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Making the Local Global

Lessons the International Criminal Court Can Learn From Finnish Universal Jurisdiction Trials

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ABSTRACT

When the International Criminal Court (ICC) was created 27 years ago, it was meant to become a court with global reach responsible for investigating, prosecuting, trying and punishing individuals accused of international crimes. However, a variety of factors have reduced the capacity of the ICC and caused those working to impose accountability for international crimes to look elsewhere for solutions. The ICC may need to assess whether it can reorient its trial processes so that it remains relevant in this changing legal landscape. One way this might be achieved is by shifting trials away from the Court's seat in The Hague and holding them closer to the victims and communities affected by the accused's alleged criminality. Doing so could help change perceptions of the ICC and grant it the legitimacy it craves. This article assesses the legality, potential effectiveness, and practicality of such a change. It does this through an examination of the *Bazaramba* and *Massaquoi* cases, two universal jurisdiction trials held in Finnish domestic courts. These trials are particularly relevant because in both cases the presiding courts relocated the trial to parts of Africa in or near the countries in which the crimes under consideration took place. As a result, they offer insight into the potential impact locally held trials for international crimes can have on victims and witnesses. Through this lens, the article considers whether a practical basis exists for the localization of ICC trials through a thorough examination of the Rome Statute's relevant provisions. Next, it explores whether relocating trials can improve the standing of the court, both in terms of the justice it delivers and how its activities are perceived. Finally, the article will consider some of the practical challenges faced by the Finnish courts when holding proceedings in Africa, and what the ICC might learn from them.

1. INTRODUCTION

When the International Criminal Court (ICC or 'the Court') was created 27 years ago, it was meant to become a court with global reach responsible for investigating, prosecuting, trying and punishing individuals accused of international crimes. The reality has been quite different, with numerous factors conspiring to prevent the ICC from adequately filling the

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role allocated to it. They include: the long distance between where crimes are allegedly committed and where trials are held; concerns about whether the Court's decisions adequately benefit affected communities; and slow-moving legal processes disconnected from the victims they are meant to serve. These concerns, and others, have caused many to look for more effective ways of adjudicating international criminal accountability, with domestic universal jurisdiction trials becoming an increasingly popular option.

Domestic courts have had success prosecuting individuals for international crimes on the basis of universal jurisdiction; however, there are some shortcomings to relying exclusively on domestic courts for prosecuting international crimes. Domestic universal jurisdiction trials are limited in ways that the ICC is not, including in their capacity to gather evidence in other states and by the immunity from domestic prosecution enjoyed by heads of state and other senior government officials. The ICC's ability to operate when domestic courts cannot demonstrates the continued relevance of, and need for, the Court. Rather than cede its authority over international crimes to third-party domestic processes, the ICC should try to learn from them by re-orienting its trial procedures so as to remain relevant in this changing legal landscape. One way the ICC might accomplish this is by holding part or all of its trials close to the communities impacted by the criminality alleged against the accused.

This article assesses the legality, potential effectiveness, and practicality of such a change. It does this through an examination of the *Bazaramba* and *Massaquoi* cases, two universal jurisdiction trials held in Finnish domestic courts. These trials are particularly relevant because in both cases the presiding courts relocated the trial to parts of Africa in or near the countries in which the crimes under consideration took place. As a result, they offer insight into the potential impact locally-held international trials can have on victims and witnesses. Through this lens, the article considers whether a practical basis exists for the localization of ICC trials through a thorough examination of the Rome Statute's relevant provisions. Next, it explores whether relocating trials can improve the standing of the court, both in terms of the justice it delivers and how its activities are perceived. Finally, the article will consider some of the practical challenges faced by the Finnish courts when holding proceedings in Africa, and what the ICC might learn from them.

Analysing the Finnish approach to universal jurisdiction trials is particularly interesting because, when compared to some of its European counterparts, Finland has largely been reluctant to try people on this jurisdictional basis. Since the *Bazaramba* case (which was the first Finnish universal jurisdiction trial), there have only been six other universal jurisdiction cases tried to completion. Universal jurisdiction trials in Finland are pursued more out of responsibility derived from the sense that Finland is the only venue in which a trial is possible, rather than a commitment to fighting impunity.[1] Further, Finnish courts have demonstrated a willingness to adopt novel trial procedures, including relocating proceedings or holding hybrid hearings, in an effort to accumulate the best evidence available upon which to make their decisions. This sort of flexibility in approach could be more widely adopted by both international and domestic courts, in an effort to ensure that trials focus on producing accurate outcomes rather than rigid compliance with pre-existing procedures.

The procedures followed by the Finnish court in *Bazaramba* and *Massaquoi* lead to the conclusion that localizing justice could offer the ICC a way forward for the future. Localization makes it easier for victims and witnesses to be involved in the trial process, either as active participants or passive observers, improving the actual and perceived quality of the justice being done. However, should the ICC choose to pursue this path, it needs to

[1] M. Kimpimäki, 'Genocide in Rwanda—Is it Really Finland's Concern?', 11 *International Criminal Law Review* (*ICLR*) (2011) 155, at 175.

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make sure to prioritize the rights and interests of the victims and witnesses, because there is no point in localizing trial when those principles are disregarded.

2. THE RELATIONSHIP BETWEEN PERCEPTION AND LEGITIMACY IN INTERNATIONAL CRIMINAL LAW

A. The Perception Problem at International Criminal Courts and Tribunals

International criminal justice has wrestled with a perception problem since its advent. The first international criminal trials, in Nuremberg and Tokyo, have been dismissed by some as representations of 'victor's justice' because neither made an effort to consider whether individuals from any of the Allied countries bore responsibility for crimes committed during the Second World War.[2] These negative perceptions about the way in which justice was sought have led some to discount the value of the post-World War II trials. The problem of perception has persisted at the modern international criminal courts and tribunals and is perhaps best exemplified by the experience at the International Criminal Tribunal for the former Yugoslavia (ICTY). At the time of the ICTY's founding, its first president, Antonio Cassese, expressed the belief that holding fair trials at the ICTY would allow feelings of hatred and resentment to dissipate, which would in turn lead to reconciliation and long-term peace.[3] While it is doubtful that trials can actually facilitate peace and reconciliation in the way Cassese hoped, it is also somewhat beside the point.[4] What he critically overlooked is that trials must not only be fair, they must also be perceived as being fair to produce the sort of impact on people's attitudes necessary for reconciliation and peace. That can only be accomplished if the members of communities affected by the relevant criminality believe in the legitimacy of the criminal justice institutions holding those trials and the reliability of the decisions they produce.

Within this context, the trials held by the ICTY do not appear to have had the intended effect on local perceptions. This is borne out by the belief held by different ethnic groups that the ICTY was biased against them.[5] A study conducted of multiple surveys of different ethnic groups in the former Yugoslavia found that communal distrust for the ICTY primarily resulted from the perception that the Tribunal was biased and lacked objectivity with regard to their own ethnic group.[6] These perceptions of bias are particularly interesting in light of scholarship findings that the trials at the ICTY were fair. One study into the fairness of post-conflict trials held between 1946 and 2005 found that trials conducted at the ICTY were the most impartial (in the sense that individuals from different parties to the conflict were treated on equal terms) of all the post-conflict trials studied.[7] The ICTY has also been described by commentators as 'a successful experiment in international criminal justice'.[8] These positive conclusions about the Tribunal's work demonstrate an obvious disconnect between how trials at the ICTY were conducted and the ways in which they were perceived.

[2] Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, *Tadić* (IT-94-1-T), Trial Chamber, 10 August 1995, § 21.

[3] UN Security Council, *Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991*, UN Doc S/1994/1007, 29 August 1994, §§ 15–17.

[4] I. Vukušić, 'Archives of Mass Violence: Understanding and Using ICTY Trial Records', 70 *Comparative Southeastern European Studies* (2022) 585, at 587.

[5] *Ibid*.

[6] M. Milanović, 'The Impact of the ICTY on the Former Yugoslavia: An Anticipatory Postmortem', 110 *The American Journal of International Law* (2016) 233, at 242.

[7] C.V. Steinert, 'Trial Fairness Before Impact: Tracing the Link Between Post-Conflict Trials and Peace Stability', 45 *International Interactions* (2019) 1003, at 1007, 1025.

[8] C. Hillebrecht and A. Huneeus with S. Borda, 'The Judicialization of Peace', 59 *Harvard International Law Journal* (2018) 279, at 283.

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The discrepancy between how the work of international criminal justice institutions is conducted and how it is perceived is not limited to the context of the former Yugoslavia. Similar observations have also been made about the proceedings at the International Criminal Tribunal for Rwanda (ICTR) and the ICC.[9]

It should be noted that trials can rarely change local perceptions on their own and often need to be accompanied by other outreach efforts. One of the ICTY's greatest oversights as an institution was waiting for more than 5 years to establish an outreach programme directed at the people living in the countries that once made up Yugoslavia. This failure allowed actors within the different former Yugoslavian countries to reframe the Tribunal's work in a way that advanced their own political interests and viewpoints.[10] As a result, by the time the ICTY launched its own outreach efforts, opinions about the Tribunal's work were already entrenched in local communities.[11] This was further exacerbated by the fact that the ICTY's outreach programme was chronically understaffed and underfunded, leaving it poorly equipped to counter the misleading and nationalistic rhetoric about it that was being advanced by domestic political leaders.[12] Had the ICTY ensured greater local visibility for its trials from the start, both through localized trials and increased outreach efforts, it may have been better able to counter those narratives aimed at undermining its legitimacy and effectiveness.

B. Improving Perceptions Through Localized Trials

The key question then becomes: how do international criminal justice institutions increase local visibility so as to improve perceptions about their work? The answer is multi-faceted and complex, but one aspect of it could include holding trials closer to the locus of the activities that are the subject of the trial.[13] International criminal trials are, for the most part, conducted outside of the country or countries in which the crimes charged are alleged to have occurred, and often thousands of kilometres away. Trials at the ICTY, the ICC, the Special Tribunal for Lebanon and the Kosovo Specialist Chambers are, or have been, held in the Netherlands. The ICTR conducted its trials in Tanzania. The Special Court for Sierra Leone (SCSL) held most of its trials in Sierra Leone with the exception of the trial of Charles Taylor, which took place in The Hague. Only the Extraordinary Chambers in the Courts of Cambodia (ECCC) held all of its trials in the country in which the alleged crimes took place.

Research shows that the proximity of the trial to the location of the alleged crimes can have a positive impact on how those proceedings are perceived by victims and affected communities. Victims have indicated that they are more likely to believe that a court is not biased if they are able to attend and participate in trials.[14] This is supported by data from Sierra Leone and Liberia showing that the proximity of trials impacts perceptions of legitimacy about international criminal justice institutions. Following the closure of the SCSL,

[9] S. Darcy, 'Imputed Criminal Liability and the Goals of International Criminal Justice', 20 *Leiden Journal of International Law* (2007) 377, at 394; G. Dancy, Y.M. Dutton, T. Alleblas and E. Aloyo, 'What Determines Perceptions of Bias toward the International Criminal Court? Evidence from Kenya', 64 *Journal of Conflict Resolution* (2020) 1443, at 1446.

[10] P. Finci, 'Was It Worth It? A Look Into the ICTY's Outreach Programme', in C. Stahn et al. (eds), *Legacies of the International Criminal Tribunal for the Former Yugoslavia: A Multidisciplinary Approach* (Oxford University Press (OUP), 2020) 355, at 356.

[11] D. Orentlichter, *Some Kind of Justice: The ICTY's Impact in Bosnia and Serbia* (OUP, 2018), at 309.

[12] Finci, *supra* note 10, at 369.

[13] Darcy, *supra* note 9, at 394; N.J. Kritz, 'Coming to Terms with Atrocities: A Review of Accountability Mechanisms for Mass Violations of Human Rights', 59 *Law & Contemporary Problems* (1996) 127, at 131; Orentlichter, *supra* note 11, at 309.

[14] B. McGonigle Leyh, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Intersentia, 2011), at 47–48, citing A-M. de Brouwer and M. Groenhuijsen, 'The Role of Victims in International Criminal Proceedings', in G. Sluiter and S. Vasiliev (eds), *International Criminal Procedure: Towards a Coherent Body of Law* (CMP Publishing, 2009) 149, at 153–154.

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Sierra Leoneans and Liberians were surveyed about the impact and legacy of the court.[15] Almost 80% of respondents indicated that the SCSL had accomplished what it set out to achieve, with 82% stating that the Court could be trusted to bring justice and 84% saying the Court had 'done a good job' in holding those responsible for committing atrocity crimes to account.[16] Further, 91% of Sierra Leoneans believed that the SCSL was directly responsible for bringing peace and stability to the country, which many respondents attributed to the physical presence of the court in Freetown.[17] Similarly, a study of perceptions amongst Cambodians about the ECCC found that 95% believed that the ECCC was a positive force in Cambodian society, a belief which was in part attributed to 'unprecedented access' to the locally held proceedings.[18]

Conversely, the distance between where a court sits and the community it wishes to communicate with has been shown to disrupt judicially constructed narratives from reaching their intended audiences or allow those narratives to become filtered so as to lose much of their actual meaning.[19] As one resident of the eastern part of the Democratic Republic of Congo pointed out, the *Lubanga* and *Katanga* trials were both held in the Hague, meaning that 'nobody [in the community] knew what actually happened there'.[20] That sentiment was reinforced by victims in the *Ntaganda* case. One said of the ICC '[w]here are they? We cannot see them or their work', while another stated '[w]e will remember that the trials of Thomas Lubanga and Germain Katanga took place in The Hague … so nobody knew what actually happened there.'[21] These statements suggest that local communities are interested in observing the work being done by international criminal justice institutions and view these organizations with greater scepticism when they have limited or no access to information about the trial.

Increasing public awareness about international criminal courts and tribunals and their activities can also improve perceptions about the legitimacy of those institutions.[22] Legitimacy, in this context, should be understood as the belief amongst the public that a court or tribunal has the right to exercise authority over matters falling within its jurisdiction.[23] People will support the continued operation of institutions they perceive to be legitimate, and those institutions are more likely to continue to receive support from the public even when they make decisions that the public disagrees with.[24] The difficulty for international criminal justice organizations is that they lack the inherent legitimacy of domestic courts, requiring them to build their legitimacy from the bottom up.[25]

[15] L.A.A. Smith and S. Meli, *Making Justice Count: Assessing the Impact and Legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia* (No Peace Without Justice, 2012).

[16] *Ibid.*, at 27, 29.

[17] *Ibid.*, at 14, 21.

[18] Open Society Justice Initiative, *Performance and Perception: The Impact of the Extraordinary Chambers in the Courts of Cambodia* (Open Society Foundation, 2016), at 71, 101.

[19] B. Sander, 'The Method Is the Message: Law, Narrative Authority and Historical Contestation in International Criminal Courts',19 *Melbourne Journal of International Law* (2018) 299, at 305; Orentlichter, *supra* note 11, at 309.

[20] Radio Canal Révélation, 'Reactions from the Population of Bunia to the Possibility of Holding Closing Statements in Situ', International Justice Monitor, 1 March 2018, available online at https://www.ijmonitor.org/2018/03/reactions-from-the-population-of-bunia-to-the-possibility-of-holding-closing-statements-in-situ/ (visited 18 March 2025).

[21] M. Goetz, 'Victims' Experiences of the International Criminal Court's Reparations Mandate in the Democratic Republic of Congo', in C. Ferstman and M. Goetz (eds), *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity: Systems in Place and Systems in the Making* (2nd edn., Brill, 2020) 415, at 429.

[22] Y.M. Dutton, 'Bridging the Legitimacy Divide: The International Criminal Court's Domestic Perception Challenge', 56 *Columbia Journal of Transnational Law* (2017) 71, at 78.

[23] E. Voeten, 'Public Opinion and the Legitimacy of International Courts', 14 *Theoretical Inquiries in Law* (2013) 411, at 414.

[24] N. Combs, 'Legitimizing International Criminal Justice: The Importance of Process Control', 33 *Michigan Journal of International Law* (2012) 321, at 371–372; see also Dutton, *supra* note 22, at 78.

[25] D. Luban, 'Fairness to Rightness: Jurisdiction, Legality, and the Legitimacy of International Criminal Law', in S. Besson and J. Tasioulas (eds), *The Philosophy of International Law* (OUP, 2010) 569, at 579, 588.

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Perception and legitimacy are not, however, matters purely of concern to international courts and tribunals. While domestic courts gain inherent legitimacy as an expression of the sovereignty of the state in which they are constituted, it should not be taken for granted that they will maintain their legitimacy in perpetuity. Domestic courts can, and do, lose that legitimacy, particularly when people lack the belief that a court is being properly used to exercise authority. This can be particularly true of domestic courts that conduct universal jurisdiction trials. Universal jurisdiction is, by its very nature, an extra-territorial exercise of jurisdiction. It casts certain crimes as being of universal concern and theoretically creates an obligation on all states to try individuals alleged to have perpetrated these crimes.[26] As a result, its application necessarily impacts the sovereignty of the state in whose territory the crimes allegedly took place.[27] That infringement is justified on the basis that the territorial state has failed to meet its responsibility to conduct its own domestic prosecution, and that the crimes alleged are of such seriousness that they cannot be left unaddressed.[28] This can leave the territorial state and its citizens feeling aggrieved and lead it and its allies to reject the legitimacy of universal jurisdiction proceedings as a violation of state sovereignty.[29]

Building legitimacy is necessarily a slow process, as it takes time for the public to engage with new institutions, particularly ones that may not immediately seem relevant in their day-to-day lives.[30] This requires those institutions to behave in ways that will improve public awareness and confidence. That process starts with ensuring the consistent delivery of high-quality justice by conducting trials that are scrupulously fair to all involved parties.[31] Efforts then need to be made to communicate those fair legal outcomes to the public to improve awareness of the court and the reliability of the justice it produces.[32] Greater awareness of a court and its functions is thought to play a significant role in building the legitimacy needed for a court's decisions to be accepted, even when they may not meet the expectations of the interested parties.[33]

Enhancing legitimacy is made easier when trials are held closer to the communities affected by the criminality being scrutinized by the criminal justice institution in question. Doing so gives local media outlets greater access to the proceedings, allowing them to directly report on the goings on during the trial to local communities. It also provides individuals directly impacted by the alleged criminality the opportunity to attend trial and observe the efforts being made by the court to ensure the proceedings are fair for all of the participants. This makes the entire process more visible, which has proven to also make it more trustworthy. Therefore, it becomes necessary to consider whether the ICC, in an effort to maintain its relevance and improve its legitimacy, should explore ways to hold trials away from its seat in The Hague and closer to the location of the alleged criminality. This first requires a consideration of the circumstances upon which the Rome Statute allows such a move and how the ICC has responded to past suggestions that trial be moved. It then necessitates an evaluation of situations in which domestic courts have relocated trials during

[26] K. Frodé, 'Universal Jurisdiction as International Solidarity with Survivors of Atrocity Crimes: Lessons from Afghanistan's Diaspora', 22 *Journal of International Criminal Justice* (*JICJ*) (2024) 463, at 464.

[27] D. Hovell, 'The Authority of Universal Jurisdiction', 29 *European Journal of International Law* (2018) 427, at 438.

[28] A. Chehtman, *The Philosophical Foundations of Extraterritorial Punishment* (OUP, 2019), at 119.

[29] F. Mégret, 'The Elephant in the Room in Debates about Universal Jurisdiction: Diasporas, Duties of Hospitality, and the Constitution of the Political', 6 *Transnational Legal Theory* (2015) 89, at 96.

[30] S. Dothan, 'How International Courts Enhance their Legitimacy', 14 *Theoretical Inquiries in International Law* (2013) 455, at 457.

[31] *Ibid.*; see also Minority Opinion of Judge Christine Van den Wyngaert, *Katanga* (ICC-01/04-01/07), Trial Chamber II, 7 March 2014, § 311; C.H. Wheeler, *Fairness and the Goals of International Criminal Trials: Finding a Balance* (Routledge, 2023), at 12.

[32] Dutton, *supra* note 22, at 78.

[33] J.L. Gibson, G.A. Caldeira, and V. Baird, 'On the Legitimacy of National High Courts', 92 *American Political Science Review* (1998) 343, at 344–345.

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universal jurisdiction prosecutions, with a specific emphasis on the Finnish experience in the *Bazaramba* and *Massaquoi* cases.

3. THE LEGALITY OF HOLDING TRIAL AWAY FROM THE SEAT OF THE ICC

Most international criminal justice institutions, including the ICC, are permitted to hold trials, in whole or in part, in a place other than the seat of the Tribunal.[34] Article 3(1) of the Rome Statute establishes The Hague as the seat of the Court, but goes on in Article 3(3) to indicate that the Court may sit elsewhere on two conditions.[35] First, sitting outside of The Hague must be permitted by the Statute; and second, the Court must consider it desirable to hold proceedings elsewhere.[36] The ICC's Rules of Procedure and Evidence (RPE) elaborate on this by establishing that the Court may, in a particular case, decide to sit somewhere other than The Hague, to hear some or all of the case under consideration when doing so would be in the interests of justice.[37] The Chamber may seek to move the location of proceedings *proprio motu*, or at the request of either the Prosecution or the Defence, and that decision should be based on the views of the parties and the victims, as well as an assessment prepared by the Registry.[38] The state in which the Chamber is looking to hold proceedings is then consulted, and should it agree to host the Court, it is up to the Court's Presidency, in consultation with the Chamber, to decide whether to move the proceedings.[39]

The reasons for including a provision in the Rome Statute allowing the ICC to sit somewhere other than The Hague are somewhat opaque. The idea was first introduced in 1993, during the discussions about the draft statute for an international criminal court being prepared by the International Law Commission (ILC).[40] There, Ahmed Mahiou, the Algerian representative to the ILC, proposed giving the court flexibility to sit elsewhere 'in situations where it could not sit at the normal place'.[41] This was later incorporated into the 1994 draft statute, through the inclusion of Article 3(3), which stated that the ICC would be permitted to 'exercise its powers and functions on the territory of any state party and, by special agreement, on the territory of any other state'.[42] This provision remained unchanged until the Rome Conference, when it was replaced with the current formulation of Article 3(3). No reason for that change is given in the Statute's *travaux préparatoires*.[43]

It is also not entirely clear from the Rome Statute or the RPE what type of proceedings may be held outside of the seat of the Court. Both documents discuss where the Court may sit, but neither defines what proceedings constitute a sitting of the Court. Rule 100 of the RPE does refer to sitting outside of The Hague 'for such period or periods as may be required, to hear the case in whole or in part'.[44] Connecting the term 'sitting outside of The Hague' with 'hear[ing] a case in whole or in part' suggests that a sitting, at least in this

[34] Art. 3 ICCSt.; STL RPE (29 November 2010) Rule 44; ICTY RPE (as amended 8 July 2015) Rule 4; ICTR RPE (as amended 13 May 2015) Rule 4.

[35] Art. 3 ICCSt.

[36] *Ibid.*

[37] ICC RPE (as amended on 27 November 2013) Rule 100.

[38] *Ibid.*

[39] *Ibid.*

[40] W.A. Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (2nd edn., OUP, 2016), at 93.

[41] International Law Commission (ILC), 'Summary Record of the 2299th Meeting', UN Doc A/CN.4/SR.2299, 21 May 1993, at § 20.

[42] ILC, 'Report of the International Law Commission on the work of its forty-sixth Session (2 May-22 July 1994)', UN Doc A/49/10, at 28.

[43] Schabas, *supra* note 40, at 94.

[44] ICC RPE, *supra* note 37, at Rule 100(1).

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context, is a court session during which the Court is conducting its adjudicative function in a specific case. This understanding is consistent with more general definitions of a court sitting.

There are three different types of proceedings at the ICC in which a Chamber might be described as 'hearing' the case in whole or in part. They are the Confirmation of Charges hearing, the trial, and any appeals proceedings. The definition of a hearing should be confined to these three types of proceedings, as it is only during these three that factual evidence and legal arguments are heard by the Court. Article 61 governs the way in which Confirmation of Charges hearings are to be conducted, and it is silent as to the location of the hearing.[45] Similarly, Article 83, which discusses the circumstances under which an appeal is to be heard, also does not include any provisions relating to the location in which those proceedings are held.[46] Trial is the only proceeding that the Statute specifically identifies as being susceptible to being held somewhere other than at the seat of the Court, and even then, there is a presumption that trial will be held in The Hague, 'unless otherwise decided'.[47] That should not be taken to mean that a trial is the only proceeding that can be conducted outside of the seat of the court, only that it is the only proceeding where the possibility is specifically mentioned in the Rome Statute. In fact, it has been suggested that because the Appeals Chamber has 'all of the powers of the Trial Chamber' pursuant to Article 83, it too can make use of Article 62.[48] Further, the fact that the ICC's Pre-Trial Chambers have repeatedly considered moving Confirmation of Charges hearings would suggest that the Court believes that those proceedings also fall under the purview of Article 3(3).[49]

The ICC has yet to avail itself of the possibility of moving proceedings to another country, despite the fact that it has been faced with multiple requests to do so. In the two Kenya cases (*Kenyatta et al.* and *Ruto et al.*), consideration was given to holding both the Confirmation of Charges hearings and part or all of the trials outside of The Hague.[50] In both instances, it was decided that no part of the proceedings would be moved. The matter was not substantively resolved in *Kenyatta*, as the Chamber declared the matter moot following the dismissal of charges against Francis Muthaura, the defendant who made the initial request to move proceedings.[51] The decision was made in the *Ruto* case not to move parts of the trial to Kenya after a plenary of the judges failed to vote in sufficient numbers to do so (at the time the relevant rule required that a two-thirds majority vote in favour of moving the trial, it has since been changed to only require a simple majority).[52] The judges in *Ruto* opposing the move expressed concerns about the cost of doing so, potential threats to security, a failure to consult all of the affected communities and increased threats to the integrity of the trial in the form of witness intimidation and tampering.[53]

[45] Art. 61 ICCSt.

[46] Art. 83 ICCSt.

[47] Art. 62 ICCSt.

[48] O. Triffterer and T. Zimmerman, 'Article 62: Place of Trial', in O. Triffterer and K. Ambos (eds), *Rome Statute of the International Criminal Court: A Commentary* (3rd edn., Hart 2016), at 1559.

[49] Decision Requesting the Parties to Submit Information for the Preparation of the Confirmation of Charges Hearing, *Kenyatta et al.* (ICC-01/09-02/11-181), Pre-Trial Chamber, 20 July 2011 ('*Kenyatta* Decision Requesting the Parties'); Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing, *Ruto et al.* (ICC-01/09-01/11-106), Pre-Trial Chamber, 3 June 2011 ('*Ruto* Decision Requesting Observations'); Public Redacted Version of 'Decision on the Prosecution Request for an *In Situ* Hearing', *Kony* (ICC-02/04-01/05-564-Red), Pre-Trial Chamber I, 28 February 2025.

[50] *Kenyatta* Decision Requesting the Parties, *supra* note 49, at § 14; Order for Further Observations on Where the Court Shall Sit for Trial, *Kenyatta et al.* (ICC-01/09-02/11-781), Trial Chamber, 29 July 2013, at § 9; *Ruto* Decision Requesting Observations, *supra* note 49, at § 5; Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place where the Court Shall Sit for Trial in the case of The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, *Ruto et al.* (ICC-01/09-01/11-875-Anx), Plenary of Judges, 26 August 2013.

[51] Transcript, *Kenyatta et al.* (ICC-01/09-01/11), Pre-Trial Chamber, 6 September 2013, at 3, lines 7-13.

[52] *Ibid.*

[53] *Ibid.*, §§ 22c23.

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The ICC considered this matter again in a somewhat different light in the *Ntaganda* case. There, the Trial Chamber recommended to the Court's Presidency that the parties make their opening statements in Bunia, Democratic Republic of Congo.[54] The cited purpose of holding part of the trial outside of The Hague was to bring the Court's work 'closer to the most affected communities' by enabling the attendance of people from those communities, including their leaders, better facilitating local and international media coverage, producing and disseminating a summary of the hearings, and the physical proximity of the hearings to the crimes.[55] In rejecting that request, the presidency acknowledged that holding proceedings closer to the affected communities would produce some benefits, but that they were outweighed by the cost of moving proceedings and the potential security risks to the victims, the witnesses, their families, and to the proceedings themselves.[56]

The defence in *Gbagbo* made a similar request in seeking to hold the trial's opening statements in Côte d'Ivoire. They supported their application by arguing that it would be in the interests of justice, contribute to the ICC's goal of raising public awareness and outreach, and allow local communities to take ownership over justice, which could in turn facilitate reconciliation.[57] In considering this issue, the *Gbagbo* Trial Chamber followed the lead of the presidency in *Ntaganda* by indicating that the benefits of bringing the work closer to affected communities had to be balanced against the risks of doing so. In determining that balance, the *Gbagbo* Trial Chamber identified four factors to consider, including: whether the request would be supported by the potential host state; the security situation; the risk to the safety and well-being of the accused; and the time and resources needed to make the necessary arrangements.[58] Having considered those factors, the *Gbagbo* court concluded that it could not recommend holding the opening statements outside of The Hague.[59]

The ICC has repeatedly recognized that holding trials closer to local communities could benefit both the victims of the crimes being prosecuted and the court itself. However, every time the court has had the opportunity to move trial, it has found that the risks of doing so outweigh the benefits. For the most part, those decisions have been based on the estimated cost of moving trial and the possible risk to the security of victims and witnesses. The seemingly intractable nature of those risks raises concerns that it will be difficult to ever find a situation in which the Court will agree to hold trials outside of The Hague. The ICC has faced budgetary limitations since its inception, a situation exacerbated by the zero nominal growth budget model adopted by some of the ICC's largest state funders.[60] Should this budgetary situation persist, there is no reason to believe that sufficient funds will ever become available to move proceedings away from The Hague. This concern was reinforced during the recent decision not to move the confirmation of charges hearing in the *Kony* case to Uganda.[61] There, the Pre-Trial Chamber justified its decision not to move the proceedings in part on the fact that doing so would constitute a 'serious burden' on the Court's finances,

[54] Recommendation to the Presidency on holding part of the trial in the State concerned, *Ntaganda* (ICC-01/04-02/06-526), Trial Chamber, 19 March 2015, at 14.

[55] *Ibid*., at §§ 22–23.

[56] Public Redacted Version of Decision on the recommendation to the Presidency on holding part of the trial in the State concerned, *Ntaganda* (ICC-01/04-02/06-645-Red), Presidency, 15 June 2015, at § 26.

[57] Decision on the Gbagbo Defence Request to hold opening statements in Abidjan or Arusha, *Gbagbo and Blé Goudé* (ICC-02/11-01/15-316) Trial Chamber I, 26 October 2015 ('*Gbagbo and Blé Goudé* Decision'), §§ 8–9; Transcript, *Gbagbo and Blé Goudé* (ICC-02/11-01/15), Trial Chamber I, 25 October 2015, at 54, lines 6–25.

[58] *Gbagbo and Blé Goudé* Decision, *supra* note 57, at § 15.

[59] *Ibid*.

[60] C. Hillebrecht, *Saving the International Justice Regime* (Cambridge University Press (CUP), 2021), at 128–129.

[61] Public redacted version of 'Decision on the Prosecution Request for an *In Situ* Hearing', *Kony* (ICC-02/04-01/05-564-Red), Pre-Trial Chamber III, 28 February 2025, § 32.

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particularly during a time when the ICC is 'under increasing pressure to make the most effective use of its limited resources'.[62]

Further, while security risks vary from situation to situation, one thing all of the matters considered by the ICC to date have had in common is that they exist in conflict or post-conflict settings. These are, almost by definition, locales that suffer from heightened security risks as they are in the midst of armed conflict or its immediate aftermath. In such situations, there will always be some security risks, and using them as a justification to refuse to hold trials outside of The Hague indicates that the ICC is willing to forego a practice that could improve its overall legitimacy and better enable it to carry out its mission to end impunity. In doing so, the ICC may be causing individuals and groups to consider using other venues in which to pursue accountability efforts for international crimes.

4. THE FINNISH APPROACH TO UNIVERSAL JURISDICTION TRIALS

The failure of international criminal courts and tribunals to clearly communicate to affected communities about their work, either through holding proceedings closer to the site of the crime or in some other way, has caused many to look elsewhere for an effective response to atrocity crimes. In that context, the universal jurisdiction principle is increasingly being used to hold trials in domestic criminal courts against individuals accused of international crimes. Finland has been in the vanguard of that movement, although it has held relatively few such trials when compared to France, Germany or Belgium.

Finland, like many other countries, permits domestic prosecutions for crimes committed outside of Finland on a multitude of different jurisdictional bases. A person can be tried in Finland for crimes committed elsewhere if the offence is: directed at Finland; an act of corruption committed by a public official; directed against an actual or legal person who is a citizen of Finland or a resident alien thereof (passive personality jurisdiction); committed abroad by a citizen or permanent resident of Finland (active personality jurisdiction); or where the crime committed is classified as an international offence on the basis of it appearing in an internationally binding agreement, statute or regulation (universal jurisdiction).[63] A decree issued by the Finnish government identifies numerous international offences that are prosecutable in Finland under universal jurisdiction, including crimes against humanity, war crimes and genocide.[64] In 2015, Finland also criminalized the crime of aggression, which, while not explicitly described as an international offence, is drafted in such a way as to indicate that it would be regarded as such for jurisdictional purposes.[65] This is further reinforced by its placement in the criminal code amongst the other specifically identified international offences.[66]

The Finnish courts have only used the provisions on international offences and universal jurisdiction on a handful of occasions. In total, there have been seven universal jurisdiction trials in Finland, one of which had just concluded at the time of writing. Other than the *Bazaramba* and *Massaquoi* cases, only one of those cases, the *Iraqi Twin Brothers* case, involved direct witness testimony.[67] The suspects in the other three cases were all charged on the basis of images posted on social media that depicted them committing war

[62] *Ibid.*, at § 33.
[63] Finland Criminal Code (No. 39/1889; amendments up to 433/2021 included), Ch. 1(3)–(7).
[64] *Ibid.*, at Ch. 1(7).
[65] *Ibid.*, at Ch. 11(4)(a).
[66] *Ibid.*
[67] Judgment, *Hamad and Hamad* (R 16/6930) District Court of Pirkanmaa (Finland), 24 May 2017 ('Judgment, *Hamad and Hamad*').

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crimes.[68] Those cases were largely decided on the basis of the images themselves, with the testimony mostly being limited to that provided by the accused and an expert witness.[69] The *Iraqi Twin Brothers Case* also involved visual evidence, specifically an ISIS propaganda video in which one of the brothers was alleged to have appeared, but unlike the other universal jurisdiction trials that proceeded almost exclusively on that evidence, it was underpinned by witness testimony.[70]

Despite the relative rarity of these sorts of cases in the Finnish system, the *Bazaramba* and *Massaquoi* cases stand out as being possibly instructive to the ICC. Both cases involve non-Finnish nationals who were accused of crimes committed in Africa (Bazaramba's crimes allegedly occurred in Rwanda, while Massaquoi's were thought to have taken place in Liberia) being prosecuted in Finnish District Courts on the basis of universal jurisdiction. What makes these cases interesting, and worthy of further scrutiny, is the fact that in both instances the district courts handling the matters moved the place of trial for part of the proceedings away from Finland and closer to the affected communities. The decisions to relocate trials were largely driven by pragmatism, justified on the basis that it makes more sense for a handful of Finnish judges, lawyers and court officials to temporarily relocate to Africa than for dozens of witnesses to travel to Finland. This approach to conducting trial has the tendency of ensuring that relevant witnesses are able to testify without causing tremendous disruption to their lives. It also results in at least some of the proceedings being held in proximity to the victims, something that can significantly improve their perceptions that justice is being done. By examining the reasons for doing this and the result of those decisions, it may be possible to extrapolate how the ICC might adopt similar practices.

A. Procedural Background in *Bazaramba* and *Massaquoi*

The first opportunity for a Finnish Court to hold a universal jurisdiction trial arose following the arrest of François Bazaramba by the Finnish police in 2007. Bazaramba, a Rwandan national, first arrived in Finland in 2003 as a refugee.[71] Three years later, in 2006, Rwanda issued an arrest warrant alleging that Bazaramba had been involved in the 1994 genocide, and requested his extradition to Rwanda to stand trial.[72] It was suggested that Bazaramba was a member of an extremist Hutu party, the *Mouvement démocratique républicaine* party, and part of the inner circle of the mayor of the Nyakizu commune, Ladislas Ntaganzwa.[73] It was thought that Bazaramba used his position of authority to order the murder of Tutsis in the Maraba sector of the commune, to incite others to violence against Tutsis, to acquire weapons and other implements used in the genocide, and to destroy Tutsi-owned property.[74] Bazaramba was arrested in Finland in 2007 and held in custody until February 2009, at which point Finland refused to extradite him to Rwanda due to concerns that he would not be able to receive a fair trial there.[75]

[68] Judgment, *Salman* (R 16/1304) District Court of Pirkanmaa (Finland), 18 March 2016; Judgment, *Hilal* (R 16/214) District Court of Kanta-Häme (Finland), 22 March 2016; Judgement Delivered in Office, *Hasan* (R 18/6593), District Court of Helsinki (Finland), 10 January 2019.

[69] *Ibid.*

[70] Judgment, *Hamad and Hamad*, *supra* note 67.

[71] Judgment, *Bazaramba* (R 09/404) District Court of Itä-Uusimaa (Finland), 11 June 2010 ('*Bazaramba* Judgement'), at 37.

[72] Kimpimäki, *supra* note 1, at 155.

[73] *Bazaramba* Judgment, *supra* note 71, at 5.

[74] *Ibid.*, at 5–8.

[75] D. Taylor, 'Genocide in Rwanda: The Search for Justice 15 Years on: An Overview of the Horrific 100 Days of Violence, the Events Leading to Them and the Ongoing Search for Justice after 15 Years', 4 *Hague Justice Journal* (2009) 71, at 78; see also M. Klamberg, 'Prosecution of Genocide v. The Fair Trial Principle', 8 *JICJ* (2010) 289, at 302.

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The decision not to extradite was based, at least in part, on a decision by the Appeals Chamber of the ICTR in *Munyakazi* in which it refused to transfer the case under its jurisdiction to the domestic Rwandan court system.[76] The *Munyakazi* Appeals Chamber was particularly concerned with whether the domestic courts would be able to properly protect defence witnesses from outside influence and violence, and with whether Munyakazi would be subjected to forms of punishment that are impermissible under international law.[77] Following its decision not to extradite Bazaramba, the legal principle of *aut dedere aut judicare* obliged Finland to prosecute him.[78] Accordingly, a prosecution order was issued in May 2009, and the trial started later that year.[79] Bazaramba was tried for a number of different crimes, including two counts of genocide based on the allegations that he was involved in killing Tutsis with the purpose of destroying the group in whole or in part; and inflicting upon Tutsis conditions of life calculated to bring about the destruction of the group in whole or in part.[80]

Although the trial was conducted in a Finnish Court under Finnish law, international law was given some interpretational effect in recognition of the fact that it was a universal jurisdiction prosecution where none of the alleged crimes occurred in Finland and the accused and the victims were not Finnish.[81] The Court was specifically interested in using international sources to evaluate whether genocide requires a showing that an advanced plan existed to carry out the substantive acts constituting the crime.[82] The Court ultimately concluded that it did not, basing its opinion on existing jurisprudence from the ad hoc tribunals and legal scholars.[83] After applying the Finnish definition of genocide, as interpreted by international law, to the facts, the court concluded that Bazaramba was guilty of both forms of genocide alleged against him.[84]

The second Finnish case to relocate part of the proceedings to Africa involved defendant Gibril Massaquoi and his alleged actions in Liberia in the early 2000s. Massaquoi became affiliated with the Revolutionary United Front (RUF), an armed group operating in Liberia and Sierra Leone during the 1990s and 2000s, in 1991.[85] He rose through the ranks, eventually becoming a high-ranking member and personal assistant to the RUF's leader, Foday Sankoh.[86] The RUF's primary focus was the overthrow of the Sierra Leonean government; however, it would also cross over into Liberia to assist Charles Taylor when his government came under attack from dissident forces within Liberia. The RUF's actions in Sierra Leone were the subject of one of the cases tried at the SCSL, resulting in members of the group being convicted of crimes including murder, rape, sexual slavery, mutilation, enslavement, pillage, committing acts of terror and using child soldiers.[87] Massaquoi avoided facing accountability for his role played in the violence in Sierra Leone by agreeing to cooperate with the SCSL Prosecutor and giving evidence in the case brought against members of the

[76] Decision on the Prosecution's Appeal Against Decision on Referral Under Rule 11*bis*, *Munyakazi* (ICTR-97-36-R11bis), Appeals Chamber, 8 October 2008.

[77] *Ibid.*, § 50.

[78] A. Caligiuri, 'Governing International Cooperation in Criminal Matters', 18 *ICLR* (2018) 244, at 245.

[79] Kimpimäki, *supra* note 1, at 155.

[80] *Bazaramba* Judgment, *supra* note 84, at 5–6.

[81] *Ibid.*, at 29.

[82] *Ibid.*

[83] *Ibid.*, at 30–31; citing Judgment and Sentencing, *Bagosora et al.* (ICTR-98-41), Trial Chamber, 18 December 2008; Judgement, *Jelisić* (IC-95-10-A), Appeals Chamber, 5 July 2001; G. Werle, *Principles of International Criminal Law* (Asser Press, 2005).

[84] *Bazaramba* Judgment, *supra* note 71, at 112.

[85] Judgment, *Massaquoi* (R 21/370) District Court of Pirkanmaa (Finland), 29 April 2022 ('*Massaquoi* Judgment'), at 5 (translated by author).

[86] *Ibid.*

[87] Judgement, *Sesay et al.* (SCSL-04-15-T) Trial Chamber, 26 October 2009, 677–687.

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Armed Forces Revolutionary Council (AFRC), a political and military group that had worked in partnership with the RUF.[88] As a result of his cooperation, Massaquoi was granted immunity from prosecution by the SCSL and was allowed to relocate to Finland, living in the city of Tampere from 2008 until the time of his arrest in 2020.[89]

Massaquoi's alleged crimes committed in Liberia were brought to the attention of the Finnish authorities after two non-governmental organizations, Civitas Maxima and its Liberian sister organization the Global Justice Research Project (GJRP), commissioned a Finnish law firm to file a report against him with the Office of the Prosecutor General.[90] That caused the Finnish Central Criminal Police (KRP) to open an investigation, which would ultimately result in the KRP travelling to Liberia to investigate the claims.[91] The outcome of that investigation led to the issuance of an indictment against Massaquoi for crimes occurring in Liberia between 2001 and 2003, including murder, rape, aggravated war crimes and the aggravated violation of human rights during a state of emergency.[92] Trial began in the Finnish city of Tampere in February 2021, with the Court issuing its decision in April 2022, acquitting Massaquoi of all charges.[93] The charges against Massaquoi were confirmed on appeal in January 2024, with part of that proceeding also being conducted in Liberia for the purpose of taking additional witness testimony.[94]

B. Moving Proceedings to Africa

The *Bazaramba* and *Massaquoi* courts faced a variety of challenges in hearing these cases. The most significant came in the form of how to access the witnesses so they could have the opportunity to testify during the trial. The *Bazaramba* case was being tried in the District Court of Itä-Uusimaa (sitting in Porvoo, a city approximately 50 kilometres east of Helsinki) while the witnesses were based in Rwanda or Tanzania. This led the court to decide that the best way to hear the evidence was for it to move to Rwanda rather than trying to bring the witnesses to Finland.[95] This was made possible by the willingness of the Rwandan government to cooperate with the Finnish prosecution, despite the fact that the prosecution was only taking place in Finland because its government doubted the fairness of the Rwandan criminal justice system.[96] Interestingly, there does not appear to be any provision in Finnish legislation allowing trials to be moved to another country. Instead, the decision was apparently made following a request from the Prosecution, and was unilaterally agreed to by the judges sitting on the case without any objection from the defence.[97] The court accepted the request to move trial as it seemed more practical to move a small group of people from Finland to Rwanda than to move more than 50 witnesses from Rwanda and Tanzania to Finland.[98]

[88] *Massaquoi* (Judgment), *supra* note 85, at 6; see generally Judgement, *Brima et al.* (SCSL-04-16-T), Trial Chamber, 20 June 2007.

[89] J. Böhme, 'The Traveling Tribunal', *Die Ziet*, 5 June 2022 (reprinted in English by the European Press Prize) available online at https://www.europeanpressprize.com/article/the-travelling-tribunal/ (visited 18 March 2025).

[90] *Massaquoi* Judgment, *supra* note 85, at 719.

[91] *Ibid.*

[92] *Ibid.*

[93] *Ibid.*, at 719, 721.

[94] 'Press Release', Turku Court of Appeal: Judgment of the Court Appeal in a criminal case R 22/860, 31 January 2024, available online at https://www.justiceinfo.net/wp-content/uploads/Finland_Massaquoi-judgment-31-01-2024_@Turku-court-of-appeal.pdf (visited 19 June 2025).

[95] Kimpimäki, *supra* note 1, at 171–172.

[96] *Ibid.*; Klamberg, *supra* note 75, at 302.

[97] Interview with an attorney for the Prosecution in the *Bazaramba* case (10 May 2024).

[98] Correspondence with a senior court official in the District Court of Itä-Uusimaa (3 May 2024). Held on file with the author.

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The decision to relocate proceedings in *Bazaramba* was complicated by the fact that a number of witnesses living in Tanzania refused to travel to Rwanda, causing the Court to also go to Tanzania to hear their testimony.[99] Despite these challenges, a member of the court would later comment that the actual taking of evidence did not differ much from how it would have been done in Finland, and that the court's proximity to the places in which the alleged crimes took place gave the court a better perspective upon which to base its decision.[100] Further, the Court concluded in its judgment that the witnesses were able to testify openly and appeared to be free from undue influence from the Rwandan government.[101]

The decision to move the *Massaquoi* trial to Liberia and Sierra Leone was relatively uncontroversial. The move to Africa resulted from a request by the prosecutor, Tom Laitinen, and was based on the belief that assessing the credibility of a witness is better done in person than over video-link.[102] Laitinen had also served on the *Bazaramba* prosecution team, and his request to move trial in *Massaquoi* was based on the positive experience derived from moving the earlier case. Because it was not possible for the witnesses to all travel to Finland to testify, it was decided that the Court would travel to them to ensure that the evidence would be evaluated in person. Liberia approved the request to move the trial, despite the fact that it had previously been resistant to accountability efforts relating to crimes committed during the country's two civil wars. It was thought that the decision to allow the trial to proceed was, in part due to the fact that Massaquoi is Sierra Leonean, meaning that a resulting conviction would not directly implicate any Liberian citizens for their involvement in the violence.[103] The trial moved to Liberia soon after its start in February 2021, where it remained until April, at which point it shifted to Sierra Leone.[104] The trial then moved back to Finland before returning to Africa in September 2021 to hear additional witnesses.

Choosing to move the *Bazaramba* and *Massaquoi* trials to enable better access to witnesses stands in contrast to the *Iraqi Twin Brothers* case, another Finnish universal jurisdiction prosecution that included testimony from fact witnesses. Unlike *Bazaramba* and *Massaquoi*, the *Iraqi Twin Brothers* trial was conducted in a semi-hybrid format. The judges and the accused remained in Finland for the entirety of the proceedings, and some witnesses were also heard in Finland, with others appearing remotely via videolink.[105] The remote witnesses appeared at the Iraqi Central Court in Baghdad and gave testimony under the supervision of an Iraqi judge.[106] The prosecutor, Tom Laitinen, and the defence counsel for one of the brothers, Kaarle Gummerus, both travelled to Iraq and were able to question the witnesses in person.[107]

This hybrid approach eliminated the need for the entire court to travel to Iraq, while also giving it access to testimony from witnesses that could not travel to Finland. The downside of this, and one that became an issue during the *Iraqi Twin Brothers* trial, is the unreliability of electricity and computing networks in some locations. As was noted by the Court in the *Iraqi Twin Brothers* case, power outages and network connectivity issues impacted its ability to receive remote evidence.[108] A further difficulty arose from the fact that the Iraqi judge

[99] Kimpimäki, *supra* note 1, at 171–172.

[100] Correspondence with a senior court official in the District Court of Itä-Uusimaa (3 May 2024). Held on file with the author.

[101] *Bazaramba* Judgment, *supra* note 71, at 38.

[102] Böhme, *supra* note 89.

[103] Lansana Gberie, 'Massaquoi Acquittal: What has it Wrought?', *JusticeInfo.net*, 3 May 2022, available online at https://www.justiceinfo.net/en/91667-massaquoi-acquittal-what-has-it-wrought.html (visited 18 March 2025).

[104] *Massaquoi* Judgment, *supra* note 85, at 719.

[105] Judgment, *Hamad and Hamad*, *supra* note 67, at 20 (translated by author).

[106] *Ibid*.

[107] *Ibid*.

[108] *Ibid*.

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overseeing the testimony in Iraq prevented the witnesses from answering questions about the nature of the pre-trial interrogations they were subjected to by Iraqi government officials.[109] As a result, the Finnish Court was unable to evaluate the conditions under which pre-trial statements were given, somewhat compromising their evidentiary value.

The ICC could adopt hybrid proceedings similar to those used in the *Iraqi Twin Brothers* case. The Rome Statute permits witnesses to testify using video technology, although the Statute limits its use to situations in which doing so is necessary to protect the witness, the victims, and/or the accused.[110] Some commentators have also theorized that testimony by video technology may also be possible when it is logistically impossible for the witness to appear in-person.[111] However, while the ICC is able to hold hybrid proceedings, the Finnish experience suggests it could be inadvisable to do so. In particular, the danger of power outages and other disruptions to communication technology within the country in which the witness is testifying could significantly interfere with proceedings, possibly affecting the reliability of the evidence and the overall fairness of proceedings. While hybrid trials of the type pursued in the *Iraqi Twin Brothers* case should certainly be considered when a court has no other way of conducting the proceeding, it should not be considered as a substitute for local, in-person proceedings.

C. Translation Issues

The location of the witnesses is not the only challenge Finnish universal jurisdiction trials have had to overcome. Both the *Bazaramba* and *Massaquoi* trials had to contend with difficulties arising from the languages spoken by the witnesses. Chapter 6(a) of the Finnish Criminal Procedure Act mandates that court proceedings be conducted in either Finnish or Swedish (matters can also be conducted in Sami when held in the Sami home region).[112] Not surprisingly, none of the Rwandan witnesses in *Bazaramba*, or the Liberians and Sierra Leoneans testifying in *Massaquoi*, spoke either Finnish or Swedish. This meant their testimony had to be heard in translation. That is not uncommon in international criminal proceedings; witnesses have testified through translators at international criminal justice institutions since the Nuremberg Tribunal following World War II. However, at international criminal courts and tribunals, the witness testimony is typically translated from the language being spoken by the witness into the two working languages of the Court, which are spoken or understood by the judges, the court administrators and trial counsel. Proceedings are also translated into a language that the defendant is fully fluent in, should they not speak either of the official languages of the Court.[113]

Translating directly from the language the witnesses were testifying in to Finnish or Swedish was not possible in either *Bazaramba* or *Massaquoi*. In both instances, the trial courts were unable to locate translators who could speak the languages in which the witnesses were fluent and the official languages of the court.[114] Therefore, both courts had to employ a method of double translation, with the testimony first being translated from the language spoken by the witness into French or English and then from French or English into Finnish.[115] This need for double translation created an obvious danger of

[109] *Ibid.*, at 26.

[110] Art. 69(2) ICCSt.

[111] K. Sobański, 'Evolution of Remote Participation of the Accused and Victim in International Criminal Proceedings', 25 *ICLR* (2025) 167, at 178; see also C. Stahn, *A Critical Introduction to International Criminal Law* (CUP, 2019), at 319.

[112] Finland Ministry of Justice, Criminal Procedure Act (as amended up to 733/2015) ch 6(a)(1).

[113] Art. 67(1)(f) ICCSt.

[114] Kinyarwanda was the predominant language spoken amongst the witnesses in *Bazaramba*, while the witnesses in *Massaquoi* spoke a variety of languages including Liberian English, Bandi, Mende and Krio.

[115] *Bazaramba* Judgment, *supra* note 71, at 35; *Massaquoi* Judgment, *supra* note 85, at 720.

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mistranslation, which could result in the Court misunderstanding the testimony. Translated language is inherently indeterminate, and requires not only the direct translation of words from one language to another, but it also demands that the translator account for syntactical differences between languages.[116] This is made all the more difficult in legal proceedings, as it has been found that legal terminology is even harder to translate and demands greater precision.[117] This is due to the fact that understanding legal language often requires an appreciation for the jurisdictional context in which the language is being used.[118] The *Massaquoi* court specifically recognized these challenges in its judgment when it observed that the interpretations revealed that the meaning of many words varied based on the context in which they were being used.[119] The possibility of something going wrong in this process, leading to inaccuracy or misunderstanding, is significant enough when testimony is translated from one language into another and is only heightened when it has to pass through the intermediary translation of a third language.

It should be noted that double-translating the testimony was not necessarily a product of holding part of the proceedings in Liberia and Sierra Leone. Had the witnesses appeared in Finland, a similar approach would almost certainly have been required. Further, the ICC already has a more comprehensive approach to translation, allowing testimony to be translated once, rather than twice. While this does not eliminate all of the dangers of translated testimony, it avoids the possibility of exacerbating them further, which is inherent in the double-translation process.

Despite this, in both cases, the courts seem to have accepted that the double-translation procedure was necessary due to the requirements of Chapter 6(a) of the Finnish Criminal Procedure Act. The *Bazaramba* Court took note of the risk double translation posed to the accuracy of the translation, but indicated in its decision that any significant errors had largely been avoided. The Court based that belief on the fact that Bazaramba, who speaks both Kinyarwanda and French, had very few comments about the quality of the translation, allowing for an inference that it was largely accurate.[120] While this implication may be correct, it was based on the fact that Bazaramba mostly failed to object to the translation of the testimony rather than on an affirmative statement that the interpretation was correct. Further, it also somewhat overlooks the fact that Bazaramba is not an interpreter and that he was not physically present in the courtroom when the Kinyarwanda-speaking witnesses were testifying. Studies have found that trained interpreters are less accurate when translating remotely, which makes it exceedingly likely that Bazaramba's ability to simultaneously follow the testimony and accurately evaluate the translation over video-link would also have been reduced.[121]

In *Massaquoi*, the court discussed the procedure used to receive the witnesses' testimony, but was entirely silent as to whether any parties challenged the accuracy of the translation. However, other participants in the trial did notice instances in which testimony went untranslated and where clarifications had to be sought.[122] The *Massaquoi* Court took notice

[116] J. Karton, 'Lost in Translation: International Criminal Tribunals and the Legal Implications of Interpreted Testimony', 41 *Vanderbilt Journal of Transnational Law* (2008) 1, at 26.

[117] A. Tomić and A. Beltrán Montoliu, 'Translation at the International Criminal Court', in A. Borja Albi and F. Prieto Ramos (eds), *Legal Translation in Context: Professional Issues and Contexts* (Peter Lang, 2013) 221, at 232.

[118] *Ibid.*

[119] *Massaquoi* Judgment, *supra* note 85, at 726.

[120] *Bazaramba* Judgment, *supra* note 71, at 35.

[121] S. Braun, 'Distance Interpretation as a Professional Profile', in G. Massey, M. Ehrensberger-Dow and E. Angelone (eds), *Handbook of the Language Industry: Contexts, Resources and Profiles* (De Gruyter Mouton, 2024) 449, at 458.

[122] M. Rosvall, 'The second phase of the Liberian war crimes trial begins, the court travels to Sierra Leone to hear defense witnesses, the accused watches the hearings remotely from a prison in Finland', *Etelä-Suomen Sanomat*, 26 April 2021, available online at https://www.ess.fi/uutissuomalainen/4121363 (visited 18 March 2025).

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that difficulties with translation may have affected the content of the testimony, and announced that it would take that into account when assessing the probity of the evidence.[123] While that is certainly the right approach to take with respect to protecting the accused's right to a fair trial, it does raise questions about the value of moving the court to Liberia and Sierra Leone to hear testimony by way of a procedure that would quite probably weaken the value of that evidence.

D. Lack of Victim Involvement

Another issue faced during the *Bazaramba* and *Massaquoi* trials was the lack of involvement of the victims of the crimes alleged. Under the Finnish Criminal Procedure Act, victims have the limited right to bring charges against an accused; to be represented by counsel; to be present during trial; to testify; and to present their position on the charges alleged.[124] Despite the existence of these fairly extensive rights, victims only participated in the trials to the extent that they were permitted to testify as witnesses. In *Bazaramba*, this was attributed to the fact that the court did not know who the victims were and as a result did not give them their statutorily mandated role in the process.[125] While this may be true, there is little indication that the court made an effort to identify the potential victims to make them aware of their participatory rights. This may be attributable to the large number of possible victims and the time and expense that would have been required to identify them. It has also been suggested that different types of family structures from those found in Finland and inconsistent record-keeping may have meant that there was insufficient evidence by Finnish standards to substantiate the familial connection between people killed during the genocide and individuals who may possess the successor victims' rights of those killed.[126]

The *Massaquoi* trial resembled *Bazaramba* to the extent that little effort was made to involve the affected communities in the proceedings. The Liberian portion of the trial was held in a hotel outside of Monrovia, the location of which was not publicly disclosed, in a room that could only accommodate three people other than those directly involved in the proceedings.[127] There was also an annex room in which the trial was broadcast, which was often either empty or sparsely populated.[128] The lack of publicity about the location and the dearth of space allocated to observers meant that access to the trial was quite restricted, and the victims were not given the opportunity to attend or participate.[129]

There were both practical and political dimensions to the lack of community outreach by the Finnish Court in *Massaquoi*. The practical reason was reflected in the position of the president judge of the Court, who felt that while any public interest in the trial was desirable, it was ancillary to the Court's main purpose of hearing the witness testimony so that it could reach a verdict in the case.[130] Further, the Finnish Court chose not to publicly broadcast the trial due to concerns that doing so could create a security risk.[131] Even if the trial had been broadcast, it is unlikely that the proceedings would have been adequately understood by the

[123] *Massaquoi* Judgment, *supra* note 85, at 726.

[124] Finland Criminal Procedure Act, *supra* note 112, at Ch. 1(14); Ch. 2(1)(a); Ch. 5(15); Ch. 6(7).

[125] Correspondence with a senior court official in the District Court of Itä-Uusimaa (8 May 2024). Held on file with the author.

[126] Interview with an attorney for the Prosecution in the *Bazaramba* case (10 May 2024).

[127] T. Cruvellier, 'Massaquoi: Please Hide This Trial From Liberians', *JusticeInfo.net*, 22 April 2021, available online at https://www.justiceinfo.net/en/76280-massaquoi-please-hide-trial-from-liberians.html (visited 18 March 2025).

[128] Gberie, *supra* note 103.

[129] T. Cruvellier 'Aaron Weah: "Liberians Have Been Reminded that Justice is Still Possible"', *JusticeInfo.net*, 27 April 2021, available online at https://www.justiceinfo.net/en/76484-aaron-weah-liberians-reminded-justice-still-possible.html (visited 18 March 2025).

[130] Cruvellier, *supra* note 127.

[131] *Ibid*.

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impacted community. Because of the statutory requirement that the trial be conducted in Finnish or Swedish, those portions of the trial that did not include witness testimony were conducted exclusively in Finnish without translation and would have been incomprehensible to the non-Finnish-speaking local community.[132]

The lack of a public broadcast may also have had a political component. Some observers suggest that it was the Liberian government, and not the Court, who refused permission to better publicize the trial.[133] In an interview, Sayma-Syrenius Cephus, then serving as Liberia's Solicitor General, rejected the idea that the proceeding being conducted by the Finnish Court was a trial at all, and attempted to cast it as an evidence-gathering effort for a trial that was being held in Finland.[134] Cephus instead called it a 'constructed trial' lacking the formality inherent in a trial.[135] As such, there was no apparent need to publicize it because the outcome was not regarded as constituting a justice process relevant in Liberia. This marginalization of the proceedings by Liberia's government was interpreted at the time as an effort to limit debate within the country about the need for war crimes trials.[136] The lack of publicity appears to have persisted after trial moved to Sierra Leone. One local, when asked about the proceedings, described it as 'hidden' and indicated that there had been no publicity 'so nobody knows about it'.[137] This could be due, in part, to the fact that the trial involved crimes allegedly committed in Liberia, meaning that it had less relevance to media in Sierra Leone.

The decision to move parts of the *Bazaramba* and *Massaquoi* trials to Africa gave the Finnish courts the means to make the proceedings relevant to the victims and other members of the affected communities. However, that opportunity was missed when the trials were allowed to proceed without meaningful victim involvement and in relative secrecy. That the trial courts did not make a greater effort to involve victims in the process should not have come as a great surprise when viewed in the context of other Finnish universal jurisdiction trials. Those trials also made no apparent effort to involve the victims in their proceedings. What makes the *Bazaramba* and *Massaquoi* courts' failure to involve the victims in the process particularly disappointing is the fact that by moving the trials, their proximity to victim communities gave them a much greater opportunity for engagement.

The lack of victim engagement by the Finnish courts highlights the fact that domestic criminal courts are not particularly concerned with the expressivist purposes that international criminal trials are meant to achieve. Instead, the primary purpose of domestic criminal trials, even those conducted in other countries, is to determine whether the accused should be held accountable for the crimes alleged and, if so, what the appropriate punishment should be.[138] While some expressivist value can be found in the deterrent function of punishment, it is largely directed at convincing others that they should not engage in similar activities, rather than towards the communities affected by the commission of the crimes.[139] Under these circumstances, there is little need for a domestic trial court to engage the local community in order to accomplish its trial goals.

[132] *Ibid.*

[133] Gberie, *supra* note 103.

[134] Cruvellier, *supra* note 127.

[135] *Ibid.*

[136] Gberie, *supra* note 103.

[137] M. Azango, 'Massaquoi Trial Quietly Begins Hearings in Freetown', *FrontPage Africa*, 12 September 2022, available online at https://website.frontpageafricaonline.com/liberia-war-crimes-trial/massaquoi-trial-quietly-begins-hearings-in-freetown/ (visited 18 March 2025).

[138] C.H. Wheeler, 'Trials', in P. Caeiro et al. (eds), *Elgar Encyclopedia of Crime and Criminal Justice* (Edward Elgar, 2024) 690, at 695.

[139] M.A. Drumbl, *Atrocity, Punishment, and International Law* (CUP, 2007), at 173; see also H. Jo and B.A. Simmons, 'Can the International Criminal Court Deter Atrocity?', 70 *International Organization* (2016) 443, at 447.

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The failure to involve victims also ignores the growing belief that universal jurisdiction trials are conducted, at least in part, as an 'obligation owed to individuals'.[140] Included in that obligation is the victims' right of access to justice, which can include the investigation, arrest, prosecution, and, where warranted, conviction of the perpetrators of the crimes committed against them.[141] That right can obviously not be exercised if the victims are unaware of the proceedings, making fulfilment of the right contingent on involving victims in the trial process. This is a non-issue for most universal jurisdiction prosecutions, as they are often initiated at the instigation of victims or victim communities.[142] In those instances, victims are involved in the process from the outset and do not need to be incorporated into it. That has not, for the most part, been the Finnish experience. With the exception of the *Massaquoi* case, the investigation into which was prompted by a report filed by two NGOs with the direct involvement of a victim of Massaquoi's alleged crimes, Finnish universal jurisdiction trials have largely been undertaken without the involvement of the victims. This, therefore, makes it all the more important that efforts are made to involve victims in the process to ensure that their right of access to justice is being protected.

5. CONCLUSION

Due to its international nature, the ICC finds itself in a situation where it needs to build and reaffirm its own legitimacy. This is a complicated process, requiring it to not only ensure that justice is being done, but also that justice is being seen to be done. One way this can be achieved is by holding trials closer to the communities affected by the crimes under consideration during those proceedings. That way, interested individuals and communities can directly observe and participate in the process. This form of direct participation has been found to improve perceptions of the justice institutions conducting trials and the judgments that they produce.

Hybrid hearings, similar to those held by the Finnish courts in the *Iraqi Twin Brothers* case, can address some of the financial and logistical challenges often cited by the ICC as reasons not to hold local trials. Unfortunately, hybridity is limited in its ability to produce the same perception and legitimacy benefits the ICC would gain from moving trials closer to affected communities. One shortcoming of hybrid hearings is that they diminish the possibility of involving local communities in the trial process. While victims could be encouraged to be present during the delivery of locally given testimony, the absence of the judges and the accused would make it less likely that they would understand the procedure as being conducted with the same formality of trial. Additionally, remote evidence can be subject to external factors that can affect the way in which the evidence is received. To date, many trials for international crimes, whether international or domestic, have involved situations arising in developing countries with infrastructure limitations that can disrupt the Court's ability to fully hear and understand the evidence. Interruptions to the testimony of that sort could have a negative effect on the fair trial rights of the accused, which would create separate legitimacy concerns for the ICC.

A legal process exists in the Rome Statute and the RPE permitting the ICC to move the location of trial, but it has yet to be utilized. Should the ICC reverse course and hold trials closer to affected communities, it must draw on the experiences pioneered by Finland in the *Bazaramba* and *Massaquoi* trials. First, it must have the courage to move a trial, in whole or

[140] A. Mills, 'Rethinking Jurisdiction in International Law', 84 *British Yearbook of International Law* (2014) 187, at 229.

[141] D. Hovell and M. Malagodi, 'Universal Jurisdiction: Law Out of Context', 87 *The Modern Law Review* (2024) 1480, at 1487; see also Mégret, *supra* note 29, at 112.

[142] Hovell and Malagodi, *supra* note 141, at 1488.

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in part, closer to the affected communities. While this will certainly be logistically difficult and expensive, it has the potential to create significant benefits for the Court. Those involved in the *Bazaramba* and *Massaquoi* cases extolled the virtues of travelling closer to the locus of the alleged crimes and considered it fundamental to producing a more accurate outcome in both proceedings. Next, the ICC must not only take advantage of the evidentiary possibilities created by relocating trials, but it must also use the opportunity of proximity to better engage with local communities. Victims have always been a central focus of the ICC, and relocating trials would only serve to strengthen the Court's mission of delivering justice to them. Should the ICC hold local trials, it must prioritize engagement with victims both inside and outside of the courtroom. Victims should be made a direct part of the legal process, as participants and observers, and the court should also undertake significant efforts to publicize the proceedings and disseminate its decisions. The Finnish universal jurisdiction trials failed at this, allowing other interests to take precedence. The ICC cannot do the same if it hopes to change perceptions about its effectiveness and achieve the sort of global respect it demands and so desperately craves.

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