



# Swiss Trial for Liberia Atrocities: Universal Jurisdiction Paves Path for Justice

## Questions and Answers

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On December 3, 2020, the criminal trial of Alieu Kosiah, a former Liberian rebel commander, began in the city of Bellinzona, Switzerland, in the country's Federal Criminal Court. Kosiah is the first person to be tried for war crimes in a non-military criminal court in Switzerland and is the first Liberian to be put on trial for alleged war crimes committed during the first Liberian civil war, from 1989 to 1996.

This question-and-answer document provides some background to the trial, the accused, and overall efforts by Switzerland to investigate and prosecute serious crimes under international law before its national tribunals.

**1. [Who is Alieu Kosiah and what are the charges against him?](#)**

Alieu Kosiah is a 45-year-old Liberian national who was a former commander of the United Liberation Movement of Liberia for Democracy armed group, known as ULIMO; a rebel group active during Liberia's first civil war.

Kosiah [was arrested](#) on November 10, 2014, in Switzerland, where he had been living since 1999, for his alleged role in war crimes committed between 1993 and 1995 in Lofa County, northwest Liberia. The arrest followed criminal complaints against him by seven Liberian victims who are now formal parties to the proceeding against him, called "private plaintiffs." Two lawyers from the Swiss nongovernmental group [Civitas Maxima](#) represent four of them. Kosiah was detained throughout the multi-year investigation, which led in March 2019 to the Swiss attorney general's office [filing an indictment](#) against him.

Swiss prosecutors accuse him of various crimes, including ordering the murder and cruel treatment of civilians, rape, recruiting child soldiers, and pillage. Kosiah faces 25 separate charges.

**2. [Why is Kosiah's trial taking place in Switzerland?](#)**

Kosiah's trial in Switzerland is possible because [the country's laws](#) recognize [universal jurisdiction](#) over certain serious crimes under international law, allowing for the investigation and prosecution of these crimes no matter where they were committed, and regardless of the nationality of the suspects or victims.

Typically, national authorities are only able to investigate a crime if there is a link between their country and the crime. The normal linkage is territorial, meaning that the crime, or a significant element of it, was committed on the territory of the country wishing to exercise jurisdiction (called the territorial jurisdiction principle). Many countries also prosecute on the basis of the personality, meaning that the alleged perpetrator is a citizen of that country (active personality principle), or the victim is a citizen (passive personality principle). However, some countries have granted their national courts – such as those in Switzerland – the jurisdiction to act even if there is no territorial or personality link.

A number of European countries have ongoing investigations and prosecutions related to grave abuses committed abroad in places such as the [Democratic Republic of Congo](#), [Iraq](#), [Liberia](#), and

[Syria](#). Universal jurisdiction cases are increasingly important in international efforts to hold those responsible for atrocities accountable, provide justice to victims who have nowhere else to turn, deter future crimes, and help ensure that countries do not become safe havens for human rights abusers.

### 3. [What international crimes were committed in Liberia during its civil wars?](#)

Liberia's civil wars (1989-1996 and 1999-2003) were characterized by [widespread and systematic violations](#) of international human rights and humanitarian law. Domestic and international human rights groups, foreign embassies, the media, and the Liberian Truth and Reconciliation Commission (TRC) identified summary executions, massacres, rape and other forms of sexual violence, mutilation and torture, and forced conscription and use of child combatants, among the numerous abuses.

Crimes were committed by members of all the [parties to the conflict](#), government and rebel groups alike; including the National Patriotic Front of Liberia (NPFL), Independent National Patriotic Front of Liberia (INPFL), United Liberation Movement of Liberia for Democracy (ULIMO) and its splinter factions ULIMO-K and ULIMO-J, Armed Forces of Liberia (AFL), Liberian Peace Council (LPC), the government of Liberia (including various security forces), militias and the government-backed Anti-Terrorist Unit (ATU), Movement for Democracy in Liberia (Model), Lofa Defense Force, and Liberians United for Reconciliation and Democracy (LURD).

Fighters gunned down Liberian men, women, and children in their homes, villages, marketplaces, and places of worship. In a few cases, they massacred [hundreds of civilians](#) in a matter of hours. They subjected girls and women [to horrific sexual violence](#) including rape, gang rape, sexual slavery, torture, and outrages on personal dignity. They destroyed and looted villages. They abducted children from their homes and schools and pressed them into service, often after murdering their parents in front of them. The violence blighted the lives of tens of thousands of civilians and displaced almost half the population.

The Economic Community of West African States Monitoring Group (ECOMOG), a multinational military force deployed to Liberia in 1990, was implicated in the looting, harassment, and arbitrary detention of civilians, as well as indiscriminate airstrikes against civilians and civilian structures.

### 4. [Shouldn't crimes committed in Liberia during the country's two civil wars be investigated and prosecuted domestically?](#)

Criminal accountability should be pursued as close as possible to where the crimes were committed to have the greatest impact within the communities most affected by the crimes. Domestic

prosecutions of past atrocities are not always possible, however, because of a lack of capacity or political will, or both.

Liberia [has not prosecuted a single person](#) for the grave crimes committed during its two armed conflicts.

The Liberian Truth and Reconciliation Commission (TRC), which operated between 2006 and 2009, recommended creating a war crimes court staffed by international and Liberian practitioners – the [Extraordinary Criminal Court for Liberia](#) – to be based in Liberia to try those responsible for grave crimes. Despite intensified calls for accountability for the crimes domestically and internationally, the recommendation for a [war crimes court](#) has yet to be carried out.

## 5. [Has anyone faced justice for crimes committed during Liberia’s civil wars?](#)

The few cases involving civil wars-era crimes have all occurred outside Liberia in European and US courts. In addition to universal jurisdiction cases, authorities have also investigated individuals for crimes related to immigration, such as lying on immigration forms about involvement in abuses in Liberia.

In 2008, a United States federal court convicted [Chuckie Taylor](#), former head of the ATU and son of former Liberian president Charles Taylor, of torture committed during the country’s second civil war. US courts also convicted the former ULIMO leader, [Mohammed Jabbateh](#), and the NPFL spokesman, [Jucontee Thomas Smith Woewiyu](#), for fraud and perjury related to their failure to disclose to US immigration authorities their involvement in alleged wartime crimes during the country’s first civil war. Moses Thomas also [faces a civil lawsuit](#) in the US, where victims filed a complaint against him for allegedly ordering extrajudicial killings, torture, war crimes, and crimes against humanity in Liberia as a Colonel in the Armed Forces of Liberia.

In 2014, Belgian authorities arrested [Martina Johnson](#), former commander of the NPFL, for her alleged role in war crimes, but the case [appears to have stalled](#). In 2017, British authorities charged [Agnes Reeves Taylor](#) for her alleged role in torture in Liberia between December 1989 and January 1991, but the [case was dismissed](#) in 2019. In 2018, French authorities arrested [Kunti Kamara](#), a former ULIMO commander, in Paris for alleged war crimes committed in Liberia. According to media reports, Kamara [has been ordered to stand trial](#), though an exact date has yet to be officially announced.

Civil society efforts have spurred much of this judicial activity, including collaboration between the Monrovia-based [Global Justice and Research Project](#) and the Geneva-based [Civitas Maxima](#), and by the San Francisco-based [Center for Justice and Accountability](#).

There is also one case for illegal [arms trafficking](#) to Liberia and complicity in war crimes through providing military support that led to [conviction](#) of a Dutch national.

In addition, the UN-backed Special Court for Sierra Leone tried and convicted the former Liberian president [Charles Taylor](#) in 2012 for grave crimes committed in Sierra Leone, and sentenced him to 50 years in prison.

## 6. [What has happened so far during Kossiah's trial?](#)

Since his arrest in 2014, Kossiah has been in Swiss custody. His trial was originally scheduled to begin in April 2020 but was repeatedly postponed because the Covid-19 pandemic [made it impossible](#) for seven Liberian victims who are formal parties to the proceeding called [“private plaintiffs”](#) and for witnesses to travel from Liberia for the proceeding. The [Swiss Federal Criminal Court](#) said that efforts to arrange for their testimony via video link from Monrovia, Liberia’s capital, were unsuccessful.

The length of pretrial detention raises human rights concerns both in terms of the justification for depriving an unindicted person, who is presumed innocent, of their liberty for years and in relation to the fairness of the proceedings. Kossiah’s detention was judicially reviewed under Swiss law every three to six months and extended multiple times between November 2014 and March 2019, when he was indicted. Some of the factors contributing to repeated extensions may have been the difficulty of conducting investigations of serious crimes committed abroad, but information about the details is not publicly available. To comply with their international human rights obligations, and to address those concerns and ensure procedural fairness, the Swiss authorities should provide more information about the basis for this detention.

International and European human rights law require the authorities to use pretrial detention as an exception, not the rule, and only when demonstrably necessary for specific reasons, including risk of flight and threats to witnesses, and for the shortest time possible. The European Court of Human Rights, by which Switzerland is bound as a party to the European Convention on Human Rights, has held that in granting pretrial extensions judicial authorities not only have to assess whether the reasons for the extensions are relevant and sufficient, but also whether the authorities are exercising special diligence in the pursuit of the case, and that the courts must provide reasons and rationale for authorizing extensions.

To avoid further delays, the Federal Criminal Court decided to divide Kossiah’s trial into two parts: one phase in December 2020 and the other in February 2021. During the first part of the trial, be-

tween December 3-10, the court considered a number of procedural challenges presented by various parties to the proceeding and later heard from Kosiah.

The procedural challenges varied. For example, victims' lawyers asked the court to delay hearing Kosiah until their clients could be physically present. They unsuccessfully argued that not doing so would prejudice the overall proceedings, their ability to represent their clients, and victims' rights to actively participate in the trial and to appear in person. For its part, the defense – among other issues – asked the court to dismiss one of the victims' lawyers for conflict of interest related to his separate role as director of the Swiss nongovernmental group [Civitas Maxima](#). The court later rejected this challenge.

After addressing various procedural issues, the court heard from Kosiah. He spoke in English and his testimony was translated into French – the official language of the proceedings – by a court interpreter. He was questioned by the trial's presiding judges, the federal prosecutor, and his own lawyer. The victims' lawyers declined to ask Kosiah any questions, instead opting to do so during the second phase of the trial in the presence of their clients so that they can confer with them about Kosiah's responses.

Generally, the judges asked Kosiah about: (i) his personal background; (ii) his journey to Switzerland; (iii) his knowledge of the Liberian civil war and the warring factions; and (iv) his involvement in the civil war, including relating to each of the 25 charges. Kosiah denied each of the charges against him.

In phase two of the trial [set to begin on February 15](#), the court will hear from the seven private plaintiffs and nine witnesses, who will attend the hearings in person. The parties will also present their substantive pleadings in the case.

## **7. [What kind of challenges have judicial authorities in Switzerland faced bringing this case to trial?](#)**

Investigating and prosecuting serious crimes, especially those that occurred in a foreign country thousands of kilometers away, is a complex exercise, which requires specific knowledge, expertise, and resources. In addition to appropriate legislation, it involves complex investigations by national criminal justice authorities of often large-scale crimes that happened years earlier in a foreign country, which can be extremely difficult and costly. Gathering evidence – most often victims and witnesses to the actual crimes – usually requires traveling to the country where the crimes occurred. This presents a range of challenges, including linguistic and cultural barriers, and possible resistance from national authorities who may not want to see justice served.

Swiss prosecutors said they faced particular difficulties investigating the crimes at issue in Kosiah's trial given that they took place decades ago. In addition, the authorities reported [receiving no cooperation](#) from Liberia while conducting their inquiries. They were nonetheless able to hear from more than 25 witnesses, including through legal assistance extended to them by other countries and international organizations. The lengthy investigation however resulted in the [six-year pretrial detention](#) for Kosiah.

Swiss authorities also faced unexpected difficulties starting Kosiah's trial. The proceeding was originally scheduled to begin in April 2020 but was postponed because the Covid-19 pandemic [made it impossible](#) for the private plaintiffs and seven witnesses to travel from Liberia for the trial. The [Swiss Federal Criminal Court](#) said that efforts to arrange for their testimony via video link from Monrovia, Liberia's capital, were unsuccessful. In the end, the court resolved to divide Kosiah's trial into two parts to avoid further delays.

At the trial phase, Swiss authorities face new challenges. First, judges in Bellinzona have had to familiarize themselves with the history of the armed conflict and crimes in Liberia, and with a context and cultures that are foreign to them. The appearance of witnesses from Liberia will require careful preparation. Victims and witnesses of serious crimes are likely to require specific protection measures as well as psychological support. The court will also have to ensure that the rights of the accused, Kosiah, are scrupulously upheld, and that he is afforded all the means to build an effective defense.

#### **8. [What are "private plaintiffs" and what is their role in the trial?](#)**

Swiss law recognizes two types of people as affected by crimes: (1) "persons suffering harm" (anyone whose rights have been directly violated by an offence); and (2) "victims" (anyone who suffers direct physical, sexual, or mental harm). Victims are considered a subcategory of the larger group of persons suffering harm. Both persons suffering harm and victims can apply to become formal parties to a criminal proceeding as private plaintiffs by making a declaration to that effect to the federal prosecutor's office prior to the conclusion of an investigation. Such a declaration can also indicate the person suffering harm's intention to make a civil claim for damages in connection to the criminal case.

Seven private plaintiffs are taking part in the case against Kosiah. They have a number of rights as formal parties to the proceeding, including the right: (i) to be assisted by a lawyer; (ii) to inspect case documents; (iii) to participate in procedural acts; (iv) to request that further evidence be taken; (v) to comment on the case and on the proceedings; and (vi) to challenge decisions taken by the federal police and prosecutors.

**9. [Is the trial accessible to the public? Are Liberians able to follow the proceedings in Switzerland?](#)**

Generally, hearings at the Federal Criminal Court are [open to the public](#). At the same time, Swiss law allows the court to take steps to restrict access if it is warranted for public safety or for the protection of an individual when merited. Given the Covid-19 pandemic, ensuring the safety of witnesses, victims, and judicial staff has been a major challenge for the court. While hearings were open to the public in December, the number of people permitted in the courtroom was limited. The court is [not allowing any members of the public](#) to attend the second phase of the trial, citing public health concerns. Only accredited media will be permitted to follow proceedings in a separate room inside the court reserved for the press.

A key challenge Swiss judicial authorities face is ensuring that affected communities in Liberia whose members are unable to travel to Bellinzona have access to some information about the trial. This may require forms of communication that are unusual for a Swiss court, such as issuing news releases in English or making transcripts of testimony available (when security allows) in the original language spoken by victims and witnesses.

For the time being, unless one is able to attend Kosiah's trial in person, the only source of information about the proceeding is media articles. A handful of [Swiss](#), [international](#), and [Liberian journalists](#) were able to be present during the first phase of the trial. Though the court recorded Kosiah's December testimony, access to the recording was restricted to the private plaintiffs and their lawyers given their inability to attend the first set of hearings. Civitas Maxima also published daily trial monitoring reports but was [ordered by the court](#) on December 10 to remove their online observation reports.

The court in Bellinzona should make every effort to fill this gap and make information about the trial available to the public and communities affected by ULIMO's many crimes. Human Rights Watch [research](#) in other situations has shown that inadequate [outreach](#) to affected communities can undermine the impact of accountability efforts in relation to serious international crimes.

**10. [How long is the trial expected to last and what are the possible outcomes?](#)**

The trial is expected to conclude on March 5, a little longer than three weeks overall. Once the second phase of the trial concludes, the presiding judges will enter their deliberations. The court will then issue its judgment on Kosiah's guilt in relation to the charges against him, a possible sentence, and any further consequences including addressing any possible civil claims. If convicted, Kosiah could face up to 20 years in prison.

Any party to the proceeding can appeal the court's decision. Private plaintiffs, however, cannot appeal the sentence imposed by the court. Appeals are first heard by the [higher appeals chamber](#) of the Federal Criminal Court. Decisions of the appeals chamber may be further appealed to Federal Supreme Court, the highest judicial authority in Switzerland.

**11. [Who is responsible for investigating and prosecuting international crimes in Switzerland?](#)**

Since 2011, the prosecution of genocide, crimes against humanity, and war crimes has fallen under federal criminal jurisdiction in Switzerland. As such, the Swiss Federal Judicial Police and the [Office of the Attorney General](#) (OAG) in Bern investigate these crimes. The OAG is [organized into different sections](#) according to types of offenses, with serious crimes handled by the Mutual Legal Assistance, Terrorism, International Criminal Law and Cybercrime division.

The Federal Criminal Court, in Bellinzona, hears universal jurisdiction cases.

**12. [How many cases related to serious crimes have been opened in Switzerland?](#)**

In its 2019 [annual activities report](#), the attorney general's office reported 13 ongoing international criminal law investigations. In addition to Koshih, three other people are known to be under investigation: [Khaled Nezzar](#), former Algerian defense minister; [Rifaat al-Assad](#), uncle of President Bashar al-Assad of Syria and former commander of the Syrian Defense Brigades; and [Ousman Sonko](#), Gambia's former interior minister.

**13. [How does Swiss universal jurisdiction practice compare to other countries in Europe?](#)**

Over the past two decades, the [national courts](#) of an [increasing number of countries](#) have pursued cases involving war crimes, crimes against humanity, genocide, torture, enforced disappearances, and extrajudicial executions committed abroad. At the same time, [Swiss nongovernmental organizations](#), former federal prosecutors, members of parliament, and others have [criticized](#) judicial officials in Switzerland for slow progress despite having solid legislation to address serious crimes.

Criticism has revolved around a lack of [capacity](#) and [political will](#), undue delays, and allegations of [political interference](#). The [supervisory authority](#) that oversees the attorney general's office [has in the past commented](#) on a number of these issues in response to parliamentarians' questions. The [latest parliamentary query](#) was filed after the first part of Koshih's trial concluded in December, noting a lack of clarity around the exact resources dedicated to serious crimes cases by the federal prosecutor's office.

Human Rights Watch [reporting in various countries](#) shows that the fair and effective exercise of universal jurisdiction is achievable with the right combination of appropriate laws; adequate resources; institutional commitment, such as dedicated war crimes units; and political will. Political will in particular is necessary for pursuing war crimes cases, given the sensitivities and diplomatic tensions that often arise, especially if high-ranking foreign officials are the subject of investigations.

**14. [What options are there for further accountability for international crimes committed in Liberia?](#)**

Liberian and international human rights advocates have [called](#) for Liberian President George Weah to request United Nations assistance to create a war crimes court to prosecute serious international crimes committed during the country's two conflicts.

The proposal for an Extraordinary Criminal Court for Liberia by Liberia's Truth and Reconciliation Commission provides a strong basis for moving forward. But [a number of adjustments](#) would need to be made to the court and its mandate to ensure that it aligns with international standards and practice.

In 2019, President Weah gave hope to victims when he spoke at the United Nations General Assembly about pursuing a war crimes court for Liberia. He said consultations with the national legislature were already in motion, and engagement with the judicial system and international partners on the court's creation was on the way.

Since then, the government has begun to allow foreign investigators into Liberia to investigate war crimes for overseas prosecutions but has yet to make progress on a war crimes court to be based in country. Meanwhile, former warlords have worked to [oppose](#) a war crimes court, and the speaker of Liberia's legislature [declined](#) to introduce a resolution on the court, despite [strong backing](#) among [lawmakers](#). Human rights activists who have championed accountability have faced increasing [threats](#), as have witnesses to civil wars-era crimes.

Liberians have [held marches](#) to campaign for a war crimes court, and Liberia's Traditional Chiefs Council has [backed](#) a war crimes court. Liberia's National Economic Dialogue, attended by 350 Liberians, including members of the government, political parties, youth, and civil society, also recommended in 2019 establishing the court. Groups released a [video](#) appeal that showcases Liberians' interest in such a court in 2018.

The increasing number of cases abroad for crimes committed in Liberia should signal to the Liberian authorities that Liberia can prosecute people for serious crimes and that it should proceed. In

addition, many of Liberia's international partners have supported judicial accountability mechanisms in recent decades and have accumulated experience in addressing challenges that often arise with them. Such expertise, which should be leveraged for accountability for past crimes in Liberia, includes protection and support for witnesses and victims, security for judges and staff, assuring fair legal process, and educating the local population about the court.