X.'s body was reportedly left behind. Antoine W. said he was very scared during the transport and did not try to flee for fear of being killed. The convoy arrived in Sassahun in the evening (40.756.034). The ammunition was deposited at the "Palaver House". The complainant stated that he then hid in a woman's house in order to avoid having to go as far as Fassama, because the ULIMO soldiers were looking for men to go there. When asked whether he was paid for this transport, Antoine W. replied in the negative, stating that he had even been beaten (40.756.035).

7.11.2.9 In court, Louis Z. confirmed that he had to carry ammunition during a transport from Gondolahun, during which a victim named Didier X. was killed. He said he was forced to participate in the transport by ULIMO soldiers. He was in Pasolahun, one of the twelve villages belonging to the Hembe clan. Soldiers then requisitioned men from each village in the clan to go to Gondolahun (40.754.019). The complainant stated that he did not know who gave the order for this transport and thus did not know whether Alieu Kosiah had played a role in the said transport (40.754.020). He stated that he did not see him in the convoy (40.754.021, 023). Louis Z. said that he could not refuse to participate, given the risk of being killed. He confirmed that he saw Antoine W. on the transport in question (40.754.020). The convoy was reportedly led by soldiers named Serge, KKK, and BBB. (40.754.021). The civilians spent the night in Gondolahun, some locked in rooms and others sleeping outside. Louis Z. said he could not remember if Antoine W. spent the night in the same room as him. The civilians left the next morning for Sassahun (40.754.022). In addition to ammunition, they had to carry bags whose contents the complainant did not know. For his part, he said that he carried two rifles on his head, or on his shoulders when he was tired, apparently tied together (40.754.021). The goods had to be transported, according to what Louis Z. would have heard, because there was fighting in Fassama. There were many civilians in the convoy. The soldiers were mixed in with them, so that they could not put down their loads and run away. The road used was passable from Gondolahun to Gehewa, and then became a bush road. The civilians were not allowed to take breaks and were not given food or water during the journey (40.754.023, 026). According to the complainant, the soldiers behaved very cruelly with the civilians. The majority of them were armed with long guns. Civilians were threatened with death if they tried to escape from the convoy (40.754.023). Louis Z. said he was beaten by soldiers during the transport, as were other civilians, with guns or sticks, so that he would walk faster. The complainant said he was not present when the civilian Didier X. was killed. André, who reportedly witnessed the scene, told him that it was Alieu Kosiah (40.754.024). He was killed near the place where the convoy was to cross the river, more precisely before the crossing. When asked if Antoine W. saw Didier X. being killed, Louis Z. said he did not know and had never spoken to him about it. He also stated that he did not know what weapon the defendant used to kill Didier X. However, he said that he had seen the body on the ground when he arrived at the riverbank to cross it and that he was sure that it was Didier X. The complainant stated that he was afraid during the transport because the civilians were "under tension"; the soldiers were telling them what to do and controlling them (40.754.025). Louis Z. said he finished the transport in Sassahun, where the goods were dropped off in front of a "round house". It was then later than 6 pm. There, another group of soldiers were looking for men to carry out a new transport. Many took the opportunity to run away. Louis Z. spent a night in Sassahun and returned the next morning to Pasolahun. The complainant was unable to say whether the final destination was Sassahun or whether part of the convoy went

further. He stated that he was not paid for his participation in the transport but was forced to do so.

- 7.11.2.10 In court, witness André confirmed that he saw Alieu Kosiah give the order to transport ammunition, which took place in 1993, a few months after the transport of the generator from Pasolahun (40.763.002, 026). ULIMO soldiers came to Pasolahun to look for village youths "who were tough". André said he was requisitioned early in the morning. He said he could not refuse to take part in the transport (40.762.027). The civilians, including André, were taken to Gondolahun to pick up ammunition before leaving for Konehun. It was in Gondolahun that André allegedly saw the defendant give the order to transport the ammunition to Konehun. He said he remembered seeing Antoine W.'s face in the convoy (40.763.026). As for the defendant, he would have accompanied the transport and directed it (40.763.026 f.). During the journey, he was sometimes at the front and sometimes at the back of the group. He wore military clothing, including a military jacket. Alieu Kosiah commanded and gave orders during the trip. He would say, "Take the ammunition and let's go" (40.763.027). Regarding the goods transported, André indicated that they were metal boxes with ammunition inside. There were also other things, but the witness did not know what they were. He said he himself carried a metal box with another civilian. The route taken could only be on foot. The civilians did not take any "real" breaks during the transport and were not given food or water. The civilians moved in a line because of the narrowness of the path and the soldiers walked on the sides (40.763.028). Alieu Kosiah was sometimes at the front and sometimes at the back of the group. Regarding the behavior of the soldiers, who were armed, André said they were never "friendly" with civilians. Alieu Kosiah was armed with a pistol. The witness said he and other civilians were threatened during the trip. The fact that the soldiers were carrying weapons was a threat in itself. According to André, Alieu Kosiah did not intervene to prevent the civilians from being threatened or beaten (40.763.029). The witness also confirmed that Alieu Kosiah killed the civilian Didier X. during the transport near the bridge on the Lofa River in Konehun (40.763.030). He explained that the only thing that mattered to the ULIMO soldiers was the property they looted and that the lives of civilians were of little importance to them in comparison. While the convoy was at the edge of the Lofa River, Didier X. reportedly dropped his load. This allegedly triggered the anger of the defendant, who shot him. (40.763.022). André testified that the convoy had reached its destination and that all the civilians had dropped their loads. Then the witness said he heard a gunshot (40.763.023). Alieu Kosiah allegedly used a pistol to kill the victim. The witness could not say which part of Didier X.'s body the defendant shot (40.763.024).
- 7.11.2.11 When questioned by the Court about the facts of which he is accused, Alieu Kosiah contested them. He indicated that the village of Gondodulahun, whose name he claimed not to have known, was very far from the "center" and was located in the bush. It was therefore impossible for a soldier like him to get there. The defendant added that he had

already gone to Fassama by car, but from Bomi, in the opposite direction (40.731.059). Alieu Kosiah explained that he had never heard of ammunition being transported from Gondolahun to Fassama, especially since, according to him, this would not have made sense from a military point of view. In fact, the ULIMO soldiers would have arrived in Lofa by the opposite route. When asked whether he had ever heard that a civilian named Didier X. had been killed during a transport of ammunition between Gondolahun and Fassama, the defendant answered in the negative (40.731.060). For the rest, he referred to the statements of Robert. According to the defendant, as the village chief at the time, he was in a better position than anyone else to comment on the denounced facts. However, the chief allegedly stated that there was only one Didier X. in Pasolahun during the war and that there was no W. family in the village (40.731.061).

7.11.2.12 Also heard by the court as a witness, Robert stated that he had knowledge of a transport of ammunition from Gondolahun to Fassama. Soldiers had come to Pasolahun to carry out the said transport. Robert said he remembered that Didier X. participated in the convoy and that when he returned, he complained that the load had been too heavy to carry and that he did not want to do any more transporting (40.764.016). The witness said that he himself had not participated in the transport in question and indicated that he did not know who the leader of the soldiers was. Asked whether he knew of any civilians killed during the transport, Robert said he did not. He also disputed that Didier X. was injured during the transport because he had seen him return (40.764.017). Robert said that Didier X. was the uncle of Luc (referred to by the witness as Antoine W.), his mother's brother. According to the witness, his date of birth must be around 1973. The witness further testified that he only knew one Didier X. at the time of the war (40,764,018).

7.11.2.13 When interviewed in turn, Victor X. stated that he had once taken part in a transport of ammunition from Gondolahun in 1993, from which he had allegedly escaped. He said that none of his brothers had participated in this transport (40.765.011).

7.11.2.14 Witness Didier X. testified that in 1994 he took part in a transport of ammunition from Gondolahun to "Sassasu" (phon.), a village located after the Lofa River. The journey from Gondolahun to "Sassasu" required a nine-hour walk. The witness said he stopped in Papahun and did not cross the river. 200 civilians were reportedly involved in the transport, which was led by a military officer named Chief LLL.

When asked if anyone present in the courtroom had also participated in this transport, Didier X. answered in the negative (40.766.008). According to him, Alieu Kosiah did not take part in this convoy. The witness stated that no one was injured or killed during the transport. When his attention was drawn to the fact that a certain Didier X. was reported to have died during the transport, the witness stated that he was the only Didier X. he knew in Pasolahun from the time of the war.

According to him, there are many Didier, but he would be the only Didier X. (40.766.009).

7.11.3 Law and evaluation of evidence

Transport of ammunition

- 7.11.3.1 According to Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (subpara. a) and outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.
- 7.11.3.2 According to Art. 4 para. 2 AP 11, violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and slave trade in all their forms (let. f) and the threat to commit the above-mentioned acts (let. h).
- 7.11.3.3 With regard to the legal developments in relation to cruel treatment, violation of human dignity and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3 and 7.5.3.4 above.
- 7.11.3.4 With regard to the order given by a superior within the meaning of art. 18 of the former Swiss Military Criminal Law Code, reference is made to recital 7.2.3.4 above.
- 7.11.3.5 In the present case, Antoine W., Louis Z. and André all recounted a transport of ammunition from Gondolahun. They gave consistent and clear accounts that overlap on several elements, including the manner in which civilians were requisitioned from among the twelve villages of the Hembé clan, the merchandise transported, the condition of the road taken, the organization of the convoy, the way in which civilians were treated during the journey, and the fact that one civilian was killed during the movement. Antoine W. and Louis Z. said they stopped at Sassahun, after crossing the Lofa River, while André said the transport ended at Konehun, before crossing the river. On the other hand, the first two stated that they were requisitioned at the end of the day and had to spend a night locked up in Gondolahun before the convoy left, while André was requisitioned that morning. However, these discrepancies do not detract from the credibility of their stories. It is perfectly possible that André was called that morning, while Antoine W. and Louis Z. were requisitioned the day before. Furthermore, the final destination of the transport is not decisive as all three participants have provided sufficient evidence to conclude that they were indeed involved in the same ammunition transport. In this respect, it cannot be ruled out that some civilians dropped their loads before crossing the river at Konehun, while others

had to continue the transport to Sassahun. The Court therefore finds that the statements of the three participants in relation to the transport in question are very credible, given their consistency and the many elements that overlap between their respective statements.

- 7.11.3.6 With regard to the role played by the defendant in the said transport, Antoine W. and André both testified that they saw him give the order for the transport to Gondolahun and participate in it by supervising it. Louis Z., on the other hand, stated that it was possible that Alieu Kosiah participated in the convoy, but that he had not personally seen him. The court finds the concurring statements of Antoine W. and André to be credible. The fact that Louis Z. did not see the defendant does not change this assessment. On the contrary, it reinforces the credibility of the complainant's statements, who does not seek to accuse Alieu Kosiah at all costs, but rather sticks to what he has seen and/or heard.
- 7.11.3.7 The accounts of Antoine W., Louis Z. and André as to the course of the transport are corroborated by the other participants who have denounced the transport in the present proceedings, and the same applies to the involvement of the defendant. It is always the same pattern that is described: Alieu Kosiah gives the order for the transport and participates in it by supervising it, with the soldiers doing the dirty work of threatening and beating the civilians who do not move fast enough. The statements of the three participants can also be linked to the statements of Olivier, who admitted the existence of ammunition transports during the war, as well as to the de facto position of H&H held by the defendant (cf. supra recital 7.5.3.10).
- 7.11.3.8 The argument of the defendant that a transport of ammunition to Fassama would have been illogical from a military point of view is false. It should first be noted that in a war such as the one in Liberia, the enemy is likely to be anywhere sooner or later, so it is difficult to refer to a simplified and static military scheme, as the defendant suggests. Moreover, according to the prosecution, the transport took place between March 1994 and the end of 1995, after the split of the ULIMO. However, there was fighting in Bomi between ULIMO-J and ULIMO-K, who were fighting for the general quarter (see 15-02.0544, 0546). It is therefore not illogical, from a military point of view, that at some point ammunition was transported southwards. The defense's argument is therefore false. With regard to the statements of Robert, Victor X. and Didier X., reference is made to recitals 7.10.3.7 and 7.10.3.17 above with regard to the assessment of their credibility.
- 7.11.3.9 In view of the above-mentioned elements, it is established that Alieu Kosiah gave the order for the above-mentioned transport of ammunition and that he participated in it. These facts can be qualified as both an attack on physical and psychological integrity, in the form of cruel treatment, and an attack on personal dignity, in the form of humiliating and degrading treatment.

Forcing civilians to walk for hours, with a heavy load to carry, without giving them food or water and threatening them with weapons or beating them when they do not move at the imposed pace, is likely to cause great suffering. This suffering is primarily physical, due to the length of the march that the civilians had to make while carrying a heavy load and the blows they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that the civilians felt throughout the journey, as they were accompanied by armed and violent soldiers. Once again, it is specified that, even if the accused did not inflict the blows himself or threaten the civilians with his weapon, these facts can be imputed to him. In fact, in order to be the author of the offense, it is not necessary that he himself has carried out all the acts constituting the offense. It was a common plan that was carried out by different actors, who thus acted as co-perpetrators of the offense (on the notion of co-action: cf. supra recital 7.4.3.25).

The acts of which the defendant is accused must also be qualified as humiliating and degrading treatment. Forcing a person to carry a load in extremely difficult conditions, threatening him with death or beatings if he does not move at the imposed pace, is tantamount to flouting his quality of human being and represents a very serious form of humiliation. Any sensible person would feel deeply humiliated and mortified by such treatment.

Furthermore, the beating of civilians and death threats were considered as components of the offenses of cruel, humiliating and degrading treatment, and therefore do not constitute separate offenses that should be retained in addition.

Finally, it is specified that despite the seriousness of the facts, the offense of slavery is not realized, insofar as the transport lasted a few hours and that this lapse of time is not sufficient to retain the exercise of powers of ownership over the civilians involved.

7.11.3.10 With regard to the order of transport, the capacity of chief of Alieu Kosiah can be retained, taking into account the concordant statements of Antoine W. and André, according to which the accused gave the said order without receiving it himself. The order given involved the commission of offenses, namely the infliction of cruel, humiliating, and degrading treatment. It was because of the order they received from Alieu Kosiah that the soldiers accompanied the civilians during the transport under the conditions and with the behaviors described above. The objective conditions of art. 18 of the former Swiss Military Criminal Law Code are therefore fulfilled.

7.11.3.11 Subjectively, Alieu Kosiah acted intentionally. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would execute it.

Finally, these facts are part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

- 7.11.3.12 In conclusion, Alieu Kosiah must therefore be condemned for having ordered the infliction, respectively for having inflicted himself a cruel, respectively humiliating, and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a and c common to the GCs and art. 4 ch. 2 let. a and e AP II).

Murder of civilian Didier X.

- 7.11.3.13 According to Art. 3 para. 1 (1) (a) common to the GCs, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.

Under Art. 4 para. 2 (a) AP 11, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not, or are no longer, taking part in the hostilities, whether or not they are deprived of their liberty.

- 7.11.3.14 For legal developments in relation to the offense of murder, reference is made to paragraphs 7.2.3.1 to 7.2.3.3 above.

- 7.11.3.15 In this case, Antoine W. and André both testified that they saw the defendant kill Didier X. with a firearm. Louis Z. reported that he only saw the lifeless body of the civilian and that he was told that Alieu Kosiah shot him. All three participants described the location of the event as being on the banks of the Lofa River, before the crossing to Sassahun. As to why Didier X. was killed, Antoine W. said it was because he complained of being tired, while André said it was because he dropped his load due to fatigue. While these two versions are not absolutely consistent, they are not incompatible. Indeed, it is perfectly possible that Didier X. not only dropped his load, but also complained of being tired, and that the two informants did not use the same element as a determining factor. With regard to the weapon used, both Antoine W. and André agree that it was a firearm, although the former recalls that it was an AK-47, while the latter remembers it as a pistol. In this respect, the developments presented in recital 7.10.3.24 above in relation to the murder of Victor X. can be repeated. In view of this kind of traumatic event, witnesses may sometimes have truncated memories due to the shock and fear that it causes. It is therefore normal and expected that participants will tell stories that do not agree with each other in all respects, especially because of the trauma experienced and the years that have passed. These differences between the accounts are even rather reassuring. Indeed, perfectly similar versions would raise suspicions of collusion.

Finally, the Court considers the statements of Antoine W. and André, as well as those of Louis Z., to be very credible.

- 7.11.3.16 With regard to the argument that there was only one Didier X. in Pasolahun during the war, reference should be made to what was said about Victor X. in paragraph 7.10.3.25 above. Beyond the fact that the statements of the three witnesses Robert, Victor X. and Didier X. are not held to be credible, it is not possible to postulate without risk of error that there was only one Didier X. in Pasolahun during the war, especially considering the number of displaced civilians and the frequency of namesakes in Liberia. Indeed, Antoine W., Louis Z., and André all indicated that the said Didier X. heard before the court was not the person whose execution they reported, but a namesake.
- 7.11.3.17 In view of the foregoing, the Court finds it established that Alieu Kosiah killed a civilian named Didier X. by shooting him with a firearm.
- 7.11.3.18 Subjectively, Alieu Kosiah acted intentionally. He also knew that the victim was a civilian.

These facts were part of the internal armed conflict that took place during the first civil war in Liberia, which the accused knew.

- 7.11.3.19 In conclusion, Alieu Kosiah will be found guilty of the murder of the civilian Didier X. within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GC and 4 para. 2 letter a AP II.

7.12 Murder of a civilian in Voinjama

7.12.1 Charge

According to section 1.3.18 of the indictment, Alieu Kosiah is charged with having, in the context of the internal armed conflict that took place in Liberia from 1989 to 1996 and as a member of the ULIMO armed faction, executed a civilian in Voinjama, in December 1993 or between the beginning of 1994 and May 1994.

7.12.2 Means of proof

During the investigation

- 7.12.2.1 It appears from Jérôme's criminal complaint dated July 30, 2014, that he witnessed firsthand crimes committed in the town of Voinjama, by Alieu Kosiah personally or by ULIMO members under his command, as part of the "Black Monday" events, in which civilians were arbitrarily shot on Mondays for several years (05-03-0002 ff).
- 7.12.2.2 During his interview with the Office of the Attorney General, Jérôme described Alieu Kosiah at the time of the incident as black with "very, very

large eyes". He had pop eyes, which means that he gave the impression of having large eyes. The defendant was darker skinned than he was, and he was not very large. Jérôme testified that he did not remember the predicate's hair because he always wore a cap on his head; sometimes a military cap, sometimes a regular cap. Alieu Kosiah was taller than him (the complainant's height was estimated at 168 centimeters). The complainant did not remember the shape of Alieu Kosiah's face. He said he never saw him wearing glasses. He could not say if he had a beard, as he had "never been close to him". Whenever he saw him, Alieu Kosiah wore three-color camouflage military pants and a long-sleeved military shirt. Sometimes he wore military T-shirts. The upper garments were also camouflage. He wore black military boots. Alieu Kosiah carried a pistol on his hip on his right side (12-09-0009). When presented with two photographic plates by the Office of the Attorney General, Jérôme could not identify the defendant and stated that this was because the events were more than 20 years old. He admitted that he did not recognize the person he complained about in his complaint among the faces presented to him (12-09-0010). When the defendant appeared on a screen, Jérôme stated that it was the person mentioned in his denunciation because he had the same long face as the one he had seen at the time in Voinjama and he also had pop eyes (12-09- 0010).

- 7.12.2.3 In connection with the facts of this case, Jérôme stated that his aunt, MMM., with whom he lived, was the head cook for the ULIMO soldiers (12-09-0013). She was known to them as "Chairlady". One day when "General Kosiah" and his soldiers ate at her house, after an attack on the Monrovia Highway, he said: "Since the Lorma defense force want to fight us, I will declare that next Monday will be black Monday". The defendant added that he had lost one of his strongest men (12-09- 0015). Jérôme explained that "Black Monday" meant that no civilians were allowed to leave their homes in Voinjama (12-09-0015). Black Mondays went on in succession, according to the complainant, for two to three months in Voinjama (12-19-0016). On the fourth day of Black Monday, soldiers parked their car in front of the house of Jérôme, who then saw "General Kosiah" in the passenger seat. Soldiers forced their way into the home of Jérôme's neighbors and took a young boy who was inside. They ordered him to go to the pickup, which he refused, telling them that anyone who went to the pickup would be killed. General Kosiah", who was wearing a camouflage outfit with a pistol on the side, then walked towards the boy, asked him what the problem was and said "you, let's go". When the boy refused again, Alieu Kosiah pulled out his gun and shot him. According to Jérôme, the boy had fallen dead, and his body was left on the spot. After that, Alieu Kosiah and his soldiers reportedly resumed their normal activity (12-09- 0016).
- 7.12.2.4 When questioned about the facts of which he was accused, Alieu Kosiah disputed them. He stated that he had heard the expression "Black Monday" for the first time in these proceedings (13-01-0184). He also testified that he never uttered the phrase reported by Jérôme, nor did he hear anyone utter it during the conflict. The ULIMO indeed knew,

according to the defendant, that the LOFs were not an autonomous group and that "the real demon behind them" was the NPFL (13-01-0186). Alieu Kosiah claimed that Jérôme's statements were "1000%" false (13-01-0186) and that he had never seen or heard of any young boys being forcibly taken from their homes and taken to be killed, either in Voinjama or in any other town. He stated that he was never involved in any round-ups during the war in Liberia, anywhere. There was, in his words, the front lines to fight (13-01-0186). He also claimed that he never had a white pickup truck, but mainly used a red Yamaha motorcycle (13-01-0185, 0186).

7.12.2.5 When questioned during the trial about Black Monday, former ULIMO Olivier (12-16-0042), Bernard (12-19-0045), M. (12-29-0064) and NNN. (12-15-0027) all stated that they did not know what it was.

7.12.2.6 When asked if he knew an "MMM.a." during the war, Bernard, the former member of Alieu Kosiah's security detail, said that she was the woman who cooked for the soldiers when they came back from the front. He said he knew of only one "MMM.a.". He added that he thought that Alieu Kosiah knew "MMM.a.", who was like a mother to the soldiers (12-19-0075, 0079).

At the hearing

7.12.2.7 During his court hearing, Jérôme confirmed his accusation against Alieu Kosiah, namely that he killed a civilian in Voinjama. He explained that one Saturday, Alieu Kosiah and some soldiers came to his house to eat. The event is said to have taken place between April and July 1994. The accused then said: "Next Monday, I will tell you to go and inform the other communities that no civilians should go out, because one of our big men was killed in the last attack by the Lorma Defense Force, so on Monday, no one should go out. Anyone seen outside, I will kill him, and it will be "Black Monday". According to Jérôme, Alieu Kosiah was the "inventor" of Black Monday and that is how it started (40,753,015). Black Monday took place in Voinjama for two or three months, from April to July 1994, every Monday (40.753.006). Specifically on the facts of the case, he explained that the murder occurred next to his house (40.753.010). The defendant, who was wearing camouflage clothing, was in the front seat of a military green Landcruiser pickup truck (40.753.010, 011). It was an open two-door pickup truck with at least ten civilians in the back, according to Jérôme's estimate, some of whom were restrained (40.753.010ff). Soldiers surrounded them. The complainant indicated that he did not know the identity of the victim. He was a teenager between 13 and 18 years old, who lived in the house next to his (40.753.011). Soldiers entered the boy's house by forcing the door. They forced him out and ordered him to get into the pickup truck. The boy reportedly refused twice. One of the soldiers then went to Alieu Kosiah and told him that the boy refused to get into the pickup. The defendant got out of the vehicle and walked towards the boy. He ordered the boy to get into the pick-up. When the boy refused once again, Alieu Kosiah allegedly grabbed his pistol

from the side and shot him. The body was left behind and the soldiers left on the defendant's orders (40.753.012, 014). As to why the defendant wanted the boy to get into the pickup truck, Jérôme speculated that it was for the purpose of taking him away and killing him. This was a habit of the ULIMO every Monday. At the time of the scene, Jérôme stated that he was in his room, where he was hiding (40.753.012). He was about 10 yards from Alieu Kosiah and could see what was happening from the window (40.753.012ff.). The complainant testified that he saw Kosiah shoot the boy in the chest once with a pistol (40.753.012 f.). He also indicated that he was in shock after this episode (40.753.014).

- 7.12.2.8 When asked about his possible knowledge of Black Monday, Paul stated that he had heard of it and that it was a Monday in which many people were killed in Voinjama. The term "Black" signified mourning in connection with that day. According to the complainant, there were rumors that Alieu Kosiah and his men had killed people in Voinjama and on the Foya road on a Monday. Many people would have talked about this event in Lofa. Paul said that anyone who lived in Lofa during the war must have heard about Black Monday (40.756.006). Hearing in turn on the matter, Raoul said that it was a term for a day that no one in Lofa will ever forget because on that day, a "great genocide took place". Black Monday is said to have occurred in Voinjama and Foya (40,755,006). It was a day of mourning, on which many people lost family members. According to Raoul, only someone who was not in Lofa during the war could be unaware of Black Monday (40.755.007). Georges, on the other hand, explained that it was a day of terror that was chosen to commit acts of cruelty on human beings (40.751.006). While Black Monday is associated with Voinjama, Black Friday refers to Foya (40.751.006 f.). During these events, the ULIMO allegedly killed a large number of people, desecrated bodies, cut them up into pieces, and then displayed these pieces and organs for public viewing, including in wheelbarrows. According to Georges, people in Lofa know what Black Monday and Black Friday are. According to Georges, the ULIMO did this to demonstrate their power and control of the area (40,751,007). Louis Z., for his part, said he heard about Black Monday. He said he heard that on Monday the rebels killed many people in Voinjama, and in Lofa the people know what Black Monday is (40,754,005). Antoine W. also said that he had heard that Black Monday was a Monday when ULIMO committed massacres. The bodies were allegedly placed in trucks to be dumped in a valley behind the Catholic school (40.756.006). According to Antoine W., everyone who was in Lofa during the war remembers Black Monday (40.756.007). Coralie, on the other hand, said she heard about Black Monday, but did not know what it meant (40.752.007). Witness Rémy said he did not know about Black Monday (40.762.004). André said he had heard about it and that many people were killed in Voinjama (40.763.008),
- 7.12.2.9 Olivier indicated that he did not know what Black Monday was (40.761.011), as did Pierre, alias Pégase (40.77.007), Jean, alias Cassiopée (40.769.006) and Alfred (40.767.008).

7.12.2.10 When questioned during the debates about the facts of which he is accused, Alieu Kosiah contested them. He stated that between December 1993 and May 1994, he was in Bomi and in Lofa, in Voinjama (40.731.061). He also stated that he did not believe the Black Monday story, although the TRC talks about it. He had never heard of it before his arrest. The defendant further noted that, unlike Jérôme who situates Black Monday in 1994, the TRC situates it in 1993, after Voinjama's capture. In addition, the TRC reportedly refers to people being put on trucks in the direction of Macenta, while Jérôme claims that on five consecutive Mondays, people were taken to the Zeleba River, in the opposite direction (40.731.062).

Material evidence

7.12.2.11 The TRC Report shows that in 1993 Black Monday took place in Voinjama, during which 750 people were killed by the ULIMO-K (14-01-0137). According to Jérôme, who has reported on several Black Mondays and at one point speaks of the fourth Black Monday, there were several massacres in Voinjama over a period of time (10-01-0526, 0527). As for Georges, he confirms that Black Monday refers to several days of massacre (40,751,007). In all likelihood, this refers to events that took place over several days.

7.12.3 Law and evaluation of evidence

7.12.3.1 According to Art. 3 para. 1 para. 1 letter a common to the GC, violence to life and limb, in particular murder in all its forms, mutilation, cruel treatment, torture and torment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.

Under Art. 4 para. 2 (a) AP II, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not, or are no longer, taking part in the hostilities, whether or not they are deprived of their liberty.

7.12.3.2 For legal developments in relation to the offense of murder, reference is made to paragraphs 7.2.3.1 to 7.2.3.3 above.

7.12.3.3 In this case, before the Office of the Attorney General, Jérôme provided details to describe the accused that are recurrent in the proceedings, namely: his pop eyes (large bulging eyes), his dark skin, his rather tall height, his military clothing and the pistol that he carried on his right hip. These indications already allow the Court to accept as credible the fact that the plaintiff had indeed been with Alieu Kosiah during the war. Furthermore, the complainant clearly recognized the defendant from his outbursts of anger during the debates (40.753.009), as did Paul (see

7.2.1.8). With regard to Jérôme's inability to identify the defendant on the photographic plate submitted to him, reference may be made to the discussion in recital 6.4 above. The Court considers that this is not a decisive factor in proceedings involving war crimes committed by perpetrators whom the victims feared to approach and which date back more than twenty years.

7.12.3.4 In relation to the circumstances of the murder, Jérôme's statements before the Office of the Attorney General and then before the Court were perfectly consistent. The event of Black Monday, disputed by the defendant, was reported by many participants in the proceedings, all of whom gave the same definition. Its reality is also confirmed by the TRC report. It would have been a mass killing that would have been perpetrated in Voinjama. As for the date, Jérôme places Black Monday after the ULIMO split in March 1994, i.e., between April and May 1994, and he says the event took place over two or three months. The TRC refers to the year 1993, while specifying that the crimes were committed by the ULIMO-K. However, since the group split at the beginning of 1994 (see TRC report, p. 158; 14-01-0337), it must be noted that the TRC report probably contains an error in the dating of Black Monday. It is also possible that several Black Monday events occurred in Voinjama in both 1993 and 1994. According to Jérôme, Black Monday was proclaimed by the defendant as the "inventor" of Black Monday as part of the conflict between the ULIMO and the LOFs, a group formed in late 1993. The purpose of this faction was to fight against the ULIMO in the Lofa (cf. above recital C.9). The events of Black Monday would thus have consisted of a revenge by the ULIMO against all those who supported the LOFs or who were suspected of supporting them. Even if Alieu Kosiah was not the "inventor" of Black Monday, the Court considers that, even if the explanations provided by Jérôme in connection with Black Monday can be considered generally credible, they are not decisive in assessing the facts of which the defendant is accused. Indeed, the TRC report shows that real massacres took place in Lofa during the war (14-01-0337), which was confirmed by many participants in these proceedings. The term "Black Monday" in Voinjama, as well as "Black Friday" in Foya, were clearly used to refer to civilian raids. Even if it is not possible to determine all the circumstances in which these atrocities were committed, what remains decisive is that they are established in the file. It is therefore reasonable to consider that the murder recounted by Jérôme was part of the climate of terror that prevailed in Lofa at the time and was not extraordinary in the context of the civil war. The fact that former soldiers claim not to have heard of Black Monday is easily explained: it is a particularly dark chapter in the war, attributable to the ULIMO, in which no ULIMO soldier wishes to be suspected of having taken part.

7.12.3.5 With regard to the involvement of Alieu Kosiah in the murder of the civilian in Voinjama, the Court considers the statements of Jérôme to be credible. He provided a detailed description of the scene before the Office of the Attorney General, which he reiterated before the Court with consistency.

He stated that he saw the defendant sitting in the front seat of the pickup truck, indicating the important position he held. He also stated that he saw him shoot the boy with his pistol. Also, during his testimony at the trial, Jérôme spontaneously distinguished between a witness who witnessed an event and one who only heard about an incident, stating that he was not satisfied with hearsay (40.753.014). In addition, Jérôme provided details about the context of the event in question, which were confirmed by other participants in the proceedings, such as his aunt's function as a cook with the ULIMO soldiers. This information was corroborated by Bernard, the defendant's former bodyguard. Even if this clarification does not directly concern the denounced murder, it contributes to the credibility of Jérôme's statements. Finally, it should be noted that the fact that Jérôme did not know the identity of the young boy does not cast doubt on his credibility, as the Court was able to convince itself during the debates of the plaintiff's reserved character and his restraint in dealing with others. In addition, there were a large number of displaced persons during the war, which may explain why Jérôme never had time to get to know the victim (see 40.753.036).

7.12.3.6 In view of the above, and the fact that the historical reality of Black Monday is clearly established despite the defendant's denials, the defendant's arguments can be dismissed. Moreover, the defendant does not deny having been present at Voinjama in 1994.

7.12.3.7 Finally, the Court finds that Alieu Kosiah killed a young boy in Voinjama by shooting him with a pistol.

7.12.3.8 Subjectively, Alieu Kosiah acted with intent. He also knew the victim's civilian status.

The facts were part of the internal armed conflict that took place in Liberia during the first civil war, which the accused knew.

7.12.3.9 In conclusion, Alieu Kosiah will therefore be found guilty of the murder of a young boy within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 letter a common to the GC and 4 para. 2 letter a AP II.

7.13 Ordering a forced transport, by civilians, from Voinjama to Gbarlyeloh (Guinea)

7.13.1 Charge

According to section 1.3.19 of the indictment, Alieu Kosiah is charged with having ordered the forced transportation of civilians from Voinjama to Gbarlyeloh (Guinea) between September 1993 and December 1993, or between the beginning of 1994 and May 1994.

7.13.2 Means of proof

During the investigation

- 7.13.2.1 In his criminal denunciation dated July 30, 2014, Jérôme stated that in 1994, while residing in Voinjama, he and about ten other civilians were forced to carry a cargo from Voinjama to the village of Gbarlyeloh, located about four hours away on foot. Because the cargo was so heavy, a third person was needed to place it on the head of each carrier. During the trip, one of the porters, OOO., said he couldn't take it anymore. The ULIMO members who were leading the transport threatened him with death, and he ran off into the forest. The ULIMO shot at him, but did not kill him. The order to carry the cargo to Gbarlyeloh had been given to Voinjama by Alieu Kosiah in the presence of Jérôme. Alieu Kosiah then delegated to his subordinates the task of directing the forced march (05-03-0002 ff).
- 7.13.2.2 During his interrogation by the Office of the Attorney General, Jérôme stated that in 1994, while sitting at home one morning, he was requisitioned by three soldiers to follow them into the Barzee neighborhood, where "General Kosiah" was sitting on a porch (12-09-0014, 0019). At that time, he did not know what he was going to have to do. During the trip, he was alone with three soldiers behind him. In Barzee, other civilians were already there (12-09-0019). To get there, they crossed the main road and the road to Kolahun (12-09-0013). The location was not far from Kolahun Road (12-09-0019). Jérôme explained that "General Kosiah" had instructed his soldiers that the civilians should go and pick up the cargo and take it to Gbarlyeloh (12-09-0014). He also told them which route to take and that if a civilian tried to flee, to shoot him and report back (12-09-0014, 0020). Jérôme stated that he never saw anyone superior to "General Kosiah" giving him orders. He was the only one to give orders (12-09-0026). During the transport, there were, according to him, eleven civilians and fifteen military personnel (12-09-0020). The civilians were to transport oil, coffee, and cocoa. Jérôme stated that he had to carry a can of oil. He could not lift it by himself, so a soldier placed it on his head. The civilians took the road from Voinjama to Gbarlyeloh (12-09-0014). During the transport, if the civilians did not walk fast enough, the soldiers would push them with their hands and tell them to go faster. Some civilians were hit with hands or slapped. The soldiers did not hit them with their weapons or any other object. Jérôme reported that he personally was not hit because he would pick up the pace whenever the soldier behind him ordered him to (12-09-0020). During the transit, OOO., the complainant's brother, allegedly told the ULIMO soldiers behind him that he was tired. They told him that he had to walk faster. OOO. also asked to relieve himself, which he was allowed to do (12-09-0014). The entire group then stopped (12-09-0020). Once in the bush, OOO. then ran away (12-09-0014, 0020). According to Jérôme, he managed to save his life (12-09-0020). When he did not return after five minutes, the soldiers went to look for him in the bush, but to no avail. They then opened fire in the direction of where he had gone,

firing their weapons at knee height. They then distributed the coffee cargo that OOO. was carrying to other civilians who were carrying the goods and the convoy resumed to Gbarlyeloh. After passing the checkpoint, the convoy dropped off the cargo. Three ULIMO soldiers remained behind, while twelve others returned with the civilians to Voinjama (12-09-0014). Jérôme stated that he did not know who the commander was who directed the transport and did not even know if there was one (12-09-0020).

- 7.13.2.3 When questioned about the facts of which he is accused, Alieu Kosiah contested them. He stated that he never went to Gbarlyeloh with merchandise (13-01-0259). Furthermore, according to him, OOO. was not a civilian, but an NPFL soldier who was captured and who became a military police commander for the ULIMO (13-01-0247). He also stated that, contrary to Jérôme's statement, the walking time between Voinjama and Gbarlyeloh is not four hours, but two hours by walking at a leisurely pace. By car, the travel time is only ten or fifteen minutes on a paved road. The distance between the two cities would be 20 kilometers (13-01-0246).

During the debates

- 7.13.2.4 During the debates, Jérôme confirmed his denunciation against Alieu Kosiah. He stated that the transport took place at the beginning of 1994, during the dry season (40,753,015 s.). He was requisitioned by soldiers one morning while he was at home. The complainant stated that he had no choice but to participate in the transport, because to refuse would have meant that he had "no desire to live". He went with the soldiers to the Barzee neighborhood. He reported that when he arrived, "General Kosiah" was giving orders (40.753.016). He asked the soldiers where the men were that he had ordered to requisition and ordered them to tell them to take the loads. Alieu Kosiah was then sitting on the porch and the civilians had to go in front of him to take the loads. The defendant allegedly told his soldiers again that if anyone tried to escape on the way, they were to kill them and report back to him (40.753.018). On the spot, no one seemed to be hierarchically superior to him. Jérôme explained that eleven civilians took part in the transport and that the soldiers numbered fifteen (40.753.017). The defendant, for his part, did not participate in the convoy (40.753.017 et seq.). The complainant was unable to say who was the leader during the transport. Jérôme stated that he had to carry oil on his head, while other civilians had to carry coffee and cocoa (40.753.018 f.). The container carried held six gallons (40.753.019). The complainant stated that he did not know why the goods were to be taken to Gbarlyeloh (40.753.018). The convoy left in the morning and arrived around noon, so it took four or five hours from Voinjama to reach its destination (40.753.018 f., 022). The road was passable. If the civilians did not walk fast enough during the journey, the soldiers, who were armed, would push them and beat them with their sticks or hands (40,753,019ff.). Jérôme stated that he was "lucky" that he was not personally beaten (40.753.019). He was indeed following "very,

very closely" to the person that was in front of him. If a civilian left a distance in front of him, he risked being beaten because it meant he was lagging behind (40.753.020). Civilians were not given food or drink during the march (40.753.019). Regarding the shape of the convoy, Jérôme explained that some soldiers were in the front, others among the civilians, and the rest in the back (40.753.021). When asked if there were any breaks during the trip, the complainant said they stopped because his brother, OOO., had to go to the bathroom (40.753.019). He was actually tired and claimed he had to relieve himself (40.753.020). The civilians were left standing, but were allowed to drop their load on the ground (40.753.019). OOO. was allowed to go into the bush to relieve himself but five minutes later he had not returned. Three soldiers searched for him, to no avail. At least five soldiers then put their rifles at knee level and fired for almost a minute, according to the complainant. The soldiers then took the load of coffee that OOO. was carrying and distributed it among the civilians who were carrying the same goods. The convoy then continued on its way. Jérôme stated that he feared for his life during the transport (40.753.020). Upon arriving at Gbarlyeloh, the civilians crossed the border to deposit the goods. They then returned, accompanied by thirteen soldiers, two of whom remained in Guinea (40.753.022). The group arrived in Voinjama in the evening. Jérôme stated that he was not compensated for his participation in the transport (40,753,023). Regarding his brother OOO., he indicated that he returned to Voinjama in 1998 (40.753.021).

7.13.2.5 When questioned about the facts of which he was accused, the defendant disputed them. He stated that he had never taken anyone to Gbarlyeloh and that it was strange that Jérôme's complaint mentioned that a "civilian" had run away, without specifying that it was his brother. Alieu Kosiah testified that he was in Voinjama in 1994 (40.731.062). However, he stated that he did not know where the Barzee neighborhood was, having spent all of his time at the Voinjama headquarters when he was there (40.731.063).

7.13.3 Law and evaluation of the evidence

7.13.3.1 According to common article 3 of the GC, violence to life and limb, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (subpara. a), as well as outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities.

7.13.3.2 According to Art. 4 para. 2 AP II, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and the slave trade in all their forms (let. f) (let. e), slavery

and the slave trade in all their forms (let. f), and the threat to commit the aforementioned acts (let. h).

- 7.13.3.3 With regard to the legal developments in relation to cruel treatment, violation of human dignity and slavery, reference is made to paragraphs 7.4.3.2, 7.4.3.3, 7.5.3.3 and 7.5.3.4 above.
- 7.13.3.4 With regard to the order given by a hierarchical superior within the meaning of article 18 of the former Swiss Military Criminal Law Code, reference is made to recital 7.2.3.4 above.
- 7.13.3.5 In the present case, the account given by Jérôme before the Office of the Attorney General and then before the Court was very consistent as to the circumstances in which the transport took place and as to the involvement of the accused, whom he saw and heard giving the order for the transport. The extreme precision of the complainant's statements, particularly with regard to figures, is surprising. Before the debates, the Court found it odd, to say the least, that the plaintiff was able, more than 20 years after the events, to state that the civilians who took part in the transport were eleven and the soldiers fifteen. The hearing of Jérôme, however, brought to light that, as a passionate fan of numbers, he attached particular importance to figures and systematically counted everything around him. Indeed, during his examination, the Court asked the complainant how many people were in the courtroom. Without even turning around, he was able to give the exact number of participants (in fact, he indicated one more person because he had not seen that one participant had not returned after the lunch break). He also stated that he had counted the number of chairs available in the room, as well as the number of police officers present (40,753,034 s.). Thus, Jérôme's statement convinced the Court that when he puts forward numbers, he has generally done an accurate count. In addition, he was careful in his statements, not hesitating to admit it when he did not know something (for example, who was the leader during the transport). He also did not try to set himself up as a victim at all costs, acknowledging, for example, that he had not been beaten during the transport. These elements make Jérôme's statements very credible to the Court.
- 7.13.3.6 Jérôme's account is also corroborated by the numerous other accounts of complainants who have reported transports in the proceedings, which have been found to involve Alieu Kosiah (see in particular supra. recital 7.10). The circumstances in which the various transports took place are always described in a similar way and the defendant always plays a central role. The presence of Alieu Kosiah at the place where the goods were deposited, which enabled him to supervise the departure of the convoy, can be compared with the facts described in 7.12 above. Furthermore, the facts of which the defendant is accused echo the function of H&H that several participants in the proceedings have attributed to him (cf. supra recital 7.5.3.10). The credibility of Jérôme's statements is further strengthened by Olivier's statements about the existence of civilian transport of goods during the war, as the former child

soldier provides a convincing explanation as to why civilians were solicited.

7.13.3.7 With respect to the defendant's argument regarding the denunciation of Jérôme, which does not indicate that OOO. is his brother, there is no contradiction between this and the complainant's subsequent statements, the latter having simply specified at a later stage what his relationship was with the civilian in question. Furthermore, it is difficult to understand what conclusion the defense would like to draw from the alleged contradiction it has identified. Moreover, the claim that OOO. was an NPFL soldier is not supported by any evidence in the record and is irrelevant because it does not help to confirm or deny the credibility of Jérôme. It can therefore be set aside without further discussion. Finally, concerning the duration of the journey between Voinjama and Gbarlyeloh, if the distance between the two localities is indeed 20 kilometers (which the Court cannot verify, as the village of Gbarlyeloh could not be clearly located), as the defendant maintains, the four-hour walk indicated by the plaintiff may be sufficient, provided that the porters are sufficiently beaten and threatened to keep up. For the rest, the presence of Alieu Kosiah in Voinjama in 1994 is not disputed.

7.13.3.8 The Court notes that the statements of Jérôme are much more credible than the denials of the accused, so that it considers it duly established that the latter ordered the transport of goods from Voinjama to Gbarlyeloh denounced by the complainant. These facts can be qualified as both an attack on the physical and psychological integrity, in the form of cruel treatment, and an attack on the dignity of the person, in the form of humiliating and degrading treatment.

Forcing people to walk for hours with a heavy load, without giving them food or water, threatening them and beating them if they do not move at the imposed pace, is likely to cause great suffering. This suffering is first of all physical, because of the long march that the civilians had to make carrying a heavy load and the blows they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that the civilians felt throughout the journey, since they were accompanied by armed soldiers who had received orders from the defendant to kill the recalcitrant civilians.

The facts must also be qualified as humiliating and degrading treatment. The act of forcing a person to carry a load under extremely difficult conditions, threatening him with death or beatings if he does not move at the imposed pace, amounts to a disregard for his quality as a human being and represents a very serious form of humiliation. Any sane person would feel thoroughly humiliated and belittled by such treatment.

Furthermore, beating civilians and death threats were considered as components of the offenses of cruel, humiliating and degrading treatment, and therefore do not constitute separate offenses that should be retained in addition.

Lastly, it is specified that, despite the seriousness of the facts, the offense of slavery was not committed in this case, insofar as the transport lasted for a few hours and that this period of time is not sufficient to establish the exercise of property rights over the civilians involved.

- 7.13.3.9 By ordering the soldiers to force the civilians to carry out the transport, Alieu Kosiah knew that he was forcing them to commit acts that constitute criminal offenses. The capacity of the accused as a leader can be admitted, as his presence at the warehouse and the orders he gave to the soldiers before departure attest to his hierarchical superiority. In addition, it is because he gave the order to transport the goods that the soldiers did so.
- 7.13.3.10 Regarding the subjective element, Alieu Kosiah acted with intent. He knew that by instructing the soldiers to accompany the transport and to kill the recalcitrant civilians, they would carry it out. The defendant also knew that the people forced into the transport were civilians.

Finally, these facts are part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

- 7.13.3.11 In conclusion, Alieu Kosiah must therefore be condemned for having given the order to inflict cruel, respectively humiliating and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code) in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a etc. common to the GCs and art. 4 ch. 2 let. a and e AP II).

7.14 Ordering a forced transport, by civilians, from Voinjama to Solomba and from there to the Guinean border

7.14.1 Charge

According to section 1.3.20 of the indictment, Alieu Kosiah is accused of having ordered the forced transportation of civilians from Voinjama to Solomba between September 1993 and December 1993, or between the beginning of 1994 and May 1994.

7.14.2 Means of proof

During the investigation

- 7.14.2.1 It appears from Jérôme's criminal denunciation dated July 30, 2014 that approximately two weeks after the transport to Gbarlyeloh, in the context of an offensive by the LDF armed group on Voinjama, he was once again forced to transport goods with about ten other civilians from Voinjama to Solomba. The transport took two full days, with one night spent in the town of Kolahun. The convoy also passed through the town of Foya. The order to carry the cargo to Solomba was given to Voinjama by Alieu

Kosiah, in the presence of Jérôme. Alieu Kosiah then gave his subordinates the mission of directing the forced march (05-03-0002 ff).

7.14.2.2 During his interrogation by the Office of the Attorney General, Jérôme stated that, a few days after the transport to Gbarlyeloh (cf. supra recital 7.13), five ULIMO soldiers again came to his house to requisition him. One of the soldiers, who was smaller and younger than him, tried to hit him with his gun. Jérôme had to follow them to Barzee's neighborhood. "General Kosiah" was again present, sitting on the porch. He asked where the people were that he had asked to requisition. One of the soldiers told him that they were there. Alieu Kosiah then gave the order to transport the cargo to Kolahun. He also said that if the soldiers did not find other civilians in Kolahun to go to Solomba, they should continue with those who had come from Voinjama. He also ordered that if anyone ran away, they were to be shot. When asked by one of the civilians why they did not go to Gbarlyeloh, a soldier replied that shortly after leaving Voinjama, at Kuruka Junction, they had been ambushed during a transport a few days earlier (12-09-0014). According to the complainant, seventeen soldiers were present during the transport (12-09-0021). The civilians took the cargo and walked for eight hours to Kolahun. There, a soldier, who had a key, opened a door and gave the order to drop the cargo inside. A few minutes later, two soldiers who had been part of the convoy brought a pan with food that was intended for civilians. However, there was not enough to satisfy everyone, so each civilian received a small handful. The next morning, around 6:00 or 7:00, the soldiers "opened the door" and the civilians had to pick up the shipment and carry it to Solomba. From Kolahun, the civilians walked to Foya, where they took a 20 to 30minute break at the side of the road (12-09-0014). They then continued walking towards Solomba. Once there, the convoy stopped at the Makona River, which forms the border between Liberia and Guinea. The civilians left the cargo on the road and the soldiers asked five of them, including Jérôme, to put it in a canoe. The civilians did not cross the river. The soldiers in fact asked them to turn back to where they came from. The complainant stated that the civilians arrived between 11:00 p.m. and midnight in Kolahun, where they again spent the night. The next day, they returned to Voinjama. For the return trip, fifteen soldiers accompanied them, while two remained at the border with the cargo (12-09-0015).

7.14.2.3 When questioned about the facts of the case, Alieu Kosiah disputed them. He stated that the route described by Jérôme was not logical. Voinjama is surrounded by Guinea, and there would have been at least fifteen places where it was possible to cross a border into Guinea. It would not have been necessary to go all the way to Solomba. With regard to the ambush cited by the complainant to justify the destination of Solomba instead of Gbarlyeloh, Alieu Kosiah stated that there was never such an ambush on the road to Gbarlyeloh on the side indicated by Jérôme since it is in the direction of Guinea and the villages of Kuruka and Sakonedu are Mandingo villages, as is Gbarlyeloh on the Guinean side. Moreover, according to the defendant, there were border posts with

Guinea that were 35 minutes' walk from the Voinjama garrison, so it was easier and faster to go through there to get to the border. Alieu Kosiah considers that Jérôme told the story of the ambush to justify his complaint (13-01- 0106, 0649).

During the proceedings

- 7.14.2.4 When heard by the Court, Jérôme confirmed his denunciation against Alieu Kosiah. He stated that he was requisitioned by five soldiers who came to his home one morning (40.753.023). One of them was a child soldier armed (40.753.023ff.). Jérôme again had to go to the Barzee neighborhood. As with the first transport (see supra recital 7.13). Jérôme claimed that he had no choice but to participate in the transport, as refusal would have put him at risk of losing his life. In Barzee, Alieu Kosiah gave instructions. Again, he told his soldiers that if citizens fled, they were to shoot them. According to the complainant, there was no one superior to the defendant at that time and he was the only one to give orders (40.753.024). Ten civilians and seventeen soldiers took part in the transport (40.753.024 f.). Alieu Kosiah, on the other hand, reportedly remained in the Barzee neighborhood. Jérôme stated that he did not know the names of the soldiers who led the transport and that he did not hear anyone give orders during the convoy except to move forward. All the soldiers were armed (40.753.025). The goods transported were of the same type as those of the previous transport (cf. supra para. 7.13). For his part, the Complainant stated that he carried an oil can that contained six gallons. He also explained that the destination of the convoy was Solomba because he had heard that ULIMO had been attacked in the opposite direction. The convoy left between 7:00 and 9:00 am. The road used was passable. In some places, it was so narrow that civilians had to walk in a column. Soldiers were positioned at the front, at the back and equally among the civilians. Sometimes the civilians and soldiers stopped to drink water from the river as they walked under the sun. The civilians, on the other hand, did not receive any food (40,753,027). After eight to nine hours of walking, the convoy stopped at Kolahun to spend the night (40.753.026). Jérôme reported receiving the contents of a palmful of food there. Civilians were also able to drink water from a well. During the night, the civilians were locked in a room that was locked from the outside. The convoy left the next day between 6:00 and 7:00 am. It traveled to Foya, which requires a three to four hour walk. There, the civilians were able to rest (40,753,027). The soldiers and civilians then set off again, arriving at the Guinean border around 4:00 or 5:00 p.m. The road from Kolahun to the border was also passable, but it was not wide enough for a vehicle to pass because the bush had covered it. At the border, the civilians deposited the goods in the sand. Five of them were requisitioned to put it in canoes to take it across the Makona River. Jérôme reported that once the merchandise was deposited, the civilians left, accompanied by fifteen soldiers, in the direction of Kolahun, where they spent the night, while two soldiers remained at the border to deal with the merchandise (40.753.028). The next morning, the civilians returned to Voinjama. When asked about the behavior of the soldiers

during the transportation of goods, Jérôme stated that they had behaved in the same way as during the previous convoy (see above, para. 7.13). The civilians were thus subjected to the same violence and threats. The complainant stated that he had escaped the threats and violence (40.753.029). He also stated that he was not paid for his participation in the transport (40.753.030). When asked if it would have been possible to make the trip with vehicles, Jérôme said that a soldier explained that if the enemy heard a vehicle, they would attack them; there was also the risk of jumping on a mine (40.753.030 f.).

7.14.2.5 When questioned during the debates on the facts of which he was accused, Alieu Kosiah insisted on contesting them, claiming that the transport denounced by Jérôme did not make sense "for someone who was in Lofa". In fact, according to him, it was illogical to go to Solomba from Voinjama because between the latter city and Kolahun, there were fifteen to sixteen border crossings (40.731.063).

7.14.3 Law and evaluation of evidence

7.14.3.1 According to Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (subpara. a), and outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons who do not take a direct part in hostilities. According to Art. 4 para. 2 AP 11, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not taking a direct part or are no longer taking part in hostilities, whether or not they are deprived of their liberty (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and the slave trade in all their forms (let. f), and the threat to commit the above-mentioned acts (let. h).

7.14.3.2 With regard to the legal developments in relation to cruel treatment, violation of human dignity and slavery, reference is made to paragraphs 7.4.3.2, 7.4.3.3, 7.5.3.3 and 7.5.3.4 above.

7.14.3.3 With regard to the order given by a hierarchical superior within the meaning of art. 18 of the former Swiss Military Criminal Law Code, reference is made to recital 7.2.3.4 above.

7.14.3.4 In the present case, Jérôme's statements to the Office of the Attorney General and then to the Court were perfectly consistent as to the circumstances in which the transport took place and the involvement of the accused. The complainant affirmed during the investigation and repeated during the debates that Alieu Kosiah was present at the Barzee

quarter, where the merchandise was stored, and that he gave the order to the ULIMO soldiers to transport the merchandise, asking them to shoot at any civilians who were recalcitrant. As in the case of the transport discussed above in recital 7.13, Jérôme was again extremely precise about the course of events and the number of soldiers and civilians who took part in the convoy, which must be considered, in view of the complainant's personality, as a clear indication of credibility (cf. supra recital 7.13.3.5). In addition, Jérôme was once again measured in his statements, admitting that Alieu Kosiah had not taken part in the transport and that he himself had not been threatened or beaten during the transport. This reinforces the reliability of his story.

- 7.14.3.5 Most of the complainants did not know each other or were not related to each other. Therefore, the fact that they reported forced transports with a similar, if not identical, *modus operandi* in terms of the type of goods transported, the role of the soldiers and Alieu Kosiah, as well as the direction of the convoy and the purpose of the convoy (to sell the goods in Guinea), undermines the credibility of their statements. Indeed, it is highly unlikely that all of these individuals would have worked together to provide a similar account. In addition, these forced transports are typical of the civil war and are part of the economic logic of the ULIMO. Jérôme's account echoes the statements of the other participants in the proceedings. However, the transport recounted by Jérôme differs from the others in that the civilians in this case were given a few breaks (one of which was to spend the night) as well as a handful of food and some clean water. This difference can be logically explained, considering the particularly long duration of the transport and the distance covered, i.e. about 60 km. Without a minimum of sustenance and a break, the civilians would undoubtedly have fallen from exhaustion. Moreover, the fact that it took two days to reach the destination is perfectly credible in view of the distance covered. Furthermore, the statements of Olivier as to the existence of forced transports during the war (cf. supra recitals 7.5.2.3 and 7.5.2.7) add further credence to the statements of Jérôme. The facts denounced by the latter can finally be linked to the role of H&H assumed by Alieu Kosiah (cf. supra recital 7.5.3.10).
- 7.14.3.6 With regard to the defendant's argument that it would have been illogical for the convoy to go to Solomba in view of the number of border posts between Voinjama and Kolahun, it is recalled once again that the civil war in Liberia did not seem to follow any logical military pattern, as the enemy could sooner or later be found anywhere. It is therefore not impossible that goods had to be transported specifically to Solomba for one reason or another, as the other border crossings were not so close to the market towns in Guinea. Finally, the court finds it difficult to understand what interest the plaintiff would have in lying about the destination of a shipment of goods.
- 7.14.3.7 In view of the foregoing, the Court considers the statements of Jérôme to be much more credible than those of the accused, and finds that it has been duly established that Alieu Kosiah gave the order for the transport

of goods denounced by the complainant. The facts can be qualified as both an attack on physical and psychological integrity, in the form of cruel treatment, and an attack on personal dignity, in the form of humiliating and degrading treatment.

- 7.14.3.8 Forcing civilians to walk for hours with a heavy load, threatening them with weapons or beating them if they do not move at the imposed pace, and locking them up for an entire night, are likely to cause great suffering. This suffering is first of all physical, because of the long walk that the civilians had to make carrying a heavy load and the blows that they suffered if they did not walk fast enough. The suffering is also psychological, given the terror that the civilians felt throughout the journey, since they were accompanied by armed soldiers and given their captivity for one night.

The acts of which the defendant is accused must also be qualified as humiliating and degrading treatment. The fact of forcing a person to carry a load in extremely difficult conditions, by threatening him with death or beatings. If a person is forced to carry a load under extremely difficult conditions, with threats of death or beatings if he or she does not keep up with the pace of the load, this is a very serious form of humiliation and is a violation of his or her status as a human being. Any sensible person would indeed feel deeply humiliated and bruised by such treatment.

Furthermore, the beating of civilians and the death threats fall under the offenses of cruel, humiliating and degrading treatment, and therefore do not constitute separate offenses that should be retained in addition.

Finally, it is specified that despite the seriousness of the facts, the offense of slavery was not carried out, insofar as the transport lasted two days and that this lapse of time is not sufficient to retain the exercise of powers of ownership over the civilians involved.

- 7.14.3.9 With regard to the order given in connection with article 18 of the former Swiss Military Criminal Law Code, the capacity of leader of the accused can be retained, given the situation described by Jérôme. Alieu Kosiah was indeed at the departure of the convoy, at the place where the goods were stored. It was there that he gave his instructions, specifying that any recalcitrant civilian should be killed. On the few occasions when Alieu Kosiah did not take part in the denounced transports, he was always in a strategic position which attested to his role as a leader exercising his prerogatives: either at the departure of the convoy (as in this case), which allowed him to ensure that all the loads were taken away and to give his instructions, or at the arrival of the convoy, which allowed him to see that everything had been done in accordance with said instructions. The fact that his order was carried out also demonstrates his superiority in the hierarchy. Even if he did not specifically give the order to beat the civilians, this element must still be held against him in the context of article 18 of the former Swiss Military Criminal Law Code. Indeed, it should be understood that such treatment went hand in hand with the

forced transport, as did the threats, in order to make the civilians move at the imposed pace. It is thus appropriate to retain that the order given by the accused involved the commission of offenses, namely the infliction of cruel, humiliating and degrading treatment and that it was because of the order that they received that the soldiers accompanied the civilians during the transport in the conditions described above. The objective elements of Article 18 of the former Swiss Military Criminal Law Code are therefore fulfilled.

- 7.14.3.10 Subjectively, Alieu Kosiah acted intentionally. He knew that the instruction given to his soldiers to carry out the transport would be carried out. Moreover, the accused knew, without any doubt, that the persons involved were civilians.

Finally, these facts are part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

- 7.14.3.11 In conclusion, Alieu Kosiah must therefore be condemned for having ordered the infliction of cruel, respectively humiliating, and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a etc. common to the GCs and art. 4 ch. 2 let. a and e AP II).

7.15 Ordering the killings of two ULIMO fighters of Krahn ethnicity, including the so-called Phénix, in Voinjama

7.15.1 Charge

According to section 1.3.21 of the indictment, Alieu Kosiah is charged with having ordered the killings of two ULIMO combatants of Krahn ethnicity, including the so-called Phénix, in Voinjama, between September 1993 and December 1993, and between the beginning of 1994 and May 1994 respectively.

7.15.2 Means of proof

During the investigation

- 7.15.2.1 During his interrogation by the Office of the Attorney General, Jérôme related that while he was returning from the market in Voinjama, passing through the Barzee neighborhood, and crossing the road to Kolahun, he saw a group of ULIMO, consisting of twenty to thirty people, with "General Kosiah" in the middle (12-09-0022). The latter was dressed in a "uniform", a t-shirt and a camouflage cap and was carrying a pistol on his right hip, as usual, according to Jérôme (12-09-0022). The latter reported seeing, in the middle of the group, two ULIMO soldiers strapped in "tabé." One of the two answered to the nickname of Phénix. Jérôme stated that he heard "General Kosiah" say the following words: "Since the Krahn want to fight us, we will kill the ones who are among us". The defendant also

stated that there were three Krahn soldiers among them, one of whom had run away, and that the other two, tied up in "tabé", were going to be executed. According to Jérôme, he then ordered that the two soldiers be executed by slitting their throats with a knife (12- 09-0015). Later, at his hearing, the complainant stated that "General Kosiah" ordered the execution of the two soldiers with the phrase "execute them", without specifying how to execute them; he did not make any explicit gesture either (12-09-0022). The soldiers allegedly cut off Phénix's head and took it to the Monrovia Highway checkpoint, Iron Gate (12-09-0015). Jérôme reported seeing it there the next day (12- 09-0022). They also displayed the head of the other Krahn soldier, whose name Jérôme does not know, at the Kolahun Highway checkpoint (12-09-0015). After the execution, Alieu Kosiah reportedly did not say or do anything else (12-09-0022).

7.15.2.2 When questioned about the facts of which he is accused, Alieu Kosiah disputed them. He stated that he did not know anyone named Phénix and that he had never heard of an episode in which he was "beaten" and then killed with another ULIMO soldier at Voinjama, on the road to Kolahun (13-01-0178). The defendant also stated that the version given by Jérôme did not make sense, since he dated the event to the beginning of 1994, whereas the ULIMO split would have taken place later that year. According to Alieu Kosiah, Jérôme claimed that he killed the two soldiers in revenge for the ULIMO-J and the death of two members of his family during the war. The defendant contests this version, stating that if he had wanted to avenge the death of his family members, he would have gone after the Gios, who were active fighters in the Nimba at the time of the death of the family members, and not the Krahns soldiers (13-01-0178, 0180). Alieu Kosiah further stated that he was in Bomi when the split took place and that he had never been to Voinjama before the split (13-01-0106, 0178).

7.15.2.3 During the investigation, Olivier stated that he regularly saw human skulls placed on sticks at checkpoints at the entrance to Lofa towns, including Salayae, Zorzor, Voinjama and Foya (12-16-0039). According to him, this practice was aimed at scaring the enemy. He clarified that these were not civilian bodies, but NPFL soldiers captured by the ULIMO or vice versa (12-16- 0040).

7.15.2.4 Raoul, interviewed two days before Jérôme by the Office of the Attorney General, stated that he had heard that a man named "Patrick ", who was a Krahn, had been killed by Alieu Kosiah's soldiers during the ULIMO split (12-08- 0034, 0037).

During the debates

7.15.2.5 When heard by the Court, Jérôme confirmed his denunciation against Alieu Kosiah. He specified that the event had occurred in 1994, without being able to say whether it had taken place before or after the split of ULIMO. Indeed, the complainant indicated that he "knew nothing" about the split and that the only thing he could say was that Alieu Kosiah had

said, in reference to the Krahn, "Since they want to fight us, then we have to kill them" (40.753.031ff.). Jérôme explained that the killings took place at Voinjama, between the road to Monrovia and the road to Kolahun (40.753.031). He confirmed that he was present at the scene of the crime, as he was returning from the market. Three Krahn soldiers were scheduled to be executed, but one of them had managed to escape. According to Jérôme, Alieu Kosiah ordered the throats of the other two to be slit. The complainant stated that he did not know if there was a superior military officer at the scene, but that the soldiers took orders from him (40.753.032). The two soldiers were allegedly tied up in a "tabé", with their torsos naked, before being executed. According to Jérôme, they were not beaten. They were killed by two soldiers, who cut off their heads with long knives. The other soldiers present held the victims to prevent them from moving. According to the complainant, one of the victims was named Phénix. The head of the latter was placed on a stick at the city gate on the road to Monrovia, and the head of the other soldier at the gate on the Kolahun road (40.753.033).

7.15.2.6 When questioned by the Court about the facts of which he is accused, Alieu Kosiah contested them. He stated that he was in Tubmanburg at the time of the split and that he did not know any soldier called Phénix. When asked if he had ever seen human body parts at the Monrovia and Kolahun road checkpoints, the defendant answered in the negative.

7.15.3 Law and evaluation of evidence

7.15.3.1 According to article 3, paragraph 1, letter a, common to the GC, it is and remains prohibited at any time and in any place whatsoever, with respect to persons not taking a direct part in the hostilities, to inflict violence to life and limb, in particular murder in all its forms, mutilation, cruel treatment, torture and torment.

According to Art. 4 para. 2 a AP 11, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons who are not, or are no longer, taking part in the hostilities, whether or not they are deprived of their liberty.

For legal developments in relation to murder and superior orders within the meaning of art. 18a of the former Swiss Military Criminal Law Code, reference is made to sections 7.2.3.1 to 7.2.3.4 above.

7.15.3.2 In the present case, the statements of Jérôme were again consistent as to the circumstances in which the two Krahn soldiers were executed and the role played by the accused. At the hearing, Jérôme confirmed his testimony to the Office of the Attorney General that he had seen and heard Alieu Kosiah ordering the soldiers to slit the throats of the two Krahn soldiers. The scene described was part of the conflict between the Mandingo and Krahn branches of ULIMO, which led to the split of the

group in March 1994. However, Jérôme did not link this event to the crimes he reported, stating that he had no knowledge of the split in the ULIMO group. He merely reported the words he had heard from the defendant, that since the Krahn wanted to fight "them" he should kill them. Jérôme thus remained very factual in his description of the scene, which lends credibility to his account. Moreover, he did not, once again, try to incriminate Alieu Kosiah more than he should have, stating that he arrived at the scene when the two soldiers were already tied up in "tabé", so that he could not say whether or not the order to restrain them had been given by the defendant. The words of Jérôme can also be correlated with those of Raoul, who stated that he had heard that a man named Patrick had been killed by the soldiers of Alieu Kosiah. Given the vagueness with which some names or nicknames are spoken or used in Liberia, it seems highly likely to the Court that this is the same person as the Phénix referred to by Jérôme. Finally, Jérôme's details of the skulls of the two soldiers, which were allegedly placed at two gates of the town of Voinjama, are corroborated by the testimony of Olivier, a former member of Alieu Kosiah's security detail. These are certainly barbaric acts, but they are not exceptional in the context of a war where terror is readily practiced.

- 7.15.3.3 As regards the denials of the accused, motivated by the temporary information provided by Jérôme, they are not conclusive. In fact, contrary to what he claims, Jérôme did not date the event he denounced with precision, merely saying that it occurred in 1994. Since the split took place in March 1994, it is very likely that the events reported by Jérôme were committed around that time, during which time Alieu Kosiah was present in Voinjama.
- 7.15.3.4 It follows from the above that Jérôme's denunciation is very credible, so that it is clearly established that Alieu Kosiah gave the order to his men to kill the two Krahn soldiers. There is no doubt in the court's mind that he was a leader. Jérôme testified that the soldiers took their instructions from the defendant. Furthermore, the order was carried out, which demonstrates the superiority of Alieu Kosiah. Since the order led to the commission of an offense, the objective elements of article 18 of the former Swiss Military Criminal Law Code were fulfilled.
- 7.15.3.5 It should be pointed out that the two soldiers, having been disarmed (they were in fact tied up), are considered as persons "not taking part in the hostilities" (cf. supra recital 4.4.3) and are thus protected by the legal provisions mentioned in recital 7.15.3.1 above.
- 7.15.3.6 Subjectively, Alieu Kosiah acted intentionally. He knew that by giving the order to kill the two Krahn soldiers, it would be executed and that he was committing an offense. Moreover, he could not have been unaware of the protected status of the two unarmed soldiers, given the knowledge that he could rely on as a result of the military training that he had undoubtedly received in the regular army.

Moreover, the events took place in the context of the internal armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.15.3.7 Alieu Kosiah was therefore found guilty of having given the order to kill two unarmed soldiers within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum 3 para. 1 para. 1 letter a common to the GCs and 4 para. 2 letter a AP II.

7.16 Ordering the looting of the village of Botosu and ordering and directing the forcible transport of goods, by civilians, from Botosu

7.16.1 Charge

According to numbers 1.3.22 and 1.3.23 of the indictment, Alieu Kosiah is charged with having ordered the looting of Botosu, between March and December 1993 or between March 1994 and the end of 1995, and with having ordered and directed the forced transportation of looted goods from the village of Botosu by civilians.

7.16.2 Means of proof

During the investigation

7.16.2.1 When interviewed by the Office of the Attorney General, Coralie described Alieu Kosiah as being very dark-skinned and having large eyes, i.e. big eyeballs and being of medium height. The complainant could not say whether he had any tattoos or scars. As Alieu Kosiah had only removed his trousers (during the events described in recital 7.17 below), she could not say whether he had any distinctive features on his torso. She further stated that she was afraid and did not pay attention to such details. Regarding the description of Alieu Kosiah's clothing, Coralie stated that he had uniform trousers. What he was wearing on top was not uniform material. She could not say whether he was wearing anything on his head. In the first photographs shown to her, the complainant did not recognize anyone (12-21-0012). On the third day of her hearing, she was shown more photographs, in a larger format. Coralie was then able to identify Alieu Kosiah in the two photographs showing him. She was then confronted by the defendant and confirmed that he was the perpetrator of the acts she had denounced (12-21-0062).

7.16.2.2 At the hearing, Coralie said that when the ULIMO soldiers arrived in Botosu village, they asked people to cook for them. Some civilians cooked, while others, like Coralie, washed the dishes and fetched water from the stream. The civilians were responsible for bringing the food to a gathering place called "Palaver House" (12-21-0009). According to the complainant, 'General Kosiah' ordered his men to collect all the rice and oil (12-21-0043). The soldiers thus forcibly took the rice and oil from the civilians (12-21-0010). The former collected the rice they found in a large

bag used for long-term storage that could hold up to 100 kilograms. According to Coralie, once the rice was collected, the bag was half full. Regarding the oil, the complainant stated that she saw soldiers filling fourteen cans of oil (12-21-0089). After that, 'General Kosiah' allegedly ordered the men to carry the rice, oil and ammunition, with the women following them (12-21-0010, 0043, 0089). According to Coralie, the convoy was composed as follows: first there were Alieu Kosiah's men who were to protect him in case of an attack, then Alieu Kosiah, and behind him, the men who carried the loads, escorted by a second group of soldiers. The women closed the march (12-21-0043). Coralie claimed to have participated in the convoy, during which she would have thought only "about her survival" (12-21-0108). However, she said she managed to escape and hide in the bush (12-21-0010). The complainant stated at the hearing that no one but Alieu Kosiah gave orders. According to her, he was the 'General', a big man, a person above everyone else (12-21-0038 f.).

- 7.16.2.3 When questioned about the facts of which he was accused, Alieu Kosiah disputed them. He stated that he did not know the village of Botosu and had never been there. He stated that he had never left the main road and that Botosu was not there. He also referred to the fact that Coralie had not mentioned a year to enable him to situate the events she recounted, describing this inaccuracy as strange (13-01-0652).

At the hearing

- 7.16.2.4 During her hearing in court, via video conference from the American Embassy in Monrovia, Coralie confirmed her denunciation against Alieu Kosiah (40.752.008). She said that the looting of Botosu village took place during the rice growing season. On the day of the looting, the soldiers had asked the civilians to cook for them at the Palaver House. Alieu Kosiah was present, according to the complainant (40.752.009).

She confirmed that she had heard him order the ULIMO soldiers to collect the rice and oil that the civilians had. She stated that the defendant was the most important person in the hierarchy at the time, as the soldiers called him "General". She said that when she had stated during the investigation that the soldiers had taken the rice and oil from the civilians "by force", this meant that they had taken property that did not belong to them. In particular, the soldiers took everything that belonged to Coralie's mother, with whom she lived. The civilians had no choice but to hand over their property to the soldiers to avoid being killed (40.752.010). Coralie also confirmed that she heard the defendant give the order to transport the looted goods (40.752.011). She said that she heard that he was the most important leader on the spot. The transport took place on the same day as the looting. If the civilians had refused to participate in the transport, they would surely have been killed, according to the complainant (40.752.012). The complainant stated that the civilians outnumbered the soldiers, but because they were unarmed, they could not "avoid the attackers" (40.752.013). Coralie confirmed that she was

one of the civilians requisitioned (40.752.012). She said that women had indeed taken part in the transport, but that only the men carried the goods (40.752.014). When asked why the women had taken part in the transport without carrying anything, the complainant replied that she did not know (40.752.014). She also stated that Alieu Kosiah had participated in the convoy. He was at the front, with his bodyguards behind him, and it was he who gave the orders, to the exclusion of all others (40.752.013). Behind him were those carrying ammunition and others, and finally a group of soldiers who framed the whole convoy. The civilians carried the goods on their heads or shoulders (40.752.014). The soldiers were armed with guns and knives, according to the complainant. Alieu Kosiah was carrying a pistol on his side. Before leaving Botosu with the convoy, the soldiers fired several shots (40.752.015). With regard to the road used, Coralie said that it only allowed one person to pass at a time (40.752.014). When asked whether the soldiers had threatened civilians during the transport, Coralie replied that she did not know, as she was positioned at the back of the convoy (40.752.015). She also said that the civilians had not been physically abused, as they would not have been able to carry their loads. According to her, death threats were sufficient to force the civilians to participate in the transport, without the need for beatings to make them obey. Coralie added that she did not know whether Alieu Kosiah could see everything that was happening during the transport (40.752.016). She further stated that, as the soldiers were not looking at her, she managed to escape (40.752.012). In view of her flight, she could not indicate how far the goods had been transported. The complainant was also unable to say how long she had traveled with the convoy before fleeing (40.752.015). She stated that she had fled into the bush (40.752.016). When asked again how long it took from the start of the transport until she managed to escape, she said that it "didn't take long" (40.752.018).

7.16.2.5 When questioned by the Court about these facts, Alieu Kosiah persisted in disputing them. He stated that he had never been to the village of Botosu during the war and that he did not even know it existed. With regard to the "Palaver House", the defendant explained that this referred to a place found in every village in Liberia. He also stated that he had never witnessed soldiers looting food, but that "different things happened", but that he had not witnessed them (40.731.066). Alieu Kosiah further denied having ordered or directed a transport of oil, rice and ammunition from the village of Botosu (40.731.066).

7.16.2.6 During the debates, many participants in the proceedings confirmed that looting of civilian property was a common practice during the war, in particular the looting of coffee, cocoa, rice and oil (Paul: 40.757.007; Raoul: 40.755.007; Antoine W.: 40.756.007; Louis Z: 40.756.007). Jérôme: 40.753.007; André: 40.763.006). According to André, "they looted everything, even clothes, and especially anything that contained metal or iron. It could be generators or sewing machines. They also looted food." (40.763.006). Olivier specifically stated that the ULIMO committed looting. Indeed, as they had no material support, when they

arrived somewhere and saw something of value, they took it (40.761.009).

7.16.3 Law and assessment of evidence

Order to loot

- 7.16.3.1 Pursuant to Art. 4 para. 2 (g) AP II, pillage is and remains prohibited at all times and in all places against persons not taking a direct part or no longer taking part in hostilities, whether or not they are deprived of their liberty.
- 7.16.3.2 For legal developments in relation to pillaging, reference is made to recital 7.8.3.2 above. For developments in relation to Article 18 of the former Swiss Military Criminal Law Code, which concerns the responsibility of the superior for the order given, reference is made to recital 7.2.3.4 above.
- 7.16.3.3 In the present case, Coralie gave a description of the defendant that has often been cited in the proceedings, namely his very dark skin, bulging eyes and medium height. This spontaneous description is already an indication that the complainant was indeed in contact with the defendant during the war. Complementary to this is the consistency of her account, first before the Office of the Attorney General and then during the hearings. Consistency in her statements is particularly important in this case, as Coralie is completely uneducated. She has never attended school and the statements she made in the proceedings reflect this. Indeed, the complainant always described the events in a very simple and factual manner. In particular, she was unable to talk about dates, duration or distance, and she could not count. She never hesitated, when asked questions, to state that she could not answer when this was the case. She never tried to give answers to the criminal authorities who questioned her without being able to do so. In all likelihood, she would have been unable to do so given her level of education. Nor would the complainant have been able to make statements before the Court that were as consistent as possible with her previous statements. It thus appeared to the Court that when Coralie gave information, it was based on an actual visual or auditory memory. In view of these elements and the consistency of the complainant's statements, the Court considers her account of the facts complained of to be very credible. The reality of the looting during the war was also corroborated by many participants in the proceedings, and in particular by Olivier, who convincingly explained the reasons why ULIMO soldiers engaged in looting. The facts reported by Coralie can also be linked to the role of H&H attributed to Alieu Kosiah (see supra recital 7.5.3.10).
- 7.16.3.4 The defendant defended himself by arguing that Coralie had not placed the events she reported in time. It is true that the complainant was not able to date the events she reported, indicating only that they had occurred during the rainy season, at the time of the rice harvest. If Coralie

did not give more precise indications, it is because, as the Court was able to see during the debates, she perceives her life as being simply punctuated by the alternation of day and night and the seasons. For example, during the hearing, she was unable to give a precise answer to the question of what 'a week' meant to her. She replied that, in her opinion, it was 'not too long, not too short', without being able to say more (40.752.028). It is therefore not surprising that she was unable to give any further indication as to the dating of the events she recounted. Moreover, the Office of the Attorney used a relatively broad time period to situate this event, given Coralie's inability to provide more details on the subject. The Court considers that this temporal imprecision does not infringe the rights of the defense, insofar as the defendant knows precisely what facts he is accused of, without needing to know the exact date of their commission in order to identify them clearly. For the rest, it should be noted that the period used by the prosecution was the period during which the defendant was, in all likelihood, in the Lofa, so that his presence at the scene appeared credible. The defense also pointed to the relationship between the complainants Coralie and Jérôme as a basis for the conspiracy of which the defendant claims to be a victim. While it is certainly established that the two plaintiffs had contacts, the latter having in particular taken the former to the premises of the NGO RRR so that she could report on the events she had experienced during the first civil war, the Court struggles to understand what argument should be drawn from this. Indeed, it is not at all objectionable that a plaintiff helped another potential victim to assert his rights. Moreover, the facts denounced by Jérôme and Coralie are totally distinct, i.e. without any overlap, so that the complainant's account cannot serve Jérôme's interests. The defense's argument therefore falls flat. Finally, it should be noted that the position of the defendant in denying that he witnessed any civilian casualties while in Lofa lacks any credibility, as civilians were very often victimized during the war.

- 7.16.3.5 In view of the above, the Court considers the statements of Coralie to be much more credible than those of Alieu Kosiah. As she confirmed during the debates that she had seen and heard the accused give orders to his soldiers to take the oil and rice possessed by the civilians of Botosu, the Court considers this fact to be established. Moreover, this is a procedure that has already been described above (see supra, para. 7.16.2.6).
- 7.16.3.6 The taking of basic and essential goods necessary to a civilian population for its survival falls within the scope of Art. 4 para. 2 let. g AP II. In this respect, it is irrelevant whether the looting was the result of high-level thinking by the ULIMO hierarchy or of an isolated action by the accused, as this element is irrelevant to the finding of looting (cf. supra para. 7.8.3.2).
- 7.16.3.7 As to whether Alieu Kosiah, who had ordered the looting, was the leader, this was accepted in the light of Coralie's statements that he had not received instructions from anyone and that he called himself 'general'. The fact that the defendant's order was carried out is also an indication

of his hierarchical superiority. The order given concerned the commission of an offense and it was on the basis of this order that the soldiers engaged in the looting. The objective elements of Article 18 of the former Swiss Military Criminal Law Code are therefore fulfilled.

- 7.16.3.8 Subjectively, Alieu Kosiah acted intentionally. He knew that the order he gave would result in the commission of an offense. Moreover, the events occurred in the context of the internal armed conflict in Liberia during the first civil war, which the defendant knew.
- 7.16.3.9 In conclusion, Alieu Kosiah must be condemned for having given the order to loot the village of Botosu within the meaning of art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law cum art. 3 common to the GC and art. 4 ch. 2 let. g AP II.

Forced transport

- 7.16.3.10 According to Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture, and torment (subpara. a), and outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons who do not take a direct part in hostilities
- 7.16.3.11 According to Art. 4 para. 2 AP 11, violence to life, health and physical or mental well-being, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpara. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and the slave trade in all their forms (let. f).
- 7.16.3.12 With regard to the legal developments in connection with cruel treatment, violation of human dignity and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3 and 7.5.3.4 above. Concerning the order given by a hierarchical superior in the sense of art. 18 of the former Swiss Military Criminal Law Code, reference is made to recital 7.2.3.4 above.
- 7.16.3.13 In the present case, the statements of Coralie were constant as to the modalities of the transport of the goods that followed the looting and the role played by the accused. With regard to the credibility of the complainant, reference can be made in full to recital 7.16.3.3 above. Her account is also perfectly coherent insofar as it is logical that, following a looting, the goods are transported with a desire to be sold. It should be noted that the destination of the transport is not known, as Coralie stated that she fled on the way. The absence of this information does not, however, call into question the credibility of the complainant or the reality of the transport. The goods were most likely transported to a city with a market, but the choice of city is not decisive. Indeed, despite the absence of this indication, Alieu Kosiah is perfectly capable of understanding the

accusation that he forced civilians to transport the goods, looted in the village of Botosu, to a commercial area. The facts described by Coralie also echo the statements of the other participants in the proceedings who denounced the transports. The fact that Coralie managed to escape from the convoy is, however, relatively exceptional compared to the other accounts of forced transportation, as the various participants in the proceedings all stated that it was not possible to escape without risking their lives. This incongruity can, however, be explained by the fact that the complainant was not carrying a load, but merely accompanying the convoy at the end of the column, so that the attention of the soldiers was probably not focused on her, but rather on the men who were carrying the looted goods. Finally, it should be noted that the facts denounced by Coralie can be linked to the role of H&H attributed to Alieu Kosiah (cf. supra recital 7.5.3.10).

7.16.3.14 With regard to the denials of the accused, reference is made to paragraph 7.16.3.4 above.

7.16.3.15 The Court considers that the statements of Coralie are much more credible than those of the accused. She stated before the Office of the Attorney General, and repeated before the Court, that she had seen Alieu Kosiah give the order for the transport and had participated in it. These facts are therefore considered validly established. The fact of forcing civilians to carry loads, by threatening them with weapons so that they move at the imposed pace, is likely to cause great suffering. This suffering is first of all physical, because of the strain of carrying heavy loads over a long distance. The suffering is also psychological, given the terror that the civilians felt throughout the journey, since they were accompanied by armed soldiers.

The acts of which the defendant is accused must also be qualified as humiliating and degrading treatment. Forcing a person to carry a load in extremely difficult conditions, in the presence of armed soldiers with a reputation for arbitrarily attacking civilians, amounts to a violation of his or her status as a human being and represents a very serious form of humiliation. Any sensible person would indeed feel deeply humiliated and belittled by such treatment.

It is specified that in spite of the gravity of the facts, the offense of slavery is not realized, insofar as the duration of the transport is not sufficient to retain the exercise of powers of ownership over the civilians involved.

7.16.3.17 Subjectively, Alieu Kosiah acted with intent. With regard to the order given, he knew that by instructing his soldiers to carry out the transport, they would carry it out. Moreover, the accused knew without any doubt that the persons involved were civilians.

Finally, these facts were part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.16.3.18 In conclusion, Alieu Kosiah must therefore be condemned for having ordered the infliction, respectively for having inflicted himself a cruel, respectively humiliating and degrading treatment on civilians (art. 109 al. 1 and 108 al. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 al. 1 ch. 1 let. a and c common to the GCs and art. 4 ch. 2 let. a and e AP II).

7.17 Rape of the civilian Coralie

7.17.1 Charge

According to section 1.3.24 of the indictment, Alieu Kosiah is accused of having raped the civilian Coralie in a hamlet near Voinjama, between March and December 1993 or between March 1994 and the end of 1995.

7.17.2 Means of proof

During the investigation

7.17.2.1 It appears from Coralie's criminal denunciation dated August 17, 2016, that when the armed group ULIMO attacked Gbortozo, the village in which she lived with her parents and sisters, located in the Voinjama district, she fled with the women of the village and took refuge in the bush. After a few days in the bush, Coralie headed to Voinjama one morning hoping to find food because she was hungry. In Voinjama, some men sitting on the porch of a house called her and asked her to follow them. They threatened to beat her if she refused. They said they wanted to take her to their leader, whom they called "General Kosiah. Alieu Kosiah then took Coralie to a house and closed the door. He took her by force. She tried to struggle, but he raped her. The next day, Coralie was able to escape. As a result of the rape, she bled a lot. Years later, at the time of writing her complaint, she still says she suffers from the rape. Coralie speaks of terrible suffering in her body and mind (05-04-0002 f.).

7.17.2.2 During her interrogation by the Office of the Attorney General, Coralie stated that following the looting of the village of Botosu and the forced transport in which she was forced to take part (see supra recital 7.16), she spent one week in the bush (12-21-0046). On her way to Voinjama to get food, she saw a house on the side of the main road while crossing the road (12-21-0023). This was the first house as she entered the town of Voinjama (12-21-0054). According to the complainant, a group of men, from "General Kosiah", were waiting there (12-21-0011). The latter was also present (12-21-0023). As she crossed the main road, a boy who wore a piece of red cloth and was armed, told her to follow him because "General Kosiah" was waiting for her (12-21-0011, 0023). He reportedly said in English: "Come here" (12-21-0022). Coralie stated that it was Alieu Kosiah who sent the boy to her (12-21-0024) and that she went with him to the defendant. There, Alieu Kosiah allegedly took her to another house (12-21-0011, 0022). The complainant stated that he was dressed

in uniform pants at the time and was wearing civilian clothes on top. He was also carrying a gun, hanging from his shoulder, and a knife hanging from his belt in such a way that it was clearly visible (12-21-0028 f.). Coralie explained that Alieu Kosiah locked her in the house by padlocking the door and left. He came back after a few hours and told her that he was going to keep her and take her to be his wife (12-21- 0023, 0029). The complainant then allegedly acquiesced, afraid that he would kill her. She reported feeling bad and scared (12-21-0024). Alieu Kosiah then told her to undress. Coralie stated that she was not "happy" but that she had to do it or she would be killed (12-21-0011). She indicated that she then took off her clothes (12-21-0011, 0029). Alieu Kosiah took off his boots and pants and put down his gun and knife. The complainant explained that he then began to "come inside [her]" (12-21- 0029). He penetrated her, lying on top of her, on the bed. She indicated that Alieu Kosiah "used" her and that he repeated the act more than four times (12-21-0011, 0031). Coralie stated that she cried during the act, but that because the defendant then allegedly told her he was going to kill her, she was afraid and therefore kept quiet. After the act, Coralie and Alieu Kosiah spent all day inside and slept there (12-21-0030). The complainant stated that in the morning, at dawn, Alieu Kosiah left her in the house and went to join his group of men without locking the door. She was spying on him and when she saw that he had left, she fled to the bush. On the way, she met some people from her village who gave her food (12-21-0011). She then explained to them what had happened to her and asked them to inform her mother, who was waiting for her in the bush, that she was going to Guinea (12-21-0011 f.). Coralie said she did not go back because if Alieu Kosiah had seen her, he would have killed her (12-21-0012). So she drove to Guinea and did not return to Liberia until after the war was over (12-21-0012, 0054). During her interview, Coralie stated that she was never beaten by Alieu Kosiah; he allegedly "used" her, but never beat her (12-21-0030). She stated that this was the first time she had been penetrated by a man. She reportedly had pain in her lower abdomen during intercourse and bled. On the day she crossed the border into Guinea, she was still in pain. At the time of her hearing in Switzerland, in November 2016, she reported that she was still experiencing pain at times (12-21-0031).

- 7.17.2.3 When questioned about the facts of which he is accused, Alieu Kosiah disputed them. He stated that he did not know Coralie and that he had never raped a woman. According to him, he never had a problem with having a woman; many of them "chased him" and he had to refuse them, so there was no reason for him to rape a woman. The defendant added that "it's the men who have problems having women who can rape them" (13- 01-0651, 0091). Alieu Kosiah also stated that there was no evidence that the complainant knew him because she was not able to recognize him from a wartime photo, but only from a photo of him that was circulated by Liberian newspapers at the time of his arrest (13-01-0456 f.).

During the proceedings

- 7.17.2.4 When questioned by the court, Coralie confirmed her denunciation against Alieu Kosiah. She stated that she recognized the perpetrator by his bulging eyes. She explained that she was raped during the rainy season, while growing rice (40.752.018). She said that the rape occurred in Voinjama when she came out of the bush to get food. A child soldier, armed with a rifle, reportedly stopped her and took her "to the General's house". He said to her: "Come, it is the General who is calling you. If you don't come, I will kill you". Coralie said that she was so afraid of being killed that she submitted to the injunction. Alieu Kosiah wanted her to be his wife and he took her to his house (40.752.019, 020). The defendant was dressed in military uniform and was armed with a knife, which the complainant estimated to be the length of her forearm (40.752.020). According to Coralie, once they arrived at the defendant's house, he left after locking her in. He then returned and they allegedly spent the night together. The complainant stated that Alieu Kosiah abused her four times and that she did not resist because she was afraid of being killed. She did not say anything. Coralie specified that she had not received a blow from the defendant. However, he threatened to kill her if she refused to be his wife. The complainant explained that the four rapes took place throughout the night, with intervals of one or two hours. She stated that Alieu Kosiah penetrated her but did not force any other sexual practices on her (40.752.022). Coralie stated that the next day, when Kosiah had left and left the door open, she took the opportunity to run away. When asked why she did not try to run away the first time Kosiah left, before he abused her, the complainant said she wanted to gain his trust. This worked because the next day the defendant left without closing the door (40.752.021). Coralie said that she noticed bleeding when she fled into the bush and that it lasted for two days (40.752.022, 023). She said that she first received "traditional treatment" and then went to the hospital to have her stomach pains treated. She reportedly experienced severe pain following intercourse and stated that she was still experiencing pain, which interfered with her sexual relations (40.752.023). The complainant stated that this was the first time she had had sex with a man (40.752.024). The complainant added that she felt humiliated by the facts she reported (40.752.025).
- 7.17.2.5 When questioned by the Court on the facts of which he was accused, Alieu Kosiah again disputed them. He stated that there was "no chance" that he had even tried, as his girlfriend was "ten times more beautiful" than the complainant. The defendant also expressed surprise that Coralie mentioned ULIMO in her criminal complaint, whereas when questioned by the Office of the Attorney General, she indicated that she knew nothing about this faction (40.731.066). Also, it would be strange if she only knew his name, among 150'000 ULIMO fighters. In particular, the defendant does not understand why the plaintiff could not know Vincent. According to him, it is because Coralie passed "through the NGO" that she knows his identity (40.731.067).
- 7.17.2.6 During the debates, many participants in the proceedings confirmed that it was common during the civil war for soldiers to commit sexual violence

against women (Paul: 40.757.007; Raoul: 40.755.054 s.; Louis Z.: 40.754.045; Antoine W.: 40.756.063 s.).

Material Evidence

7.17.2.7 The TRC report shows that all the factions involved in the armed conflict systematically targeted women, mainly because of their gender, and committed sexual violence and gender-based acts against them, including rape in all its forms, sexual slavery, forced marriage, forced recruitment and abductions (14-01-0022, 0023).

7.17.3 Law and evaluation of evidence

7.17.3.1 According to Art. 3 common to the GC, outrages upon personal dignity, in particular humiliating and degrading treatment, are and shall remain prohibited at any time and in any place whatsoever with respect to persons not taking a direct part in hostilities (subpara. c).

Art. 4 para. 2 let. e AP II, which complements Art. 3 let. c common to the GCs, states that outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault, are and shall remain prohibited at any time and in any place whatsoever with respect to persons taking no direct part in hostilities, whether or not they have been deprived of their liberty (let. e) and the threat to commit the above-mentioned acts (let. h).

7.17.3.2 With regard to the offense of rape, the question arises as to whether the concept referred to in Art. 4 para. 2 let. e AP corresponds to that of Art. 190 CC or whether it is necessary to refer to an international definition of rape as a war crime, namely that of the ICC or the ICTY. International definitions of rape do not take into account the sex of the victim and refer to any act of sexual penetration committed on another person through the use of force or coercion (see in particular ICTR, Akayesu Case, Judgment of 2 September 1998, paras. 597 and 688; ICTY, Furundzija Case, Judgment of 10 December 1998, paras. 175 ff. and 185; ICC, Affaire Katanga, Judgment of 7 March 2014, paras. 964 ff.) In contrast, according to art. 190 of the Swiss Criminal Code, a person commits rape if he or she forces a female person to undergo a sexual act, in particular by using threats or violence, by exerting psychological pressure on the victim or by putting her in a state of incapacity to resist. Swiss law thus requires forced sexual intercourse consisting of the conjunction of the genitals of a man and those of a woman. As for other sexual acts, and in particular other forms of penetration, they fall under sexual coercion within the meaning of Article 189 of the Criminal Code (Message on the implementation of the Rome Statute, FF 2008 3522 f.). The definition in Swiss law is thus much narrower than that accepted in international law. The question of the exact definition of rape under the AP II may, however, be left open in the present case, since, as will be seen, the facts described by Coralie correspond to the concept of rape under both international and Swiss law (cf. infra recital 7.17.3.5).

- 7.17.3.3 The complainant's statements concerning the sexual acts that she denounced were perfectly consistent before the Office of the Attorney General, and then before the Court. She thus affirmed that she had been "used by the defendant" four times in the space of one night, which must be understood to mean that she had been penetrated. She specified to have been threatened with death by Alieu Kosiah, in the case where she would have refused him. She would not have put up any resistance. She also said that Alieu Kosiah had put his gun on a table in the room where the sexual acts took place. In view of the consistency of the statements made by the complainant and her lack of guile (cf. supra recital 7.16.3.3), the Court considers her account to be very conclusive. The comments made in recital 7.16.3.3 above regarding the credibility of the complainant can be repeated in full here.
- 7.17.3.4 In regards to the defendant's denials, they are completely irrelevant and are therefore dismissed. With regard to the argument put forward by the defense concerning the contradictions in Coralie's criminal complaint and in his account, reference is made to recital 6.3 above for further discussion of the probative value of criminal complaints in the present proceedings. It should be recalled that, in the Court's opinion, the probative value of the statements made by the complainants during the investigation and the hearing is paramount, and not the content of a criminal complaint written by a third party, which, in his case, Coralie was certainly not able to reread, given his lack of training. The discrepancies between the content of the complaint and the complainant's account also concern details that are not relevant to the facts of the case. Furthermore, the mention of the ULIMO in the complaint, even though Coralie said that she did not know about the existence of this group during her hearing by the Office of the Attorney General, is most likely explained by the desire of the person who drafted the complaint to place the events denounced in a certain military context. As for the fact that Coralie only knew the name of the defendant, and in particular not that of Vincent, it is not of a nature to surprise the Court. Indeed, it seems normal that a young woman would retain the name of her attacker, without retaining those of other fighters, who were indifferent to her. One can easily imagine that the name or nicknames of the soldiers who conquered the Lofa - even if they were high in the hierarchy, like Vincent - were not the main concern of civilians during the war. Finally, with regard to the wartime photograph in which the complainant could not identify the defendant, reference is made to recital 6.4 above.
- 7.17.3.5 The Court considers that the complainant's statements are much more credible than those of the defendant. In addition, the complainant's statements are clearly exemplary of the sexual assaults on civilians that were reported by many participants in the proceedings and by the TRC report. The Court thus finds that it is well established that Alieu Kosiah forced Coralie, under the threat of killing her, to undergo sexual relations on four occasions in one night. These facts constitute rape, both under international law and under Swiss law.

The question is whether the four successive sexual encounters constitute a natural unity of action or four separate offenses. A natural unity of action is achieved when separate acts result from a single decision and appear objectively to form a single event because of their close relationship in time and space. It thus refers to the repeated commission of offenses - for example, a volley of blows - or the commission of an offense in successive stages - such as the spraying of a wall with graffiti during several successive nights. However, a natural unity is excluded if a sufficiently long period of time has elapsed between the different acts, even if they are linked to each other. The concept of natural unity of action must be interpreted restrictively (Federal Supreme Court decision 68_911/2017 of April 27, 2018 recital 4.2.2 and references cited).

In this case, the complainant could not be very precise about the time intervals between the different sexual acts. She estimated the time between the acts to be between one and two hours. However, during her hearing, it became clear that Coralie has a rather approximate perception of time, so that the indication she gave cannot be considered as certain. Thus, in case of doubt, the Court accepts the case most favorable to the defendant, that is, that the four forced sexual relationships constitute a natural unity of action and not four independent offenses.

It is also specified that the verbal and gestural death threats are part of the coercion exercised to force the victim to undergo the act and thus do not constitute a separate offense, rape being a specific form of coercion (BERNARD CORBOZ, Les infractions en droit suisse, volume 1, 2010, n° 42 ad art. 181 CC).

- 7.17.3.6 Subjectively, Alieu Kosiah acted intentionally. He knew full well that Coralie was not willing to undergo the sexual relations that he imposed on her.

Moreover, the facts are part of the internal armed conflict that took place in Liberia during the first civil war, which the defendant knew.

- 7.17.3.7 Alieu Kosiah will therefore be condemned for the rape of a civilian woman within the meaning of art. 109 para. 1 and 108 para. 2 the former Swiss Military Criminal Law Code) cum art. 3 para. 1 letter c common to the GC and art. 4 para. 2 letter e AP II.

7.18 Ordering and directing the forcible transport of goods, by civilians, from Zorzor to Salayae

7.18.1 Charge

According to section 1.3.25 of the indictment, Alieu Kosiah is charged with ordering and directing the forcible transport of goods (in particular

ammunition and weapons) from Zorzor to Salayae by civilians, between March and December 1993 or between March 1994 and the end of 1995.

7.18.2 Means of proof

During the investigation

- 7.18.2.1 It appears from Paul 's criminal information of July 3, 2014, that he was in the town of Zorzor, Lofa County, in 1994 when the ULIMO faction, under the command of Alieu Kosiah, invaded the town. Paul spent three months in Zorzor when the city was under the control of Alieu Kosiah's forces. During this time, he witnessed on many occasions Alieu Kosiah and ULIMO fighters forcing civilians to carry food or military supplies and in particular Alieu Kosiah giving such orders to civilians. Paul himself was forced by ULIMO fighters to carry ammunition from Zorzor to Salayae (05-01-0012).
- 7.18.2.2 During his interrogation by the Office of the Attorney General, Paul stated that during the war in Liberia, while he was in Zorzor, civilians were called from house to house to gather at the gas station in the town. When he got there, he saw the loads that had to be carried. The complainant stated that he saw Alieu Kosiah giving orders to the civilians to carry the said loads directly to Salayae. The loads were distributed among the civilians, who set off. Everyone was carrying loads, including women and children. There were large boxes of ammunition, small arms and large arms. The civilians marched from Zorzor to Salayae. According to Paul, the defendant accompanied them during the transport (12-21-0037). During the journey, the defendant gave orders, yelling at everyone to move forward and that no one was to loiter or run away. When they heard him, everyone was afraid (12-21-0039). During the journey, Alieu Kosiah and his soldiers told the civilians that they should not think of saying that they were tired and that if they complained about being tired, they would be executed on the road. When civilians walked too slowly, they were beaten with rifle butts (12-21-0037). The soldiers also pushed the civilians with their sticks to make them move. When they saw that someone was tired, they would beat them to make them move faster. Many people were beaten during the transport. Paul stated that this happened to almost everyone, including himself. The complainant stated that no one was killed during the transport (12-21-0038). While the convoy left Zorzor in the morning, it arrived in Salayae when it was almost dark. The civilians then returned during the night and arrived in Zorzor around 4:00 a.m (12-28-0037). Paul said he was "traumatized by fear" during the transport, so he could not count the soldiers accompanying Alieu Kosiah. As for the civilians, he said there were many and they were in a long line. Some of the soldiers were at the front of the line, some in the middle and some at the back to make sure that all the civilians stayed in front of them. Alieu Kosiah was at the front of the group (12-28-0038 f.). Paul could not say whether there was another commander on the transport. According to him, Alieu Kosiah was the only leader, the only one everyone called "chief" (12-28-0040).

- 7.18.2.3 When questioned about the facts of which he was accused, Alieu Kosiah disputed them (13-01-0623, 0653).

During the debates

- 7.18.2.4 At the hearing, Paul confirmed his accusation against Alieu Kosiah. With regard to the date of the transport, the complainant stated that it took place shortly after the event that occurred at the gas station in Zorzor (cf. supra para. 7.2). One morning, child soldiers went to collect civilians from the houses and gathered them at the said station. There, Alieu Kosiah allegedly gave the order to transport loads from Zorzor to Salayae. According to the complainant, Alieu Kosiah gave the order by shouting, to scare the civilians (40.757.018). Paul said that he did not see any of the defendant's superiors at that time. He estimated the number of civilians involved in the transport to be more than twenty-five or thirty. These included women and children as young as twelve or thirteen years of age (40.757,019). According to Paul, the civilians had no choice but to participate in this transport. They were an "instrument" used by the factions. If a civilian refused, the soldiers, who were "bloodthirsty," showed "absolutely no mercy". There was a risk of being considered a traitor and of being killed. According to the complainant, killing was "their daily menu". He was not able to put a figure on the number of soldiers present. He said that Alieu Kosiah was the leader of the group. He was the leader of the transport; he was the one who gave the orders and who imposed on the soldiers to make sure that no one showed fatigue or lagged behind, and if necessary, to beat those who were too slow, so that they would move faster (40.757.020). When asked if no one was giving orders to the defendant, Paul replied that this may have been the case, but that he never saw him taking orders from anyone. Among the soldiers present were Bertrand and War Boss. Alieu Kosiah was at the front of the convoy, and the soldiers were positioned at the side and rear to ensure that no one could run away, as ordered by the defendant (40.757.021). Paul testified that he had to carry a box of ammunition, which he described as heavy (40.757, 021, 022). Other civilians were carrying bags, the contents of which the complainant did not know, as well as weapons. The goods had to be transported to Salayae because the fighting had moved from Zorzor to that location (40.757.021). According to the complainant, it was a one-day walk from Zorzor to Salayae. The road that connected the two towns was large, but not paved. Paul said that on the way, the civilians could take breaks and quench their thirst when they came across a stream. They were not given food, however. Regarding the behavior of the soldiers, the complainant explained that they were very harsh and showed no sympathy. They hit the civilians with the butt of their rifles to make them move faster. They also threatened to kill them if they fled. As for Alieu Kosiah, he was also harsh by shouting and scaring the civilians. He also shouted at his soldiers (40.757.022). While they were armed with a rifle, Paul stated that he did not see Alieu Kosiah carrying a weapon. He also stated that he was personally threatened by the soldiers that if he ran away, he would

be killed and that he was hit with a rifle butt to make him move faster. Alieu Kosiah threatened his own soldiers that if anything happened contrary to his instructions, there would be repercussions for them too. As soon as he ordered something, the soldiers would carry out his orders (40.757.023). According to the complainant, no one was killed during the transport. However, he said he was very afraid for his life (40.757.024). The convoy arrived in Salayae in the evening, before the sun set. The goods were deposited in a school in Salayae, which is called Lutheran Training Institute (LTI), after which the civilians left immediately in the direction of Zorzor. Paul added that he was not paid for his participation in the transport (40,757,025). According to him, civilians were used for transport because it was a way to make them understand that they were not important to the soldiers. He did not know why soldiers did not use vehicles for transportation (40.757.026).

7.18.2.5 When questioned by the Court about the facts of which he is accused, Alieu Kosiah again contested them. He stated that he had not been present in Zorzor between March and December 1993, but had been present between March 1994 and the end of 1995. The defendant also stated that the cities of Zorzor and Salayae were not very far apart (40,731,067). According to his estimate, it took two to three hours to reach Salayae from Zorzor on foot (40.731.068).

7.18.3 Law and evaluation of evidence

7.18.3.1 According to Art. 3 common to the GC, violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, torture and torment (subpara. a), and outrages upon personal dignity, in particular humiliating and degrading treatment (subpara. c), are and shall remain prohibited at any time and in any place whatsoever with respect to persons who do not take a direct part in hostilities.

According to Art. 4 para. 2 AP II, it is and remains prohibited at any time and in any place whatsoever with regard to persons who are not or are no longer taking part in hostilities, whether or not they are deprived of their liberty, to commit violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment (subpar. a), outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault (let. e), slavery and slave trade in all their forms (let. f).

7.18.3.2 With regard to the legal developments in connection with cruel treatment, outrages upon human dignity and slavery, reference is made to recitals 7.4.3.2, 7.4.3.3, 7.5.3.3 and 7.5.3.4 above. Concerning the order given by a hierarchical superior within the meaning of art. 18 of the former Swiss Military Criminal Law Code, reference is made to recital 7.2.3.4 above.

- 7.18.3.3 In the present case, the statements made by Paul during the investigation and at the hearing concerning this transport were constant as to the way in which he was requisitioned, the modalities of the transport, its duration, the type of goods transported, the treatment of civilians during the convoy and the role played by the accused. The complainant also stated that he saw and heard Alieu Kosiah giving the order for the transport and participating by giving instructions throughout the journey. He described the defendant's attitude during the transport, providing details such as how he shouted and gave orders to hit civilians who were too slow. Paul was also precise in his comments, not hesitating to state that he did not know when the court asked him if the defendant was also taking orders from a person who was superior to him during the transport. He merely said that he had not seen him receive any such orders. The complainant also admitted that he had not seen the defendant with a weapon, for example. The consistency of his statements and the restraint he displayed make Paul's denunciation very credible. In addition to this, there was also the emotion that the complainant felt when he saw Alieu Kosiah during his hearing before the Office of the Attorney General, as well as the emotion shown during the debates, when the defendant expressed his anger loudly (cf. supra recital 7.2.2.8). This emotion adds further credence to the testimony of Paul. It should also be noted that his account echoes many of the other descriptions of the transports denounced in the present proceedings, particularly with regard to the involvement of the defendant, the treatment reserved for the civilians and the destination of the transport. On this last point, it can be noted that all the reported transports of ammunition were destined for southern Liberia, where the conflict zones were located. It should also be noted that the role that Alieu Kosiah is said to have played, as described by Paul, can be linked to the function of H&H that several participants in the proceedings attributed to Alieu Kosiah during the war (see supra recital 7.5.3.10). Paul's estimate of the duration of the transport, i.e. from the morning until the end of the afternoon, is perfectly plausible in the circumstances of a forced transport under threat and beatings, the journey between Zorzor and Salayae being some 50 kilometers. Finally, Olivier's statements as to the justification for the transport of ammunition during the first civil war also support Paul's account (see supra, paragraphs 7.5.2.3 and 7.5.2.7).
- 7.18.3.4 The denials of Alieu Kosiah are not such as to call into question the credibility of the statements of Paul. Indeed, with regard to his presence in Zorzor in 1993, reference is made to recital 7.2.3.7 above. As regards the time needed to reach Salayae from Zorzor, which the defendant estimates at between two and three hours on foot, it is thus underestimated if one considers that it is a journey of 50 kilometers.
- 7.18.3.5 In view of the foregoing, the Court considers that the statements of Paul are much more credible than the denials of the accused and finds that it is established that Alieu Kosiah gave the order for the transport of the ammunition in question and took part in it. The facts can be qualified as both an attack on physical and psychological integrity, in the form of cruel

treatment, and an attack on personal dignity, in the form of humiliating and degrading treatment.

- 7.18.3.6 The acts of forcing civilians to walk for hours with a heavy load to carry, threatening them with death with weapons or beating them if they do not move at the imposed pace, are likely to cause great suffering. This suffering is first of all physical, because of the long march that the civilians had to make carrying a heavy load and the blows that they suffered when they did not walk fast enough. The suffering is also psychological, given the terror that the civilians experienced throughout the journey, as they were accompanied by armed soldiers who beat them with rifle butts and threatened them with death.

The acts of which the defendant is accused must also be qualified as humiliating and degrading treatment. Forcing a person to carry a load under extremely difficult conditions, threatening him with death or beatings if he does not move at the imposed pace, is tantamount to trampling on his quality as a human being and represents a very serious form of humiliation. Any sensible person would feel deeply humiliated and hurt by such treatment.

Furthermore, the beating of civilians and the death threats fall under the offenses of cruel, humiliating and degrading treatment, and therefore do not constitute separate offenses that should be retained in addition.

Finally, it is specified that, despite the seriousness of the facts, the offense of slavery was not committed, insofar as the transport lasted a few hours and that this period of time is not sufficient to establish the exercise of powers of ownership over the civilians involved.

- 7.18.3.7 With regard to the order given, in relation to article 18 of the former Swiss Military Criminal Law Code, the capacity of leader of the accused can be retained, taking into account the statements made by Paul. Alieu Kosiah ordered the transport and during the transport he was the only one to give orders to the soldiers, who then relayed the instructions received to the civilians. The fact that the soldiers obeyed his orders demonstrates the superiority of the defendant. The fact that he was at the front of the convoy, while the soldiers were in the middle and at the back in order to prevent the civilians from running away, also attests to the fact that he was supervising the group, thus playing his role as leader. The objective elements of art. 18 of the former Swiss Military Criminal Law Code are therefore fulfilled.

- 7.18.3.8 Subjectively, Alieu Kosiah acted with intent. He knew that by instructing his soldiers to carry out the transport, they would carry it out. Moreover, the accused knew without a doubt that the persons involved were civilians.

Finally, these facts were part of the armed conflict that took place in Liberia during the first civil war, which Alieu Kosiah knew.

7.18.3.9 In conclusion, Alieu Kosiah must therefore be condemned for having ordered the infliction of cruel, respectively humiliating and degrading treatment on civilians (art. 109 para. 1 and 108 para. 2 of the former Swiss Military Criminal Law Code in relation to art. 18 of the former Swiss Military Criminal Law Code cum art. 3 para. 1 let. a etc. common to the GCs and art. 4 para. 2 letters a and e AP II).

7.19 Summary of the criminal acts of Alieu Kosiah

In view of the variety of offenses charged against Alieu Kosiah, it finally appears that the various forced transports in which the accused took part allowed him to either transport merchandise to Guinea to sell it there and finance the war, or to transport ammunition to the South where the fighting was taking place. During these transports, Alieu Kosiah played the role of H&H or quartermaster general. In this capacity, he first resorted to theft and looting before forcing civilians to transport food or war materials purchased with the proceeds of such theft. To instill obedience among civilians by instilling fear, the defendant and his men sometimes resorted to killing arbitrarily selected civilians, and more rarely to cannibalism and rape.

8. Sentencing

8.1 According to art. 44 of the former Swiss Military Criminal Law Code, the judge will determine the sentence on the basis of the offender's guilt, taking into account his motives, his background, his personal situation and his conduct in military service. This article corresponds to article 63 aCC (former criminal code) and, in substance, to the current article 47 Criminal code.

8.2 According to art. 49 para. 1 of the former Swiss Military Criminal Law Code, when an offender has incurred several custodial sentences by a single act or by several acts, the judge will sentence him to the sentence for the most serious offense and will increase the duration of the sentence according to the circumstances, but not more than half of the maximum sentence provided for this offense. It will, moreover, be bound by the legal maximum of the type of sentence. This provision corresponds to the current Art. 49 para. 1 Criminal code.

8.3 The requirement, in order to apply art. 49 para. 1 of the former Swiss Military Criminal Law Code, that the sentences be of the same kind, implies that the judge must examine, offense by offense, the nature of the sentence to be imposed. The imposition of an overall sentence in accordance with the principle of aggravation provided for in art. 49 para. 1 of the former Swiss Military Criminal Law Code is only possible if the judge chooses the same type of sentence for each offense committed in the specific case. It is not sufficient that the applicable penal provisions provide for the same type of punishment. If the penalties in question are

not of the same type, they must be imposed cumulatively (ATF 144 IV 313, para. 1.1.1 and the decisions cited, applicable by analogy to art. 49 para. 1 of the former Swiss Military Criminal Law Code).

- 8.4 In assessing the sentence, the Court may take up the general principles of sentencing under the current art. 47 of the Swiss Criminal Code. According to this provision, the judge determines the sentence according to the culpability of the offender. He takes into account the offender's background and personal situation as well as the effect of the sentence on his future (para. 1). Guilt is determined by the seriousness of the injury or danger to the legal property concerned, the reprehensibility of the act, the motives and aims of the perpetrator and the extent to which the perpetrator could have avoided the danger or injury, taking into account his or her personal situation and the external circumstances (para. 2).
- 8.5 Article 44 of the former Swiss Military Criminal Law Code, like article 47 Criminal Code, confers a broad discretionary power on the judge. Consequently, the judge only violates federal law by fixing the sentence if he goes beyond the legal framework, if he bases himself on criteria that are not covered by art. 47 of the Swiss Criminal Code, if he fails to take into account the assessment elements provided for by this provision or, finally, if the sentence he pronounces is so severe or lenient as to constitute an abuse of discretion (ATF 136 IV 55, para. 5.6).
- 8.6 The elements of culpability that the judge must consider first are those relating to the act itself (*Tatkomponente*), namely, from an objective point of view, the seriousness of the injury or endangerment, the reprehensible nature of the act and the manner in which it was carried out (objective *Tatkomponente*). In the case of the seriousness of the injury, the importance of the legally protected property and the result of the unlawful activity are taken into account. From a subjective point of view, the intensity of the criminal intent as well as the motives and goals of the perpetrator (subjective *Tatkomponente*) are taken into consideration. With regard to the intensity of the criminal intent, it is important to determine whether the perpetrator was free to choose between lawful and unlawful conduct and whether it would have been easy for him to avoid committing the act. The easier it would have been for him to comply with the norm violated, the greater the weight of his decision to have violated it, and therefore the more serious his fault, and vice versa (ATF 127 IV 101, para. 2a; 122 IV 241, para. 1a and the decisions cited).
- 8.7 The judge must also assess the factors related to the perpetrator himself (*Taterkomponente*), i.e. his judicial and non-judicial record, his reputation, his personal situation (state of health, age, family obligations, professional situation, risk of recidivism, etc.), his vulnerability to punishment, as well as his behavior after the act and during the criminal proceedings (ATF 142 IV 137, § 9.1). The absence of previous convictions has in principle a neutral effect on sentencing. It does not have to be taken into consideration in a mitigating sense. In exceptional cases, however, it may be taken into account as a mitigating factor in the

assessment of the offender's personality, provided that the offender's behavior is extraordinarily law-abiding. However, the fulfillment of this condition must be accepted only with restraint, because of the risk of unequal treatment (ATF 136 IV 1 consid. 2.6). In assessing the foreseeable effect of the sentence on the defendant's future, the judge must consider what is likely to be the main impact of the sentence on the defendant's future life. Vulnerability to punishment should, however, only be considered as a mitigating factor if it makes the punishment considerably harsher for the defendant than for the average convict, e.g. in the case of serious illness, claustrophobic psychoses or being deaf-mute. It is not a question of favoring offenders belonging to the privileged social classes over ordinary citizens (Federal Court decision 68_14/2007 of April 17, 2017, para. 6.4). The sentence must be set with regard to the effect that the sanction will have on the defendant. This requirement, however, only allows for marginal corrections, as the sentence must always remain proportionate to the fault (Federal Tribunal decision 68_673/2007 of 15 February 2008, para. 3.1).

- 8.8 According to art. 45 of the former Swiss Military Criminal Law Code, the judge may mitigate the sentence when the guilty party has acted under the influence of a person to whom he owes obedience or on whom he depends; in deep distress or under the impression of a serious threat, unless the duties imposed by the service forbid taking this into account; when he has been induced into serious temptation by the conduct of the victim; when he has been driven by anger or by violent pain, produced by an unjust provocation or an undeserved offense when he has shown sincere repentance by his actions, in particular when he has repaired the damage as much as could be expected of him; when a relatively long time has elapsed since the offense and the offender has behaved well during this time; when he was 18 to 20 years old and did not yet fully possess the ability to appreciate the unlawfulness of his act (ATF 132 IV 1 consid. 6.1.2).

With regard to the passage of time, the idea behind this mitigating factor is that by behaving well for a relatively long period of time, the perpetrator respects the legal order again, so that the need for punishment diminishes (ATF 132 IV 1 consid. 6.1.2). In the judgment 68_665/2017 of January 10, 2018 con sid. 4.1, the Federal Court mentioned that, with regard to imprescriptible offenses under Art. 101 Criminal Code, Art. 101 para. 2 Criminal Code provides that the judge may mitigate the punishment in the case where the criminal action is time-barred under Art. 97 and 98 Criminal Code. This provision clarifies Art. 48 let. e Criminal Code with regard to offenses for which there is no statute of limitations. It thus sets the time limit for the judge to reduce the sentence in this context. Art. 48 let.e Criminal Code (which is the counterpart of art. 45 of the former Swiss Military Criminal Law Code) is therefore not applicable to crimes for which there is no statute of limitations, as the judge has the option of mitigating the sentence, but is not obliged to do so (ATF 140 IV 145, para. 3.2, p. 148). Art. 59 para. 2 Swiss Military

Criminal Law (art. 56bis para. 2 of the former Swiss Military Criminal Law Code) provides for the same rule as art. 101 para. 2 CC.

- 8.9 Articles 5 Code of criminal procedure and 29 para. 1 Swiss Constitution guarantee, inter alia, the right of every person to have his case dealt with within a reasonable time. These provisions enshrine the principle of expedition and prohibit unjustified delays in the decision. The principle of promptness requires the authorities to conduct criminal proceedings without delay, from the moment the accused is informed of the suspicion against him. He must not be kept in the anxiety of the criminal proceedings for longer than is necessary (ATF 143 IV 353 consid. 1.3.1; 133 IV 158 consid. 8). Thus, in order to assess whether or not the principle of expedition has been violated in a particular case, it is necessary to consider the period from the moment when the person concerned became aware - by whatever means - of the fact that the criminal authority harbors suspicions against him until the moment of notification of the final judgment, excluding the review or pardon procedure (YVAN JEANNERET/ANDRÉ KUHN, Précis de procédure pénale, 28 éd, 2018, n° 4079; WOLFGANG WOHLERS, Kommentar zur Schweizerischen Strafprozessordnung, 3rd ed., 2020, n° 6 s. ad art. 5 Code of criminal procedure). It is therefore the overall duration of the proceedings that is decisive (Federal Court decision 6B_122/2017 of January 8, 2019, para. 11.7.3). Two aspects of the principle of expedition must be distinguished (SARAH SUMMERS, BSK-StPO, no. 8 ad art. 5 Code of criminal procedure): the total duration of the proceedings may be disproportionate, or the total duration of the proceedings does not seem to be proportionate, but there are clear temporal discontinuities ("*krasse Zeitlücke*") during certain periods of time that present moments of unjustified inactivity; these periods of inactivity may concern any phase of the proceedings. Thus, on the one hand, it is necessary to examine the duration of the procedure as a whole and, on the other hand, to check whether unavoidable dead times are shockingly long (LAURENT MOREILLON/AUDE PAREIN-REYMOND, Petit Commentaire du Code of criminal procedure, n° 5 ad art. 5 Code of criminal procedure). There is no admissible standard duration for a procedure, as it must be assessed according to all the particular circumstances of the case (YVAN JEANNERET/ANDRÉ KUHN, Précis de procédure pénale, 2nd ed., 2018, no. 4079; LAURENT MOREILLON/AUDE PAREIN-REYMOND, Petit Commentaire du Code of criminal procedure, no. 4 ad art. 5 Code of criminal procedure; SARAH SUMMERS, BSK StPO, no. 7 ad art. 5 Code of criminal procedure). The reasonableness of the duration of a procedure is assessed in each specific case, in light of all the particular circumstances, which generally require an overall assessment (Federal Court decisions 68_431/2019 of 5 July 2019, para. 6.1; 68_545/2015 of 10 February 2016, para. 4.1; ATF 143 IV 373, para. 1.3.1). When a procedure seems particularly long and therefore unreasonable, three elements must be examined to assess whether the duration of the procedure is acceptable or not with regard to the principle of celerity: the conduct of the authorities, i.e. the pace of the procedure, the complexity of the case and the attitude of the accused and/or the defense (Federal

Court decision 6B_431/2019 of July 5, 2019, consid. 6.1; ATF 130 I 312, consid. 5.1 p. 331; YVAN JEANNERET/ANDRÉ KUHN, Précis de procédure pénale, 28 éd. 2018, n° 4079; SARAH SUMMERS, BSK-StPO, ze éd. n° 9 to 13 ad art. 5 Code of criminal procedure).

- 8.10 According to art. 50 al. 1 1e sentence of the former Swiss Military Criminal Law Code, the judge will deduct the preventive detention from the custodial sentence insofar as the convicted person has not, by his conduct after the offense, provoked his preventive detention or the extension of it. Any detention ordered in the course of a criminal trial for the purposes of investigation or for security reasons is considered to be preventive detention (para. 3).
- 8.11 In the present case, Alieu Kosiah was found guilty of multiple violations of the laws of war (art. 109 para. 1 of the former Swiss Military Criminal Law Code). This provision provides for imprisonment for simple cases (at least three days and at most three years, cf. art. 29 para. 1 of the former Swiss Military Criminal Law Code and for imprisonment for serious cases (at least one year and at most 20 years, cf. art. 28 para. 1 of the former Swiss Military Criminal Law Code). Imprisonment and imprisonment, two custodial sanctions, were replaced on January 1, 2007 by the custodial sentence in the sense of the current art. 34 Swiss Military criminal law code, equivalent to art. 40 CC. Since the Court cannot impose a sentence that no longer exists, the defendant will be formally sentenced to deprivation of liberty in the present judgment. However, only the name of the sentence will change, the terms of the sentence being identical. The Court is also bound by the maximum of 20 years provided for in The Court is also bound by the maximum of 20 years provided for in art. 28 para. 1 of the former Swiss Military Criminal Law Code applicable by reference to art. 109 para. 1 of the former Swiss Military Criminal Law Code (application of the principle of *lex mitior*, cf. *supra* recital 4.3).
- 8.12 Alieu Kosiah is found guilty of several violations of the laws of war within the meaning of art. 109 para. 1 of the former Swiss Military Criminal Law Code. He used a child soldier, committed four murders and ordered the commission of nineteen murders, ordered the infliction of cruel treatment on seven persons, ordered the infliction and/or infliction of cruel, respectively humiliating and degrading treatment during nine transports of goods, ordered the looting of a generator and a village, violated the dignity of a deceased civilian and committed a rape. Since the sentences envisaged for each of the acts against the accused are of the same kind, i.e. a custodial sentence, the sentence for the most serious offense in the abstract must be fixed, taking into account all the relevant elements, and then increased to punish the other offenses committed, again taking into account all the relevant circumstances, in application of the principle of aggravation (art. 49 para. 1 of the former Swiss Military Criminal Law Code).
- 8.13 The most serious offense against Alieu Kosiah is murder or the order to kill. Overall, the defendant committed four murders and gave orders to

kill nineteen people. Since all these murders or orders to kill affect the same legally protected property (human life), the Court used the number of victims per act to determine the most serious offense. Thus, the Court considers the order to kill seven civilians in Zorzor as the primary offense (section 1.3.2 of the indictment; cf. supra para.7.2).

- 8.13.1 From an objective point of view, the guilt of Alieu Kosiah is extremely heavy, because he harmed the lives of seven people, i.e. the most precious legal asset. His act is particularly reprehensible in that he ordered the killing of the seven civilians on the basis of a totally arbitrary and random choice, based on false suspicions of belonging to the enemy faction. The modus operandi is also odious: the accused merely gave the order for them to be killed, leaving other soldiers to do the dirty work. The civilians were beaten with clubs and maces and died as a result of this treatment, which adds to the atrocity of the situation.
- 8.13.2 From a subjective point of view, the criminal intensity of Alieu Kosiah is very important. The fact that he was a rebel and possessed a weapon did not give him permission to kill innocent civilians, as the law of war was strictly established and necessarily known to the defendant. He acted in a particularly reprehensible manner, because his motive was futile and feigned: he used the pretext of belonging to the enemy faction of randomly selected civilians to justify their death. By the order he gave, he showed his complete disregard for the lives of others. The aim was clearly to bring terror to the areas conquered by the armed faction ULIMO. His misconduct must therefore be qualified as extremely serious.
- 8.13.3 With regard to the factors relating to the author himself, it should be mentioned that Alieu Kosiah has no known criminal record, which has a neutral effect on the sentence to be imposed. His cooperation with the criminal authorities during the proceedings was poor. He did not admit to any of the charges against him and attacked the complainants and their lawyers, often in very vehement and threatening words, in order to denounce what he called a conspiracy on their part. He did not express the slightest compassion for the victims, nor did he express any regrets. Alieu Kosiah also repeatedly insulted the Swiss authorities, claiming that he was the victim of a kidnapping by them (40.731.048). The defendant also had witnesses called before the court who had no connection with the facts alleged in the indictment, with the obvious aim of misleading the court. Finally, it will be noted, for all practical purposes, that the quality of the collaboration with the criminal authorities is not assessed by the number of pages of questioning of a defendant, but by the content of the statements made and their usefulness for the investigation. In this case, Alieu Kosiah certainly expressed himself a lot during the investigation phase and during the debates, but his statements were of little use to the investigation. In fact, he went out of his way to contest any form of reproach against him or any information that might be unfavorable to him and to demonstrate the slightest contradictions in the statements of his accusers or witnesses in an attempt to discredit them. He also repeatedly digressed on the history of the Liberian war, most of which was irrelevant

to the facts of the case, in an attempt to drown out the relevant elements in a flood of useless and unverifiable information.

- 8.13.4 With respect to mitigating factors, none of them are relevant. In particular, from a temporal point of view, the fact that a relatively long time has elapsed since the commission of the offenses is indisputable. However, in order for the mitigating circumstance to be retained, the time elapsed must have had a healing effect, diminishing the interest in punishing the perpetrator. The wounds caused by the Liberian war crimes are still raw. Only the beginnings of international justice for Liberia have been achieved so far. Victims of war crimes are still waiting for justice, even decades after they suffered them. The public interest in punishment has not diminished over the years. From the perspective of special prevention, there is no healing effect of the passage of time either. The defendant has no known criminal record since he arrived in Switzerland. However, despite the fact that some 25 years have passed since the end of the first civil war, Alieu Kosiah remains in total denial about the facts of which he is accused and, more generally, about the atrocities committed by the armed factions during that war against civilians. As already mentioned, he has never admitted the facts of which he is accused, not even partially, and has not shown the slightest empathy towards the victims of the war (not even towards the child soldier who was under his command), considering that the only victim is himself. He accused the plaintiffs and their lawyers of lying and conspiracy. Thus, under both general and special prevention, the interest in punishment remains entire, so that no mitigation of punishment will be granted for the time that has elapsed. Moreover, art. 59 para. 2 Military Criminal code (or art. 56bis para. 2 of the former Swiss Military Criminal Law Code), which corresponds to art. 101 para. 2 Criminal code, does not provide for a mandatory mitigation of the sentence for the time elapsed, but only for the judge to decide on it.
- 8.13.5 In connection with the young age of the accused, the Court notes that Alieu Kosiah committed the essential part of the acts against him when he was between 18 and 20 years old. However, in order for the mitigating factor to apply, it must be established, in addition to the young age, that the perpetrator did not yet fully possess the ability to appreciate the unlawfulness of his act. However, the defendant had the full capacity to understand the unlawfulness of the acts he was committing, given their extreme seriousness. This finding is all the more important given that Alieu Kosiah underwent several months of military training, which in all likelihood included the basics of the law of war. The Court is therefore in no doubt that he was able to assess the unlawfulness of his actions. Moreover, the defendant never claimed, during the proceedings, to have been unaware of the unlawfulness of all or part of the acts with which he was charged. This mitigating factor must therefore also be set aside.
- 8.13.6 In view of the foregoing, the Court sets the basic sentence for the offense set out in paragraph 1.3.2 of the indictment at 20 years. Since this is the

maximum sentence for Alieu Kosiah under the old law, which is more favorable to him than the new law, which provides for life imprisonment, the method of aggravation imposed by the case law of the Federal Court does not apply in this case.

It should be noted, however, that a maximum sentence of 20 years appears to be all the more justified in this case, since in addition to the order to kill seven civilians, Alieu Kosiah is also responsible for the orders to kill six civilians, as well as two unarmed soldiers, and for the murder, by his own hands, of four civilians on four different occasions. These other killings would also undoubtedly warrant a 20-year prison sentence. The terrible torture that Alieu Kosiah ordered against seven civilians, six of whom were subsequently executed, is also an in fraction that alone would merit at least 5 years of deprivation of liberty because the treatment inflicted was so violent and painful. The nine forced transports that Alieu Kosiah ordered and/or participated in, during which hundreds of civilians were forced to carry enormous loads over a total distance of several hundred kilometers, under threat and beatings, constitute serious offenses that alone would have earned the defendant a sentence of at least 10 years of deprivation of liberty. As for the rape of which Alieu Kosiah was guilty, by the exercise of force and terror, four times: it should have been punished by a custodial sentence of at least two years. Having ordered the looting of a generator and food products from a village twice, Alieu Kosiah deprived civilians of basic necessities and was guilty of offenses that could have earned him a custodial sentence of at least a dozen months. As for the desecration of a corpse of which Alieu Kosiah was guilty, by eating part of the corpse (the heart), it would also have earned him a prison sentence of several months. Thus, it appears that a maximum sentence of 20 years of deprivation of liberty would be particularly justified in this case, as the defendant benefited from the principle of *lex mitior* and the maximum sentence imposed by the applicable law, at a time when the law in force allows for much greater penalties.

The Court notes that the culpability of Alieu Kosiah in these other crimes is also extremely high, as he violated the lives of many individuals, the physical and psychological integrity of many people, the sexual freedom of a young person, the freedom of movement of many civilians, the private property of many people and the honor of a deceased person by the contempt of his body. Through these behaviors, Alieu Kosiah expressed a lot of violence, cruelty, arbitrariness, selfishness and very little consideration for others and their property.

On a subjective level, the criminal involvement of Alieu Kosiah is very important. Again, he acted for frivolous reasons, using vague pretexts, or letting his momentary desires speak for themselves. It seems clear that Alieu Kosiah often gave free rein to his destructive tendencies. Once again, the faults of Alieu Kosiah must be qualified as very heavy.

8.13.7 With regard to the factors relating to the author himself, it should be recalled that Alieu Kosiah has no previous criminal record, that his cooperation with the criminal authorities during the proceedings was poor, that he did not admit to any of the acts of which he is accused, that he maintained, against all odds, the theory of a conspiracy against him and that he did not express any sympathy for the victims, or any regrets (see para. 8.13.3 above).

Here again, none of the mitigating factors of the sentence are relevant. While it is true that a relatively long time has elapsed since the commission of the offenses, this has clearly not had a healing effect that would diminish the interest in punishment. Indeed, the wounds of the war are still alive, and the victims still demand justice. As for Alieu Kosiah, he is still, almost 25 years after the fact, in complete denial about all the crimes he is accused of, and the atrocities Liberians suffered during the first civil war. From the point of view of both general and special prevention, the interest in punishment remains intact, so that no mitigation of sentence could be granted because of the time that has elapsed (art. 59 para. 2 Swiss Military Criminal Law Code or art. 56bis para. 2 of the former Swiss Military Criminal Law Code) (cf. supra recital 8.13.4).

There is no need to return here to the possible effects of the young age of the defendant, the Court having found that, notwithstanding his age (between 18 and 20), the defendant had the full capacity to understand the unlawful nature of the acts he was committing, having regard to their seriousness, which was, depending on the crime, from high to extreme. This mitigating factor must also be set aside (8.13.5).

8.14 It remains to be determined whether the 20-year prison sentence should be reduced in the light of the principle of expediency. Although this argument has not been raised by the defense, the Court must examine this question of its own motion.

In this case, the proceedings lasted six years and seven months from the time of Alieu Kosiah's arrest to the reading of the judgment by the Court. While this may seem like a long time, it is difficult to argue that the authorities would have been able to deal with the present proceedings in a significantly shorter period of time. The procedure has never been inactive since it was initiated, and the defense does not argue the contrary.

8.14.1 Thus, as far as the investigation phase is concerned, it took the Office of the Attorney General just over four years to bring the indictment against Alieu Kosiah before the Court of Appeal. This period of time must be considered as reasonable considering the particularity of the case and its complexity in terms of the facts to be established. Furthermore, Liberia was not in a position to provide the Office of the Attorney General with the results of investigations that it could have conducted on its territory. The reluctance of Liberia to grant judicial assistance, the letters rogatory

with foreign countries (England, Norway and the United States) and the number of persons residing in Liberia who were heard in Switzerland by the Office of the Attorney General, easily explain the time that elapsed until the indictment was sent. The Court notes that the behavior of the defendant during the investigation was conducive to delaying the proceedings. Indeed, as we have seen on several occasions, the defendant went to great lengths to contest all the facts described by the complainants and the witnesses for the prosecution, including elements that were irrelevant to the outcome of the case. He tried to drown the proceedings in huge amounts of useless information that was irrelevant to the facts of the case. The Office of the Attorney General therefore had to sort out this information, which inevitably took time. It follows from these considerations that a duration of just over four years for the investigation phase is not open to criticism.

8.14.2 With regard to the trial phase, the Court received the indictment of 19 March 2019 the following day. The trial was originally scheduled to begin on April 14, 2020. This year was justified by the preparation of unprecedented debates. First, the file was sent by the Office of the Attorney General while letters rogatory were still pending (with the UK and the US). It was therefore necessary to follow up on these requests for mutual assistance by contacting the foreign authorities on several occasions. The Court also had to familiarize itself with the file and the abundance and complexity of the facts it had to deal with. It was then necessary to contact the many Liberian witnesses who were to be heard in Switzerland, which was not easy given the lack of mutual legal assistance granted to Switzerland by Liberia and the very limited means of communication in that country. In order not to violate the principle of territoriality with respect to Liberia and in agreement with the Federal Office of Justice, the Court contacted the Swiss embassy in Ivory Coast, which is also responsible for Liberia, so that the latter could try to contact the Liberian authorities to obtain their agreement to the summoning of Liberian citizens to Switzerland. The COVID-19 health crisis added further complexity to the trial. The Court had to postpone the proceedings several times (first postponement to November 16, 2020; second postponement to November 30, 2020; holding the proceedings in two parts from December 3 to 9, 2020 and from February 15 to March 5, 2021). These successive postponements were justified in order to ensure the health security of the participants in the proceedings, in particular the security of the plaintiffs and the witnesses who had to be brought from Africa. It was in the essential interest of the participants in the proceedings, including that of the defendant who was on the spot, that these repeated postponements of the proceedings proved necessary. The judicial authorities cannot therefore be blamed for not holding the proceedings more quickly. Indeed, there was no justification for the health and lives of the participants in the proceedings to be unnecessarily endangered by holding the proceedings in the middle of a pandemic. During the periods of postponement, the Court, with the assistance of the Swiss Embassy in Ivory Coast, sought alternatives, including the possibility of arranging video conferences from Monrovia to hear the

Liberian participants from a distance. After months of discussions with various partners (foreign embassies in Monrovia, the United Nations, the Liberian Attorney General, the Liberian Ministry of Justice), the Court finally obtained the assistance of the American embassy, which made premises available to conduct interviews by videoconference when necessary, with the agreement of the Liberian authorities (in this case, two hearings were conducted in this way). All of these steps were also time-consuming and required a great deal of effort, which is reflected in the Court's record. Finally, in order to help ensure that the participants in the trial ran as little risk as possible by traveling by air, the Court approached the Federal Council to obtain its permission to make its aircraft available to the court to transport the witnesses by direct flight, with the help of the Federal Judicial Police, thus enabling them to meet as few people as possible along the way and to spend as little time as possible on Swiss soil. Taking into account all these steps and the constraints imposed by the pandemic, the processing time of the case cannot be considered excessive. There is therefore no reason to consider that there was a violation of the principle of expedition and, consequently, to reduce the sentence for this reason.

- 8.15 In view of the above, Alieu Kosiah will be sentenced to 20 years' imprisonment, from which must be deducted the days of pre-trial detention already undergone, i.e. 2413 days on the day of the oral pronouncement of judgment on June 18, 2021.

9. Expulsion

- 9.1 According to art. 40 para. 1 sentence 1 of the Swiss Military Criminal Law Code in force at the time of the events, the judge may expel from Swiss territory, for a period of three to fifteen years, any foreigner sentenced to imprisonment or imprisonment.
- 9.2 This provision corresponds verbatim to art. 55 al. 1, 1st sentence, of the Criminal Code. Articles 40 of the former Swiss Military Criminal Law Code and 55 of the former criminal code were repealed on 1 January 2007. On October 1, 2016, judicial expulsion was reintroduced in the Swiss Military Criminal Law Code (art. 49a and 49b) and in the Criminal Code (art. 66a to 66d). From now on, these laws provide for mandatory expulsion for a list of offenses, including war crimes (art. 49a let. h CPM and 66a let. m Criminal Code), and optional expulsion on a supplementary basis for offenses not included in said list. It follows that, also from the point of view of expulsion, the former law, which only provided for the option - and not the obligation - to expel the perpetrator of war crimes, is more favorable to the accused, insofar as it left more discretion to the court. Art. 40 para. 1 of the former Swiss Military Criminal Law Code is therefore applicable to the present case according to the principle of *lex mitior*.

- 9.3 According to the case law of the Federal Court on article 55, paragraph 1, of the former Criminal Code (applicable by analogy to article 40, para. 1, of the Code), in deciding whether or not to impose deportation, the judge had to take into account both the criteria for determining the penalty and the public security objective of the measure. The decision on deportation required a specific examination of the personal situation of the person concerned. The judge had to take into account the fact that the expulsion would have a moderate impact on a foreigner who had only come to Switzerland to commit offenses and who had no particular link with our country, whereas it would represent a very heavy sanction for a person who had lived and worked in Switzerland, had been integrated there for several years and had, if necessary, started a family there. Moreover, as a general rule, there had to be a certain consistency between the duration of the expulsion and that of the main sentence (Federal Court decision 68_607/2018 of October 10, 2018 consid. 1.1 and the decisions cited).
- 9.4 In the present case, Alieu Kosiah is sentenced to 20 years' imprisonment, given the seriousness of the charges against him and his extremely serious fault. The lack of regret or remorse for his actions, as well as his hostile and threatening attitude towards the complainants, their lawyers and the witnesses for the prosecution, show that the defendant represents a threat to Switzerland. Moreover, he has very few ties to Switzerland. Even if his son, who is of age, lives in the Lausanne region, he seems to have very few ties with the latter. In fact, his son only visited him very sporadically in detention and Alieu Kosiah did not consider it useful to call him as a witness during the trial. Apart from his son, the defendant has no family members in Switzerland, except for a distant cousin. All other members of his family live abroad, in particular in Liberia. Moreover, at the time of his arrest, Alieu Kosiah was unemployed and on social assistance. In addition, he never completed his education in Switzerland. Because of his detention, his settlement permit was not renewed, so that he would be in an irregular situation in Switzerland if he were free. It must therefore be noted that the defendant has only tenuous links with our country and that there is therefore nothing to prevent his expulsion, once his sentence has been served, in order to guarantee the security of our country.
- 9.5 In view of the above, Alieu Kosiah will be expelled from Swiss territory. In order to be consistent with the sentence that has been imposed and to take into account the extent of the danger to be prevented, the expulsion will be for a period of fifteen years.
- 9.6 The Ordinance of 8 March 2013 on the national section of the Schengen Information System (N-SIS) and on the SIRENE Bureau (RS 362.0; N-SIS Ordinance) implements, at the national level, the procedure for issuing alerts in the Schengen Information System as provided for in Regulation (EC) No. 1987/2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II Regulation). In accordance with Article 20 of the N-SIS Ordinance, an

alert may only be issued on third-country nationals for the purposes of refusing entry or stay on the basis of a decision by an administrative or judicial authority. Registration in the SIS of alerts for the purpose of expulsion under criminal law is required by the judge who issued the order. When issuing a criminal expulsion order, the court is obliged to examine the question of the alert in the SIS, independently of any corresponding request from the public prosecutor. It must assess the necessity of the alert and must state in the operative part of the judgment whether the alert is to be issued or whether it is to be waived (ATF 146 IV 172, para. 3.2.5).

- 9.7 In the present case, the Court finds that a notation in the SIS of the expulsion of Alieu Kosiah from Swiss territory for a period of fifteen years is necessary in view of the seriousness of the reasons justifying the pronouncement of the said expulsion.

10. Civil findings

10.1 Determination

- 10.1.1 According to art. 47 CO, the judge may, taking into account the particular circumstances, award the victim of bodily injury or, in the case of death, the family, fair compensation for moral damages.
- 10.1.2 The special circumstances referred to in the norm relate in particular to the extent to which the personality of the injured party has been damaged, art. 47 CO being a case of application of art. 49 CO. Bodily injuries, which cause both physical and psychological damage, must therefore in principle result in significant physical or mental pain or have caused lasting damage to health. The circumstances that may, depending on the case, justify the application of Art. 47 CO include, above all, the type and severity of the injury, the intensity and duration of the repercussions on the personality of the victim concerned, the degree of fault attributable to the perpetrator, and any concomitant fault on the part of the victim. The compensation awarded must be adequate. The judge applies the rules of law and equity when the law requires him, as in art. 47 CO, to award compensation taking into account the circumstances (cf. art. 4 CC) (ATF 141 III 97 consid. 11.2 and the references cited). The extent of the moral compensation depends not only on the severity of the physical or psychological suffering caused by the injury suffered by the entitled person, but also on the possibility of substantially alleviating the resulting moral pain by paying a sum of money. Because of its nature, compensation for moral damages, which is intended to compensate for a loss that can hardly be translated into a simple sum of money, cannot be determined mathematically, so that its evaluation in figures must avoid being excessive. However, the compensation awarded must be fair (decision of the Federal Court 6B_484/2020 of January 21, 2020 consid. 12.1). The judge will therefore proportion the amount to the seriousness of the injury suffered and will

avoid that the sum awarded appears derisory to the victim (ATF 129 IV 22, para. 7.2).

When a lower cost of living has to be taken into account in order to calculate compensation for non-material damage, a simple calculation of the proportion between the cost of living in Switzerland and the cost of living in the injured party's home is not possible. Instead, the Federal Court has accepted a non-schematic reduction of the compensation for non-material damage when the cost of living at home is much lower than in Switzerland (ATF 125 II 554, para. 4a, p. 559: Vojvodina, purchasing power 18 times higher, allowing for a reduction of the compensation, which was however reduced from 14 times to 2 times; Federal Court decision 1A.299/2000 of 30 May 2001, para. Sc: Bosnia-Herzegovina, purchasing power 6 to 7 times higher, allowing a reduction of the compensation by 75%, judged high by the Federal Court, but nevertheless within the limits of the discretionary power of the cantonal court; Federal Court decision 1C_106/2008 of September 24, 2008, rec. 4.2: Portugal, cost of living corresponding to 70% of the Swiss cost of living, not justifying a reduction; Federal Court decisions 68_984/2018 and 68_990/2018 of 4 April 2019, recital 5.4.1; Federal Court decision 68_974/2020 of 31 March 2021, recital 2.2: Georgia, reduction of the compensation by 80%. It was taken into account that, according to the statistical data most favorable to the appellant, the cost of living was 3.6 times higher in Switzerland than in Georgia and that the average salary was 18.4 times higher. The result was that the possibility for an average Georgian employee to acquire the same goods as an average Swiss employee was approximately $18.4/3.6$, or 5.1 times higher.)

10.1.3 Siblings are among the family members who are entitled to compensation for non-economic loss. However, this entitlement depends on the circumstances and practice in this area is rather restrictive. In particular, living in the same household is an important indicator of the intensity of the relationship that may exist within a sibling group, which may give rise to a claim for compensation. If there is no cohabitation at the time of the brother's or sister's death, compensation for non-material damage can only be considered if there is very close contact, which is the only way to cause exceptional mental suffering (Federal Court decision 68_484/2020 of January 21, 2020, section 12.1). Except in very exceptional circumstances, the amount of compensation awarded to a brother or sister shall not exceed CHF 10,000 (Federal Court judgment 68_369/2012 of 28 September 2012, para. 2.1.2 and the cited rulings).

10.1.4 In the present case, each of the seven plaintiffs in the proceedings has requested the payment of the sum of CHF 8,000.00 as compensation for the non-material damage suffered. It is necessary to examine, for each of them, which sum appears to be proportionate to the damage suffered.

10.2 Paul

- 10.2.1 Paul is the complainant for the murder of his brother N. (para. 1.3.2 of the indictment, cf. supra, para. 7.2) and for the transport of ammunition from Zorzor to Salayae, which constitutes cruel, humiliating and degrading treatment (para. 1.3.25 of the indictment, cf. supra, para. 7.18).
- 10.2.2 Paul was the brother of N., one of the seven victims executed on the orders of Alieu Kosiah in Zorzor. The complainant testified that he lived in the same house as his older brother and that his brother's death had a great impact on the family. Paul 's father had invested money so that he could go to school. The plaintiff testified that he loved his brother very much and that when he died, he lost a role model who cared for him, helped him and guided him (40.757.015, 016). The Court noted at oral argument that Paul expressed his grief in a very sober manner. Nevertheless, the court perceived his pain as real and deep, especially since he saw his brother killed, coldly and arbitrarily, on the defendant's orders. N. was also called upon to provide for Paul 's family and thus had to play the role of second father to the latter. In view of the seriousness of the act committed and the fact that the victim acted as a foster brother to the complainant, it is justified in the circumstances of this case to award the sum of CHF 12'000.00 as moral damages.
- 10.2.3 In connection with the cruel, humiliating and degrading treatment inflicted on Paul during the transportation of ammunition from Zorzor to Salayae, it should be noted that the defendant attacked essential legal property, i.e. the physical and psychological integrity of persons. The fact that he had to carry a heavy load on his head for almost a whole day, without a break and without being given food or water but being beaten with rifle butts and threatened with death, must have caused the complainant a great deal of physical and mental suffering. The fear of dying must have haunted him at every moment of the journey, because he knew that the ULIMO soldiers, and the defendant in particular, were capable of committing murder in a totally brutal and arbitrary manner, as had been the case with his brother. The fault of Alieu Kosiah in relation to these facts is extremely heavy, as he totally disregarded Paul's quality as a human being, who probably underwent a significant trauma. The fact that he came to testify in Switzerland, on two occasions, is moreover a serious indication of his suffering, which has not disappeared more than 20 years after the facts. In view of the seriousness of the events and the above-mentioned circumstances, it is justified to award the sum of CHF 10,000 as moral damages.
- 10.2.4 Paul lives in Liberia. As the maintenance costs in Liberia are much lower than in Switzerland, the amount of CHF 22,000 set above should be reduced. As the average monthly salary in Liberia is around CHF 800 per month, the Court decides to reduce the amount by two thirds.

The amount awarded to Paul as compensation for non-material damage is therefore CHF 7'300.

10.3 Raoul

- 10.3.1 Raoul is the complainant for the cruel treatment of which he was the victim in Foya in the form of "tabé" (para. 1.3.4 of the indictment; cf. supra para. 7.4) and for the transport of goods from Foya to Solomba, which constituted cruel, humiliating and degrading treatment (para. 1.3.7 of the indictment; cf. supra para. 7.5)
- 10.3.2 The treatment of the "tabé" that Raoul was subjected to was a perfectly barbaric and cruel act of extreme violence. The fact of tying the hands of a human being to the front and tying his elbows to the back causes without any doubt excruciating pain to the upper limbs and compresses the chest in such a way as to impede breathing. In addition, the complainant was dragged along the ground for dozens of meters, which caused his skin to be exposed raw. Raoul stated that more than 20 years after the event, he was still experiencing pain in his left arm and right leg. Admittedly, the plaintiff did not provide the Court with a medical certificate attesting to these pains. However, it should be taken into account that Raoul is domiciled in Liberia, a country which certainly does not have the same habits as Western countries with regard to medical tests and the probative force that is attributed to them. There is no doubt that physical after-effects can remain after an act as barbaric as the one he underwent, to which is added a psychological trauma, fed by the fear of dying that Raoul. The fault of Alieu Kosiah is extremely heavy, having ordered his soldiers, in a totally arbitrary way, to inflict a cruel and very damaging treatment on the plaintiff. For these facts, it is justified to award compensation of CHF 10'000.
- 10.3.3 With regard to the cruel, humiliating and degrading treatment inflicted on Raoul, during the transport of goods from Foya to Solomba, it should be noted that the defendant attacked two essential legal assets, namely his physical integrity and his mental equilibrium. The fact of having to carry a heavy load on the head during almost a whole day without taking a break, without receiving neither water nor food, but while undergoing blows and threats of death, is likely to cause important physical and moral damage. All the more so since the fear of dying must have been with Raoul's fear of death must have been with him every moment of the journey. The fault of Alieu Kosiah in connection with these facts is extremely heavy, this one having completely trampled Raoul's quality as a human being. During the debates, the plaintiff explained what he had suffered in a very reserved way. This does not, however, detract from the trauma he experienced, which no doubt explains in part why he agreed to come to Switzerland to testify on two occasions so long after the events. In view of the seriousness of the events, it would be justified to award the complainant the sum of CHF 10,000 as compensation.
- 10.3.4 Raoul is domiciled in Liberia, a country where maintenance costs are much lower than in Switzerland, so the compensation of CHF 20,000 should be reduced by two thirds (see above, section 10.5.4).

However, as the Court cannot award the plaintiff a higher sum than that which he has claimed, the amount awarded to him as compensation for non-material damage is set at CHF 8,000.

10.4 Georges

10.4.1 Georges is the complainant in relation to the two transports of goods from Foya to Solomba in which he was forced to participate, which constitute cruel, humiliating and degrading treatment (para. 1.3.10 of the indictment, cf. supra recital 7.7 and para.1.3.12 of the indictment, cf. supra recital 7.9).

10.4.2 With regard to the cruel, humiliating and degrading treatment inflicted on Georges during the transport of goods from Foya to Solomba, it should be noted that the accused attacked two essential legal assets, namely the physical and psychological integrity of the person. The fact of having to carry a heavy load on the head for almost a whole day without taking a break, without being given food or water, while being pushed and being beaten and threatened with death, is likely to cause significant physical and moral damage. The fault of Alieu Kosiah in relation to these facts is extremely heavy, as he totally disregarded the quality as a human being of Georges. During the proceedings, Georges stated that he was afraid to die (40.751.024, 033). He also stated that it had been a terrible experience that could have killed him and that he had been traumatized by being forced to carry heavy loads over a long distance (12-20-0032). The complainant's visit to Switzerland tends to indicate that this trauma is still present more than 20 years after the events. In view of the seriousness of the events and the conditions of the transport, an award of CHF 10,000 per transport is justified.

10.4.3 As Georges is domiciled in Liberia, a country where maintenance costs are much lower than in Switzerland, the compensation of CHF 20,000 should be reduced by two-thirds (cf. supra recital 10.5.4).

The amount awarded to Georges as compensation for non-material damage is therefore CHF 6,600.

10.5 Louis Z.

10.5.1 Louis Z. is a plaintiff in connection with the two transports of goods in which he was forced to participate, i.e. that of the generator from Pasolahun to Kolahun (para. 1.3.14 of the indictment; cf. 10.5.1 and i.e. the ammunition at Gondolahun in Sassahun (para. 1.3.16 of the indictment; cf. supra, para. 7.11)), both of which constitute cruel, humiliating or degrading treatment.

10.5.2 By causing the cruel, humiliating and degrading treatment inflicted on Louis Z. during the two transports in which he was forced to participate, Alieu Kosiah attacked two essential legal assets, namely his physical and

mental integrity. The fact that he had to carry a heavy load for a whole day without a break, without being given food or water, and while being beaten and threatened with death, caused him great physical and mental pain. The fear of dying must have pursued the plaintiff at every moment of the journey, especially since other civilians were coldly executed before his eyes due to their state of exhaustion. The defendant's fault is extremely heavy, as he completely disregarded Louis Z.'s status as a human being. During the debates, Louis Z. told the story of the events he experienced in a very sober manner. But this does not detract from his trauma. The fact that he came to Switzerland on two occasions to tell his story is an indicator of his suffering, which is still alive more than 20 years after the events. In view of the seriousness of the events and the deep damage caused by the two transports in question, it is justified to award the sum of CHF 10'000 for each of them.

- 10.5.3 Since Louis Z. lives in Liberia, where maintenance costs are much lower than in Switzerland, the compensation of CHF 20,000 should be reduced by two-thirds (see above, recital 10.5.4).

In the end, the amount awarded to Louis Z. as compensation for non-material damage amounts to CHF 6,600.

10.6 Antoine W.

- 10.6.1 Antoine W. is the complainant in relation to the two transports of goods in which he was forced to participate, namely the transport of the generator from Pasolahun to Kolahun (para. 1.3.14 of the indictment; cf. supra recital 7.10) and the transport of ammunition from Gondolahun to Sassahun (para. 1.3.16 of the indictment; cf. supra recital 7.11), which constitute cruel, humiliating and degrading treatment.
- 10.6.2 What was stated in recital 10.5.2 above with regard to Louis Z. can be repeated in full with regard to Antoine W., as both complainants were forced to take part in the same transport. Thus, for Antoine W. too, in view of the seriousness of the facts, an award of CHF 10,000 for each of the two transports is justified.
- 10.6.3 During the investigation, the Office of the Attorney General admitted Antoine W.'s status as a complainant in connection with the murder of his uncle, Victor X. (para. 1.3.15 of the indictment; see supra, para. 7.10). During the trial, Antoine W. was questioned about his relationship with his uncle. He stated that his mother had taken him to his home in Bolahun to attend school. When asked if he lived with him in Pasolahun or close to him, Antoine W. said that he did not remember exactly, but that they were in the same neighborhood (40.756.020). Antoine W. did not provide further information about his relationship with his uncle. The relationship he described is not close enough to cause exceptional mental suffering to justify an award of pain and suffering. Indeed, Antoine W. has not given the Court any reason to believe that his relationship with Victor X. was of such intensity that it could be equated to that which he might have had

with his father, for example. In these circumstances, he will not be awarded compensation for the death of his uncle.

- 10.6.4 Since Antoine W. lives in Liberia, a country where maintenance costs are much lower than in Switzerland, the compensation of CHF 20,000 should be reduced by two-thirds (cf. supra recital 10.5.4).

In the end, the amount awarded to Antoine W. as compensation for non-material damage amounts to CHF 6,600.

10.7 Jérôme

- 10.7.1 Jérôme is the complainant in relation to the two transports of goods in which he was forced to participate, one from Voinjama to Gbarlyeloh (para. 1.3.19 of the indictment; cf. supra, para. 7.13) and the other from Voinjama to Solomba (para. 1.3.20 of the indictment; cf. supra, para. 7.14), which constitute cruel, humiliating and degrading treatment.

- 10.7.2 By causing the cruel, humiliating, and degrading treatment inflicted on Jérôme during the two transports in which he was forced to participate, Alieu Kosiah attacked two essential legal assets, namely physical and mental integrity. Having to carry a heavy load for a long distance with the threat of being beaten and killed is likely to cause significant physical and mental pain. Jérôme stated that he was in fear for his life (40.753.020). The defendant's misconduct is extremely serious, as he disregarded Jérôme's status as a human being. During the debates, he recounted the events he experienced with a certain restraint. However, this does not detract from his trauma. His coming to Switzerland, on two occasions, to tell his story is an indication of a suffering, which is still present more than 20 years after the events. Given the seriousness of the events and the terrible conditions in which the transports took place, it is justified to award the sum of CHF 10,000 for the transport discussed in recital 7.13 and CHF 15,000 for the transport discussed in recital 7.14. Indeed, this last transport was spread over two days, with one night spent in captivity. The Court considers that these two elements justify the allocation of a higher indemnity than that granted for the first transport.

- 10.7.3 Since Jérôme is domiciled in Liberia, a country where the cost of maintenance is much lower than in Switzerland, the compensation of CHF 25,000 should be reduced by two-thirds (see supra recital 10.5.4).

- 10.10.4 Since the Court cannot, however, award the plaintiff more than he has claimed, the amount awarded to him as compensation for pain and suffering is CHF 8,000.

10.8 Coralie

- 10.8.1 Coralie is the complainant for the rape of which she was the victim (para. 1.3.24 of the indictment; see para. 7.17 above).

- 10.8.2 By forcing the complainant to undergo sexual intercourse four times in one night, Alieu Kosiah attacked an extremely important legal asset, namely sexual integrity. He used his power and the fact that he was armed to force the act on Coralie. Moreover, he threatened to kill the victim if she did not submit. His fault is extremely heavy. The complainant, who had never had sex with a man before, said she was forced to undergo the act without saying a word for fear of dying. As a result of the forced relationship, she reported losing blood and said she still experiences pain that affects her intimate relations to this day (40.752.024). She stated at the hearings that she still has feelings of humiliation about these facts (40.752.025). The Court considers these to be very serious. Taking into account the terror used by Alieu Kosiah to achieve his ends, the death threats he made and the fact that Coralie had never had sexual relations with a man at that time, it is justified to award her compensation for moral damages in the amount of CHF 30'000.
- 10.8.3 With regard to the transport of goods from Botosu following the looting of this village (para. 1.3.23 of the indictment; cf. supra, para. 7.16), Coralie stated that she did not have to carry any load and that she only accompanied the convoy, from which she said she managed to escape. She could not say how long it took her to escape. The fact that she accompanied a convoy, without carrying a load, for an indeterminate period of time, is not sufficient to cause suffering that would require compensation. Therefore, no compensation will be awarded in relation to these facts.
- 10.8.4 As Coralie is domiciled in Liberia, a country in which maintenance costs are much lower than in Switzerland, the compensation of CHF 30,000 should be reduced by two-thirds (cf. supra recital 10.5.4).
- 10.8.5 However, as the Court cannot award the plaintiff more than she has claimed, the amount awarded to her as compensation for pain and suffering is fixed at CHF 8,000.

11. Expenses

- 11.1 According to Art. 433 para. 1 of the CPP, the plaintiff may claim fair compensation from the defendant for the compulsory expenses incurred in the proceedings if he or she is successful (let. a) and if the defendant is obliged to pay costs in accordance with Art. 426 para. 2 (let. b). The plaintiff must submit his or her claims to the criminal justice authorities and must quantify and justify them. If he fails to do so, the criminal authority will not consider the request.

According to Art. 434 para. 1 of the CPP, third parties who suffer damage as a result of procedural acts or assistance to the criminal authorities are entitled to fair compensation if the damage is not otherwise covered, as well as to compensation for non-material damage. Art. 433 para. 2 is applicable by analogy.

11.2 In the present case, in order to take into account the particularities of the case, the Court decided to apply article 434 paragraph 1 of the Swiss Criminal Code analogously to the expenses incurred by the complainants in coming to Switzerland. Otherwise, in view of their indigence, they would not have been able to stay in our country during the three weeks of the proceedings.

11.3 Thus, the Court is paying the expenses related to the stay in Bellinzona of the six plaintiffs who traveled from Liberia. These expenses amounted to CHF 25,494.90.

The Court also undertook to reimburse the expenses that were advanced to the plaintiffs (presumably by the Civitas Maxima association) for their stay in Geneva from Thursday, March 11 to Sunday, March 14, 2021. Their presence a few days before the debates was deemed necessary so that the six plaintiffs could have time to prepare the debates with their respective lawyers. In view of the documents produced, the Court decided to award an amount of CHF 1'225.80 to each of the following plaintiffs: Jérôme, Louis, Raoul, Antoine W. and Paul and the sum of CHF 1'197.75 to Georges for the expenses incurred by their stay in Geneva.

11.4 The above-mentioned costs are part of the costs of the proceedings which are to be borne by the defendant (cf. *infra* recital 12).

12. Costs

12.1 The penal authority shall determine the costs in the final decision (art. 421 para. 1 code of criminal procedure). The costs of the proceedings consist of the fees to cover the costs and disbursements actually incurred (Art. 422 para. 1 CPP).

The fees are due for operations carried out or ordered by the Federal Criminal Police and the Federal Prosecutor's Office in the preliminary proceedings, as well as by the Criminal Court of the Federal Criminal Court. The amount of the fee is calculated on the basis of the scope and difficulty of the case, the way in which the parties proceed, their financial situation and the workload of the chancellery (Art. 424 para. 1 of the CPP), as well as Art. 5 of the Regulation of the Federal Criminal Court on the Costs, Fees, Expenses and Indemnities in Federal Criminal Proceedings (RFPPF; SR 173.713.162). The fees for police investigations in the case of the opening of an investigation vary between CHF 200 and CHF 50,000 (art. 6 para. 3 let. b RFPPF); those for the investigation ending in an indictment vary between CHF 1,000 and CHF 100,000 (art. 6 para. 4 let. c RFPPF). However, the total amount of the fees for the entire preliminary proceedings must not exceed CHF 100'000.00 (art. 6 al. 5 RFPPF). For the proceedings before the Criminal Court of the Federal Criminal Court, the fees for a three-judge panel are between CHF 1,000 and CHF 100,000 (art. 7 let. b FPPR).

The disbursements are the amounts paid in advance by the Confederation. They include, in particular, the costs attributable to the ex officio defense and to free legal assistance, translation costs, costs of expertise, costs of participation of other authorities, postage and telephone costs and other similar costs (art. 422 para. 2 code of criminal procedure). Disbursements are fixed at the price invoiced to or paid by the Confederation (art. 9 RFPPF).

- 12.2 In the present case, the Office of the Attorney General calculated the costs of the proceedings at CHF 1'664'852.07, consisting solely of disbursements. It did not give an amount for the emoluments.

As the Office of the Attorney General has not quantified its emoluments, the Court sets them, ex officio, at CHF 60'000.00. This amount seems appropriate in view of the duration of the investigation and the number of hearings conducted by the Office of the Attorney General.

- 12.3 The expenses that can be charged to the defendant must be reduced. Firstly, the costs of the ex officio defense are calculated separately (cf. infra recital 14.2). They can only be charged to the defendant under the conditions of art. 135 al. 4 code of criminal procedure (art. 426 al. 1 in fine code of criminal procedure), so that their fate does not follow that of the costs of the proceedings. Secondly, the costs of pre-trial detention are not part of the disbursements within the meaning of art. 422 of the Swiss Criminal Code and therefore cannot be charged to the accused (ATF 141 IV 465, para. 9.5.2). Medical costs that are not directly related to the criminal proceedings must also be disregarded (ATF 141 IV 465 recital 9.5.4). Finally, with regard to translation costs, those relating to the hearing of the plaintiffs and witnesses are to be borne by the defendant. On the other hand, translation costs relating to the hearings of the latter cannot be charged to him and are therefore not part of the disbursements (cf. art. 426 al. 3 let. b code of criminal procedure). After these deductions, the expenses that the defendant may be obliged to bear amount to CHF 217'581.61.

- 12.4 The fees for the first instance proceedings are fixed at CHF 40'000. The disbursements that can be charged to the defendant amount to CHF 113'288.50. This amount is made up of the legal costs of the Court of Coercive Measures for the decisions relating to the detention of Alieu Kosiah for security reasons, the costs of bringing the plaintiffs and witnesses to Switzerland, the costs of the Office of the Attorney General's pre-presence during the debates and the translation costs (however, the costs of the hearing of the defendant are deducted).

- 12.5 The total costs for the entire proceedings amount to CHF 1,349,739.23 (preliminary proceedings: CHF 60,000.00 [emoluments] and CHF 1,114,852.00 [two thirds of the total costs, one third of which was settled in the order of the Office of the Attorney General of May 7, 2019]; trial proceedings: CHF 40,000.00 [emoluments] and CHF 134,887.25

[disbursements]). The costs that may be charged to the defendant amount to CHF 378,342.90 (preliminary proceedings: CHF 60,000.00 [emoluments] and CHF 145,054.40 [two-thirds of the disbursements, one-third having been settled in the order of the Office of the Attorney General of May 7, 2019]; trial proceedings: CHF 40,000.00 [emoluments] and CHF 113,288.50 [disbursements]).

- 12.6 In accordance with art. 426 para. 1 of the code of criminal procedure, the accused shall bear the costs of the proceedings if he is convicted. The criminal authority may grant a stay of execution for the payment of the costs of the proceedings. It may reduce or postpone the costs, taking into account the situation of the person ordered to pay them (art. 425 code of criminal procedure).
- 12.7 In the present case, the accused was partially acquitted of the charges laid against him in the indictment. In order to take account of this partial acquittal, the Court reduced the costs to be paid by ten percent, which amounts to CHF 340,508.61. However, taking into account the imprisonment of Alieu Kosiah, his irregular and temporary situation in Switzerland and the fact that he has no income or assets, the Court decides to further reduce his share of the costs to a total amount of CHF 50,000, the balance being left to be paid by the Confederation.

13. Indemnity of the defendant

- 13.1 According to art. 429 para. 1 of code of criminal procedure, if the accused is acquitted in whole or in part or if he is granted a closure order, he is entitled to compensation for the expenses incurred in the reasonable exercise of his procedural rights (let. a), compensation for the economic damage suffered as a result of his compulsory participation in the criminal proceedings (let. b) and compensation for the moral damage suffered as a result of a particularly serious violation of his personality, especially in the case of deprivation of liberty (let. c)
- 13.2 In the present case, Alieu Kosiah has made claims based on article 429 of the Code of Criminal Procedure. He requested compensation for the expenses incurred in the reasonable exercise of his rights of defense, CHF 500,000 as compensation for the economic damage he suffered as a result of his participation in the present proceedings and CHF 856,000 as compensation for pain and suffering.
- 13.3 Since the defendant has been convicted, he cannot claim any compensation for the economic and moral damage he believes he has suffered. Indeed, if Alieu Kosiah had not been prosecuted for the few crimes of which he has now been acquitted, he would not have suffered any less economic loss for his participation in the proceedings (art. 429 al. 1 let. b) and the damage to his personality would not have been significantly reduced, so much so that the crimes against him damage his honor and his reputation (art. 429 al. 1 let. c). No compensation for

participation in the proceedings or for moral damages is possible. The Court will take into account the partial acquittal of Alieu Kosiah in determining the amount of the reimbursement of defense costs (see *infra*, para. 14). The defendant's claims based on article 429 of the Code of criminal procedure are rejected.

14. Indemnification of Public Defender and Free Legal Advice

14.1 Fixation

14.1.1 Art. 135 para. 1 of the CPP regulates the compensation of the public defender by referring to the tariff of lawyers of the Confederation or of the canton where the trial is held. If this regulation provides for a reduced fee, it applies, regardless of the outcome of the trial (ATF 139 IV 261, para. 2.2.1). Art. 11 ff RFPPF regulates the compensation of the *ex officio* counsel. Reference can be made to these provisions. In accordance with the consistent practice of the Criminal Court of the Federal Criminal Court, the hourly rate (excluding VAT) for cases of medium difficulty is CHF 230.- for working hours, CHF 200.- for travel hours of the defender, and CHF 100.- for hours worked by a trainee lawyer (Federal Criminal Court decision SK.2017.38 of November 23, 2017, recital 4.2, and the case law cited).

In the present case, there is no justification for departing from the usual hourly rates applied by the Court. Indeed, while the proceedings presented a certain complexity in terms of the facts, the legal analysis did not pose any great difficulty. This is evidenced by the fact that the majority of the lawyers involved in the proceedings did not develop any legal arguments at the pleading stage. The above-mentioned tariffs were used as a basis for determining the compensation.

14.1.2 Furthermore, in accordance with the indictment of March 22, 2019 and the order of closure of May 7, 2019, approximately two-thirds of the total costs of the proceedings against Alieu Kosiah for war crimes correspond to the statements of facts that are the subject of the indictment and one-third of the costs correspond to the statements of facts that have already been closed (40.100.040; 40.110.054 f.). This allocation key must be applied by the Court to determine the share of pre-March 22, 2019 costs to be considered in this judgment. It should be noted that the considerations and calculations made by the Office of the Attorney General in the context of the classification order are in no way binding on the Court (40.110.055). The calculation of the two-thirds is therefore based on the amounts retained by the Court in the following recitals.

14.2 Attorney Dimitri Gianoli

14.2.1 By decision of the Office of the Attorney General of November 11, 2014, Mr. Dimitri Gianoli was appointed as *ex officio* counsel for the defendant Alieu Kosiah (16-01-0001 s.).

14.2.2 For the period from November 11, 2014 to December 31, 2017, Maître Dimitri Gianoli billed 1,780.5 hours of attorney activity (including hearings), i.e. 52 hours and 15 minutes in 2014, 633 hours and 20 minutes in 2015, 495 hours and 10 minutes in 2016 and 599 hours and 45 minutes in 2017. For the year 2014, the Court subtracts 20 min. of hearing time that was over-counted. In 2015, 36h45 of activities are thus subtracted for the following reasons: 14h20 of overcounted court time, billing of non-billable secretarial tasks (5 min. on January 14, 15 min. on February 25), 9.10 hours of hearing time billed at the lawyer's rate while his trainee officiated (August 21) and billing of a manifestly excessive amount of time for certain tasks (reduction of 4.15 hours for the preparation of a chronology of names and events between May 11 and 12, of 3.55 hours for various researches and the preparation of questions to Alieu Kosiah between September 9 and 10 and of 4.45 hours for observations at the Court of restraint on December 11 [hereafter: Tmc]) For 2016, 64h20 must be deducted, because 5h10 of overbooked hearings must be deducted, 13h15 were billed between January 16 and 31 for a position to the Office of the Attorney General which is not in the file, secretarial tasks cannot be admitted (10 min. on December 22) and the time billed for certain tasks is clearly exaggerated (reduction of 16 hours for the preparation of a 14-page spontaneous writing to the Office of the Attorney General between March 5 and 11, of 5 hours for observations to the TMC between March 13 and 14, of 12:15 hours for a letter to the Office of the Attorney General concerning the complainant Antoine W. between June 17 and July 22, of 4:15 hours for observations to the TMC on September 15 and of 8:15 hours for observations to the TMC between December 11 and 12). For 2017, 77h20 are deducted: 25h50 of hearings have been counted in excess, 32h10 relate to appeals which must therefore be invoiced in the related procedures and the time spent on certain tasks is considered excessive (deductions of 2h45 for the examination of a pleading whose annexes were already known on June 5, of 4h45 for observations to the Tmc on June 9 and of 11h50 for observations to the Tmc between September 7 and 9).

A total of 1'601h45 of lawyer activity is therefore retained. By applying the rate of CHF 230/hour and adding VAT at 8%, this gives CHF 397'874.70.

The 411 hours of travel time are admitted. Applying the rate of CHF 200/hour and adding VAT at 8%, we obtain CHF 88'776.00.

For trainee activity during the same period, Master Dimitri Gianoli billed 179h45. The 9h10 of court time on August 21, 2015, deducted from the hours billed at the attorney rate, must be added here. For 2016, 50 min. of court time was overbilled and is therefore deducted. In addition, 120h40 of client interviews were billed during the same year. Since 66h45 were already admitted as lawyer's activity for this same position, 85h are deducted here, as about 100 hours of interviews (lawyer and trainee

together) are considered to be more than sufficient to exchange useful information.

78h of travel time was invoiced at the trainee's rate for this period. The travel time related to the interviews with the client refused by the Court must also be deducted here; 21 hours of travel time are thus deducted.

160 hours of activity and travel time for the trainee are thus retained. Applying the rate of CHF 100/hour and adding VAT at 8%, we obtain the sum of CHF 17,290.80.

- 14.2.3 For the period between January 1, 2018 and March 22, 2019, Dimitri Gianoli has recorded 408.5 hours of activity as a lawyer (including hearings), i.e., 267.40 hours in 2018 and 140.50 hours between March 1 and 22, 2019. For the year 2018, 2h20 of hearings counted in excess must be deducted, 1h40 for appeals to the Court of Complaints of the TPF which must be invoiced in the related procedures, 2h10 of secretarial tasks and 32h25 for an excessively long time spent drafting position papers for the Tmc (deduction of 9h30 between March 7 and 9 and of 22h55 between September 4 and 7). A deduction of 50h must still be made from the 94h25 billed as client interviews, as such hours cannot be justified in view of the only six hearing days that took place in 2018. For the first part of 2019, 1h45 of over-billed hearing time must be deducted, as well as 6h05 for a double-billed hearing (January 15). In addition, 20 hours and 20 minutes are deducted from the time recorded for the preparation of submissions to the TMC on March 7 and 8, 2019, which is considered excessive. 291 hours and 45 minutes of attorney time are therefore retained. Applying the rate of CHF 230/hour and adding VAT at 7.7%, we arrive at an amount of CHF 72,269.40. Regarding travel during the same period, the 90 hours invoiced by Mr. Gianoli are admitted, being specified that, although the Court considers excessive the number of hours of interviews with the client, conducted during this period, it admits their frequency and consequently also the travel to get there. Applying the rate of CHF 200/hour and adding VAT at 7.7%, the sum of CHF 19'386 is obtained.

During this same period, 7 hours of activity and 6 hours of travel were charged at the trainee rate. This is fully admitted. Applying the rate of CHF 100/hour and adding VAT at 7.7%, this gives CHF 1'400.10.

- 14.2.4 For the period from March 23, 2019 to March 12, 2021, Mr. Dimitri Gianoli has invoiced 1'296h15 of legal activity (including hearings), i.e. 264h10 from March 23 to December 31, 2019, 626h55 in 2020 and 405h10 in 2021. For the end of 2019, 24 hours and 20 minutes are deducted because of time deemed excessive for the accomplishment of certain tasks (deduction of 8 hours for observations at the TMC on March 28 and 29, 6 hours and 30 minutes for the drafting of a letter to PPP. between August 5 and 8, 8 hours and 50 minutes for observations at the TMC on September 20 and 1 hour for an interview with PPP. on September 30). In addition, the 156h55 of interviews with the client invoiced for the year

2019 are largely exaggerated in view of the procedural acts that took place that year; 100h are thus deducted. For the year 2020, the Court does not admit the compensation of 4 hours and 45 minutes of overcounted hearings, 35 minutes of contact with a lawyer who was not involved in the proceedings (January 28 and November 9), 21 hours and 40 minutes of drafting that turned out to be useless because they were never sent to the Court (between February 25 and April 2), 1h55 of secretarial tasks), 6.5 hours of preparation of cases to go to Bellinzona (November 28) and 49 hours and 20 minutes of overcounted time for the various tasks to be carried out (deduction of 26 hours and 45 minutes for observations at the TMC between March 20 and 22, 25 min. for the examination of a pleading on March 27, of 18h30 for various researches between April 9 and 17, of 3h30 for a position paper at the Tmc on September 24 and 25 and of 10 min. for the examination of a correspondence of the Tmc on September 29). For the same year, 60 hours of interviews with the client are deducted from the 158h05 invoiced for this purpose, as well as 100 hours out of the 200 hours invoiced for the preparation of the hearings, such a number of hours being considered excessive. In 2021, the Court deducted 4 hours 25 minutes of overcharged hearings, 5 hours 40 minutes of contact with a lawyer who was not involved in the proceedings (January 28, January 29, February 5, February 6), 7 hours 35 minutes of preparation of cases for hearings (February 11 and 13), 7 hours 40 minutes of storage of said cases (March 5 and 7) and 14 hours 20 minutes of preparation of the bill of costs and fees (between March 8 and 12). Once again, the time devoted to the preparation of the hearings, i.e. 168 hours, is considered excessive; 100 hours are thus still subtracted from this fact.

It is thus a total of 787h30 of activity of lawyer which is retained. Applying the rate of CHF 230/hour and adding VAT at 7.7%, this gives CHF 195,071.65.

For this period, Dimitri Gianoli invoiced 198 hours and 10 minutes of travel. To be deducted are 3 hours for October 20, 2020, and 1 hour and 10 minutes for January 22, 2021, because these trips do not correspond to any activity that would have justified them, as well as 1 hour and 10 minutes for January 28, 2021, because this trip corresponds to a meeting with an external lawyer that the Court does not compensate.

Thus, 192 hours and 50 minutes of travel are allowed. Applying the rate of CHF 100/hour and adding VAT at 7.7%, we obtain an amount of CHF 41'539.90.

For the activity of trainee, Dimitri Gianoli invoiced 600h45 for the same period, that is to say 3h50 for the end of the year 2019, 506h50 in 2020 and 90h05 in 2021. The Court does not enter into the matter of the interviews with the client, i.e. 1h30 in 2019, 497h10 in 2020 and 15h35 in 2021, as these have already been excessively invoiced as an activity of Master Dimitri Gianoli himself. For the preparation of the debates invoiced in 2021, 34h30 are deducted from the 74h30 invoiced, such time

being considered excessive in view of what Mr. Dimitri Gianoli has already charged for his personal activity.

The 191 hours of travel time billed at the trainee's rate are rejected in their entirety, as they relate to meetings with the client that are not admitted by the Court.

It is thus a total of 52 hours of trainee activity and travel that are retained. Applying the rate of CHF 100/hour and adding VAT at 7.7%, we arrive at CHF 5'600.40.

- 14.2.5 For the whole of his mandate, Mr. Dimitri Gianoli has invoiced disbursements amounting to CHF 62,597.60, i.e. CHF 41,657.35 for the period preceding March 22, 2019 and CHF 20,940.25 for the subsequent period.

Photocopies, charged at a rate of CHF 0.50/piece are reduced to a rate of CHF 0.20/piece (November 17 and 18, 2014, March 13, 17, 26 and 30, 2015, April 29 and 30, 2015, May 19, 21 and 29, 2015, June 1, 16, 17, 18, 22 and 23, 2015, March 14, 2016, December 19 and 21, 2016, March 13, 2017, May 30, 2017 and June 2, 2017, October 5, 2018, December 18, 2019, January 6, 2020, February 19, 2020, October 22, 2020, December 3, 2020, March 12, 2021). The disbursements corresponding to the appeals to the Court of Complaints of the TPF are deducted (CHF 7.70 between September 26 and October 11, 2017). The parking fees of June 18, 2016 are reduced from CHF 160.- to CHF 16.-, a more likely amount for a few hours of parking. The February 6, 2020 parking fee, charged twice, was reduced to CHF 34.-, and the February 10, 2021 parking fee, also charged twice, was reduced to CHF 27.40. The parking fees for February 19, October 20, October 22 and December 3, 2020, and January 28, 2021, have been waived, as they do not correspond to any eligible trips. Disbursements relating to travel to interviews with the client not admitted by the Court are deducted (seven trainee trips at CHF 102.50 in 2016, one trainee trip at CHF 102.50 in 2019, one trip by Maître Dimitri Gianoli in 2020 and one in 2021). All the interviews with the client invoiced at the trainee's rate in 2020 and 2021 having been refused by the Court, the disbursements corresponding to the travel in connection with these interviews as well as to the meals of these days are entirely cut off. The meals invoiced between December 10 and 18, 2020 are not retained, nor those of February 13 and March 6, 2021, as no hearing took place on these dates. For February 14, 2021, only the evening meal is allowed, as the proceedings began the following day. The meals billed twice are also deducted (February 15, 16, 17, 18, 22, 23, 24, 25, 2021, March 1, 2, 3, 4, 5, 2021). Finally, the costs of renting a single apartment in Bellinzona for the duration of the proceedings are admitted.

The disbursements retained thus amount to CHF 25'759.55 for the period from November 11, 2014 to March 22, 2019 and to CHF 13'652.- for the period from March 23, 2019 to March 12, 2021.

14.2.6 With regard to the reading of the judgment of June 18, 2021, the Court retains, for each lawyer, a lump sum of CHF 3'550.00, which covers all their costs, including VAT, as well as their disbursements.

14.2.7 The Court therefore retains, including costs and disbursements, a total of CHF 622,756.55 for the period prior to the indictment. Two-thirds of this amount, i.e. CHF 415,171, is taken into account for the compensation of Maître Dimitri Gianoli in the present proceedings. The amount of CHF 255'863.95 for costs and disbursements subsequent to the indictment is taken into consideration in full. To these amounts is added the lump sum of CHF 3'550.00 for the reading of the judgment.

In view of the foregoing, the total amount of the compensation of Mr. Dimitri Gianoli for the defense of the interests of Alieu Kosiah, including VAT and disbursements, amounts to CHF 674,585, rounded to CHF 674,900, after deduction of two-thirds of the advance payments made up to March 22, 2019, and of all the advance payments made thereafter.

14.2.8 Upon examination of the expense and fee reports of Mr. Dimitri Gianoli, the Court was surprised, to say the least, to note the number of hours invoiced as well as the tasks accounted for. If the work of the lawyer must naturally be remunerated, it is not however a question of making the Confederation bear the costs of useless or non-existent activities. In this respect, the bill of fees established by Mr. Dimitri Gianoli contains some very important incongruities. The Court considers it useful to go back over some figures. The hours devoted to drafting observations and statements for the attention of the TMC have been significantly reduced (118h20), as successive extensions of detention generally call for the same arguments. Moreover, the number of hours of interviews with the client billed has particularly challenged the Court (187h25 in 2016, 94h25 in 2018, 157h25 in 2019, 655h15 in 2020 and 51h10 in 2021). If it is true that the lawyer of a defendant must take the time to listen to him and advise him, it is also his duty to lead these interviews in order to obtain from his client and communicate to him, in an efficient way, the useful information. Thus, 295 hours had to be deducted. The Court also noted the excessive number of hours devoted to the preparation of the debates (442 hours and 30 minutes, i.e. more than 55 full working days). It recalls that the lawyer is deemed to know the facts of the case, on which he has worked for many years, and that these facts did not call for any complex legal development, which was moreover apparent from the pleading of Maître Dimitri Gianoli. Thus, 274 hours and 30 minutes were cut from this chapter. Finally, the Court notes, as an example of the many other hours that had to be deducted, that the preparation and tidying up of the cases do not constitute billable activities (21h45), nor does the drawing up of the bill of fees (14h20). In view of all the hours that had to be deducted from the fees of Dimitri Gianoli, the Court does not know if it should explain the excesses it has observed by a particular nonchalance, more or less conscious, or by a lack of ease in criminal matters and the need to go and find a lot of additional legal knowledge as the proceedings

progress. The Court is still in doubt, and for the time being, it will not make any denunciation to anyone.

- 14.2.9 According to art. 135 para. 4 let. a of the Code of Criminal Procedure, when the accused is ordered to bear the costs of the proceedings, he is obliged to reimburse the Confederation, as soon as his financial situation permits, for the costs of his fees.

In the present case, in order to take into account the financial situation of Alieu Kosiah, the Court fixes at CHF 100,000 the amount that he must reimburse to the Confederation for the costs and fees of Maître Dimitri Gianoli.

14.3 Attorney Raphaël Jakob

- 14.3.1 By decision of the Office of the Attorney General, dated September 5, 2014, Maître Raphaël Jakob was appointed free legal counsel for the complainant Raoul with retroactive effect to August 21, 2014 (15-02-0002 ff).

- 14.3.2 For the period from August 21, 2014 to December 31, 2017, Maître Raphaël Jakob billed 509:30 hours of court time, from which 17:55 hours were overcharged. For the rest of his activity as a lawyer, Mr. Raphaël Jakob billed 328 hours and 55 minutes. The Court does not take into consideration the time dedicated to the drafting of a letter concerning the offense of recruitment and use of a child soldier (30 min. on May 15, 2016, 3h on May 29, 2016, 2h on May 10, 2016, 2h on May 12, 2016, 3h on May 13, 2016, 1h30 on July 23, 2016, and 1h on July 25, 2016), as this charge does not concern his principal. In addition, the 15 min. billed on June 23, 2016 for the revision of a draft complaint of Mr. Alain Werner as well as the 30 min. billed on October 27, 2016 for the revision of a letter of the same colleague are deducted. It is thus a total of 806h50 of lawyer activity that is retained. By applying the rate of CHF 230/hour and adding VAT at 8%, we arrive at CHF 200'624.40.

The 170 hours of travel recorded are admitted. Applying the rate of CHF 200/hour and adding VAT at 8%, the amount of CHF 36'720 is reached.

For the same period, 7 hours of hearings were invoiced at the trainee's rate, from which 45 minutes of overbooked time must be deducted. The 18h30 of other activities carried out by the trainee lawyers are admitted, as well as the 4h of travel invoiced.

A total of 28.45 hours of activity and travel time of the trainee lawyers are therefore deducted. Applying the rate of CHF 100/hour and adding VAT at 8%, this gives CHF 3,105.

- 14.3.3 For the period from January 1, 2018 to March 22, 2019, 33 hours and 45 minutes of hearing time have been recorded; 2 hours and 10 minutes

must be deducted. The other hours invoiced for the activity of lawyer Raphaël Jakob, i.e. 24 hours 35, are admitted.

Therefore, a total of 56 hours and 10 minutes of legal activity is retained. By applying the rate of CHF 230/hour and adding VAT at 7.7%, this gives CHF 13,913.05.

The 22 hours and 35 minutes of travel time invoiced are accepted. Applying the rate of CHF 200.00/hour and adding VAT at 7.7%, we obtain the sum of CHF 4'864.45.

For this same period, Mr. Raphaël Jakob invoiced 43h20 of hearing at the trainee's rate, 31h05 for the activity outside the hearing and 12h of travel. Everything is admitted.

Therefore, a total of 86 hours and 25 minutes of trainee activity and travel are retained. By applying the rate of CHF 100.00/hour and by adding the VAT at 7.7%, this gives CHF 9'307.10.

- 14.3.4 For the period from March 23, 2019 to March 5, 2021, 144.10 hours of hearings have been invoiced, which are fully admitted. The 102 hours and 50 minutes counted for the rest of Raphaël Jakob's activity are also admitted.

A total of 247 hours of legal activity is therefore retained. Applying the rate of CHF 230/hour and adding VAT at 7.7%, this gives CHF 61'184.35.

Mr. Raphaël Jakob has invoiced for 50 hours and 20 minutes of travel time, which is accepted in full. Applying the rate of CHF 200/hour and adding the VAT at 7.7%, this amounts to CHF 10'841.80.

For the same period, Mr. Raphaël Jakob invoiced 25h15 for the hearings attended by his trainees as well as 8h30 for the other activities performed by them. This is fully admitted. Likewise, 10 hours of travel are accepted.

Applying the rate of CHF 100/hour and adding VAT at 7.7%, this gives CHF 4,711.90.

- 14.3.5 For the whole of his mandate, Mr. Raphaël Jakob invoiced disbursements of CHF 16,263.50, namely CHF 10,713.80 until March 22, 2019 and CHF 5,549.70 for the subsequent period. Since the amount of the overnight stays for the period between April 8, 2017 and March 22, 2019 was invoiced at a higher rate than that admitted by the Court, the overnight stays for the said period are reduced from CHF 1,765.10 to CHF 1,530.00. The disbursements admitted by the Court thus amount to CHF 10,478.70 for the period prior to March 22, 2019, and CHF 5,549.70 for the period after that date.

- 14.3.6 The Court therefore retains, including costs and disbursements, a total of CHF 279,012.70 for the period prior to the indictment. Two-thirds of this

amount, i.e. CHF 186,008.45, is taken into account for the compensation of Maître Raphaël Jakob in the present proceedings. The amount of CHF 82,287.75 for costs and expenses incurred after the indictment was sent is taken into account in full.

In view of the above, the total amount of the compensation of Mr. Raphaël Jakob for the assistance of the plaintiff Raoul, including VAT and disbursements, amounts to CHF 271,846.20, rounded to CHF 271,900.00, after deduction of two thirds of the advance payments made until March 22, 2019 and of the totality of the advance payments made thereafter.

14.4 Attorney Hikmat Maleh

14.4.1 By decision of the Office of the Attorney General of September 5, 2014, Attorney Hikmat Maleh was appointed as Complainant Jerome's free legal counsel retroactive to August 22, 2014 (15-03-0002 ff).

14.4.2 For the period from August 22, 2014 to December 31, 2017, as legal counsel, Attorney Hikmat Maleh billed 235 hours and 45 minutes of court time, from which 11 hours and 20 minutes were overbilled. For the rest of his activity, 78h30 have been accounted for. 12.10 hours billed for "TPF appeals" should be deducted (2.5 hours on November 21, 2016, 30 minutes on November 23, 2016, 2 hours on November 25, 2016, 2.20 hours on November 26, 2016, 1 hour on February 9, 2017, 1 hour on February 10, 2017, 25 minutes on February 13, 2017, and 2.5 hours on September 12, 2017) must be subtracted, as these hours must be billed in the context of the related procedure.

Therefore, a total of 290h50 of attorney activity is retained. Applying the rate of CHF 230/hour and adding VAT at 8%, this amounts to CHF 72'247.15.

The travel time, for which Mr. Hikmat Maleh invoiced 78 hours, is fully admitted. Applying the rate of CHF 200/hour and adding VAT at 8%, this gives CHF 16'848.

For the same period, in relation to the activity of the trainee, Maître Hikmat Maleh invoiced 125h35 of court time, of which 3h20, accounted for in excess, must be deducted. A total of 18h45 was invoiced for the trainee's activity outside the hearing. A time of 2h corresponding to the item "TPF recourse" must be deducted (invoiced on November 28, 2016) for the above-mentioned reason. The travel, up to 47h25, is admitted.

It is thus a total of 186h15 of trainee activity and travel which is retained. Applying the rate of CHF 100/hour and adding VAT at 8%, this amounts to CHF 20'104.20.

- 14.4.3 For the period from January 1, 2018 to March 22, 2019, 3.20 hours of attorney activity were billed; they are admitted. Applying the rate of CHF 230.-/hour and adding VAT at 7.7%, this gives CHF 817.05.

For the same period, 20 min. of trainee activity was charged. This is also allowed. Applying the rate of CHF 100/hour and adding VAT at 7.7%, this gives CHF 32.30.

- 14.4.4 For the period from March 23, 2019 to March 10, 2021, Mr. Hikmat Maleh has invoiced 123 hours and 10 minutes of hearing time, from which 4 hours and 10 minutes are to be deducted. With regard to the activity of a lawyer for this period, that is 57h35 invoiced, 10 min. corresponding to a determination on appeal must be deducted (November 25, 2019).

It is thus a total of 176h25 of activity of lawyer which are retained. By applying the rate of CHF 230.00/hour and by adding the VAT at 7.7%, it reaches the sum of CHF 43'708.40.

The 28.5 hours of travel time are admitted. Applying the rate of CHF 200.00/hour and adding the VAT at 7.7%, this gives CHF 6'138.90.

For the same period, 48 hours and 20 minutes of hearing time were invoiced at the trainee's rate, from which 10 minutes were deducted. From the 9 hours invoiced as trainee activity for this period, 1 hour of preparation of the expense statement must be deducted (November 2, 2020).

All travel hours billed, i.e. 9 hours, are allowed.

Therefore, a total of 64 hours and 50 minutes of activity and travel of the trainee are retained. Applying the rate of CHF 100/hour and adding VAT at 7.7%, this amounts to CHF 6'978.95.

- 14.4.5 For the entire duration of his mandate, Mr. Hikmat Maleh charged CHF 8,970.95 in disbursements, namely CHF 4,197.30 between August 22, 2014 and March 22, 2019 and CHF 4,773.65 between March 23, 2019 and March 10, 2021. Train tickets amounting to CHF 298.20 invoiced in 2018 (April 1, April 4, April 19 and December 4) and CHF 92.50 invoiced in 2019 (January 19) are deducted since no participation in any hearing was recorded for these years and these trips are not justified in relation to the present case.

Thus, disbursements in the amount of CHF 3,806.60 for the period from August 22, 2014 to March 22, 2019 and CHF 4,773.65 for the period from March 23, 2019 to March 10, 2021 are retained.

- 14.4.6 The Court therefore admits, including costs and disbursements, a total of CHF 113'838.- for the period prior to the indictment. Considering that the filing order of May 7, 2019 (40.110.059) did not concern charges related to his principal, Maître Hikmat Maleh had waived the filing of a note of

disbursements and fees in the context of the latter. The entire amount mentioned above is therefore granted to him in the present proceedings. For the period after the indictment, an amount of CHF 61'599.90 is retained. To these amounts is added the lump sum of CHF 3'550.00 retained by the Court for the reading of the judgment.

In view of the above, the total amount of the compensation of Maître Hikmat Maleh for the assistance of the plaintiff Jérôme, including VAT and disbursements, amounts to CHF 178'987.90, rounded off to CHF 179'100.00, after deduction of the advance payments made.

14.5 Attorney Zeina Wakim

14.5.1 By decision of the Office of the Attorney General of November 3, 2016, Maître Zeina Wakim was appointed as free legal counsel for the complainant Coralie with effect from August 23, 2016 (15-04-0013 ff).

14.5.2 For the period August 23, 2016 through December 31, 2017, Attorney Zeina Wakim billed 104:05 hours of hearing attendance time. The over-billed hours of 9:55 must be subtracted. For the rest of her activity as an attorney, Attorney Zeina Wakim billed 44h05, including 20h30 of activity related to proofreading minutes and writing a summary during November and December 2017. She still conducted such activities for 35h05 in 2018. The Court considers that this total of 55h35 (20h30+35h05) is too high; it admits only a total of 25h for this task, i.e. 10h in 2017 and 15h in 2018. Are therefore admitted, for the activity of lawyer, excluding hearing, until December 31, 2017, 33h35.

It is therefore a total of 127h45 (104h05-9h55+33h35) of activity of lawyer which is retained for the above-mentioned period. Applying the rate of CHF 230/hour and adding VAT at 8%, this gives a total of CHF 31'733.10.

For this same period, the 20 hours of travel invoiced at the lawyer's rate are admitted. Applying the rate of CHF 200.00/hour and adding the 8% VAT, this amounts to CHF 4'320.00.

For the hearings followed by her trainee during the same period of time, Mrs. Zeina Wakim has invoiced 110 hours, from which 40 minutes are to be deducted. In addition, she billed 10 hours and 10 minutes for the other activities of the trainee, from which the Court deducts, following the decision of the Office of the Attorney General of February 2, 2017 (15-04-0087), 1 hour and 40 minutes billed on October 25, 2016 for the reservation of an airplane ticket for the accompanist of her client. As for the 60 hours of travel billed, 4 hours are deducted, as these were hearings at which the trainee accompanied Maître Zeina Wakim, this deduction being in accordance with the Office of the Attorney General's decision of 2 February 2017 (15-04-0089).

It is therefore a total of 173h50 of trainee activity and travel that is retained. Applying the rate of CHF 100.00/hour and adding VAT at 8%, we reach the sum of CHF 18,770.40.

- 14.5.3 For the period from January 1, 2018 to March 22, 2019, a total of 69 hours and 20 minutes of hearings were invoiced, from which 3 hours and 35 minutes of overcharging must be deducted. As for the lawyer's activity outside the hearing, 40 hours were billed. As already explained above (cf. supra recital 14.5.2), the 31 hours and 20 minutes invoiced for the proofreading of the minutes and the drafting of a summary were reduced to 15 hours by the Court.

A total of 89 hours and 25 minutes of attorney's time is therefore retained. By applying the rate of CHF 230.00/hour and by adding the VAT at 7.7%, this totals CHF 22'145.25.

The 36h25 invoiced for travel during this period are admitted. Applying the rate of CHF 200/hour and adding VAT at 7.7%, this gives CHF 7'840.55.

For the same period, 33h50 of hearing were invoiced at the trainee's rate. The 2h25 overcharged must be deducted. No other activities were billed at the trainee rate. The 8 hours charged for travel are admitted.

Therefore, a total of 39h25 of activity and trainee travel is retained. Applying the rate of CHF 100.00/hour and adding VAT at 7.7%, this gives CHF 4'243.40.

- 14.5.4 For the period from March 23, 2019 to the end of the debates, Mrs. Zeina Wakim has invoiced 187h40 of hearings, from which 16h55 of overbooked time must be deducted. A total of 250 hours and 20 minutes have been accounted for as non-hearing lawyer activity for this period, of which 126 hours and 35 minutes correspond to preparation work for the debates for the year 2020 and 56 hours and 40 minutes relate to the same task for the year 2021. The Court considers that such preparation is disproportionate in relation to the preparation time of the lawyers of the other plaintiffs, it being specified that Maître Zeina Wakim did not plead during the first part of the debates in December 2020, nor did she raise any preliminary question at that time, that her plea in March 2021 lasted less than one hour (40,720,084) and that it was to determine only two counts relating to a single complainant. The Court thus admits 20 hours of preparation for the debates for the year 2020 and 25 hours for the year 2021. Moreover, the 2h30 of legal research related to the order of closure must be deducted (May 13 and 14, 2019), as well as the 9h05 invoiced in relation to the appeals to the TPF (May 14, 2019, June 25, 2019, July 1 and 2, 2019), for the reason previously explained.

A total of 271h15 of lawyer's activity is therefore retained. By applying the rate of CHF 230.00/hour and by adding the VAT at 7.7%, we obtain CHF 67'191.35.

For this period, the 88h30 of travel recorded by Mrs. Zeina Wakim are admitted. Applying the rate of CHF 200/hour and adding the VAT at 7.7%, this gives CHF 19'062.90.

- 14.5.5 For the entire duration of her mandate, Mrs. Zeina Wakim has invoiced disbursements amounting to CHF 21'961.50, namely CHF 12'343.30 for the period until March 22, 2019 and CHF 9'618.20 for the subsequent period. The costs for the train and airplane tickets of Coralie's companion, as well as the price of the latter's train ticket, must be deducted (November 7, 2011; train tickets invoiced at CHF 150.00 for three persons, whereas only the travel of Maître Zeina Wakim, i.e. CHF 50.00, can be admitted). The travel of the trainee invoiced on the same date, also CHF 50.00, is also deducted, as he was accompanying Ms. Zeina Wakim. In addition, a trip from Geneva to Bellinzona, invoiced at CHF 224.00 (December 3, 2020), must be reduced to CHF 112.00, the applicable rate for such a trip. An amount of CHF 98.30, corresponding to the trainee's meal expenses during the week of the hearing in Bern, during which he accompanied Ms. Zeina Wakim, and an amount of CHF 666.50, relating to the trainee's hotel nights during this same period as well as to an overrun by Ms. Zeina Wakim of the amount allocated for her own hotel nights, must also be deducted, in accordance with the Office of the Attorney General's decision of February 2, 2017 (15-04-0089). Over the entire mandate, an overrun of the meal budget in the amount of CHF 32.10 is also deducted. In 2017, hotel nights amounting to CHF 3690.70 were charged; this amount must be reduced by CHF 383.00, as the maximum amount allocated per night was exceeded by this amount. In 2020, hotel nights amounting to CHF 852.50 were charged. This amount must be reduced by CHF 122.50, which corresponds to the night from December 6, 2020 to December 7, 2020 of Maître Zeina Wakim, who was replaced at the hearing of December 7, 2020 by Maître Léna Laghzaoui, for whom the invoiced hotel night was admitted.

Disbursements amounting to CHF 9'142.40 for the period from August 23, 2016 to March 22, 2019 and CHF 9'095.95 for the period from March 23, 2019 to March 10, 2021 are thus retained.

- 14.5.6 The Court therefore retains, including costs and disbursements, a total of CHF 98,195.10 for the period before the indictment. Two thirds of this amount, i.e. CHF 65'463.40, are taken into account for the compensation of Maître Zeina Wakim in the present proceedings. The amount of CHF 95'350.20 for costs and disbursements subsequent to the indictment is taken into account in its entirety. To these amounts is added the lump sum of CHF 3'550.00 retained by the Court for the reading of the judgment.

- 14.5.7 In view of the above, the total amount of the compensation of Maître Zeina Wakim for the assistance of the plaintiff Coralie, including VAT and disbursements, amounts to CHF 164,363.60, rounded to CHF

164,400.00, after deduction of two thirds of the advance payments made up to March 22, 2019, and of the totality of the advance payments made subsequently.

14.6 Maître Alain Werner

14.6.1 By decisions of the Office of the Attorney General of October 3, 2014, Maître Alain Werner was appointed as free legal counsel for the complainants Paul (15-01-0008 ff), Louis Z. (15-01-0017 ff) and Antoine W. (15-01-0020 ff) with retroactive effect to September 17, 2014.

By decision of the Office of the Attorney General of July 29, 2016, Maître Alain Werner was also appointed as free legal counsel for Complainant Georges with retroactive effect to June 24, 2016 (15-01-0301 ff).

14.6.2 For the period from September 17, 2014 to December 31, 2017, Mr. Alain Werner billed 1,181.5 hours for his activity as a lawyer as well as 277.15 hours for the activity of his associate, Mr. Romain Wavre, during the year 2017. With regard to the bill of expenses for the period from September 17, 2014 to March 31, 2015, 7 hours and 15 minutes of hearings are deducted, as well as 22 hours and 30 minutes of administrative tasks that can be considered as non-billable secretarial tasks. As for the hours billed for the period from April 1, 2015 to December 10, 2015, only 9.55 hours of overbooked hearing time must be deducted. As for the activity time billed for the period from December 10, 2015 to October 31, 2016, 14:10 hours of overcharged hearing time are to be deducted, as well as 11 hours of client conferences that the Court considers excessive and 13:30 hours of non-billable administrative tasks (5h45 related to the visit to Switzerland of a witness and 7h45 related to the visit to Switzerland of the plaintiff Georges). In addition, 25 hours and 30 minutes were charged for conferences with Raphaël Jakob and Hikmat Maleh, 6 hours and 30 minutes for the preparation of the hearings of two witnesses and 92 hours and 15 minutes for the study of the file. For all these items, the Office of the Attorney General considered that a total of 50 hours was sufficient (15-01-0379 ff). The Court agrees with this argument and thus deducts 74h15 for the three positions mentioned above. As of 2017, Alain Werner has delegated part of his activity in this case to his associate at Civitas Maxima, Romain Wavre. In order to make a correct calculation of the fees due, the hours billed and retained or not for each of the lawyers are treated separately. For the period from November 1, 2016 to October 3, 2017, the following should be deducted from the activity of Mr. Alain Werner: 22h10 of auditions overcharged, 2h of preparation for Coralie's hearing (November 3, 2016), 18h30 of preparation for the hearings of the other plaintiffs, 2h30 for the preparation of a report for the attention of the Office of the Attorney General (May 10 and 11, 2017), 2h15 of preparation for the hearings of the witnesses and 24h of non-billable administrative tasks. For the same period, concerning Mr. Romain Wavre, 10 hours and 20 minutes of hearings were billed in excess and 14 hours and 15 minutes of preparation time for witness hearings were deducted. The hours billed for the end of 2017, i.e. 160h10, are all related

to the activity of Maître Romain Wavre. Three hours and ten minutes of overbilled hearing time must be deducted. The Court also considers that the 79h15 dedicated to the study of the file and the drafting of a letter are excessive and thus deducts 39h15.

During the same period, Mr. Alain Werner billed 154 hours for his travels and 18 hours for those of Mr. Romain Wavre. Subtracted are 4 hours recorded by the former on September 2, 2017, i.e., a Saturday on which there was no hearing and a round trip having already been billed the day before (see Office of the Attorney General decision of November 8, 2017; 40.851.064).

Alain Werner and Romain Wavre are employees of the association Civitas Maxima, from which they receive a regular salary. Their activity for the aforementioned association consists of defending the interests of war victims who are seeking compensation. Since this activity overlaps completely with their role in the present case, the amount of compensation due for the defense of the plaintiffs, for whom Mr. Alain Werner was appointed free legal counsel, should be reduced to the amount of the salary received from Civitas Maxima.

Mr. Alain Werner received from Civitas Maxima, between 2014 and 2017, a gross annual salary of CHF 117,000, which corresponds to an hourly wage of CHF 53.60/hour (the Court assumes that a full-time job includes 2,182 hours per year [12 months x 4.33 weeks per month x 42 hours per week], i.e. $117,000 \div 2,182.32$). A total of 984 hours of attorney activity is allowed for the period between September 17, 2014 and December 31, 2017. Applying the rate of CHF 176.40/hour ($230 - 53.60$) and adding VAT at 8%, we reach the sum of CHF 187'463.80. With regard to travel, 150 hours are allowed. Applying the rate of CHF 146.40/hour ($200 - 53.60$) and adding VAT at 8%, we obtain the amount of CHF 23'716.80.

Mr. Romain Wavre received from Civitas Maxima a salary of CHF 5'520.- for the seven months during which he worked for the association in 2017, i.e. an hourly wage of CHF 4.35/hour ($[5'520 \div 7 \times 12] \div 2'182.32$). A total of 210h15 of activity is admitted for the above mentioned period. Applying the rate of CHF 225.65/hour ($230 - 4.35$) and adding VAT at 8%, we reach the sum of CHF 51'465.40. As for his traveling hours, 18 hours are allowed. Applying the rate of CHF 195.65/hour ($200 - 4.35$) and adding VAT at 8%, we reach a total of CHF 3'803.45.

For the period prior to December 31, 2017, an amount of CHF 238'929.20 is thus retained as attorney activity and CHF 27'520.25 as attorney travel.

Finally, 253 hours and 45 minutes of activity were invoiced for services and travel performed by other parties. Firstly, the 86h15 of research carried out by an American lawyer at the Library of Congress in Washington between April 16 and September 3, 2015 are admitted at the rate of CHF 100.-/hour. Then, the 97 hours of hearings recorded by Maître BBBB. - collaborator of the association Civitas Maxima - during

the year 2016, 30 hours and 25 minutes are deducted as excess, it being specified in particular that her presence, when added to that of Mr. Alain Werner, is not compensated. The Court thus retains, for the hearings in which the above-mentioned participated, 66h35 of activity and 12h of travel at the rate of CHF 100/hour. Finally, for the period from November 1, 2016 to October 3, 2017, 42 hours and 30 minutes were invoiced for the activity of Mrs. AAAA. In accordance with the decision of the Office of the Attorney General of November 8, 2017 (40.851.063), the Court notes that the status of Ms. AAAA - who was acting as an employee of Civitas Maxima - cannot be equated with that of a trainee lawyer, as she was not sworn in, nor subject to the obligations associated with this function. Therefore, the hours recorded for her activity and travel are not taken into consideration.

A total of 164h50 at a rate of CHF 100.00/hour is thus retained; adding VAT at 8%, we obtain the amount of CHF 17'801.65.

- 14.6.3 For the period from January 1, 2018 to March 22, 2019, Maître Alain Werner has invoiced 54h10 of lawyer's activity between January 1 and October 3, 2018 and 30h between October 4, 2018 and March 22, 2019, as well as 116h20 for Maître Romain Wavre's activity during the first period and 146h35 for his activity during the second period. Between January 1 and October 3, 2018, the hours recorded by Mr. Romain Wavre must be reduced as follows: 3 hours and 20 minutes of hearing time recorded in excess, 11 hours of proofreading and finalization of a letter to the Office of the Attorney General, the time thus devoted to this activity being considered excessive, and 16 hours assigned to "cavardage", because it is a secretarial task, not billable as a typical activity of a lawyer. For this same period of time, 40 hours of conferences and telephone calls with the different principals and the lawyers of the other plaintiffs were counted, which are fully admitted. In the absence of precise billing for these items, they are included in the activity of Alain Werner. Concerning the period between October 4, 2018 and March 22, 2019, 1h10 of hearings accounted for in excess by Mr. Alain Werner and 15h35 of hearings accounted for in excess by Mr. Romain Wavre are deducted. The rest of the activity for this period is admitted.

The travel hours invoiced for the same period, i.e. 4 hours for Maître Alain Werner and 48 hours for Maître Romain Wavre, are admitted in full. In addition, the Court accepts to compensate 1 hour at the rate of CHF 200/hour for the pre-presence of Mr. Romain Wavre at a hearing that was finally canceled due to the absence of the person who was to be heard (March 28, 2018).

Mr. Alain Werner received from Civitas Maxima, in 2018 and 2019, a gross annual salary of CHF 117,000, which corresponds to an hourly wage of CHF 53.60/hour ($117,000 \div 2,182.32$). A total of 83h is admitted for his activity between January 1, 2018 and March 22, 2019. Applying the rate of CHF 176.40/hour ($230 - 53.60$) and adding VAT at 7.7%, we arrive at CHF 15'768.55. As for travel, 4 hours are allowed. Applying the

rate of CHF 146.40/hour (200-53.60) and adding VAT at 7.7%, we obtain CHF 630.70.

Mr. Romain Wavre received from Civitas Maxima a gross annual salary of CHF 52'000.00 for the year 2018, i.e. CHF 23.85/hour ($52'000 \div 2'182.32$). A total of 86h is retained for his activity during the period from January 1 to October 3, 2018. Applying the rate of CHF 206.15/hour (230-23.85) and adding the VAT at 7.7%, we reach the sum of CHF 19'094.05. As for the travels for the same period, 21h are admitted. Applying the rate of CHF 176.15/hour (200-23.85) and adding VAT at 7.7%, we arrive at CHF 3'984.-. For the year 2019, Mr. Romain Wavre received a gross annual salary of CHF 60'000.-, i.e. CHF 27.50/hour ($60'000 \div 2'182.32$). For the period from October 4, 2018 to March 22, 2019, an average hourly wage of CHF 25.65/hour ($[23.85+27.50] \div 2$) must be taken into account. A total of 130h45 is retained for the activity of Mr. Romain Wavre during this period. Applying the rate of CHF 204.35/hour (230-25.65) and adding VAT at 7.7%, we obtain CHF 28'809.15. As for travel for the same period, 28 hours are allowed. Applying the rate of CHF 174.35/hour (200-25.65) and adding VAT at 7.7%, we obtain an amount of CHF 5'257.75.

For the period from January 1, 2018 to March 22, 2019, an amount of CHF 63,809.15 is thus withheld as attorney activity and CHF 9,872.45 as attorney travel.

- 14.6.4 Finally, the amounts invoiced for the period from March 23, 2019 to March 10, 2021 must be detailed. For the end of the year 2019, the activity time of 1h30 recorded by Maître Alain Werner and 58h45 recorded by Maître Romain Wavre are admitted. For the debates held before the Court in 2020 and 2021, the simultaneous and paid presence of Alain Werner and Romain Wavre was admitted, given the number of plaintiffs (four) for whom Alain Werner provided free legal advice. For the year 2020, each of the lawyers charged 34 hours of court time. This time is reduced by 1 hour and 25 minutes, which is overcharged, for each of them. The activity of Mr. Alain Werner outside the courtroom in 2020, i.e. 31h30, is admitted. For the activity of Mr. Romain Wavre outside the hearing for the same year, 229 hours and 15 minutes were invoiced, from which 12 hours and 50 minutes must be deducted, invoiced between September 23 and November 9, 2020, for administrative procedures related to the travel of the plaintiffs. For the year 2021, the 141h55 of hearing time billed by each of the lawyers is admitted. The 99 hours and 15 minutes of activity outside the courtroom by Alain Werner are also admitted. For the same year, Mr. Romain Wavre invoiced 125 hours and 20 minutes of activity outside the courtroom, of which 8 hours between January 20 and February 9, 2021 are deducted, as these are again administrative procedures related to the arrival of the plaintiffs in Switzerland. Between the years 2020 and 2021, Mr. Alain Werner billed 83h30 of preparation for the debates and Mr. Romain Wavre 178h30 for this same activity. The time charged by the latter is considered excessive, a total of 85 hours being sufficient in view of the cumulative time of the

two lawyers for this preparation. A reduction of 46h45 is thus made on the hours admitted for Mr. Romain Wavre in 2020 and an identical deduction in 2021.

With regard to their travel for the period following the indictment, Alain Werner and Romain Wavre each accounted for 19 hours in 2020 and 9.5 hours in 2021. This is accepted. Only the costs relating to the reading of the judgment are deducted from the calculation, as these are included in the fixed price applied by the Court.

Alain Werner received from Civitas Maxima, between 2019 and 2021, a gross annual salary of CHF 117,000, which corresponds to an hourly wage of CHF 53.60/hour ($117,000 \div 2,182.32$). A total of 306 hours and 45 minutes of legal activity is admitted for the post-indictment period. Applying the rate of CHF 176.40/hour ($230 - 53.60$) and adding VAT at 7.7%, we obtain CHF 58'277.20. For travel, 4 hours are allowed. Applying the rate of CHF 146.40/hour ($200 - 53.60$) and adding VAT at 7.7%, we get CHF 4'493.65.

Maître Romain Wavre received from Civitas Maxima a gross annual salary of CHF 60'000.- for the year 2019, which is an hourly wage of CHF 27.50/hour ($60'000 \div 2'182.32$). A total of 58h45 is retained for the activity during the period from March 23, 2019 to December 31, 2019. Applying the rate of CHF 202.50/hour ($230 - 27.50$) and adding VAT at 7.7%, we obtain the sum of CHF 12'812.95. For the year 2020, Mr. Romain Wavre received a net annual salary of CHF 65,500, i.e. an hourly wage of CHF 30/hour ($65,500 \div 2,182.32$). A total of 202h15 is retained for the activity of lawyer in 2020. Applying the rate of CHF 200/hour ($230 - 30$) and adding VAT at 7.7%, we arrive at CHF 43,564.65. As for the travels for the same period, 19h are allowed. Applying the rate of CHF 170/hour ($200 - 30$) and adding VAT at 7.7%, we obtain CHF 3'478.70. For the year 2021, Mr. Romain Wavre received a salary of CHF 16'317.00 between the beginning of January and mid-March, i.e. an hourly salary of CHF 35.90/hour ($[16'317 \div 2.5 \times 12] \div 2'182.32$). A total of 212h30 is retained for his activity as a lawyer in 2021. Applying the rate of CHF 194.10/hour ($230 - 35.90$) and adding VAT at 7.7%, we reach CHF 44'422.20. As for travel for the same period, 9.5 hours are allowed. Applying the rate of CHF 164.10/hour ($200 - 35.90$) and adding VAT at 7.7%, we reach an amount of CHF 1'679.-.

For the period after the indictment, an amount of CHF 159,077.00 is thus retained for the activities of the two lawyers and CHF 11,330.35 for their travel.

- 14.6.5 For the entire duration of his mandate, Mr. Alain Werner invoiced disbursements (relating to his activity and that of Mr. Romain Wavre) in the amount of CHF 29,698.45, i.e. CHF 18,187.05 for the period prior to the indictment and CHF 11,511.40 for the subsequent period. In 2016, the disbursements clearly designated as costs of the plaintiffs are deducted (CHF 22.10 on August 26, CHF 10.20 on August 29, CHF 28.20

and 20.- on August 30, CHF 100.- on August 31, CHF 15.- on September 5, CHF 14.80 and 4.10 on September 12). In addition, for disbursements recorded between November 1, 2016 and October 3, 2017, a total amount of CHF 4,720.80 (CHF 1,925.80 for transportation, CHF 1,245.- for accommodation and CHF 1,540.- for meals) is withheld in accordance with the Office of the Attorney General 's decision of November 8, 2017 (40.851.064 f.) in lieu of the CHF 7,293.55 invoiced. The two amounts of CHF 203.00 charged for travel to the reading of the judgment are also deducted from the last fee note, as these costs were already included in the lump sum provided by the Court.

Thus, disbursements of CHF 15'399.90 for the period from September 17, 2014 to March 22, 2019 and CHF 11'105.40 for the period from March 23, 2019 to March 10, 2021 are retained.

14.6.6 The Court therefore retains, including costs and disbursements, a total of CHF 373,195.20 for the period before the indictment. Two-thirds of this amount, i.e. CHF 248,796.80, is taken into account for the compensation of Mr. Alain Werner in the present proceedings. The amount of CHF 181,512.75 for costs and disbursements subsequent to the indictment is taken into account in full. To these amounts is added the lump sum of CHF 3'550.00 retained by the Court for the reading of the judgment.

14.6.7 In view of the foregoing, the total amount of the compensation of Maître Alain Werner (and by this means that of Maître Romain Wavre) for the assistance of the plaintiffs Georges, Louis Z., Antoine W. and Paul, including VAT and disbursements, amounts to CHF 433,859.55, rounded to CHF 434,000.00, after deduction of two-thirds of the advance payments made up to March 22, 2019, and of the totality of the advance payments made subsequently. The Court emphasizes that in the motivation of the present judgment, it noted that an error, unfavorable to Mr. Alain Werner (omission of several items in the fee note of October 3, 2017, i.e. 181 hours and 20 minutes of legal activity), had been made in the total calculation of the indemnity due to him. This error is rectified ex officio pursuant to art. 83 al. 1 code of criminal procedure and the operative part of the judgment will be rectified accordingly (LAURENT MOREIL-LON/AUDE PAREIN-REYMOND, Petit Commentaire du code de procédure pénale, 2nd ed., 2016, n° 3 ad art. 83 code of criminal procedure).

On these grounds, the Court rules:

I. Acquittal and conviction

1. Alieu Kosiah is acquitted of violations of the laws of war on the following counts:
 - 1.1 Recruitment of a child soldier according to paragraph 1.3.1 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military

- Criminal Law Code cum Art. 3 common to the GC and Art. 4 para. 3 let. c AP II);
- 1.2 Attempted murder of a civilian, alternatively attack on physical integrity, respectively on health and physical well-being according to paragraph 1.3.6 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum Art. 3 para. 1 let. a common to the GC and Art. 4 para. 2 let. a AP II);
 - 1.3 Complicity in the murder of a civilian according to paragraph 1.3.8 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum Art. 3 para. 1 let. a common to the GC and Art. 4 para. 2 let. a AP II);
 - 1.4 Order to loot according to paragraph 1.3.11 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code in connection with Art. 18 former Swiss Military Criminal Law Code cum Art. 3 common to the GC and Art. 4 para. 2 let. g AP II).
 2. Alieu Kosiah is found guilty of violations of the laws of war on the following points:
 - 2.1 Use of a child soldier according to paragraph 1.3.1 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum Art.3 common to the GC and Art. 4 ch. 3 let. c AP II);
 - 2.2 Orders to kill seven civilians, respectively six civilians, according to paragraphs 1.3.2 and 1.3.5 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code in connection with Art. 18 former Swiss Military Criminal Law Code cum Art. 3 para. 1 let. a common to the GC and Art. 4 para. 2 let. a AP II);
 - 2.3 Order to kill two unarmed soldiers according to paragraph 1.3.21 of the act of acceptance (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code in connection with Art. 18 former Swiss Military Criminal Law Code cum Art. 3 para. 1 no. 1 let. a common to the GC and Art. 4 no. 2 let.a AP II);
 - 2.4 Murder of four civilians according to numbers 1.3.3, 1.3.15, 1.3.17 and 1.3.18 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum Art. 3 para. 1 no. 1 let.a common to the GC and Art. 4 no. 2 let.a AP II),
 - 2.5 Rape of a civilian according to paragraph 1.3.24 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum Art. 3 para. 1 no. 1 let. c common to the GC and Art. 4 no. 2 let, e AP II) ;
 - 2.6 Order to treat seven civilians cruelly according to paragraph 1.3.4 of the indictment (Art. 109 Para. 1 and 108 Para. 2 former Swiss Military

Criminal Law Code in connection with Art. 18 former Swiss Military Criminal Law Code cum Art. 3 Para. 1 No. 1 let. a common to the GC and Art. 4 No. 2 let. a AP II);

- 2.7 Attack on the dignity of a deceased civilian according to paragraph 1.3.9 of the indictment (art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code in connection with art. 18 former Swiss Military Criminal Law Code cum art. 3 para. 1 let. 1 a and c common to the GC and art. 4 para. 2 let. a and e AP II);
- 2.9 Repeated infliction of cruel, respectively humiliating and degrading treatment on several civilians according to numbers 1.3.7, 1.3.10, 1.3.12, 1.3.16, 1.3.23 and 1.3.25 of the indictment (art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code cum art. 3 para. 1 ch. 1 let. a and c common to the GCs and art. 4 ch. 2 let. a and e AP II) ;
- 2.10 Repeatedly giving orders to loot according to numbers 1.3.13 and 1.3.22 of the indictment (Art. 109 para. 1 and 108 para. 2 former Swiss Military Criminal Law Code in connection with Art. 18 former Swiss Military Criminal Law Code cum Art. 3 common to the GC and Art. 4 para. 2 let. g AP II).
3. Alieu Kosiah is sentenced to a custodial sentence of 20 years, minus the pre-trial detention from November 10, 2014 to June 18, 2021, i.e. 2413 days.
4. Alieu Kosiah is expelled from Switzerland for a period of 15 years.
5. The deportation of Alieu Kosiah shall be reported in the Schengen Information System.
6. The authorities of the Canton of V. are competent for the execution of the sentence and the expulsion.

II. Civil claims

As moral damages, Alieu Kosiah is ordered to pay the following amounts (art. 47 and 49 CO):

- CHF 6,600 to Georges;
- CHF 8,000 to Coralie;
- CHF 8,000 to Jérôme;
- CHF 6,600 to Louis Z.;
- CHF 8'000 to Raoul;
- CHF 6'600 to Antoine W.;
- CHF 7,300 to Paul.

III. Costs and expenses

A. Expenses

The following sums are awarded for expenses incurred by their presence in Switzerland (art. 434 para. 1 code of criminal procedure p. a.):

- CHF 1'197.75 to Georges;
- CHF 1'225.80 to Jérôme;
- CHF 1'225.80 to Louis Z.;
- CHF 1'225.80 to Raoul;
- CHF 1'225.80 to Antoine W.;
- CHF 1'225.80 to Paul.

B. Costs

1. The costs of the proceedings amount to CHF 1,349,739.25 (preliminary proceedings: CHF 60,000.00 [emoluments] and CHF 1,114,852.00 [disbursements]; trial proceedings: CHF 40,000.00 [emoluments] and CHF 134,887.25 [disbursements]).
2. The costs of the proceedings are to be borne by Alieu Kosiah up to a maximum of CHF 50,000 (articles 425 and 426 paragraphs 1 and 2 code of criminal procedure), the balance being borne by the Confederation.

IV. Compensation of the defendant

The claims of Alieu Kosiah based on article 429 of the Swiss Criminal Code are rejected.

V. Indemnification of the public defender

1. The compensation to be paid to Maître Dimitri Gianoli is fixed at CHF 674,900 (including VAT and disbursements), after deduction of two-thirds of the advance payments made until March 22, 2019, and of the totality of the advance payments made as of March 23, 2019, this compensation being payable by the Confederation (art. 135 para. 2 code of criminal procedure).
2. Alieu Kosiah is obliged to reimburse this compensation to the Confederation up to an amount of CHF 100,000.00 as soon as his financial situation permits (Art. 135 para. 4 let. a code of criminal procedure).
3. Alieu Kosiah is obliged to reimburse to Maître Dimitri Gianoli, as soon as his financial situation permits, the difference between his compensation as an ex officio defender and the fees he would have received as a private defender (art. 135 al. 4 let. b code of criminal procedure).

VI. Compensation for free legal advice

1. The compensation to be paid to Mr. Raphaël Jakob is fixed at CHF 271,900 (including VAT), after deduction of two-thirds of the advance payments made up to 22 March 2019 and of the totality of the advance payments made as from 23 March 2019, this compensation being payable by the Confederation (Art. 138 para. 1 of the Swiss Criminal Code).
2. The compensation to be paid to Maître Hikmat Maleh is fixed at CHF 179,100 (including VAT), after deduction of the advance payments already made, this compensation being payable by the Confederation (art. 138 al. 1 code of criminal procedure).
3. The compensation to be paid to Maître Zeina Wakim is fixed at CHF 164,400 (including VAT), after deduction of two-thirds of the advance payments made up to 22 March 2019 and of the totality of the advance payments made as from 23 March 2019, this compensation being payable by the Confederation (Article 138 al. 1 code of criminal procedure).
4. The compensation to be paid to Maître Alain Werner is set at CHF 408,300 (recte: CHF 434,000) (VAT included), after deduction of two-thirds of the interim payments made up to 22 March 2019 and of all the interim payments made from 23 March 2019 onwards, this compensation being payable by the Confederation (Art. 138 para. 1 of the Swiss Criminal Code).

On behalf of the Criminal Court
of the Federal Criminal Court

The President

The Registrar

Distribution (judicial act):

- Federal Prosecutor's Office, Mr. Andreas Müller
- Attorney Dimitri Gianoli
- Attorney Jean-Pierre Bloch
- Mr. Alain Werner
- Mr. Raphaël Jakob
- Mr. Hikmat Maleh
- Attorney Zeina Wakim

After its entry into force, the judgment will be communicated to:
Swiss Federal Attorney General (as enforcement authority)