

EVAP Ep. 29 Philip Grant

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SPEAKERS

Jaclyn Streitfeld-Hall, Philip Grant

J Jaclyn Streitfeld-Hall 00:12

Welcome to Expert Voices on Atrocity Prevention by the Global Centre for the Responsibility to Protect. I'm Jaclyn Streitfeld-Hall, Research Director at the Global Centre. This podcast features one-on-one conversations with practitioners from the fields of human rights, conflict prevention, and atrocity prevention. These conversations will give us a glimpse of the personal and professional side of how practitioners approach human rights protection and atrocity prevention, allowing us to explore challenges, identify best practices, and share lessons learned on how we can protect populations more effectively. Today, I'm joined by Philip Grant, Executive Director of TRIAL International. Thank you for joining us today, Philip.

P Philip Grant 00:54

Thanks for having me.

J Jaclyn Streitfeld-Hall 00:56

Philip, you founded TRIAL international just over 20 years ago. Could you share a bit about what gaps you saw and accountability for survivors and victims of atrocities and other crimes that you sought to address?

P Philip Grant 01:08

Sure, let me maybe go a little bit back in time and mention someone I owe a lot to. His name is Augusto Pinochet. And in 1995, or 96, as head of the Chilean army, he was supposed to come to Switzerland, it seems on an arms shopping spree. And some people in Parliament decided, or rather asked, the government to declare him persona non grata in Switzerland because of his human rights record in Chile. Switzerland does not have a big tradition of making, you know, important stances at the international level, but they did declare him persona non grata, telling him not to come. I was one of those, at the time, who thought it was a stupid decision that

based on the Convention Against Torture, which would let them in in Switzerland, and arrest him once he stepped foot on Swiss territory based on very clear provisions of the Torture Conventions. Working at University at the time as an assistant, my colleagues there were telling me that's not how things happen. You're a bit naive, very sweet, but not the way things generally work. Until, two years later, that's exactly what happened when Pinochet was arrested in London. And for me, I think that was the defining moment in my in my career. In August '98, the arrest of Pinochet, we were about three months after the Rome Conference that led to the founding of the ICC, there was an emerging number of institutions in the field of international justice. But that one, the gap, that the Pinochet failed was the possibility at the national level, to arrest perpetrators present on the territory of countries that were, or that were supposed to, at least, take seriously the human rights conventions that they had ratified. So this prompted me, with others, to found TRIAL International, which was set up in 2002, about 25 days before the ICC, so we're the senior partner there. And, and from there, you know, it was originally more a volunteer legal organization trying to reproduce the Pinochet precedent, essentially, in Switzerland. There's a lot of tourism in Switzerland, it can be medical tourism, it could be, you know, the scenery is obviously beautiful, there's a lot of people come to see their bankers. So, we thought Switzerland was a good place to start to try to reproduce the Pinochet exercise. It took us a few years until we kind of figured out that the Swiss authorities were not really interested in picking up those cases, the legal framework, like in so many other countries, was not yet in place that would allow for future cases to happen. So at that point, we decided that we could put our legal expertise also at the service of victims groups outside of Switzerland. We started in 2007 with a first program in Bosnia Herzegovina that was followed by programs in Nepal, in Burundi, in the DRC. So we work on two levels, basically, at the national level, supporting and accompanying victims of international crimes trying to access the justice system within their country. And then we work here in Switzerland and increasingly in countries neighboring or even further abroad than Switzerland, to use universal jurisdiction to go after perpetrators of international crimes that might have relocated here or that might be passing through, but also trying to go after corporate actors who might be complicit in international crimes.

J Jaclyn Streitfeld-Hall 05:02

That's amazing. And how does the sort of current work and mandate of TRIAL help in fulfilling these aims? Do you have examples of, you know, how you have worked in these spaces to make an impact?

P Philip Grant 05:15

So I could give you a few examples: what happened here in Switzerland or in neighboring countries, using this new and growing field of universal jurisdiction, just to give you very recent examples, so we've picked up the trace of a number of suspects who have relocated or have arrived in Switzerland and France and Germany and other countries. And when that happens, we investigate the case, we try to document it, it could be through open source, it could be going on the field, it could be working with our partners in countries where we have field presences. And it's basically getting a case ready to file it with prosecutors or investigative authorities and countries that have universal jurisdiction provisions. And these cases, eventually are being picked up by the authorities, and we continue supporting victims, providing them lawyers, accompanying them through the proceedings, making sure they have

psychosocial support throughout, etc. So once those cases get going, and eventually arrests take place and trials happen, well, we generally take the backseat and let the prosecutors do their job. And eventually, the courts decide on the merits of the cases. At the precise moment where we speak, we have a trial, for example, running in Germany, where a member of the Gambian death squad is on trial for crimes against humanity. That's the very first trial relating to Gambian suspects, at least outside of the Gambia. We will have in January, of next year, another Gambian, really high level suspect, the former Minister of the Interior, the right hand man of Yahya Jammeh, Ousman Sonko, who's been in pretrial detention for way too long, almost seven years now in Switzerland. He's going to trial, as well, on charges of crimes against humanity. There is another Gambian suspect in pretrial detention in the U.S. who's supposed to go on trial next year for the crime of torture. And then we have, from other situations, also, sometimes very high level suspects. The former Minister of Defense of Algeria, Khalid Nizar, will go on trial in Switzerland probably by the middle of next year. That case has been ongoing for a good dozen years now already. France has just announced a few weeks back that a rebel leader, Roger Lumbala, who's also in pretrial detention will also be sent to court, probably in a year, or a year and a half on crimes against humanity charges as well. So that man who was also former minister in the DRC government will be the third minister level suspect that will go on trial in the coming months. So that's part of the job that we do here. We can come back to it a bit later, if you if you want. And another part is trying to engage with the national systems in the countries. So in the DRC, we've been present now for about almost 10 years. And we've participated in an I'm sorry, there, I didn't do my homework, but in dozens of trials already at the national level, essentially before military courts. One of the most interesting cases, and also one of the first one we worked on, is a case called the Kavumu case, and it's centered around a series of horrific crimes that took place in the Eastern Province of South Kivu in a town called Kavumu, where from 2013 to 2016, dozens of young girls, aged between 18 months, and more or less, 12 years or so, were abducted and raped by this militia, members of a local militia headed by a man who was also a provincial MP. Our friends who from Physicians for Human Rights are working on these cases, also on the medical side of it, asked us to get involved in 2016 because the cases that were filed from the families of the raped children were stuck before a civilian magistrate, a corrupt functionary referred to often as Mr. \$50, because he would not act unless you would receive his \$50. So, we jumped in the case and analyzed the evidence and kind of came to the conclusion that there would be an opening if we could qualify what was happening as crimes against humanity. If we could get that legal determination, it could get the military system, the military justice involved, because they have jurisdiction over crimes against humanity. So we came to that conclusion and submitted the case to the military justice there, which prompted a complete change in in the case. All of a sudden, it was handled very quickly, very promptly, very efficiently, professionally, dozens of members of the militia group were arrested, the abductions and the rape stopped almost from one day to the to the other, and eventually the case, went to court and in December of 2017, eleven of the militia men on trial were found guilty of crimes against humanity by rape, including the local parliamentarian, and sentenced to life in prison, all of them. That was really a landmark case in the DRC, one of the first times that a high ranking official was convicted for such crimes, also very important for the systematic nature of the sexual violence as a weapon of war, that has been too often practiced in that part of the country, but also the way in which the court dealt with the case, the handling, the sensitive handling, of underage victims of crimes of such nature, all of the protective measures that were put in place so that they could testify without the risk of traumatization, being accompanied by psychosocial actors who could support them throughout the trial. And I think it's set up a very important precedent for the country, showing that even military courts could rule on such cases very effectively. And from then we've had, you know, as I mentioned, dozens of trials taking place, often on the questions of sexual violence. But in too many situations, the crimes go way beyond sexual violence to

encompass all the atrocities that can be committed in a civil war conflict. Just to give you maybe two or three highlights of the work that we've undertaken, and how, when you have the expertise around, when you have also the willingness from justice actors to get involved in such process, you can actually make a real change. We've had a number of high profile cases that have handed with jurisprudence that is pretty progressive coming from military courts. I'll give you two or three additional examples very shortly. In 2019, a military court found that the state of Congo was liable, or was accountable, for the fact that it had not prevented and protected the civilian population from attacks coming from a rebel group. So, the state was not itself involved, it was outside forces that had attacked the civilian population. But the military courts found that the state had not done enough to protect its own population and awarded reparations in various forms to the affected communities. We managed to get the military courts to use for example, video evidence in the courtroom in a number of cases. We pushed the military court in 2021, for the first time, to recognize environmental crimes as crimes that they could pin up upon the particular bloody rebel commander. This year, the crime of forced pregnancy was first recognized by international court anywhere in the world. It's been recognized by the ICC, but for the first time, it has been recognized in the in the DRC. So I think all of these cases, and there's been a lot more, not just on rebel groups, it's often sometimes also, military members, I mean, of the armed forces of the DRC that are on trial. It's sometimes high ranking police officers so we try to kind of balance a little bit our work and not just focus on one actor, per se. I think all of these cases are a testimony to the fact that when you work together with various actors on the ground, when you bring your own piece of the puzzle to the table, your legal expertise with the other components of the justice system, you can really get some highly interesting things done.

J Jaclyn Streitfeld-Hall 15:12

Excellent. And, you know, you've touched on this a little in your description of your work. But, you know, what is the impact of these sort of high level criminal cases under universal jurisdiction, under, you know, what is the impact of, you know, as you put it, the progressive jurisprudence you've seen for victims and survivors of atrocity crimes, for those who have endured and suffered as a result of these abuses, what is the impact of justice for them?

P Philip Grant 15:43

I think when you had a legal NGO, you have to be honest about about some things that are difficult, not to say, but for us to realize. We do two things actually, we defend individual victims, we act as lawyers in particular cases, and we represent the interest of victims. At the same time, as an NGO, we have an agenda, we have objectives that we want to reach. We undertake strategic litigation, with a sense that at the end of the process, we could get progressive jurisprudence that could change behavior, that can open up doors, that can, I don't know, get rid of immunities that can... etc, etc. And sometimes there is a field of tensions between the two. An individual victim, or a group of victims, might not necessarily wish for what you want as an NGO lawyer. So, when that happens, we have to take the side of victims. We have to put aside our objectives as an NGO, we have to, you know, put on the hat of the lawyer and stick to the victims. And I think we've done that very consistently, throughout. Even though, sometimes the decisions made by victims, the choice in which they want their case to unfold was not necessarily what we would have wanted. I can give you some examples of victims wanting to stop a case, because there was an offer of financial compensation that was

more suitable to them than obtaining maybe a first condemnation in a particular case. You might have, in universal jurisdiction cases that happened very recently, where, because of the time it takes for these cases to advance, one of the victims, unfortunately died, and the family is not willing, who doesn't want to continue the case. So we have to respect that very, very firmly. That said, I have to also acknowledge that the immense courage of a lot of these victims, it's a process that is often long, that is often complicated, that can bring about stigma, that can bring about retraumatization, that can bring about risks. We don't talk a lot about that. But if someone is being sentenced to, let's say something else than a life sentence at the end of the process, and goes back to the country, what happens very concretely on the ground, what are the risks for those who step forward as witnesses or as civil parties to cases? So I have to really take my hat off to the courage of huge amount, a huge number of victims who are willing to bring their case forward. In the best case scenario, these cases, these trials end up with convictions, with reparations being awarded. And then, what is interesting, I think, and that's the strategic nature of these cases, you start to have some sort of a feedback loop. I mentioned the Gambian cases that are ongoing in Germany and that will take place in Switzerland, the trial of the former Minister of the Interior, of another member of the death squad in the U.S., these cases also have the potentiality to be used by human rights organizations in the Gambia to advocate themselves for more accountability in the country. I think, you know, the situation in the Gambia pretty well yourself. I think the usage that can be made of these cases to advocate for more justice, more accountability, is something that we're not yet really seeing, but that will probably happen. And that's where I think NGOs, such as ours, play an important role in making sure the people on the ground, those who have an interest in these cases, can follow them. We have a huge amount of work to do on outreach around these cases, on making them understandable, accessible, but also making sure whatever evidence comes out of these trials can be then fed into the system in the country itself to maybe open up new cases, or advocate for more more justice.

J

Jaclyn Streitfeld-Hall 20:15

You know, I was going to ask you about the role you see individual criminal accountability playing in deterrence. But I think it's actually come out quite a bit in the DRC example, you provided, when you said that, you know, the sexual violence and abductions stopped while the trials were kicking off. And I think it also comes out a bit in this Gambia example, where as you expand kind of accountability, you also expand potential for, you know, defining things as crimes and therefore, enabling the courts to go through these processes to prevent atrocities in the future.

P

Philip Grant 20:57

I might just add, then one little additional element. I think the beauty also with the legal cases, and of course, you have a lawyer now speaking, is that sometimes you get real, interesting jurisprudence out of these cases, and these, sometimes, clarification of what legal norms exactly mean. They will percolate down into the system and be reused either by other courts, or eventually even end up in, you know, in military manuals. They will end up in military law academies and be taught. And it's not just, and I think that's the beauty of the system, is not just ICC or ICTY jurisprudence that then go down and are being used by national authorities, it's sometimes also the other way around. It's local courts coming up with interesting interpretation of the law and feeding those decisions into an international system. We see the ICC being

interested in some of the cases that we have at the national level and how that can be used. I'll give you another example in relation to the DRC. A few weeks ago, France indicted Roger Lumbala, former minister and commander of an armed group. And in defining one of the elements, one of the charges, the destruction of civilian property as being a crime against humanity, they interpreted, or they used jurisprudence from the DRC on cases that we had worked, on how they analyzed the destruction of property. When you destroy someone's livelihood when you destroy someone's house, and how that can be inhumane treatment as a crime against humanity. So the French judge went to interpret, or see how local courts had interpreted, the crime against humanity notion of these inhumane acts and use it in this decision. So you see it goes really in multiple directions. It's, I think, a good example of cross fertilization of the law.

J

Jaclyn Streitfeld-Hall 23:19

What is one of the biggest challenges in your work to achieve justice for victims of atrocity crimes?

P

Philip Grant 23:25

Oh, there are many, many challenges. I think the first one is having sound legal frameworks, where we're far from having that. I mean, even in the most advanced countries there are always loopholes around that the suspects will be able to use. I often take the example of Italy, you know, the country of the Rome Statute of the ICC. Italy has not yet domesticated the ICC. I mean, what do you want to do? If those countries that are supposed to be at the forefront of the fight against impunity are not even doing the basics, you know, the homework that should be the easiest part actually just getting their frameworks, the legal frameworks, in line with international standards, then the challenges will be very high. Political will is often lacking, of course, we know that across the board. But what does that mean concretely? We don't work with the ICC. We don't really work at the international level. We really try to engage with the national systems. What does it mean nationally? It's sometimes you know, having just the basic resources to lead investigations. So if you take the case of Switzerland, our authorities often you know, use the reference to the Geneva Conventions, how important they are. But when you have to do the concrete work, when you have to give resources to your prosecutor's office, things go in a different direction. We've been stuck in some cases with files that have been handled for seven, ten, or twelve years. And you're talking about really high level perpetrators. I'll give you just a very simple example. In 2013, we filed a criminal complaint against Rifaat al-Assad. Rifaat al-Assad is the uncle of Bashar al-Assad. And when Bashar's father, Hafez al-Assad, was president of the country, he was, Rifaat, in charge of the defense brigades, which were kind of the elite shock troops that were sent for the worst of the repressive work, including in 1982, in Hama, following an uprising. The brigade defense came in and for three weeks just destroyed, like one third of the city and killed between 10 and 30,000 people, wholesale massacre with all the atrocities that you can imagine. Rifaat al-Assad was in a five star hotel in Geneva, probably sipping a martini at the bar, when Syrians saw him and alerted us to his presence. We did a long investigation on his role in the Hama massacre. We talk to witnesses, we talk to victims, represented victims before the Office of the Attorney General, we talked to insiders, people who were within the military who could, you know, bring testimony to his role. Rifaat al-Assad, at the time, was in exile in neighboring France. He came back to Geneva in 2015, and again, in the same five star hotel on the Geneva

lakefront. We managed to pick up his trace again, and denounce him to the authority saying, "Here's a guy." You know, you have a currency, it's blood, it's like level of person who is there, who is at your disposal, you have the evidence that an NGO has submitted, you have an offer of testimonies from victims, from witnesses, from insiders, etc. It's the perfect case. And you have a civil war ongoing in Syria with mass atrocities in 2015, you know, raging throughout the country. Imagine what would have happened had the Office of the Attorney General arrested Rifaat al-Assad at the time, the signal it would have sent to the clan in power in Syria. What did the Office of the Attorney General do? They came to his hotel room, they nicely interrogated him for, you know, half a morning, and then let them go. And he was never arrested. He was charged in Switzerland, the case is still opened, is being investigated for war crimes, but he was he was free to go. He went back to France and eventually got back to Syria about two years ago. So he's now out of reach of justice. I think that case illustrates some of the challenges that we face, even in countries such as Switzerland, where you're supposed to have the framework in place, the resources at your disposal. Switzerland is not a poor country. Sometimes there's a lack of political will, or a place of strategic vision of what these cases can bring.

J

Jaclyn Streitfeld-Hall 28:35

And so it's so frustrating, you know, to hear you talk about this lack of willingness and lack of emotion because we see it all the time and our work in atrocity prevention, as well. So far, we've talked a lot about kind of these individual cases and individual perpetrators we can hold accountable. I'm wondering if you can talk a little on on the challenges in kind of identifying state responsibility?

P

Philip Grant 29:08

We've had a long practice in international law of taking on states before international human rights bodies, be it regional mechanisms, the African Commission, the European Court, or universal mechanisms, the UN, the various treaty bodies... trying to get decisions from those international human rights courts or bodies, telling states what exactly they have to do to implement their obligations, to put in practice the General Accountability Framework, the right to truth, the right to justice, the right to reparations, etc. I can give you one example of what can be achieved but also the difficulties that come along with that. We've been working in Bosnia and Herzegovina for a long time alongside various groups, including survivors of sexual violence. And one of the cases that we brought to the Committee Against Torture was the groundbreaking case that the Committee Against Torture decided upon in 2019. Telling Bosnia and Herzegovina that it had violated the Torture Convention by failing to pay compensation to the complainant. And that Bosnia needed to go further than that. They had to ensure that the individual petitioner received immediate and free medical and psychosocial care. But they also had to issue an apology, an official apology, to the victim. And even beyond that, the Committee Against Torture told Bosnia and Herzegovina it must establish an effective reparation scheme at the national level for this person, but for all the victims of torture, including victims of of sexual violence. So, the decision itself was really groundbreaking, first time that the Committee Against Torture had decided, in such a way, on Bosnia and on the question of survivors of sexual violence. But then, you have to go back to the state. You have to go back with your nice UN decision and advocate for years. And we're still in the process of that, to have that decision implemented. So I think it gives you an illustration of the difficulties

to work with states, including in Bosnia, that are fractious states, where it's really complicated to have at the national level, a coherent response to what has been committed during the Civil War. But it does open a room for advocacy and advocacy based on the rule of law, on conventions that have been ratified by the state, and you can use the various ongoing process, the wish to join the European Union as leverage to push the authorities to implement those those decisions.

J Jaclyn Streitfeld-Hall 32:07

You know, over the course of this conversation, a few things have come up that I find interesting. One is, you know, the kind of very common theme in international justice of, it takes a long time to hold perpetrators accountable. You gave the Gambia case of a high level official who's been sort of waiting in detention for, I think, it was more than seven years for trial. And we also have cases where it's been decades between when crimes were committed and when perpetrators were held accountable. And yet, we've also talked about things that are groundbreaking and progressive. And I think the space for international criminal accountability for international investigation of crimes has evolved dramatically since TRIAL International was founded, from the creation of the ICC, you know, a month or so after you were established, to the creation of the Human Rights Council and its various investigative mechanisms and monitoring mechanisms, and then other critical developments in investigations and jurisprudence. So how has the expansion of things like universal jurisdiction, like these investigative tools over the past 20 years, impacted your work and the capacity to achieve justice for victims?

P Philip Grant 33:23

I mean, you're right. We're playing for the long term here. It's not in the weeks, months. or years that we need to count, but probably in decades. You know, we're still all referring to Nuremberg as the founding stone of accountability. I mean, Nuremberg was 80 years ago, and we're still referring to that as being you know, one of the rare instances, well there's been some stuff ongoing in the past 20-25 years. But that said, I think the pace is accelerating, where we are seeing some systemic changes happening. The Russian aggression against Ukraine is maybe one of those moments where we see states and various actors grasp the importance of international law, and the necessity to have a system grounded in law to answer such situations. And we're not there. We have a lot of work to do just to get the legal frameworks up to date. And I'm not even talking about what's happening in Palestine at the moment. That said, I'm seeing some administration's, I'm seeing some improvement on a number of fronts. Universal jurisdiction, for example, is one of those domains where things are picking up at an increasing pace. We're hearing from investigators now that they can't deal with all the cases that they have. France or Germany have hundreds of cases opened. And when you understand that France, for example, can only hold two trials a year, it's going to take decades for them to go through all of these cases. So we have big challenges coming up. One of them, I think, will be also where do you put your priorities? It's usually complicated. But when you have Ukraine, when you have Palestine, when you have Sudan, Afghanistan, etc. And you still have Rondon cases ongoing, or you still have cases from Algeria, or you still have 1988 prison massacre cases in Iran, how do you deal with them? Where do you put your priorities? And to be frank, I don't have an answer to that. I don't know. There are individual questions there. They are more systemic issues that are at stake. It's very complicated. I think, at least, we need resources,

that is very clear. If you can Ukraine with billions in arms, I think you should support the international legal system and the national judiciary with hundreds of millions. The increased political will that we are seeing, I think, emerging, albeit a bit selectively, has to have direct consequences in the level of support that is given to international courts, but also to building up national judicial systems. I think the key lies, and that's how the system is supposed to work, with national authorities, leaving the big fishes to the International Criminal Court in particular. But if you, again, if you can support Ukraine and others with billions in arms, you should be able to put tens of millions, or even more, into building coherent judicial systems and making sure investigative and prosecuting authorities have enough resources to tackle the immense impunity gap that still exists. Bearing in mind the challenges you identified in terms of the volume of universal jurisdiction cases and the amount of work that goes into each trial, you know, what is your perspective on the state of universal jurisdiction and what we can achieve with it? Let's try to be positive. So, on the upside I'm seeing, and not just considering the cases handled by my organizations, but also in other contexts, for example, the level of perpetrators is really, in many UJ cases, reaching top level officials. You have, now, a number of ministers that will go on trial in Switzerland and France. You had Argentina, just being, engaging with a universal jurisdiction case against the former President of Colombia, for thousands of cases of extrajudicial killings. So I think you're seeing the circle of accountability gently expand to cover higher people in the chain of command. And the second aspect I'm seeing is also the quality of some of the suspects, including now, and we're starting to have the first precedents in a case in Sweden, corporate actors, Western corporate actors being brought to trial on universal jurisdiction basis, for crimes in that instance, complicity in war crimes committed in Sudan. And I do see the potentiality for universal jurisdiction, at some point, to encompass more and more of the Western actors, the facilitators, the corporate actors who partake in pillaging of natural resources to potentially arm dealers, those in the art sector that benefit from pillaging of cultural goods, etc. So I think, used wisely, universal jurisdiction does have also the potentiality to become a bit more universal.



Jaclyn Streitfeld-Hall 39:12

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