

FERGAL GAYNOR

Highly effective prosecutor with vision, energy and over 22 years' legal experience, 18 in the investigation and prosecution of, and representing victims of, war crimes, crimes against humanity and genocide.

He spent over nine years prosecuting the Bosnian Serb leadership. He led a team investigating crimes in detention by Syria's leadership. He is the reserve international co-prosecutor at the Extraordinary Chambers in the Courts of Cambodia, where he and others prosecuted the Khmer Rouge leadership. He is also a Judge of the Kosovo Specialist Chambers.

He has managed almost every issue of relevance to the successful day-to-day operation of a large international prosecution office: recruitment, performance management, field security, translation, budgets, IT logistics, documentary evidence collection, insider interviews, evidence analysis and courtroom advocacy. He has dealt with over a dozen units of the ICC, both in The Hague and in the field.

He is committed to justice for victims at the ICC, regardless of their background. In 2012-2015 he was lead counsel for the victims in the case against Uhuru Kenyatta. In 2019, he was lead counsel for a group of victims in appellate proceedings concerning the commencement of investigation in Afghanistan. In 2020, he was lead counsel for a group of Palestinian victims in litigation concerning the commencement of investigation.

He has broad experience in dealing with challenges facing international prosecutors, including witness interference, state obstruction of access to evidence, and the statutory duty of the Prosecutor to ensure that investigations and prosecutions are effective. He is highly experienced in overseeing the analysis and courtroom presentation of a wide range of documentary evidence (particularly internal military and security communications). He strongly supports geographic and gender balance in the workplace, and the effective investigation and prosecution of sexual and gender-based crimes.

A widely-published writer, his writings focus on pragmatic solutions to problems such as delay in pre-trial, trial and post-trial proceedings.

CURRENT POSITIONS

- Reserve International Co-Prosecutor at the Extraordinary Chambers in the Courts of Cambodia.
- Judge on the Roster of International Judges of the Kosovo Specialist Chambers.
- Lead Counsel before the International Criminal Court.

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PROFESSIONAL EXPERIENCE

January 2017 – December 2019: Commission for International Justice and Accountability *Head, Syrian Regime Team and Head, Myanmar Team*

- Strategic leadership of teams investigating crimes in Syria and Myanmar.
- Led from 2017 to 2019 the CIJA Syrian Regime Crimes Team, managing a sub-team of field-based investigators based in three countries in the Middle East, and directed the field leader of a sub-team of Arabic-speaking analysts based in headquarters in Europe.
- Directed the analysis of documentary and testimonial evidence and the preparation of criminal briefs concerning crimes by Syria's security agencies, army and air force to ensure that they met the highest professional standards, for eventual use by an international or hybrid criminal court with jurisdiction over crimes in Syria.
- Oversaw a 2018 feasibility study and budget for a donor government for an investigation into crimes by members of the Myanmar armed forces against ethnic and religious minorities in Myanmar since 2011, in support of investigation expected to be conducted by the ICC.
- Oversaw the preparation of initial operational plan to secure collection and analysis of linkage evidence from the territory of Myanmar in support of expected ICC investigation, and liaised with financial staff drafting budget for two years of operations.
- Briefed numerous interlocutors including government representatives and the UN International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab Republic (IIIM) and the UN Independent Investigative Mechanism for Myanmar (IIMM).
- Managed, local and international staff in the delivery of four-day training sessions in Asia in 2018 and 2019 with groups of Burmese civil society organisations.
- Oversaw analysis of information contained in hundreds of witness statements and tens of thousands of Syria Regime documents, and the structured input of that analysis in CaseMap.
- Interviewed, recruited and provided structured feedback to analysts, and made recommendations concerning promotion; managed performance of all team analysts.
- Supervised selection and translation from Arabic to English of thousands of probative documents.
- Co-ordinated with evidence management unit in order to ensure highest-quality scanning of typed and handwritten documents, and made tactical decisions on a regular basis concerning the best methods to analyze large quantities of written material with limited analytical resources; transliteration protocols; optical character recognition issues; use of evidence management and case management software.
- Supervised analysts using geolocation techniques to establish the locations of crime sites, and signature analysis to match signatures of unnamed persons on Syrian Regime documents in order to identify mid- and high-level members of Syria's Regime.
- Oversaw drafting of sections of criminal briefs on sexual violence and crimes against children.
- Agreed timetables for the delivery of complex criminal briefs relating to crimes committed in Syria since March 2011 by members of the Syrian security services, army, air force and police.
- Oversaw the preparation of a 400-page brief articulating the criminal responsibility for Assad and seven other senior members of Syria's Regime for crimes against detainees.
- Oversaw the preparation of a 350-page brief articulating the criminal responsibility for senior members of Syria's Military Intelligence Department for crimes against detainees, including the murder of the over 8,000 detainees whose corpses were photographed by military police.
- Oversaw the preparation of other briefs, each of approximately 200 pages, concerning, for example, crimes by the Syrian Arab Air Force; an overview of the command structures of the Syrian Arab Army; criminal responsibility for those implementing Regime policy at the governorate level in three governorates.
- Developed goals and supervised the quarterly gathering of data for monitoring and evaluation, to be provided to donor governments who fund CIJA's operations.

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- Oversaw preparation of quarterly reports for donors, summarizing evidence collection activities and nature of criminal briefs prepared by analysts working under my direction.
- Orally presented, in summary form, factual and legal findings to representatives of donor governments and answered questions from them, and to external oversight board.
- Agreed and implemented a completion strategy to wind down the work of the headquarters-based Regime Crimes Team, in order to ensure the smooth delivery of all analytical products to the IIIM.
- Periodically met team of CIJA investigators in the Middle East for training in interview techniques, updated them on recent developments, and conducted extensive two-way dialogue with them concerning future document collection and interviews.

September 2015 – December 2016: Extraordinary Chambers in the Courts of Cambodia

Senior Assistant Prosecutor

- As a senior member in 2015 and 2016 of the Office of the Co-Prosecutors prosecuting Khmer Rouge leaders Nuon Chea and Khieu Samphan (case 002) and Meas Muth (case 003), I participated in strategic decision-making, overseeing analysis of evidence, and reviewing, drafting and editing written filings. These concerned the appeal of case 002/01, the trial of case 002/02, and, primarily, the investigation in case 003.
- Articulated the prosecution's position in case 003 on many areas of international criminal law and procedure, including forced marriage, recharacterisation of charges, and genocide of the Vietnamese.
- Delivered significant advances in building case 003. As the senior assistant prosecutor in charge of the case, I oversaw the analysis of evidence and preparation of the prosecution's "final submission". This included managing draft submissions concerning joint criminal enterprise (its membership, duration, objective); the existence of a common plan; significant contribution to the realisation of a common plan; international armed conflict (threshold for intensity of hostilities); forced marriage; the implementation by criminal means of nationwide policies; aiding and abetting; genocide; superior responsibility; dolus eventualis standard for murder; personal jurisdiction; territorial jurisdiction (crimes in Vietnam).
- Organised and ran periodic in-court oral advocacy exercises for junior prosecutors and interns, requiring participants to argue points of law and to examine witnesses played by actors.
- Delivered numerous presentations on areas of international criminal law and procedure to groups visiting the ECCC, and to students at the Royal University of Law and Economics.

November 2012 – present: International Criminal Court

Lead Counsel for victims

Appointed by a Trial Chamber as lead counsel to represent the interests of approximately 20,000 victims of the Kenyatta case at the ICC. Pro bono lead counsel for a group of Afghan victims in proceedings before the Appeals Chamber, including a three-day hearing in December 2019.

- Solely responsible for all strategic and tactical litigation decisions, financial management, managing budget requests, the preparation and presentation of oral and written submissions on the victims' behalf in the Kenyatta case before the Pre-Trial Chamber, Trial Chamber and Appeals Chamber, missions within Kenya, field security, and performance management of Hague-based staff and Nairobi-based field team.
- Managed unprecedented security, legal and logistical challenges, including state obstruction of access to evidence, in order to effectively bring views of Kenyan victims before the ICC judges.
- Reinvented model of victim representation at the ICC in order to effectively represent the 20,000 victims, while maintaining pressure on Government of Kenya to cease obstruction of justice.

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- Co-ordinated, with pro-bono team in New York, research in 70 jurisdictions to prepare unprecedented application for judicial review of Prosecutor's cessation of investigation, focusing on the Prosecutor's Article 54 duty to fully and promptly investigate and prosecute.
- Co-ordinated staff in diverse locations to ensure effective outcomes, oversaw budget, supervised logistical preparations for dozens of meetings across Kenya with victims, NGOs and diplomats.
- Negotiated budget-related issues with ICC Registry, and participated in initiatives at the Registrar's request as part of the Registrar's ReVision project to restructure, and secure more efficient funding of, victim participation, and reviewed ICC programme budgets by the ICC CBF.
- Communicated with the OTP orally and in writing, pressing for more rigorous investigation and prosecution of sexual violence crimes in Kenya, and crimes by the Kenyan police.
- Communicated effectively in live and recorded interviews to international and domestic radio, television and print media including BBC, Le Monde, The Economist, The New York Times, Al Jazeera, France 24 and all major Kenyan media outlets.
- Communicated in court, to diplomats, civil society, donors, members of the UN Security Council, as well as to hundreds victims in village halls in many locations in western Kenya.
- Developed a strategy to ensure that the voices of the victims were heard, and to press the Office of the Prosecutor, and the Government of Kenya, to comply with their Rome Statute obligations.
- Oversaw the drafting of submissions on sexual violence; victims' participatory rights in the pre-trial and trial periods; the victims' right to an expeditious and thorough investigation; Kenya's obligations under Part 9 of the Rome Statute, the Vienna Convention on the Law of Treaties and the Articles of State Responsibility for Intentionally Wrongful Acts; jurisprudence of the European Court of Human Rights and the Inter-American Court of Human Rights on the victims' right to know the full truth about the crimes committed against them, to have those responsible held accountable, and to receive just and prompt reparation for the harm suffered; the duty to be present at trial; the duty of states to investigate and prosecute.
- Responded orally to arguments put forth by the Government of Kenya, and by the Kenyatta Defence concerning state non-cooperation, and the constitutional duties of the president.
- Managed extensive fieldwork in towns and villages across western Kenya, including 55 days of meetings over two and a half years with over one thousand victims. Each briefing focused on developments in the case, and incorporated intensive question-and-answer sessions during which victims put questions to me concerning collapse of the case.
- Spoke at side events at the ICC Assembly of States Parties in 2013, 2014 and 2016.

September 2009 – December 2012: International Criminal Tribunal for the former Yugoslavia

Trial Attorney, Office of the Prosecutor, in trial of Radovan Karadžić

As a key member of the courtroom team in the trial, I provided strategic and tactical advice to the prosecution team regarding the conduct of the litigation, and participated fully in the trial itself.

- Supervised junior lawyers in their assessment of evidence and drafting prosecution submissions.
- Mentored junior lawyers, providing career advice and constructive criticism relating to outputs.
- Delivered clear and effective briefings to trial team regarding the principal factual, procedural and substantive law issues arising in the Karadzic case as the case progressed.
- Examined and cross-examined dozens of fact witnesses, including victims and insiders, and expert witnesses concerning highly technical aspects of ballistics, explosives and sniping.
- Prepared and delivered concise oral argument in court on a range of procedural issues.
- Oversaw trial preparation, including drafting of motions, responses and replies; preparation of amalgamated statements; selection of exhibits for use with witnesses in court.
- Liaised extensively with the defence in The Hague and in Sarajevo in a cooperative manner.
- Liaised extensively with members of my and other prosecution teams, trial support, field support, language support, members of Judges' staff and investigations staff, Prosecutor's immediate office, OTP Leadership Research Team, and Military Analysis Team.

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- Engaged in negotiations with an expert witness who refused to testify in the Karadzic trial. After he persistently refused to testify, I drafted and supervised the preparation of filings for contempt; applied for a warrant of arrest in order to secure his arrest in Bosnia and transfer to The Hague.
- Recommended, after consultation with other trial attorneys and investigators, which witnesses be called and which municipalities be dropped from the indictment.
- Managed a sub-team tasked with identifying, analyzing, and authenticating, through a state security witness, 700 intercepted conversations for submission in court as evidence.
- Organised meetings in Sarajevo between defence lawyers and prosecution witnesses, and ran the meetings in a fair and effective manner such that the defence and the witnesses felt at ease.
- Briefed domestic prosecutors from the former Yugoslavia about the drafting and amendment of indictments, including how to properly plead a joint criminal enterprise and genocide.
- Addressed major conference in The Hague on international criminal procedure and the right to an expeditious trial, and made specific procedural recommendations aimed at running major leadership trials more expeditiously.

October 2008 – August 2009: Circuit Court, High Court, and Supreme Court of Ireland

Barrister-at-law

- Appeared in court on an almost daily basis before the Circuit Court, High Court, the (non-jury) Special Criminal Court and Supreme Court of Ireland, representing defendants in prosecutions for a range of non-fatal offences, extradition, contempt of court, terrorism and seizure of criminal assets.

November 2007 – October 2008: International Criminal Tribunal for Rwanda

Trial Attorney, Office of the Prosecutor

- Appeared in court, on an almost daily basis, in the six-accused *Nyiramasuhuko et al.* trial, which concerned the killing of over 200,000 persons in Butare prefecture and other crimes, and opposed as necessary oral arguments put forth by all six defence teams. All six were convicted and their convictions upheld on appeal.
- Made oral submissions on a wide range of procedural and substantive areas.
- Drafted motions, responses, replies, briefs and other written legal submissions filed in French by six francophone defence teams. Supervised legal research support.
- Reviewed vast quantities of transcripts, witness statements and other evidence.
- Managed preparation for interview, and led the interview of perpetrator and victim witnesses in Rwanda, and alibi witnesses in Burundi and Malawi.
- Reviewed possibility of Rule 61 hearing against high-level fugitive for the Prosecutor.
- Proposed amendments to Chief of Prosecutions regarding the indictment of newly-arrested fugitive.

February 2007 – August 2007: International Independent Investigation Commission

Legal Adviser

- Provided strategic and tactical advice to Commissioner and senior lawyers responsible for the investigation into the assassination of former Lebanese prime minister Rafik Hariri.
- Liaised frequently with analysts, investigators, other lawyers, field security, and language support.
- Reviewed and provided comments on the Commission's reports to the U.N. Security Council.
- Prepared and co-conducted for three days in Syria a major insider interview.

June 2001 – February 2007: International Criminal Tribunal for the former Yugoslavia

Trial Attorney, Office of the Prosecutor

- Lead author, under the supervision of Mark B. Harmon, of almost all motions, responses and replies filed by the prosecution (at the pre-trial, trial, sentencing and interlocutory appellate stages) in the *Krajisnik*, *Plavsic*, *Ljubicic*, *Deronjic* and *Cesic* cases. I also drafted some submissions filed in the *Lukic* and *Lukic*, *Mico Stanisic* and *Brdjanin* cases. Despite this heavy volume, I never missed a deadline.

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- Managed teams of junior lawyers and interns efficiently in their legal research, drafting of summaries of evidence, and reviewed their contributions to the final trial brief.
- Made numerous arguments in order to focus trial on the matters truly in dispute.
- Examined witnesses in a manner which made best use of the limited time available, concentrated on the matters at issue in the case, and respected the dignity of the witnesses.
- Used Sanction software to present, in court, video, audio and documentary evidence.
- Researched ICTR, ICTY, European Court of Human Rights and domestic jurisprudence.
- Managed team drafting the final trial brief in the case of Momcilo Krajisnik, one of the senior architects of the Bosnian Serb ethnic cleansing campaign.
- Delegated tasks to senior and junior members of the team, reviewed incoming drafted and provided comments, ensured that internal and external deadlines were observed, and coordinated the final collation and checking of the final brief and its extensive appendices.
- Presented oral argument during prosecution's closing argument on ten complex legal questions put to the prosecution by the Trial Chamber at the conclusion of the Krajisnik trial.
- Conducted the examination-in-chief of insider witnesses, expert witnesses, and crime base witnesses, several of whom were massacre survivors.

August 1997 – June 2001: Freshfields Bruckhaus Deringer

Trainee Solicitor (1997-99); Associate (1999-2001)

- Freshfields is one of the world's leading law firms. I was recruited to its graduate training program while at Cambridge. During my training period at Freshfields, I was selected to work at its Tokyo office for six months, and later to go on secondment to its oldest client, the Bank of England.
- Drafted witness statements, settlement agreements, statements of claim, attended client meetings, interviewed fact and expert witnesses.
- Undertook legal research and drafted memoranda of advice on a range of complex areas relating to financial regulation, mergers and acquisitions, listing of securities, management buy-outs, and the impact on the Bank of England of large quantities of new financial services instruments.

ACADEMIC BACKGROUND; ADMISSIONS TO PRACTICE; LANGUAGES

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| 1995-1996 | University of Cambridge | Master of Philosophy in International Relations |
| 1990-1994 | Trinity College, Dublin | Bachelor of Laws |

- Admitted to practice in England and Wales in 1999 and in Ireland in 2008.
- Strong working knowledge of Spanish and French.
- Extensive knowledge of evidence management, trial management and courtroom evidence-presentation and transcription software.

PUBLICATIONS

- *General Assembly Referral to the International Criminal Court*, in "The Past, Present and Future of the International Criminal Court", International Nuremberg Principles Academy (forthcoming).
- *Current Developments at the International Criminal Court*, JICJ. Co-authored with P. Hayden and K. Kappos, 2016.
- *Evidence*, in *International Criminal Procedure - Principles and Rules*, edited by Göran Sluiter and others, Oxford University Press. Co-authored with three others. 2013.

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- *Uneasy partners: Evidence, Truth and History in International Trials* Journal of International Criminal Justice, Oxford University Press (JICJ). 2012.
- *Prosecution at the ICTY: Achievements and Challenges*, Südosteuropa Mitteilungen. 2012.
- *International Tribunals and the Right to a Speedy Trial: Problems and Possible Remedies*, Law in Context. Co-authored with David Tolbert. 2009.
- *ICTY and ICTR pre-trial proceedings and Subpoenas*: two entries in “The Oxford Companion to International Criminal Justice”, Oxford University Press. 2009.
- *Provisional Release in the Law of the International Criminal Tribunal for the former Yugoslavia*, in “The Legal Regime of the International Criminal Court” Martinus Nijhoff Publishers. 2009.
- Review of M. Cherif Bassiouni, *The Legislative History of the International Criminal Court*, JICJ. Co-authored with L. K. Morris. September 2008
- Review of Olaoluwa Olusanya, *Sentencing War Crimes and Crimes against Humanity under the International Criminal Tribunal for the former Yugoslavia*, JICJ. November 2007.
- *Ordinary Sentences for Extraordinary Crimes*, JICJ. Co-authored with Mark B. Harmon. July 2007
- *Prosecuting Massive Crimes with Primitive Tools: Three Difficulties Encountered by Prosecutors in International Criminal Proceedings*, JICJ. Co-authored with Mark B. Harmon. June 2004.
- *Current Developments at the Ad Hoc International Criminal Tribunals*. Co-authored, with Daryl A. Mundis and Barbara Goy, ten instalments of periodic digest of international criminal law in JICJ in 2004-2008.