Independent Legal Representation of **Victims of War Crimes and Crimes Against Humanity**

CIVITAS MAXIMA

2020 ANNUAL REPORT

Zwedru, Grand Gedeh, Liberia, Road to P.T.P refugee camp.
November, 2016. - © Emmanuelle Marchand/Civitas Maxima

Contents

Foreword

Emmanuelle Marchand, Deputy Director and Head of Legal Unit of Civitas Maxima

© Theo Manusaride/Civitas Maxima

Since its establishment in 2012, Civitas Maxima has always taken great care when preparing its annual reports. In this publication, we reflect on both the achievements and challenges of our work in the field of international criminal justice. Over the years we have invited lawyers, academics, historians, philosophers, artists, journalists, activists, and others to contribute with their invaluable and unique points of view.

I have worked at Civitas Maxima since 2013 and have recently become its Deputy Director. It is therefore an honor for me to introduce the 2020 annual report, rich and diverse, despite it being an incredibly challenging year for many of us.

Notwithstanding the difficulties the world faced last year because of COVID-19, we have managed to get our work moving forward significantly. While we could hardly travel on site, and the complexity that remote investigations present, our *modus operandi* has allowed us to pursue our mission, as our work is not solely driven from either Geneva or The Hague.

On the contrary, we have worked since day one with the firm belief that victims, not us, hold the keys of their quest for justice, and that investigators and other actors in the country where the crimes were committed should be involved and engaged in the effort to find accountability for these victims. This local anchorage has allowed us to make significant progress on our cases in 2020, and, as always, we can only showcase a fraction of our work in annual reports, as most of our efforts are not in the public domain.

Arrests and trials will always be the most resounding events for us, as our collaboration with national or international prosecutors culminates with them arresting and trying alleged perpetrators who are accused of crimes against the victims we work for. Such developments can take many, many years. In 2020, however, both an arrest and a trial took place.

In March, Gibril Massaquoi was arrested in Finland. And in December, the Alieu Kosiah trial started in Switzerland. These two events raise fascinating and complex questions. Why did Civitas Maxima decide to work on the Gibril Massaquoi case, when this individual collaborated with an international criminal court? How are those who committed heinous crimes, and yet collaborated with justice, regarded in national justice systems? How does someone who dedicated his life to pursue justice for war crimes feel, when he is accused by his own ethnic group of being a traitor because of his work? Is it inevitable that those accused of war crimes plead not guilty? Why is it so important for journalists to cover war crimes trials? Is there a link between neo-colonialism and the prosecution of Africans outside of Africa?

Setbacks are part and parcel of our work, and we got our share in 2020: two individuals passed away in cases we have been working on. In addition, Agnes Reeves Taylor, against whom a case was built in the United Kingdom - dismissed at the end of 2019 - decided to go back to Liberia, where impunity for war crimes still prevails. Again, these events also raised key questions: how do individuals and communities feel when justice does not prevail? Was the UK's decision to drop the case against Agnes Reeves Taylor legally justified? How can one think about the situation of general impunity in Liberia? Should we view women committing war crimes differently than men?

All of these questions are explored in this report by a variety of people from different countries and with different experiences, who offer their insights and share their unique perspective. Every year we strive to provide interesting and thought-provoking content, and this year, with the participation of 12 external contributors and our staff, is no different.

To work in the field of international criminal justice requires skills which may seem antinomic: on the one hand, the deployment of intense efforts for work to move forward – such as the litigation for war crimes, especially in front of national courts - whilst at the same time slowing down in order to reflect on the way we do our work and learn from setbacks. At Civitas Maxima, we always try to do both, and I believe this report is a testament of this reality.

Let me conclude by thanking our national and international partners: collaboration between different, but similar minded partners, helps the field greatly. And of course, by expressing our deepest and sincere gratitude to our donors. Civitas Maxima has always operated without any government funding, which guarantees our complete independence. Nothing would be possible without the trust of our donors, and we are immensely grateful for it.

Sincerely,

Emmanuelle Marchand

August 1990, Congo Town, Liberia - Members of the NPFL patrol the streets of Congo Town - © Patrick Robert

Artist's impression of Gibril Massaquoi.
© JP Kalonji/Civitas Maxima

Q1 *March*

In March 2020, Gibril Massaquoi, former Revolutionary United Front (RUF) commander, was arrested in Tampere, Finland. Civitas Maxima's decision to provide the initial information about his alleged crimes committed in Liberia to Finnish prosecutors has created controversy. This is due to the fact that Mr Massaquoi was granted immunity by the Special Court of Sierra Leone for his testimony. Director Alain Werner explains why Civitas Maxima made the decision, followed by a piece written by renowned Italian Magistrate Armando Spataro who discusses the history of Italian legislation on collaborators of justice.

Former RUF Commander Arrested in Finland Over War Crimes and Crimes Against Humanity Allegedly Committed in Liberia

Press Release - March 11, 2020

On Tuesday, March 10, Gibril Massaquoi, a Sierra Leonean national, was arrested in Tampere, Finland, by the Finnish police who suspect that he committed war crimes and crimes against humanity in Liberia between 1999 and 2003. The crimes he allegedly committed include homicide, sexual violence, and the recruitment and use of child soldiers.

Gibril Massaquoi was in the Revolutionary United Front (RUF) inner circle during the Sierra Leonean Civil War – a Lieutenant-Colonel and spokesman of the rebel group – as well as an assistant to the group's founder, Foday Sankoh.

In 2005, Massaquoi testified in open session before the Special Court for Sierra Leone (SCSL) in the case against members of Sierra Leone's former Armed Forces Revolutionary Council (AFRC) – a rebel group that allied itself with the RUF rebels in the late 1990s.

As part of their regular investigation and documentation efforts, Civitas Maxima and its Liberian sister organization, the Global Justice and Research Project (GJRP), found evidence that Massaquoi had allegedly committed, overseen, and ordered international crimes in Liberia during the Second Civil War.

Civitas Maxima and the GJRP submitted information regarding Massaquoi's alleged involvement in mass atrocities in Liberia to the authorities in Finland, where he resides. Information about Massaquoi's presence in Finland appeared online as early as 2010.

The Liberian authorities' support of this case should be applauded, as they collaborated with the Finnish authorities during the investigation.

Civitas Maxima and the GJRP also congratulate the Finnish authorities on their diligence and commitment to this investigation.

Fayah Williams, Deputy Director of the GJRP said: "*The latest news regarding the arrest of Mr Gibril Massaquoi in Finland is a huge step towards addressing the issue of accountability for past crimes committed during the two bloody civil wars in Liberia. It brings hope to all those who were victimized as a result of the civil wars. This arrest also indicates that justice does not discriminate based on nationality.*"

This is the 7th arrest of an alleged war criminal by authorities in 6 different countries on 2 continents that was prompted by information collected by Civitas Maxima and the GJRP – whose work has also contributed to two convictions of Liberian war criminals in the U.S. Nobody has ever been tried for war-related crimes on Liberian soil. The historic trial of Alieu Kosiah, a former commander of the United Liberation Movement of Liberia for Democracy (ULIMO) rebel group, is scheduled to commence on April 14 and conclude on April 30, 2020 in Bellinzona, Switzerland. Two of Civitas Maxima's lawyers directly represent 4 plaintiffs in the case. It will be the first trial for war crimes in front of the Swiss Federal Criminal Court.

We Stand Behind Our Decision

Alain Werner

Director of Civitas Maxima

Gibril Massaquoi, former rebel commander of the Revolutionary United Front (RUF) during the war in Sierra Leone, collaborated with an international court, the Special Court of Sierra Leone (SCSL), from 2002 to 2008 as an "insider witness" in the prosecution of his fellow rebel commanders. That means that in return for his collaboration, the SCSL agreed not to investigate his role in the Sierra Leonean civil conflict from 1996 to 2002. We, at Civitas Maxima, fully respect the principle that someone could collaborate with a national or international court and be granted immunity for the crimes covered by the jurisdiction of the court and that he/she committed.

In fact, we fully understand the role and importance of "insiders" in the trials of high-level alleged perpetrators for international crimes. Indeed, I was myself a Trial Attorney for the Office of the Prosecutor in the trial of Charles Taylor, former President of Liberia, who was convicted for international crimes committed in a neighboring country, Sierra Leone. Undoubtedly this conviction was secured thanks to the testimony of about 30 insider witnesses who testified on Taylor's role, including in planning a deadly military attack against the capital of Sierra Leone in January 1999. It is therefore clear that insider witnesses are often necessary in the system of international justice.

However, Civitas Maxima found evidence that Gibril Massaquoi allegedly committed, oversaw, and ordered international crimes, in another country, Liberia, during the second Liberian civil war, from 1999 to 2003. We were not looking for this evidence, but it came up, and was so compelling that we contacted the Finnish judiciary in 2017, as Gibril Massaquoi was living in Finland where he had been relocated by the SCSL in 2008.

Our own findings and Massaquoi's subsequent investigation by Finnish authorities have only ever concerned crimes that Massaquoi may have committed in Liberia, in full respect of his prior immunity granted by the SCSL for his involvement in the Sierra Leonean civil war.

Our decision to give Gibril Massaquoi's case to the Finnish judiciary was supported by our understanding of the rules governing insider witnesses. This is a rich legal issue, on a national and international level.

"We, at Civitas Maxima, fully respect the principle that someone could collaborate with a national or international court and be granted immunity."

In national contexts of criminal prosecution, states have adopted specific laws that structure collaboration with criminal insiders. As former Judge Antonio Spataro explains very clearly in this Annual Report (see p. 12), Italy's "collaborator" laws, for example, give criminal insiders shorter prison sentences in a highly regulated exchange for valuable information or for the prevention of crimes. Across criminal contexts, these laws provide for varied levels of punishment reduction depending on the criminal actor's level of commitment to preventing crimes from taking place, their credibility as a witness, and their concrete help in identifying or capturing perpetrators of crimes. There is therefore no insider deal in Italy that provides permanent or total immunity to a criminal suspect for all their alleged crimes, no matter their level of collaboration or disassociation from their criminal group. It is also important to note that insider deals in Italy can only be granted by the judge in an insider's trial. Suspects who wish to become insiders need to earn their rewards in public debate. Their testimony must be found to be thoroughly credible, and corroborated by external objective evidence, for them to earn punishment reductions from the judge. On a national level, therefore, Italy is one of several states that have strict and codified rules on insider deals, that are limited to punishment reductions rather than blanket immunity.

In contrast, in front of international courts, there are, to our knowledge, no rules regulating the selection of insider witnesses or insider deals. This is despite the fact that insider deals have the most gravity and critical relevance in the context of international criminal courts, where tribunals aim to prosecute those most responsible for some of human history's most violent and horrendous mass atrocities. In all 225 of the International Criminal Court (ICC)'s Rules of Procedure and Evidence, there are no guidelines for investigators' selection and compensation of insider witnesses. The International Criminal Tribunal for Rwanda (ICTR)'s Rules of Procedure and Evidence only provided the Prosecutor with the right to "*take all measures deemed necessary for the purposes of the investigation and to support the prosecution at trial.*" Similarly, the International Criminal Tribunal for former Yugoslavia (ICTY)'s rules allowed the Prosecution to "*undertake such other matters as may appear necessary for completing the investigation and the preparation and conduct of the prosecution at the trial*" but did not engage with regulating the court's cooperation

with insider witnesses. The SCSL did not establish or follow any codified procedures regarding their insider deals.

A study conducted by the Netherlands Institute for the Study of Crime and Law Enforcement in March 2021 found that 86% of all insider testimonies heard at the ICC, ICTY and ICTR have had credibility or reliability issues leading to the partial or full dismissal of information. Furthermore, 50% of all insider testimonies in ICC trials have been completely dismissed. The study authors recommended that international courts "*focus extensively on training and developing procedures*" to obtain credible and accurate insider testimonies. The study further underlined "*the need for more rigorous external validation*" of the insider.

A lack of rules at an international level, therefore, has led to credibility and reliability problems for insider testimonies. Insiders at an international level must be subject to intense scrutiny, and their selection and compensation must follow strict rules, just as they are in national criminal justice practices.

"But Massaquoi was not given blanket immunity for all crimes. There was no possible legal immunity for him for crimes he allegedly committed in another country, Liberia."

As a suspect in 2002 for international war crimes and crimes against humanity, Massaquoi was not given blanket immunity for all crimes. We do not believe the SCSL ever envisaged providing Massaquoi with legal amnesty for any and all mass atrocities committed in other civil wars, in other countries. And even if international and permanent legal amnesty was the SCSL's intended deal for Massaquoi, the SCSL's jurisdiction was limited to crimes committed in Sierra Leone in the civil war's timeframe. There was therefore de facto no possible legal immunity for Gibril Massaquoi for crimes committed in Liberia.

In our view, there is no merit to the argument that prosecuting former insider witnesses will make collaborators refuse to testify in the future, and endanger future cases. First, national or international courts should not, unless for exceptional and documented reasons, agree to deal with individuals who spread their international crimes across borders. In addition, in a post-conflict society, some former leaders and commanders from armed groups will naturally choose to avoid their own prosecution if the opportunity is available, and as such, there will be no shortage of insider testimonies in the future.

As such, with full respect to and in accordance with the spirit and practices of insider collaboration, national practices and international law, we made the informed decision to transmit to the Finnish authorities the information we had on Gibril Massaquoi's alleged international crimes he committed in Liberia. We fully stand by this decision.

We also stand behind international tribunals developing and implementing strict, codified rules for insider collaboration. They will serve to harmonize national and international criminal justice practices, enhance the credibility of insider testimonies, and will avoid the undue protection of individuals who are suspected of international crimes.

Alain Werner *is the Director and founder of Civitas Maxima. He has worked for the Office of the Prosecutor of the Special Court for Sierra Leone (SCSL) in several trials, including the trial in The Hague of the former President of Liberia, Charles Taylor. He also appeared at the trial of Kaing Guek Eav, or "Duch", before the Extraordinary Chambers in the Courts of Cambodia (ECCC) in Phnom Penh where he acted as a lawyer for the civil parties. Mr. Werner also represented the victims in the case against former President of Chad, Hissène Habré, in front of the Extraordinary African Chambers in Dakar, Senegal. In 2019 he was awarded the"Bâtonnier Michel Halpérin Prize for Excellence" by the Geneva Bar Association.*

The Italian Legislation on Collaborators of Justice

A winning model against terrorism and mafia

Armando Spataro

Italian Magistrate

Civitas Maxima was criticized by some for having provided information which initiated investigation against a former rebel who collaborated with an international court. It therefore seemed important to understand how national systems deal with former members of criminal movements.

During the 1970s and up until 1988, Italy experienced a period of widespread and intense domestic terrorism – the so-called "anni di piombo" (Years of Lead") – which formed the backdrop for a novel practice of collaboration by informants in terrorism, and later mafia cases. The following piece describes Italy's unique history of the widespread use of "insider witnesses", and how it is tightly regulated to ensure credibility.

From the mid 1970s, Italian magistrates dealt with domestic terrorism cases by seeking high levels of professional specialization – effectively "inventing" a system of close coordination between judicial offices involved in investigations and enhancing their relationship with the organs of the judicial police.

In particular, it was the massacre on March 16, 1978 of five police officers assigned to the protection and escort of Aldo Moro in Via Fani in Rome that prompted an initiative by approximately 25 prosecutors and investigating judges who operated in the cities most affected by terrorism. In the absence of legislative interventions or political directives, there was spontaneous coordination among the judicial offices affected by the phenomenon, leading to the creation of groups specialized in the terrorism sector.

At the time, the legal system did not provide any rules on coordination, but rather supported rules that hindered the exchange of information.

The heads of the investigative bodies of the judicial police, specialized in the field of terrorism, were also invited to participate in those meetings, so as to reciprocally favor – through the comparison of their respective experiences – a consistent growth of all the institutions involved in judicial investigations on terrorism.

All of this happened without any need to resort to the intervention of the Information Services (the so-called "Secret Services"), whose competence, according to the Italian system, concerns the prevention of risks to national security, without any possibility of interference or functional relations with the judiciary.

In addition, alongside the described self-organization of the judiciary, new legislative measures resulted from a political climate that, at least in the effort to fight terrorism, enjoyed non-partisan support from the majority and the opposition.

For this piece, however, we will only focus on the laws that favored the birth and expansion of the phenomenon of collaborators of justice.

The first legislative measure instituted was Law Decree no. 59 of March 21, 1978, which was approved a few days after Aldo Moro's kidnapping, and then converted into Law no. 191 of May 18, 1978. With this law, 289-bis (still in force) was inserted into the penal code to punish kidnapping for the purpose of terrorism or subversion with 25 to 30 years' imprisonment (or life imprisonment in the event of the kidnapped person's murder). However, 289-bis paragraph 4 provides for a decrease in punishment for perpetrators who assist victims to escape: "*The participant who, disassociating themselves from the others, works so that the passive subject regains their freedom shall be punished by imprisonment from two to eight years; if the passive subject dies after release as a result of the kidnapping, the punishment shall be imprisonment from eight to eighteen years.*"

"(..) Since the beginning of 1980, the declarations of the so-called *pentiti* (those who repent) began to pour into proceedings, resulting in hundreds and hundreds of arrests, as well as the discovery of numerous bases, the seizure of deadly weapons, explosives, and important documents."

The most effective of the laws against terrorism was, however, Law Decree n. 625, approved on December 15, 1979

("*Urgent measures for the protection of the democratic order and public security*"), then converted into Law n.15 of February 6, 1980. This contained, in addition to various other important provisions, two "norme premiali" (incentives to repent), and the crime of association for the purpose of terrorism and subversion of the democratic order (art. 270 bis c.p., a norm that, with the modifications made in 2001, today also punishes the affiliation to groups operating in the field of so-called international terrorism).

"(..) Our system provides for a mechanism entirely controlled by the judge: the collaborator who aspires to a substantial sentence reduction must earn it in public debate."

Article 4 of this law, which provided extenuating circumstances for terrorists who, by dissociating themselves, cooperate with the investigators – was approved with a rush of emotion caused by ten "gambizzazioni" (kneecappings) by Prima Linea terrorists inside a business training school in Via Ventimiglia in Turin on December 11, 1979.

The "norme premiali" (incentives to repent) had an even greater success than expected, and constituted the true characterizing point of that law, so much so that since the beginning of 1980, the declarations of the so-called "pentiti" (those who repent) began to pour into proceedings, resulting in hundreds and hundreds of arrests, as well as the discovery of numerous bases, the seizure of deadly weapons, explosives, and important documents.

The "norme premiali" in question are still in force today as an ordinary (and not exceptional) instrument to combat terrorism, and were progressively extended to combat other phenomena of organized crime, such as the mafia and international terrorism (both of which will be discussed below), as well as drug trafficking and human trafficking.

The temporary nature of its effectiveness characterized another law in favor of collaborators, Law n. 304 of May 29, 1982, which provided for even greater reductions in punishment, and in some cases no punishment (art. 1). The rule in question only applied to crimes committed after January 31, 1982, provided that the collaboration had taken place within a rigid and short period (120 days, only extendable once more by another 120) starting from the entry into force of the law. It can be said that this law was devastating for the terrorist groups, considering the high number of new collaborators of justice and, above all, of many terrorists, who, thanks to the informants, were arrested. Moreover, the magistrates with experience in terrorism matters, aware of the exceptional nature of this additional instrument introduced by the 1982 law, spoke out against the extension of its validity.

The numerous procedural collaborations that were recorded also triggered an unstoppable process of self-criticism within each of the terrorist organizations that still existed, which gave rise to Law n. 34 of February 18, 1987 (Measures in favor of those who dissociate themselves from terrorism). This law was approved when the terrorism period was nearing an end, and good results were obtained by awarding sentence reductions and penitentiary benefits to those who, even if already sentenced, had definitively abandoned the organization of which they were a part, admitted the activities carried out (without the need to accuse accomplices), and repudiated violence as a method of political struggle.

The End of the "Years of Lead" and the Positive Balance of institutional action

It can be said that, thanks to the professionalism of the Italian police forces and magistracy, together with the described legislative measures (in particular the "norme premiali"), terrorism – both right-wing and left-wing – headed towards its definitive defeat in the second half of the 1980s.

What comes to mind is the historically important words of the then President of the Republic, Sandro Pertini, who, at the end of the years of terrorism, recalled that Italy could proudly claim to have defeated terrorism in "*the courtrooms and not in the stadiums*", alluding to torture, to the violation of people's fundamental rights, and to South American practices during the years of dictatorial regimes.

From the anti-terrorism of the "Years of Lead" to the anti-mafia: a brief outline

The institutional organization and legislative output illustrated up to this point were also used positively in the fight against the mafia phenomenon.

It should be remembered that, in the final period of the years of terrorism, a group of Sicilian magistrates who dealt with the mafia (including Giovanni Falcone), participated in various meetings of colleagues who dealt with terrorism: they did so in order to learn about the modalities of the spontaneous coordination that had been created, and to share the jurisprudential orientations on the subject of associative crimes.

In the anti-mafia sector, the characteristics of the legislation passed to fight the different kinds of mafia were largely identical to those of the years of domestic terrorism. However, unlike the anti-terrorism legislation, a specific regulation that came into force in 1991 determined the institution of the National Anti-mafia Prosecutor's Office (Procura Nazionale Antimafia), the District Anti-mafia Prosecutors' Offices (Procure Distrettuali Antimafia), and – as far as the judicial police were concerned – the Anti-mafia Investigative Directorate (Direzione investigativa antimafia).

The possibility of penalty reductions was extended to mafia collaborators with the Parliamentary approval, by a very

Giuseppe Memeo, militant of the Armed Proletarians for Communism (Proletari Armati per il Comunismo, PAC) points a gun at policemen during a protest in 1977. This picture became symbol of the Years of Lead. - Public Domain

Bunker courtroom of the Ucciardone prison in Palermo during the maxi-trial against the Mafia, 1986. Sicilian prosecutors indicted 475 mafiosi for a multitude of crimes relating to Mafia activities, based primarily on testimonies given as evidence from former Mafia bosses turned informants, known as pentiti. - Public Domain

large majority, of various laws that went on to constitute a sort of "anti-mafia package". These included Decree Law no. 152 of May 13, 1991, converted by Law no. 203 of July 12, 1991, which extended to collaborators in mafia trials the same favorable treatment already codified 11 years earlier for "repentant" terrorists, providing that "(..) *for the crimes referred to in article 416-bis and for those committed by availing themselves of the conditions provided for by the aforementioned article, or in order to facilitate the activity of mafia-type associations, towards the accused who, dissociating himself from the others, works to avoid that the criminal activity pursues further crimes, and by also concretely helping the police or the judicial authority in the collection of decisive elements for the reconstruction of the facts and for the identification or the capture of the authors of the crimes, the penalty of life imprisonment is substituted by that of imprisonment from twelve to twenty years and the other penalties are diminished from a third to a half.*"

The results were immediately exceptional also in this area, and collaborators of justice proved to be decisive in bringing the mafia gangs to their knees.

Regarding collaborators during the mafia trials, it must be said that their number increased despite the controversy immediately raised by those who claimed, for reasons not always commendable, that the "repented mafiosi" would be certainly unreliable, even if the "repented terrorists" could be believed with some effort. However, the similarities between the two categories appeared evident, even in the frequent and visible transformation of the collaborator on a moral level. And the "repented mafioso", moreover, normally encounters much greater risks than the repented terrorists.

"(..) Sentence reductions are the result of a very thorough examination of the credibility of the declarations of the *pentiti*"

Among the reasons for such controversy and resistance against mafiosi that repented was the fear that they would reveal the concealed relationship between the 'cosche' (gangs) and the political class, which, especially in southern Italy, was clear to all, even if difficult to prove in court.

It is certain, however, that the "treatment" of ex-mafia collaborators became progressively more and more penalizing, and the Parliament, almost unanimously, approved in 2001 a new law for trial collaborators (Law n. 45 of February 13, 2001) which, by providing stricter conditions for the protection of the relatives of "pentiti", determined the withering of a phenomenon that had such a great part in the successes achieved up to that moment against mafia criminality.

An illogical norm, as well as contrary to the principle of mandatory criminal prosecution in force in the Italian legal system, was inserted in Law n. 45/2001: the statements made by 'pentiti' became unusable in trial if made after 180 days from the will to cooperate. The norm is still in force, and prevents the use, for example, of any information on facts provided by the collaborator – even if these were belatedly given because of previous lapses of memory. There is no possibility of derogation from the six-month term, not even with a motivated provision of the prosecutor or the judge.

It is unquestionable, in any case, that the number of collaborators against mafia has definitely decreased in recent years.

The Judiciary, Judicial Police, and the Fight Against International Terrorism: Refusal of War on Terror and Trial Collaborators

The use of collaborators has also proved to be important in the more recent fight against international terrorism, which has seen the first investigations and arrests for terrorism in Italy since the end of the 1990s. This is not the place for an in-depth analysis of the institutional responses to this new tragic phenomenon, but suffice it to say that the Italian judiciary and police forces have rejected the well-known theorization of the War on Terror, according to which activities normally considered contra legem become licit in the name of security, since the need to prevent security risks can/must be implemented by any means possible, prevailing over freedoms and other laws.

The three main laws specifically destined to contrast this new terrorism, approved after tragedies and moments of real emergency, have introduced procedural and substantial innovations in order to favor greater effectiveness in contrasting international terrorism and specialization of the bodies of magistracy and judicial police in charge of this, but, as in the Years of Lead, always in full respect of individual rights.

We refer to legislative measures approved in 2001, following 9/11; in 2005, approved after the London attacks of July 7, 2005; and in 2015, shortly after the Paris massacre of January 7, 2015 at the headquarters of the satirical magazine "Charlie Hebdo", with which the competence of the National Anti-mafia Prosecutor's Office, now renamed as the National Anti-mafia and Anti-Terrorism Directorate (Distretto Nazionale Antimafia e Antiterrorismo), was expanded.

Final note

In conclusion, after having synthesized here the enormous importance that collaborators of justice have had – and still have – in the fight against the most dangerous criminal phenomena that have afflicted Italy, it is useful to briefly mention the "guaranteed modalities" that the Italian judicial system provides for the use of informants.

Indeed, we can still discuss the appropriateness of such important sentence reductions for perpetrators of serious crimes, but, beyond the fact that these possibilities are practiced in every part of the world – and through less

guaranteed procedures than in Italy – it should be remembered that our system provides for a mechanism entirely controlled by the judge: the collaborator who aspires to a substantial sentence reduction must earn it in public debate, in front of those who they accuse, subjecting themselves to cross-examination by the defense lawyers. In substance, sentence reductions are the result of a very thorough examination of the credibility of the declarations of the "pentiti", which must be corroborated by the identification of precise objective evidence of their testimony. This is a guarantee of correct application of this legal institution, and is consistent with the rules on which any democratic system must be based.

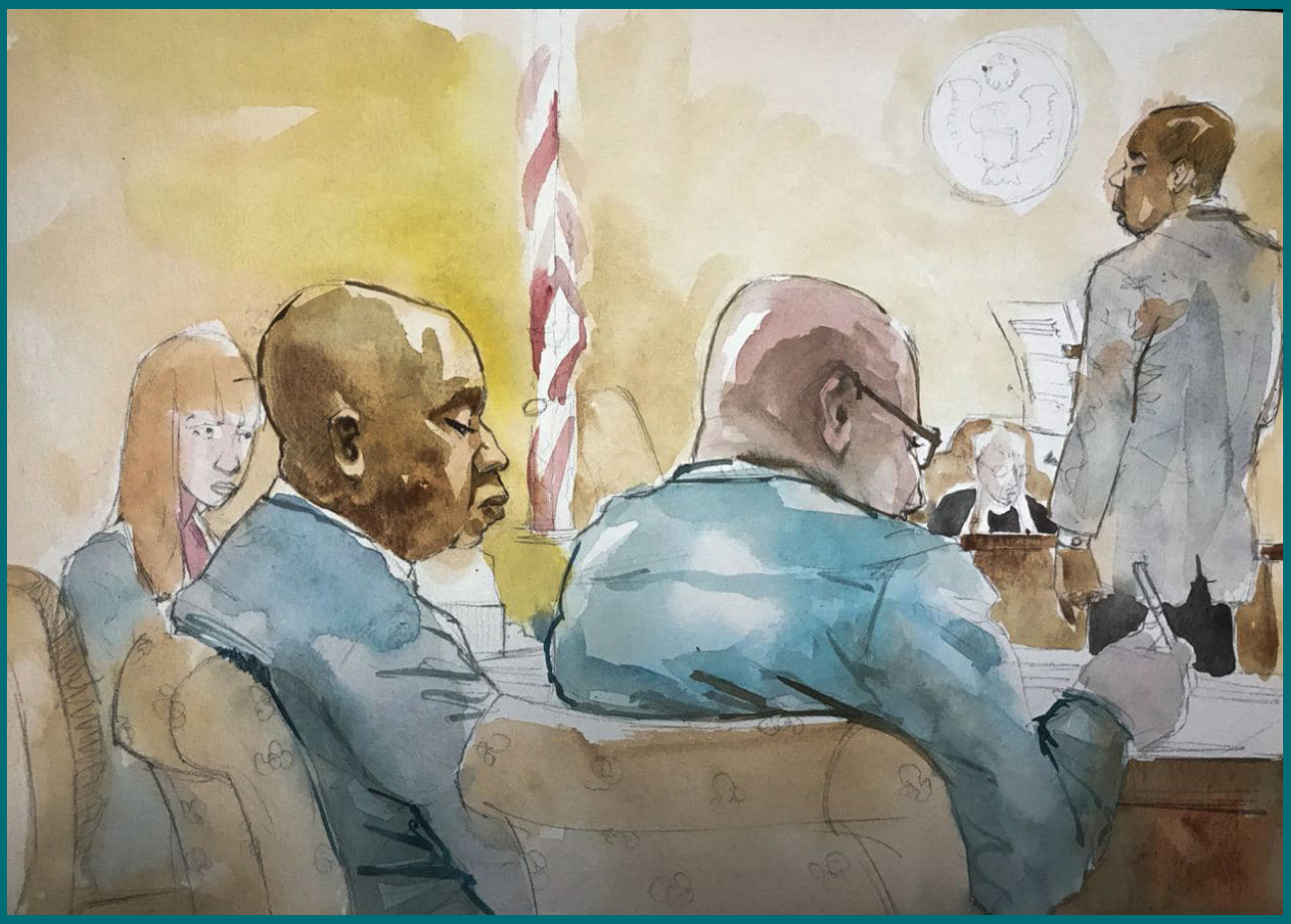
In addition to the laws mentioned above, various measures have been passed in favor of collaborators of justice and judicial witnesses concerning their protection, their possible detention in conditions of security, the change of their personal details and their social reintegration – all of which cannot be addressed here.

Finally, it should be pointed out that the implementation of protection programs for collaborators and their relatives is entrusted to the Central Protection Service (Servizio Centrale di Protezione), which is an inter-force office set up within the Central Directorate of Criminal Police (Direzione Centrale della Polizia Criminale), which makes use of the Territorial Operational Protection Units (Nuclei Operativi territoriali di Protezione). The latter are in continuous contact with the collaborator, while the tasks strictly related to his/her safety (such as home surveillance, accompaniment to hearings, etc.) are assigned directly to the territorial bodies of the Police Forces.

Armando Spataro *is an Italian Magistrate who has worked as public prosecutor in the fields of domestic terrorism since 1977 and international terrorism since 2003. He coordinated the work of the specialised groups of the Public Prosecutor's Office of Milan from 2003, and exercised the functions of Public Prosecutor of Turin from 2014. He has also been a member of the Anti-Mafia District Directorate of Milan since 1991.*

Funeral of the victims of the Piazza Fontana bombing in 1968, when 5 bombs were detonated in Rome and Milan, killing 17 people and wounding 88. The terrorist attack was carried by Ordine Nuovo, a right wing extremist group. - Public Domain

May 1996, Monrovia, Liberia - ULIMO-J fighter running on front line. In April 1996, the Liberian State Council sent police-militia to arrest Roosevelt Johnson on murder charges. As a result, fighting broke out in Monrovia between NPFL and ULIMO-J (mainly ethnic Khran headed by Roosevelt Johnson) fighters. - © Patrick Robert



Court Sketch of Thomas Woewiyu during his trial in the U.S., 2018
© Chase Walker/Civitas Maxima

Q2 *April and June*

In April 2020, Thomas Woewiyu, former Minister of Defense of the NPFL, died of COVID-19. He was convicted in Philadelphia in 2018 and was awaiting his sentence. In June 2020, Bill Horace, former Liberian rebel commander, was gunned down in his house in Canada. Civitas Maxima had worked on Horace's alleged war crimes and was hoping to pursue justice on behalf of his victims. These two events, although not similar as Thomas Woewiyu had been convicted, reminded us of how complicated and fragile any quest for justice is. Tonia Dabwe and Anoush Bagdahssarian have experienced, in different ways, war crimes impunity and share their reflections on it.

Living without closure

Tonia Dabwe

Founder and Chair of the Mineke Foundation

On October 31st, 1992, NPFL-rebels loyal to Charles Taylor mugged my family at our home, and eventually forced us to leave the house with just what we were able to carry. My father was subsequently taken to an unknown location. It would be six weeks before I found out that he was still alive. On November 2, 1992, the same NPFL rebels forcibly took my mother away. She remains missing to this day.

For the past almost 29 years, it has been emotionally draining to continuously deal with the question of what exactly happened to her after she was taken, as well as the many other questions that arise. Despite relentless efforts on my father's part - starting right after he was able to escape the torture by NPFL-rebels - to gather and submit information to national and international authorities, we have made very little progress. Nor did the tireless efforts made by her family in the Netherlands lead to any action by authorities at the time.

To this day, we don't know what happened to her.

For me, personally, it led to me shutting down a part of myself - the part that had to handle what had happened in Liberia – for almost 8 years. It also resulted in my not setting foot in the country for over 16 years, until – after spending a number of years dealing with my traumas – I decided to start an NGO, dedicated to my mother's memory. Mineke Foundation focuses on providing skills to women and girls, the groups that bore the brunt of the suffering experienced during the war.

"I believe we all deserve to not have loved ones forcibly removed from our lives without holding those responsible accountable."

What happened in 1992, resulted in my father becoming a totally different person; a man far removed from the visionary who once returned to Liberia with his Dutch wife full of plans for the development of his country. A man, consumed by grief and anger, unable to deal with the combined traumas of the torture he was subjected to during the war, anger at a deeply-felt sense of powerlessness – and possible disinterest of those who are able to help - and grief at the inability to say a proper goodbye to the love of his life.

For me, to this day, not a day goes by that I am not gutted by a memory of my mother. Sickened to tears by questions like, Was she kept a prisoner somewhere? For days, weeks, months even? How much and how long did she have to suffer? Terrified by the thought that maybe we abandoned her when she needed us the most. Could we have done more? Should we have done more given that the authorities have shown so very little inclination to help us find out the truth? Is it our fault that we still don't know what happened?

It is impossible for me to ever fully relax when I am in Liberia. First of all, when I am there, I am extremely aware of the fact that those responsible for my mother's abduction are right there in the country and I could run into them at any time. I am also very aware of the fact that they enjoy impunity; held to no account for what they did to her, to us, and to countless other victims. If they decide to go further, who will stop them? Who will protect us as long as no one is willing or able to hold them accountable?

Secondly, whenever I look around in Liberia, I see three very distinct images, superimposed on top of each other as it were: the way it was before the war, the way it was during the war, and the way it is today. The stress that I feel, just by being in the country, is compounded by the ease with which emotions from 1992 resurface as I look around me. Thirdly, every time I am there, I am confronted with one or more of the horrifying stories about my mother. Stories that I cannot refute, because I do not know the truth.

I am forever grateful to my friends there – both Liberians and expats – who, while they don't all understand what I am going through, are there for me when I feel vulnerable and afraid.

But I don't believe that it is right for anyone to live this way. I believe that we all deserve to not have loved ones forcibly removed from our lives without holding those responsible accountable.

And I believe that we deserve closure, accountability, and justice. I believe that taking a stand against injustice – and ensuring that perpetrators are punished – is a key responsibility of any country claiming to uphold the rule of law. As grateful as I am for the tireless efforts of and support from Civitas Maxima and its sister organization it should not have to fall to them to seek justice for victims.

For me, the lack of closure means that I can never truly close this chapter of my life, never fully start healing from this hurt. My own attempts to gain clarity over the years have also been unsuccessful, and every time I try, that old wound is reopened and an additional emotional toll is exacted.

No matter how far I have been able to come over the years.

Because how do I ever say goodbye to the person I loved most in this world when she is nowhere to be found?

"For me, to this day, not a day goes by that I am not gutted by a memory of my mother."

Tonia Dabwe *is the daughter of Dutch and Liberian parents and was born and raised in Liberia. Currently based in the Netherlands, she works as a business strategy consultant for companies in Europe and Africa. She is also the Founder and Chair of Mineke Foundation, a Liberian NGO providing vocational and business skills training to mainly women and girls, and affordable primary school education to children aged 4 and up.*

April 1996, Monrovia, Liberia - A young soldier with the NPFL rebels in Monrovia, Liberia. - © Patrick Robert

100 Years of Impunity

Anoush Baghdassarian

Co-Founder, Rerooted Archive

As young girls growing up in the Armenian diaspora in the U.S., Ani and I learned, without fail, about the Armenian genocide. In Armenian day school and Sunday school classes at Church, our curricula and activities revolved around preserving our Armenian identity and learning about the massacres perpetrated against our ancestors by the Ottoman Empire. It seemed as though we were stuck 100 years in the past and could not move forward until we achieved acknowledgement of our past. Each year, as Armenian Genocide Remembrance Day approached, we would hold events, participate in marches, and miss class in order to attend protests in New York City where our fellow Armenians were demanding recognition of the Genocide. Recognition by the U.S. Government felt like a nearly impossible goal, which our parents and grandparents spent decades trying to achieve. On Armenian Genocide Remembrance Day 2021, President Joseph R. Biden, Jr. finally recognized the Genocide. It is a momentous year. But while recognition by the U.S. was always important, it is recognition by Turkey, the successor of the genocidal state, that was, and still is, most important.

As a young girl, I didn't know why recognition mattered so much, or why denial hurt so much, but I do remember what I felt. I remember the confusion I felt when I went to the New York City protests on Armenian Genocide Remembrance Day and on the adjacent block, Turkish protesters were holding up signs saying the Armenians were liars and suggesting the 1.5 million Armenian deaths were the result of a mutually hurting war, as opposed to systematic annihilation. I remember the incredulity I felt when I was called into the principal's office and told my high school would not produce a play I had written about the Armenian Genocide because it was not officially recognized by the United States. I remember the indignation I felt when I visited a museum in Erzurum, Turkey, framing the genocide as committed by the Armenians against the Turks. I remember the sadness I felt when friends who went to study abroad in Istanbul came back to tell me that they did not believe what happened in 1915 was genocide. Each one stung more than the previous. Each one strengthened my resolve to ensure other communities don't have to confront the same denialism and impunity in the face of atrocity, and don't have to wait 100+ years for justice.

"Today on the same Syrian lands where Armenians reached their death or salvation during the genocide, the Armenian community has again experienced mass human rights abuses during the Syrian war."

These experiences prompted me to give a lot of thought to notions of justice, why recognition is important, how to reconcile competing narratives, and how to meld a society that has been broken for so long, or even more difficult, how to bring together communities that have treated one another with animosity for so long. These questions are not unique to the Armenian plight. In fact, as I launched myself further into studying transitional justice and international human rights, I learned that these are the questions facing practitioners in this field every day, across varying regions and conflicts. While each tool – memorialization, restitution, reparations, etc. – has its limitations, they each achieve justice in their own way. For myself, I have been pulled most towards law as a tool of justice for its ability to reconcile competing narratives and achieve recognition. Even if no final award or enforceable judgment is won, even just recognizing someone's reality and truth in court is incredibly powerful. Acknowledgement and recognition of the harm and pain endured is a critical form of redress. As I've searched to understand this, I came across a term, "ethical loneliness" that helps put words to the feeling.

In her book, "Ethical Loneliness," Jill Stauffer coins the term in the title, and defines it to mean "*the experience of being abandoned by humanity, compounded by the cruelty of wrongs not being acknowledged.*" Expanded upon, Stauffer's theory of ethical loneliness is applicable to groups that have been abandoned by humanity in two senses. First, in the sense of having had grave crimes committed against them and their peoples without the world stepping in to stop the harm soon enough. And second, in the sense of having undergone a further abandonment through the injustice of not being heard – their plight unrecognized by the world and their pain and loss unacknowledged by the perpetrators. This theory of ethical loneliness can help one understand why the desire for this kind of restorative justice has been a fundamental element, and even the end-goal, of so many transitional justice efforts of the past, including truth commissions and national trials.

While time can attenuate people's demands for justice, it can also exacerbate them, and as Ani and I grew up seeing how our community was unable to move forward without justice, we became concerned about another lack of justice: justice for the Syrian-Armenian community, as a result of the Syrian civil war. As an ethnic and religious

minority in Syria, the Syrian-Armenians have not been included in many of the transitional justice efforts for Syria. We read about their homes being destroyed, young children being kidnapped, and other community members being killed, and wanted to ensure to whatever extent we could that the Armenians would not be deprived of justice yet again. So, we started Rerooted, an oral history archive that collects and preserves testimonies from Armenians who fled Syria during the war, as well as those who stayed. The archive's goals are threefold: (1) to preserve what is left of the vibrant Syrian-Armenian community, including Western Armenian, their predominant, and endangered, language; (2) to educate others about minorities in the Middle East, notions of home, identity, and diaspora; and (3) to ensure the Syrian-Armenian community is included in justice efforts for Syria. Justice efforts should be informed by people on the ground, and that's exactly what we set out to do. To date, we have collected over 200 interviews about individuals' genocide stories, their lives in Syria, lives during the war, journeys out of Syria, and lives in their resettled country. From individuals whose businesses were destroyed and houses bombed, whose kids were kidnapped, to those who were themselves captured and held captive, we have tried to ensure that everyone's voices are heard, and we will continue to collect testimonies for as long as we can to meet this aim.

For 100 years, from the streets of New York City to the schoolyards of Aleppo, generations of Armenians have fought for justice for their ancestors. Today, on the same Syrian lands where Armenians reached their death or salvation during the genocide, the Armenian community has again experienced mass human rights abuses during the Syrian war. The Armenian community is a resilient one – no matter how many times we are rerouted, we will always re-root ourselves in strong, thriving, Armenian communities around the world. However, that is not a replacement for accountability.

"I am hopeful that the young Syrian-Armenian girls whose entire family histories are comprised of impunity and denialism will come to see justice in their lifetimes."

In fact, those who have sought refuge elsewhere, in Europe for example, can benefit from the robust and creative accountability methods being successfully tried in countries like Germany, France, and Switzerland, with the expansive use of universal jurisdiction to hold people accountable for the heinous crimes they committed abroad. As an intern with Civitas Maxima in 2019, I saw firsthand how a small, yet powerful group of international lawyers based in Switzerland was able to work with their local partner, the Global Justice and Research Project, in Liberia to document atrocity crimes committed there, and build cases 5,000 miles away to hold perpetrators accountable. A country's refusal or inability to provide accountability for its own citizens is no longer an excuse for impunity. Not only does Civitas Maxima continue to have success with Liberian cases in jurisdictions around the world, but a number of other organizations are having success with Syrian cases too. While there are many ways to achieve justice aside from retributively, I am hopeful that the power of the law in this area of accountability for atrocity crimes will only continue to strengthen. Most of all, I am hopeful that the young Syrian-Armenian girls whose entire family histories are comprised of impunity and denialism will come to see justice in their lifetimes. Ani and I hope that our documentation and advocacy work with the Syrian-Armenians can help combat impunity and help not only their community, but by playing our small part, help all of Syria become whole again.

As one of our narrators explains, "*It is very important to tell our stories. My family told their genocide stories, with all the details since I was a baby drinking milk. I feel like those realities are in my blood. They are 100% true but we were disrespected after surviving the genocide by them not recognizing it. We suffered. And now I have an opportunity to tell my story. I am very thankful for you to have the chance to express myself. This is my true story.*"

Anoush Baghdassarian *is currently a J.D. candidate at Harvard Law School and holds a Master's in Human Rights Studies from Columbia University in New York, and a Bachelor of Arts with a focus on Human Rights & Genocide Studies from Claremont McKenna College in California. She undertook a summer internship with Civitas Maxima in 2019. She is co-founder of Rerooted Archive, which has documented over 200 Syrian-Armenian testimonies from survivors of the Syrian civil war, and has previously undertaken internships with the OHCHR, the U.S. Attorney's Office, the Center for Justice and Accountability, and Human Rights Watch.*

The Armenian Genocide Memorial Complex situated in Yerevan, Armenia.
© Shant Kha

Court sktech of Agnes Reeves Taylor during a hearing.
UK, 2017 - © Elizabeth Cook/PA Media

Q3 *July*

A few months after the dismissal of the torture case against her in the United Kingdom, Agnes Reeves Taylor went back to Liberia in July 2020 and gave a press conference issuing threats against those who had pursued justice on behalf of her alleged victims. Victoria Priori points out the legal issues with the dismissal of the case, whilst Daniel De Simone recounts following the trial as a journalist. Massa Washington explains why Ms Reeves Taylor's return to Liberia contributes to the culture of impunity, and Laura Sjoberg explains why women, as much as men, are capable of committing war crimes.

Why the UK Supreme Court may have got R v Reeves Taylor wrong

Victoria Priori

PhD Candidate, Graduate Institute Geneva

Torture as a crime has always been a very slippery notion to define at the international level, changing depending on whether it is considered a discrete crime, a crime against humanity or a war crime, to the point that scholars such as Paola Gaeta have labelled it as chameleonic. Yet, the present work deals with torture as a discrete crime, and more specifically analyses two different legal bases that the UK Supreme Court could have pursued in the case R v Reeves Taylor in order to avoid the subsequent dismissal of charges.

Without entering into lengthy details, the definition of torture contained in Article 1(1) of the UN Torture Convention of 1984 (UNCAT) was implemented domestically in the UK with the adoption of Section 134 of the UK Criminal Justice Act of 1988 (CJA). Crucially, both provisions require that for an offence to be labelled as torture, it must be committed "*by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*". Precisely Section 134 was at the centre of the discussion in the case R v Reeves Taylor. The offences in question (commission and conspiracy to commit torture) were all connected to the first Liberian civil war of the 1990s, and the alleged offender was Agnes Reeves Taylor, wife of Charles Taylor. Both Agnes Reeves Taylor and her husband were part of a non-state armed group – the National Patriotic Front of Liberia (NPFL) – that ultimately succeeded in defeating the then President Samuel Doe, gaining power of the country, and Charles Taylor became the President of Liberia in 1997.

As Agnes Reeves Taylor was part of an insurgent group fighting the Liberian government at the time of the offences, the main legal question brought before the UK Supreme Court addressed whether the words '*person acting in an official capacity*' provided for in Section 134 of the CJA could be applied to members of non-state armed groups. In fact, only with the inclusion of members of non-state armed groups in the definition of torture, could charges against her have been sustained.

"Importantly, despite the dismissal of charges, the Court noted that *prima facie* there was credible evidence that Agnes Reeves Taylor committed torture."

Ultimately, the UK Supreme Court determined that only members pertaining to entities exercising de facto governmental control over a territory should be included in the category of '*person acting in an official capacity*', leading to the dismissal of charges against Agnes Reeves Taylor, as the NPFL was not considered to enjoy this type of control during the civil war. De facto governmental control in the Court's view does not simply refer to a military presence on the territory, but more to the establishment of a state-like apparatus, capable of entering into international negotiations and setting up an administrative structure, prisons and tribunals – all requirements that very few non-state armed groups can measure up to.

Practically, the threshold put forward by the UK Supreme Court limits the application of Section 134 and Article 1(1) to members of non-state armed groups that are de facto states – as is the case with the Islamic State – but lack a de jure recognition at the international level.

Importantly, despite the dismissal of charges, the Central Criminal Court noted that *prima facie* there was credible evidence that Agnes Reeves Taylor committed torture (directly or by simply ordering or acquiescing). In light of this, it is worth exploring some compelling legal arguments that would have prompted for a different decision by the UK Supreme Court.

One possible path would have been that of considering the definition of torture under customary international law. In fact, at the time of the offences, Liberia was not a party to the UN Torture Convention. Hence, the only crime for which the appellant could be prosecuted was torture as contained in customary international law. UNCAT simply provided the jurisdictional basis for the UK to convict the appellant, but the offences had to be criminal under customary international law at the time, in order to avoid violations of the ban on retroactive prosecution. Crucially, by looking at the customary definition of the crime of torture and how it has been interpreted by courts and tribunals, there is room to argue that in the 1990s, members of non-state entities were considered as qualified perpetrators.

Furthermore, the latest jurisprudence of the ad hoc tribunal for the former Yugoslavia demonstrated that under international customary law there is no requirement vis-à-vis the status of the perpetrator of torture to be satisfied.

In fact – sharing an argument made by Sivakumaran – an opposite conclusion would entail the anomalous consequence that, while genocide, war crimes and crimes against humanity can be committed by any individual, the underlying offence of torture would be limited to a certain category of persons. Therefore, even by analysing the latest jurisprudence, Agnes Reeves Taylor would have been a qualified perpetrator for torture as defined in customary international law. Irrespective of whether one considers the customary definition of the crime of torture in the 1990s or in the more recent jurisprudence, valid arguments to hold Agnes Reeves Taylor accountable for commission and conspiracy to commit torture could have been put forward by the UK Supreme Court.

Another persuasive argument possibly leading to a different conclusion by the UK Supreme Court relies on the International Law Commission (ILC) Articles on State Responsibility. In fact, the NPFL eventually became the government of Liberia and thus under Article 10 of the ILC Draft Articles, as this insurrectional group became the new government of the country, the actions of the group in question could have been considered as the actions of Liberia under international law. As a consequence, by considering the acts of the NPFL as those of the state of Liberia, NPFL affiliates could have been included in the categories of 'public officials' or 'persons acting in an official capacity' as required by the definition of the UN Torture Convention.

Bridging the notion of individual and state responsibility under the UN Convention against Torture and Section 134 of the CJA represents a very powerful argument in contradiction of the dismissal of charges against Agnes Reeves Taylor. Yet though, criminalising the actions of NPFL affiliates in relation to a future uncertain event (i.e. becoming the new government of Liberia) would be inevitably violating the principle of legality. However, by being so morally repugnant, torture can be considered inherently wrong (mala in se), irrespective of whether it has been codified in international treaties or conventions. For this precise reason, one could claim that despite the fact that members of the group did not enter into the specific international law instruments prohibiting this conduct, while committing the acts in question they were aware of the moral repugnance and the wrongness of them. In this manner, any consideration regarding the degree of knowledge expected from the group and the principle of legality could be surpassed. By referring to the aforementioned Article 10 of the ILC Articles on State Responsibility, the UK Supreme Court could have concluded in favour of applicability of the requirement of the 'public official or *person acting in an official capacity*' with respect to the acts of the NPFL, without setting an unrealistic threshold for the applicability of Section 134 to non-state armed groups.

"Problematically, the UK Supreme Court's decision instead set an extremely demanding threshold that only very specific non-states entities, such as the Islamic State, can possibly satisfy."

Importantly, the UK Supreme Court had the possibility to pursue a different reasoning, either by looking at the customary definition of the crime of torture, as Liberia was not a party to the UN Convention against Torture at the time Agnes Reeves committed the offences, or by bridging the notions of state and individual responsibility at the international level thanks to the rule of attribution contained in Article 10 of the ILC Draft Articles.

In either way, by pursuing these alternative lines of thought, the Court could have considered the case against Agnes Reeves Taylor on its merits. Problematically, the UK Supreme Court's decision instead set an extremely demanding threshold that only very specific non-state entities, such as the Islamic State, can possibly satisfy, meaning that impunity at the international level for members of non-state armed groups when it comes to torture is still the norm rather than the exception.

Victoria Priori *is a PhD candidate in international law at the Graduate Institute of Geneva. Her research deals with international criminal and humanitarian law and more specifically with the accountability of non-state armed groups and their members at the international level.*

The Agnes Reeves Taylor's Case: A Journalist Perspective

Daniel De Simone

Journalist

In the UK, as in most places, a prosecution for the crime of torture is a rare event.

The war crimes team at London's Metropolitan Police receive a small number of referrals a year. Few referrals progress to a full investigation. Fewer still to charges and a court case. So, when Agnes Reeves Taylor was charged in June 2017, there was significant press and public interest.

Liberia's civil wars are familiar to many British people, with Charles Taylor also becoming a notorious figure due to his role in the conflict in Sierra Leone. The case was important in itself, but also because of how it tested the way Britain interpreted its international obligations regarding torture. Reeves Taylor had lived in London for many years and was working as an academic at the time of her arrest.

I followed the proceedings throughout for the BBC.

There are strict rules governing how criminal cases in English courts can be covered in the media. Once a person has been charged and is due to face trial by jury, very little can be publicly said about the evidence or the defendant in case such coverage unfairly prejudices – or influences, to put it another way – members of the public who may end up as jurors.

In the time before a trial, what can be reported comprises a very short list indeed: the name of the defendant, the charges or a summary of them, and any pleas entered, plus basic factual details like the names of lawyers, the judge, and the dates of future hearings. Because the case never went to trial, this meant the evidence and allegations were never detailed in public.

Despite the fact that little could be reported at the time, I thought it was important to attend and understand all we could.

The principle of universal jurisdiction means war crimes and torture cases are often tried far from the countries to which they relate, creating practical difficulties for those journalists and people who have the closest interest. I thought it was therefore incumbent on those who could attend, such as myself, to do so.

The case of Agnes Reeves Taylor was also unusual for another reason: the length of the pre-trial period. Two-and-a-half years passed between her first being charged and the case concluding in December 2019.

"Seven torture charges alleged she committed the offences as "*public official or person acting in an official capacity together with others unknown.*" [...] An eighth charge, conspiracy to torture, related to alleged rapes of several women by NPFL forces."

The number of preliminary hearings in the criminal case – over 25 by my count – involved more sitting days than many big cases that actually go to trial. She made her first appearance at Westminster Magistrates Court on Saturday 3 June 2017, but it was not until October 2018 – on the day she entered not guilty pleas at London's Old Bailey – that details of the charges were reportable.

The prosecution related to alleged events in the first half of 1990 in Bong and Nimba counties, which had at the time been overrun by the National Patriotic Front of Liberia. By the time of the plea hearing, Reeves Taylor faced eight charges.

Seven torture charges alleged she committed the offences as a "*public official or person acting in an official capacity together with others unknown.*" One offence related to the alleged torture of a "pastor's wife" in 1990 through her being tied up and forced to witness the shooting of her two children. Three of the torture charges related to "*severe pain or suffering*" allegedly inflicted on the same 13-year-old boy. A separate torture charge related to claims an unidentified child was tied to a tree and made to witness the shooting of others. Another related to the alleged torture of a named male by shooting him in the leg. A further offence related to another male allegedly being beaten. An eighth charge, conspiracy to torture, related to alleged rapes of several women in Gborplay by NPFL forces.

After her first court appearance, Reeves Taylor attended the various hearings by video link from the prison in southern

England where she was held on remand. She was always appeared smartly dressed and attentive, listening closely to the proceedings. By the time Reeves Taylor was arrested in June 2017, the police investigation had already lasted over three years.

Prosecutors said because it had been a "*confidential investigation*" it meant that some steps, such as identity procedures with witnesses, could be not taken until after she was charged. An expert report for the prosecution, by an academic specialising in Liberia, was also completed after the defendant was charged.

The trial itself was due to last up to four months. Many of the preliminary hearings involved discussions about which evidence would feature and attempts to pare some of it down, so the trial would take less time. For example, over one hundred discs of interviews, conducted abroad by detectives, had to be transcribed and decisions taken over what would feature. At one point there was discussion of some witnesses appearing by video link from Africa, although plans were later put in place for them to come to London. The relevant witnesses were women allegedly raped by members of the NPFL.

"The end of the case was therefore a decision about jurisdiction: the judge decided, given the nature of the control he concluded the NPFL had exercised, that the court did not have the authority to put Reeves Taylor on trial for the offences."

Several planned trial dates came and went.

In February 2019 we were only days from the trial opening, with seats reserved in court for the media, but the fixture had to be abandoned when the Supreme Court agreed to hear the defence appeal. The hearings at Supreme Court – and an earlier one at the Court of Appeal – were highly consequential. The issue at hand concerned the true construction of "*public official*" and "*person acting in an official capacity*" in the relevant legislation. Both rulings held the legislation could apply to people who were acting for an entity which acquired de facto control over an area of a country and was exercising governmental or quasi-governmental functions. In effect, the law could apply to people from non-state groups and organisations.

Because the relevant events were alleged to have occurred in 1990, there could be no attempt to charge her with torture as a crime against humanity, or torture as a war crime, as the Act of Parliament containing those offences only applies to acts allegedly committed on or after 1 January 1991. She was therefore charged under earlier powers – the Criminal Justice Act 1988 – which implemented in UK law obligations arising from the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. The Act relates to public officials or people acting in an official capacity.

The prosecution argued Reeves Taylor was acting in a de facto official capacity, on behalf of the NPFL, despite seeking to overthrow the Liberian government, and that the NPFL had controlled the places where the torture was alleged to have taken place.

The Supreme Court, which heard the case in summer 2019 before handing down judgment that November, agreed by a majority that the relevant law can apply to people who act for or on behalf of non-state organisations that exercise, in relevant territories, functions normally exercised by governments. But it sent the case back to the trial judge to deal with an important new issue: whether or not the NPFL had exercised administrative or military control over the relevant places at the material times.

The Supreme Court judgment said the exercise of governmental functions was a core requirement and that it must be distinguished from purely military activity. This test – created by the judgment – is ambiguous on the meaning of governmental authority and control.

Highly relevant to this new issue, in the case of Reeves Taylor, was a clarification by the prosecution academic expert. Before the Supreme Court ruling, the expert had defined what he meant in his report by 'control', saying he intended it to mean the NPFL had exercised military rather than administrative control.

The trial judge was therefore asked by the defence to dismiss the case on this basis, namely that the NPFL had not acted – in the first half of 1990 in Bong and Nimba counties – as a body that could be defined as governmental or administrative. The judge's ruling on this issue, handed down at the Old Bailey on the morning of 6 December 2019, considered to what extent information from existing evidence and witness statements supported competing submissions by the prosecution or defence. This resulted in a focus on previously small details, such as whether the construction of a road – recorded in passing by one witness – should be seen as military or governmental. This came as a shock for those who were following the case and that are knowledgeable about the role of the NPFL in Liberia.

In the end, the judge ruled there was insufficient evidence on which a jury could conclude that, at the time and location of each offence, the NPFL had exercised governmental functions in the relevant areas.

The end of the case was therefore a decision about jurisdiction: the judge decided, given the nature of the control he concluded the NPFL had exercised, that the court did not have the authority to put Reeves Taylor on trial for the offences.

As a journalist, it was an unusual position to be in: a case had lasted over two years, involved multiple hearings in different courts, yet the evidence and witnesses would never be heard in public. Few observers had followed the case, having lost track during the ceaseless developments and hearings. The end – when it came – had not been widely anticipated and received far less attention than might have been expected.

"As a journalist, it was an unusual position to be in: a case had lasted over two years, involved multiple hearings in different courts, yet the evidence and witnesses would never be heard in public."

I became more interested than ever in understanding what I could about the case and its context, the legal position, and what might happen next.

By the summer, Agnes Reeves Taylor had left the UK, returning to Liberia and speaking publicly for the first time since her release. She remains in the country.

Elsewhere, there have since been major developments.

This year, Alieu Kosiah became the first Liberian to be convicted in relation to the two civil wars, after he was found guilty in a Swiss court of multiple offences.

Gibril Massaquoi, from Sierra Leone, is on trial in Finland for crimes he allegedly committed in Liberia. Some hearings in the case took place in Liberia itself. In London, in the past year, a man was arrested by war crimes detectives in relation to both civil wars. He remains under investigation.

Efforts to investigate and uncover what happened in the recent past – and to account for what was done – are plainly far from over.

Daniel De Simone *works as a journalist for BBC News in London, where he regularly covers major criminal prosecutions and other legal proceedings. He also conducts investigations for programmes such as Panorama and Newsnight. Daniel was educated at Goldsmith College and the London School of Economics.*

June 1990, Gborplay, Liberia - A young instructor for the NPFL grasps a human leg bone as a “commander stick”. - © Patrick Robert

Waves of Justice

Massa Washington

Journalist and former TRC Commissioner

I was in Liberia for most of the war, until 1999. Like myself, many Liberians have witnessed events that cannot be processed in a lifetime. Our hearts have filled with aches that cannot be healed. When I returned to Liberia, I did so as one of nine Commissioners selected to serve on the country's Truth and Reconciliation Commission (TRC). I was the only Commissioner recruited from abroad.

The mandate of the TRC was based on the desire to shed light on the tragic events of the Liberian civil wars, to identify war crimes and human rights violations over a period extending from January 1979 to October 2003 through the Commission was given the flexibility to review other turbulent eras of Liberia's history if possible. Above all, the ambition was to promote peace, national unity and reconciliation.

"Justice is not just for the living. We owe it to those who are not here with us anymore."

The Consolidated Final Report was Submitted on June 10 2009. Almost 400 pages long, it detailed the methodology used, reviewed the historical context of the conflicts, outlined the findings, conclusions and determinations of the investigations, and made recommendations to avoid future tragedies. More than 17,000 people were interviewed, and more than 22,000 statements were collected, and whilst we could not possibly document all the atrocities committed during those tumultuous years and name all the perpetrators - the work of the TRC is an opportunity for a turning point in Liberia's history.

We had established the truth of what happened in Liberia and presented lots of building blocks for a solid future. This, for me, was the strength of our commission: proposing solutions for peace and unity, rooted in the specific context of Liberia, by Liberians and for Liberians. Despite all the hard work – both for the commissioners and especially for those who recounted the horrors they were subjected to – we had achieved something. Something that could shape our future, collectively as a people.

History, however, proved me wrong.

Since 2009, nothing has been done and the recommendations of the TRC have not been implemented. There seems to be no political will on the part of our leaders to implement the recommendations. It has now been 12 years. If anything, the TRC itself has become a sort of chimera that lives in the realm of possibility. It exists only on the lips of those who are ready to either use it to defend themselves, or as an idle hope that something might happen. Warlords are still in power and have consolidated their political and economic base. Those who committed the gravest crimes still walk free, unperturbed, impunity their Linus' blanket - assured that nothing will ever happen to them because nothing ever did. *Let bygones be bygones* is repeated like a mantra by some, whilst others invoke the TRC's recommendations in response. The country is divided, like only a country that has not dealt with its past can be.

Justice is not just for the living. We owe it to those who are not here with us anymore. And whilst we are here chanting, what are those people saying? Our brothers, our sisters, our mothers, our fathers. How can we hear what they say, if we cannot hear their cries anymore? How did we get to this point where we are no longer our brother's keepers?

Justice must be done where the crimes were committed. Only Liberians really know what happened during the wars, and while we would love to see Liberians oversee the process. However, Liberia does not exist in a vacuum. As a member of the comity of nations and signatory to international laws, it is obligatory that Liberia respects and adhere to those laws. Accountability for war crimes is beyond the jurisdiction of Liberia as a country. Therefore, we've turned to other possible avenues to seek justice.

Universal jurisdiction is a principle according to which states can prosecute alleged perpetrators of crimes so horrible, that it allows them to undergo trial independently from where the crimes were committed. And the international community responded to our plea for justice.

Waves of arrest and trials of some individuals connected to crimes committed in the wars in Liberia, provide hope where it seemed impossible. In the United States of America for example, the arrests, trials and subsequent

convictions of Mohammed Jabbateh "Jungle Jabbah" and Thomas Woewiyu, led the way for accountability against these warlords outside of Liberia. Those courts heard Liberians recall the horrors they lived at the hands of people that forgot their humanity. And it did not stop there. Others stood trial all over Europe. Agnes Reeves Taylor was to stand trial in the UK in 2019. Alieu Kosiah faced trial in Switzerland in December 2020 and February 2021. Gibril Massaquoi is currently on trial in Finland. Many other arrests were made: Martina Johnson in Belgium in 2014, Michel Desaedeleer in Spain in 2015 and Kunti K. in France, in 2018.

However, whilst universal jurisdiction is, for the time being, the only tool at our disposal for justice, it is an uphill battle. And like every battle, there are wins and losses.

"Justice for Liberian victims is justice for the human kind. Some crimes are so horrendous, that they are, and should be, felt by everyone."

Whilst the case against Jungle Jabbah ended with a sentence that reflected the horrors he committed, there have been instances where things were more complicated. The charges against Agnes Taylor, arrested in 2017, were dismissed based on a technical legal issue. She was not found innocent, if anything, the evidence against her was considered by the UK court as '*prima facie evidence*' and that she "*held a high rank in the NPFL*" and "*carried out the acts of torture*" that she was charged with. Nevertheless, this did not stop her going back to Liberia, calling a press conference and referring to herself as "*mother of the NPFL revolution*". I remember watching her press conference live on Facebook and feeling a sense of disappointment as she engaged in historical revisionism, beat her chest boastfully, all while declaring that she welcomed any legal process to clear her name in Liberia. But she knows, just like all of us, that it was not going to happen. Because, for the time being, Liberia is not prosecuting anyone.

This year, in Switzerland. we witnessed a historical sentencing in the case of Alieu Kosiah. And whilst the sentence of Jungle Jabbah - because of legal limitations – could only be tied to immigration fraud and perjury, this time the legal framework allowed for Mr Kosiah to be tried for war crimes. Despite all of the challenges the Swiss court and the plaintiffs faced, including a global pandemic, Alieu Kosiah was found guilty and sentenced to 20 years of imprisonment, pending appeal process. I think of those plaintiffs who had the courage to testify. I think of those people who would have, but are not around anymore to do so.

It's one small step. A drop in the ocean, but a drop nevertheless. And rocks are eroded by drops, one at the time. I do hope that all of these drops will help push for a wave in Liberia. A wave that started forming already, as the many protests in favour of justice that took place in Monrovia over the years demonstrate. Justice advocates seem more than ever determined to end impunity. Their persistent cries for justice for the over 250,000 dead and millions of others scarred is encouraging.

We are passing the torch to the next generation. A generation of people that might not remember the war, but who have heard the stories and still see its ghost in the eyes of the people who raised them. A generation born in the era of global advancement of human rights and who wants the same for their country.

But beyond everything, the pursuit of justice of Liberians is not a burden we should carry alone. Justice for Liberian victims is justice for the human kind. Because the horrors we experienced are shared by so many, in every corner of the world. And some crimes are so horrendous, that they are, and should, be felt by everyone.

Massa Washington *is a Liberian journalist with extensive field experience. She has covered the conflicts in Liberia from different areas directly affected by the clashes. She is a women's rights and civil society activist and a member of the Liberian Women Initative (LWI), which has been at the vanguard of peace advocacy in Liberia. She has also represented the women of Liberia at peace conferences. She was a member of the Truth and Reconciliation Commission of Liberia, whose report and recommendations were published in 2009.*

The Women of War Crimes

Laura Sjoberg

Professor, Royal University of London and University of Florida

I have researched gender for my entire adult life. But the first time I saw an image of a woman committing a war crime, my reaction was shock – not that the war crime had been committed, or that it had been committed by my country, but that the war crime had been committed by a woman. The image that shocked me was one of Pfc. Lynndie England, a prison guard in the US military who physically and sexually tortured prisoners at the Abu Ghraib prison in Iraq early in the occupation.

After that initial shock, I started wondering why I was surprised. After all, the basic contention of my scholarly work is that women are as capable as men. And though I disagreed both with the invasion of Iraq itself and most of the tactics that the US used as it invaded and then attempted to control Iraq, I was not shocked by them. So if I was not shocked by American men behaving badly, why was I shocked by American women behaving badly?

"There are female war criminals - in almost every conflicts, in almost every context, in almost every definition of war crimes."

Then I realized – there was a silent second half of my sentence – that women are as capable as men without their flaws. I had never uttered, or even consciously thought, that second half of the sentence before, but once I realized it, I saw it in everything that I wrote, everything that I believed, and everything that I advocated to achieve. Yet that second half of the sentence is itself complicit in gender oppression. It holds women to a significantly higher standard than it holds men, while at the same time limiting women's capacities to some subset of non-flawed human behavior. It also renders either invisible or broken women who engage in violence.

No woman, then, can be free of gender stereotypes, unless all women are free of gender stereotypes – and that includes those gender stereotypes which are actually flattering to women. Rather than being shocked that a woman committed war crimes, I have looked to find a way to be shocked by war crimes – whoever is committing them – and to use gender analysis to understand the possibility that women may be committing those crimes.

Not seeing women as war criminals obscures many female war criminals – those we know well (e.g., Lynndie England, Pauline Nyiramasuhuko, Biljana Plavsic), and those whose lives and crimes have been obscured by histories that take away the possibility that women have agency in their violence. More times than not, newspapers, websites, blogs, social media posts, and even criminal defense strategies either deny a female defendant's engagement in violence at all or frame it as something gone wrong with the perpetrators' femininity – loneliness, imbalance, 'erotomania.'

Research has shown, however, that there are female war criminals – in almost every conflict, in almost every context, in almost every definition of war crimes. I assumed that if there was anything about war violence that women would stay away from, it would be wartime rape – but then I found enough material to write a book on women wartime rapists. I have finally figured out, though, through almost two decades of research – that I was asking the wrong questions to start out with, and continue to have the urge to ask the wrong questions even now.

My initial questions – a woman did that? And why do women commit political violence? – are the wrong questions. Women, like men, engage in political violence. Women, like men, engage in extralegal political violence. Women, like men, can be and are war criminals. Women's violence is not necessarily better, or necessarily worse, or necessarily for different reasons, than the violence committed by their male counterparts. It is not more interesting, more sensational, or more newsworthy – much like it is not worthy of being swept under the rug or depersonalized. The appropriate questions to ask about a woman who commits war crimes are the same appropriate questions to ask about a man who commits war crimes – what crimes were committed? Who were the victims? How can justice be done?

We live in a gendered world – and war criminals also live in a gendered world. This means that gender-based expectations and gender-based stereotypes matter in our lives, and in theirs. As a result, there is a lot of noise between my initial questions and the appropriate ones. Many of us – scholars, lawyers, activists, or even consumers of news – often get trapped in that noise – gendered narratives about violent women, assertions that women are by nature non-violent, concerns that recognizing women as war criminals will somehow get in the way of the validity of the overwhelming evidence that women are the majority of wars' civilian victims.

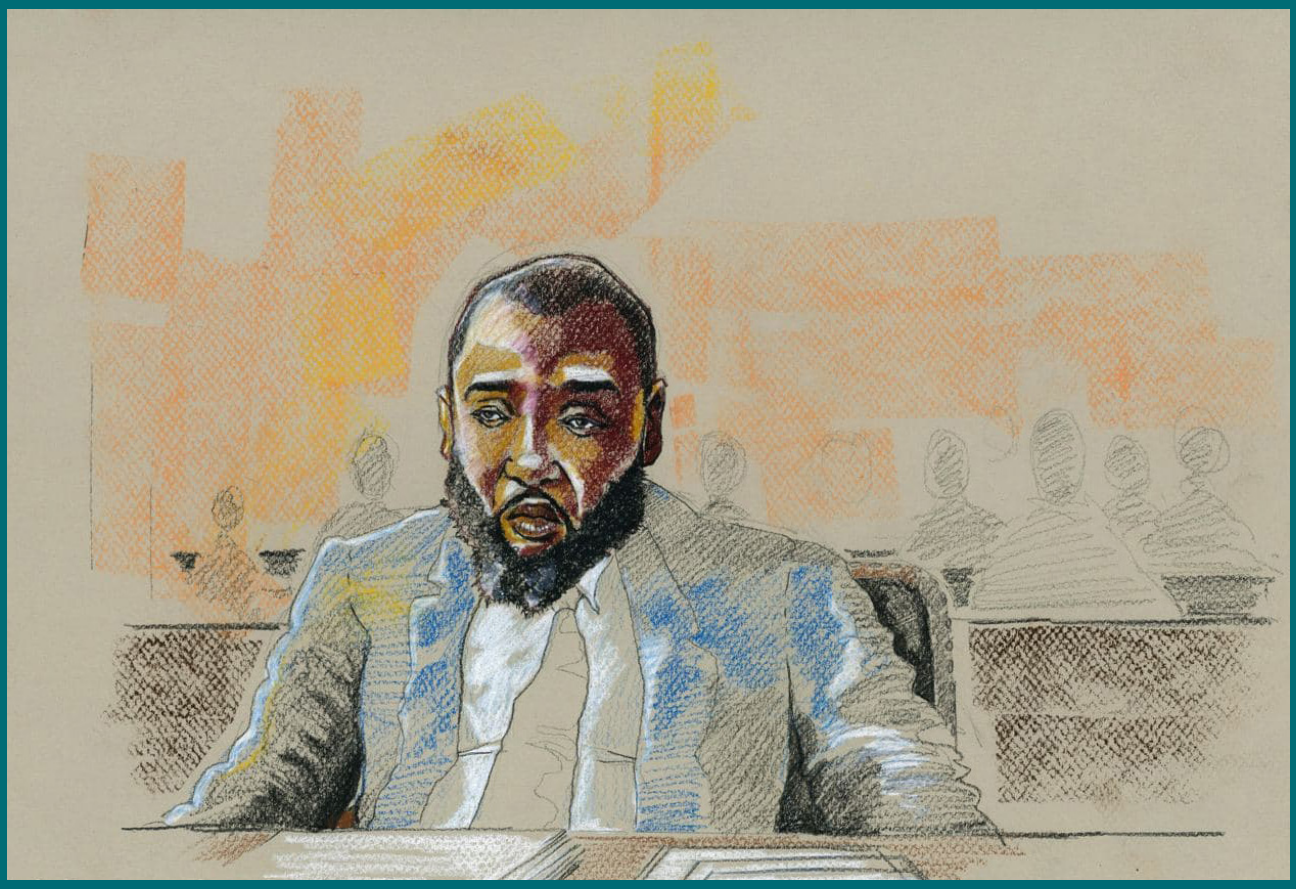
Taking a step back and realizing that this noise oversimplifies both women and gender, obscures war crimes, and remains gender-subordinating is the only way to move forward. In any given case, then, there is a person who is charged with war crimes. Those charges can be enumerated, described, and brought to court to be adjudicated. The perpetrator's gender may be part of the story – how s/he interacted with the groups s/he was a part of, how s/he is framed in the media, how s/he is received by audiences in courts and outside. But it is never either an element of the crime or an exception to it. A woman who commits war crimes is neither better nor worse than a man who does – she should receive neither harsher nor more lenient treatment because of her sex.

"A woman who commits war crimes is neither better or worse than a man who does - she should receive neither more harsh nor more lenient treatment because of sex."

Being neither shocked by nor willing to ignore female war criminals, though, is not the same thing as seeing war crime as gender-neutral. Instead, as feminist scholars and feminist activists have repeatedly taught us, gender plays a key role in the justifications for, practices of, and historical readings of all wars and conflicts. Asking questions like what assumptions about gender make possible either individual or collective behavior in war, how allies and enemies are framed in gendered terms, and how post-conflict reconciliation processes gender both combatants and states are important avenues for lawyers, researchers, and human rights activists alike. But the cost of blurring those questions into denying, exceptionalizing, or sensationalizing women who should be held accountable for their actions during those wars and conflicts is too high – for survivors, for all women, and for all of humanity.

Laura Sjoberg *is British Academy Global Professor of Politics and International Relations at Royal Holloway University of London, and Professor of Political Science at the University of Florida. She specializes in gender, international relations, and international security, with work on war theory and women's political violence.*

Black Diamond, center in red, leader of the LURD women division, poses for a photograph with other women soldiers at Tubmanberg, the LURD capital, Liberia, August 2003. - © KEYSTONE/AP Photo/Saurabh Das



Court Sketch of Jungle Jabbah during his trial, U.S., 2017
© Chase Walker/Civitas Maxima

Q3 *September*

A Federal Appeal Court in the United States upheld the landmark conviction and sentence of Jungle Jabbah. This is a very meaningful decision for justice, and Kelsey Guthrie-Jones, Legal Counsel and Capacity Building Coordinator at Civitas Maxima, explains why.

Justice Prevails in Philadelphia

Kelsey Guthrie-Jones

Legal Counsel & Capacity Building Coordinator

On 8 September 2020, six years after Civitas Maxima and the Global Justice and Research Project (GJRP) began collaborating with the U.S. authorities on their investigation of Mohammed "Jungle Jabbah" Jabbateh, the case was finally concluded, with Jabbateh's conviction and 30-year prison sentence affirmed in full by the United States Court of Appeals for the Third Circuit in Philadelphia.

In the Appeal Court's 44-page decision, Judge Paul B. Matey took the unusual step of recounting in quite some detail a number of the atrocities that 17 Liberian victims and witnesses had testified about at trial in October 2017. The Judge described these atrocities committed by, or upon the orders of, Jabbateh as "*breathtaking in their scope and cruelty*", and considered that they "*paint a portrait of a madman*". The Judge recounted acts of torture, persecution, and retribution – touching on victim and witness testimony about a horrific immolation; sexual violence, including rape of pregnant women leading to miscarriage, and months-long sexual slavery; shootings; and cannibalism.

Judge Matey took note of the ethno-religious tensions that had resulted in the ULIMO (United Liberation Movement of Liberia) rebel group splintering along tribal lines into ULIMO-K (Islamic Mandingo-dominated) and ULIMO-J (Christian Krahn-dominated) factions. He recounted one instance in which Jabbateh had beaten, stabbed, interrogated, and finally brutally murdered a pregnant woman because she was in a relationship with an ULIMO-J commander.

Juxtaposed alongside the Judge's recounting of these horrors was the story of Jabbateh seeking asylum in the U.S., during which he had repeatedly attested to having never caused, ordered, assisted or otherwise participated in harm, suffering or the killing of any person because of their race, religion, nationality, ethnic origin or political opinion. Instead, Jabbateh cast himself as an innocent victim of ethnic persecution. His lies granted him admission to the U.S., where he resided freely for nearly 20 years. In 1999 and 2001, as the second Liberian civil war raged on and innocent victims continued to face mass atrocities, Jabbateh continued to lie about the true nature of his participation in the horrors of the first Liberian civil war during interviews about his asylum application and subsequent application for permanent residency.

While Jabbateh may have considered for nearly 20 years that he had evaded justice for his crimes, he had in fact been unwittingly laying the groundwork for his eventual conviction with his repeated lies to U.S. immigration officials. He had also unknowingly paved the way for the first ever opportunity for Liberian victims of crimes committed during the first civil war to testify in a criminal trial about the atrocities they experienced and witnessed.

It is quite unique for an immigration fraud and perjury case to present such a forum for victims and witnesses of heinous international crimes to speak about the horrors of war. The Liberian victims and witnesses in this case were commendably included by the Prosecutors in the trial due to an appreciation of the weight and importance of presenting their testimony to the judges at trial. Indeed, both the trial judges, sentencing judge, and appeal judges noted in their decisions the force of the prosecution's trial evidence, based on the testimony of the 17 brave Liberian witnesses and victims who travelled from Liberia to the courtroom in Pennsylvania to face their tormentor.

"The Judge described these atrocities committed by, or upon the order of Jabbateh as *breathtaking in their scope and cruelty.*"

Despite all of Jabbateh's challenges, the Appeals Court found that "*his arguments about the quantity and quality of evidence presented at trial are wrong, with plentiful facts supporting the jury's findings.*"

In response to Jabbateh's claims of sentencing error on the basis that the District Court had stated that he committed or participated in genocide, the Court of Appeals referred to the District Court's "*exhaustive sentencing memorandum*" in which Judge Diamond reasoned that Jabbateh's maximum sentence was based on "*the egregiousness of* [Jabateh's] *lies and their effect on our immigration system*," and the fact that the "*lies allowed* [him] *to impugn the integrity of our asylum process for almost twenty years*". The Appeal decision noted that Judge Diamond had repeatedly explained how the sentencing decision was based on the gravity of Jabateh's concealment of his "*commission of every conceivable war crime*" and "*countless human rights offenses.*" The Court of Appeal was therefore unpersuaded by Jabbateh, stating that "*his claims of sentencing error ignore the careful and detailed reasoning of the District Court.*"

On the final day of Jabbateh's trial in October 2017, Assistant U.S. Attorney Linwood C. Wright, Jr. began his

"It is quite unique for an immigration fraud and perjury case to present such a forum for victims and witnesses of heinous international crimes to speak about the horrors of war."

closing statement by quoting Emma Lazarus' "The New Colossus" poem found on the pedestal of the Statue of Liberty: "*Give* [us] *your tired, your poor, Your huddled masses yearning to breathe free*". Wright spoke of the hope for new beginnings that these words instill, but distinguished that "*it doesn't say give me your war criminal, your human rights violator, your persecutor*".

While immigration systems across the world often fall devastatingly short of meeting the promise of hope in Lazarus' words, at least in this instance an immigration fraud and perjury case provided some measure of justice to the Liberian victims who suffered horrifically at Jabbateh's hands. As Judge Matey stated in the appeal decision: "*the wheels of justice sometimes turn slowly, [but] they do not turn without purpose.*" This case, and the historic 30-year prison sentence handed down to Jabbateh stands as a stark warning to other war criminals: the fight for accountability and to end impunity is inexorable, and those fighting for it unwavering. Justice will prevail.

Kelsey Guthrie-Jones *is an Australian lawyer (LL.B., Australia/The Hague), with an LL.M. in International Humanitarian Law and Human Rights (Geneva Academy/Switzerland). Kelsey leads and contributes to many of Civitas Maxima's European and U.S. cases concerning alleged war-time crimes in Liberia and Sierra Leone, in collaboration with GJRP investigators, external legal and investigative partners, and relevant national authorities. She also coordinates Civitas Maxima's capacity building efforts.*

A TIME LINE OF

THE JUNGLE JABBAH CASE

2014

CM and GJRP start collaborating with the U.S. authorities on their investigation of Jabbah.

MARCH 10, 2016

A grand jury sitting in the Eastern District of Pennsylvania return a four-count indictment charging Jabbah with fraud in immigration documents (counts 1 and 2) and perjury (counts 3 and 4)

APRIL 13, 2016

Indictment unsealed and Jabbah arrested in Pennsylvania, Philadelphia, U.S.

APRIL 18, 2016

Hearing before the U.S. District Court for the Eastern District of Pennsylvania regarding Jabbah's pre-trial detention – the Magistrate orders his release under house arrest, on condition of $1M surety.

OCTOBER 2-18, 2017

Trial. Jannah pleads not guilty. 9 days of hearings, 20 Liberian witnesses testified.

OCTOBER 18, 2017

Convicted - guilty on all four counts.

APRIL 19, 2018

Sentenced to the maximum of 30 years in prison by Judge Paul Diamond, comprising consecutive sentences of 120 months on counts 1 and 2 and sixty months on counts 3 and 4 for an aggregate sentence of 360 months.

APRIL 26, 2018

Jabbah's appeal filed.

MAY 21, 2018

Judge Diamond filed a memorandum setting forth his reasons for the sentence he imposed.

SEPTEMBER 8, 2020

Conviction and sentence affirmed.

Sketch of Alieu Kosiah - © JP Kalonji/Civitas Maxima

Q4 *December*

After several postponements, the highly anticipated trial of Alieu Kosiah started in Switzerland in front of the Swiss Federal Criminal Court: the first part lasted one week, and the rest of the hearings were postponed to February 2021. In these next pieces, different aspects of the trial are covered: the importance of reporting on war crimes trials, the complicated nuances of neo-colonialism, the delicate aspect of tribal affiliation. And also, a take on pleading guilty in international crimes trials, something that no alleged Liberian perpetrator of war-related crimes has ever done so far.

The Challenges of Seeking Justice Against My Own People

Hassan Bility

Director of the Global Justice and Research Project

In many parts of Africa, tribalism is entrenched in certain ethnic extractions. The bond holding members of these separate groups together goes beyond normal. This couldn't be truer for an ethnic group that is considered a minority group.

Here in Liberia, one of such minority ethnic groups is the Mandingo, to which I am very proud to belong to. We were one of the early tribes to arrive in what is today known as Liberia and have been powerful before, as evidenced by the kingship of the late King Sao Boso Kamara whose sphere of influence extended from what is now today as Gbarpolu County to the coast in Monrovia, the capital city of Liberia. As detailed by Tom Thomas in his "Brief History of King Sao Boso" this King of Mandingo extraction and Muslim faith brought together the settlers and the native people in the 19th century, beseeching them to consider each other as members of one African legacy, famously telling other native Kings: "*Having sold your land and accepted payment, you must accept the consequences* (...)".

Thomas also explains that Sao Boso Kamara being a Muslim, the settlers being Christians and the Mamba and Bassa people belonging to their African spiritual religion they were together able to draw on the ethical wisdom of their religious background to eventually forge some pact of understanding. The principles of these three religions have translated into a system of control and governance that can be seen today in Liberia. President William R. Tolbert, successor of the settlers, recognized about 150 years later the peace efforts of King Sao Boso Kamara when he renamed Front Street in Monrovia as King Sao Boso Street.

Alas such spirit did not exist during the Liberian civil wars in the 20th century. Four main tribal groupings were directly targeted for attacks during the first civil war (1989-1996). They included the ethnic Krahn and Mandingos on one side, and the Mano and Gios, on the other side. The ethnic killings that accompanied this first civil war were carried out on the basis of association.

The Government of then President Samuel K. Doe used the Armed Forces of Liberia (AFL) to kill the Mano and Gio people by associating them with then rebel leader of the National Patriotic Front of Liberia (NPFL), Charles Taylor. Taylor himself was neither a Gio nor a Mano but many of his NPFL fighters were, and in turn they associated the Mandingo and Krahn people with Samuel Doe and killed a large number of Mandingo and Krahn innocent civilians. Samuel Doe was an ethnic Krahn, but not a Mandingo.

This led to a large number of Mandingo and Krahn to flee Liberia into neighboring countries like Sierra Leone, Guinea and Ivory Coast. Once in exile, Mandingo and Krahn tribal men in Sierra Leone formed an alliance to make their way back home to Liberia, and fight the NPFL. Their coming home was manifested through another armed group called United Liberation Movement for Democracy or ULIMO. The alliance would not hold together for long, as they broke up into two separate groups – ULIMO-K (the Mandingos) and ULIMO-J (the Krahns). Amongst themselves, there were also a lot of killings along factional and ethnic lines. These actions are a manifestation of the fact that we cannot resolve our differences with force of arms.

"Some Mandingo people also view any Mandingo man or woman who is involved in the investigation of war related crimes against members of their tribal group as a traitor and therefore an enemy."

The Mandingo, like the other three tribes, see themselves as the victims of the other groups. This concept of victim-hood is reinforced by the minority status of the Mandingo tribe in Liberia, as we represent only about 3.2% of the Liberian population. Thus, the Mandingo people, my people, consider that they were just defending themselves against the aggressors of the NPFL and therefore do not see any reason why their tribal brothers and sisters should be held accountable for any war related crimes.

Some Mandingo people also view any Mandingo man or woman who is involved in the investigation of war related crimes against members of their tribal group as a traitor and therefore an enemy.

I personally do agree that an overwhelming majority of the Mandingo people were only victims during the civil wars, and not perpetrators. I myself never fought but I was a victim of brutal acts of torture by Charles Taylor's people. But the Mano and Gio people were also victims of the war. The Krahns were also victims of the war. The Liberian

people were, generally, all victims of the war. All of us were, in one way or another.

But to move our country forward, we have to transcend tribal, political and sectional sentiments. Because the Liberian people suffered en masse, we must work together to ensure impunity does not destroy this country.

I know it may be difficult for many people, especially my Mandingo people, to see some of us being prosecuted outside Liberia for war related crimes, people whom they consider on the contrary to be heroes, having made the ultimate sacrifice and made it possible for them to return to Liberia. I, too, appreciate that.

"We have to transcend tribal, political and sectional sentiments. We must work together to ensure impunity does not destroy this country."

But we must all understand that to move this country forward, to make sure what happened to the Mandingo people, the Gio people, the Mano and Krahn people, and to all Liberians generally, will not happen again, we must, as a nation, take some steps. One of said steps being to make sure those who committed war crimes against innocent civilians are held accountable. Otherwise, there is no guarantee that these actions will not be repeated in the future.

Three Mandingos – Alieu Kosiah, Mohamed Jabateh and Kunti Kamara – are in jail respectively in Switzerland, the United States and France in part because of the work or collaboration of my organization. However, as this was documented by the press, my organization, the Global Justice and Research Project (GJRP), obviously does not target any tribe in particular for investigation, and document crimes against all warrying factions.

Thomas Woewiyu, NPFL, died from Covid in the United States in 2020 after having been found guilty of criminal charges by a jury, Martina Johnson, NPFL, has still not been tried in Belgium and Agnes Taylor Reeves, NPFL, was released in the United Kingdom on legal grounds and came back to Liberia. Gibril Massaquoi, accused of crimes committed with the NPFL, is currently on trial in Finland. We are not responsible for the development of legal cases, only for the integrity of our initial investigative work, that we conduct diligently, independently and without bias.

I and the GJRP have been at the receiving end of threats, accusations and in some cases physical attacks. This will not stop our pursuit of Justice. I therefore call on my fellow Liberians, irrespective of which tribal group they may have come from, to join us as we take a leap of faith into a future where our differences are not resolved by conflict, but by the law and respect for all human beings; to join us as we take a leap of faith into a future in which associations and differences will not be the yardstick by which we are judged and/or condemned to death.

This much I hope for, and more.

Hassan Bility *is the director of the Global Justice Research Project. He was a prominent journalist and an human right activist in Liberia for a long time and was persecuted and tortured by Charles Taylor's soldiers during Liberia's civil war. Hassan Bility was awarded several awards: the Judith Lee Stronach Human Rights award in 2018, the Amnesty International 2003 International UK Media Award under the category Human Rights Journalism under Threat, and the Union of Liberia Best journalist of the Year Award 2003. He was also awarded the Hellman/Hammett grant that same year 2003.*

The Importance of Reporting War Crimes Trials

Mae Azango

Africa Director, New Narratives

I have been a journalist for 15 years fighting injustice in my homeland Liberia. I have reported as my neighbours fell to Ebola. I have been threatened and forced into hiding for exposing human trafficking rings and child abuse and won international press freedom prizes for my work.

But no reporting I have done has been as important as the war crimes trials of Liberians taking place across the world. In 2020 my New Narratives team and I covered the most important trial yet: In Bellinzona Switzerland, former rebel commander Alieu Kosiah became the first Liberian tried for war crimes in Liberia's civil wars.

"No reporting I have done has been as important as the war crimes trials of Liberians taking place across the world. [...] It has lifted the lid on a population seething with anger and crying for justice."

Nearly 18 years since the end of the civil wars and 9 years since a Truth and Reconciliation Commission (TRC) recommended Liberia to establish a court to try the war's worst perpetrators, no Liberian had faced war crimes charges. My colleagues Anthony Stephens, Rodney Sieh and court artist Leslie Lumeh, travelled to the Swiss Alpine town to bring the daily proceedings of that crucial trial to audiences in Liberia, Sierra Leone and Nigeria. In radio broadcasts, social media, print and online stories we shared the emotional testimonies of a former school teacher whose friend had been killed and his heart eaten; a victim of rape, trembling as she told her story by videolink. The scenes described were similar to those we had encountered firsthand as children. They were no easier to hear in a cold Swiss courtroom 25 years later.

In Liberia my colleagues and I travelled to remote areas where Kosiah committed his crimes. We gave his victims their first chances to tell their stories, remember murdered family members and call on national leaders to deliver justice.

Kosiah's conviction was celebrated in every corner of the country and fuelled demands for more perpetrators to face justice.

In February this year there was another first. A Finnish court moved its trial of Gibril Massaquoi, former commander of Sierra Leone's Revolutionary United Front, to Liberia. More than 60 witnesses became the first Liberians to testify in a war crimes trial on Liberian soil and I became one of the first journalists to cover one.

We Liberians carry a heavy weight. I lived the deepest horrors of the war. I was a refugee. I gave birth under gunfire and, when drugged-up child soldiers tried to kill my newborn son, I begged for his life. My father, a supreme court justice, was beaten and died from his wounds. Reporting these trials has taken an emotional toll on the dozen of my colleagues who have done it.

But the most debilitating legacy of the wars for Liberians is our complete lack of trust in government. It was fighters in our own government that perpetrated most of the atrocities against civilians. Now rebel faction leaders hold government posts. Can you imagine the pain of knowing Prince Johnson or George Boley was responsible for the rape and murder of your children? And then having to see him in government earning $10,000 a month– more than you will make in your lifetime? That is the reality for many Liberians.

That same government asks us to pay taxes, follow their rules and trust them to lead us. How can we do that while there is impunity for those crimes?

Ever since the war, former warlords have told people to "*let bygones be bygones*". They warn that prosecutions will lead to instability. That argument has lost its power now. Our audiences have seen more than a hundred brave Liberian witnesses testify against their perpetrators. Our reporting has lifted the lid on a population seething with anger and crying out for justice.

Kosiah and Massaquoi's trials were the ultimate test of the argument that a war crimes court will destabilize Liberia. For months audiences heard harrowing stories of violence but they also heard defendants' cases and their supporters. Victims' identities were concealed. They have faced no retribution. There has been no violence.

Audiences have expressed gratitude.

"By giving audience full, unbiased information about the trials and a chance to be heard, we have reduced tensions that may otherwise have led to violence."

"*New Narratives did well in keeping us informed daily. Had it not been for you guys, we would not have known about any of the trials in and out of Liberia*," said James Kamara, a university student from Lofa County, where Massaquoi allegedly committed atrocities.

Audiences have had a chance to air grievances with the trial process and know that their issues are being heard by Liberian leadership. By giving audiences full, unbiased information about the trials and a chance to be heard, we have reduced tensions that may otherwise have led to violence.

The trials have given new life to the campaign for a war crimes and economic crimes court that had been all but abandoned. There are now bills to establish a court moving through Liberia's legislature. Activists believe they have the numbers to see it passed. All that is standing in the way of a court now is President Weah who calculates that his support for a court may cost him the votes of a powerful senator, and likely war crimes court defendant, Prince Johnson.

As trials continue and demands for justice grow, President Weah may find blocking the court costs him more votes that approving it. Liberia's warlords are discovering what I have always known: the pen is mightier than the sword.

Mae Azango *is one of Africa's best known reporters for her dedication to telling the stories of ordinary Liberians in FrontPage Africa newspaper. Mae's courageous reporting has led to a range of actions including a ban on female genital cutting, the expose of a international trafficking ring and corruption in Liberia's education system. In 2012 Mae was awarded the prestigious International Press Freedom prize from the Committee to Protect Journalists.*

Journalist Anthony Stephens traveled from Liberia to Bellinzona, Switzerland, in order to report on the entire Alieu Kosiah trial. Swiss Federal Criminal Court, December, 2020. - © Civitas Maxima

Court Sketch of the Judges in Bellinzona, during the trial of Alieu Kosiah. Switzerland, 2020. - © Leslie Lumeh/New Narratives

Lawyers Are Actors of Justice

François Roux

Honorary Lawyer

"*Sir, you have the floor.*"

It is always an important and solemn moment for a lawyer when the President first asks him to speak.

I had a habit of standing up and taking a short moment of silence which always surprised the judges.

It is in fact a good time to reflect on what the European Court of Human Rights says about us: "*Judges and lawyers are the actors of justice.*"

At least three times in my life as an international criminal lawyer, I stood up and took the floor for a defendant who pleaded guilty. Each time, this moment was the result of a long journey.

But first, a brief recap.

When I was officially appointed to defend a chief brought to court by the International Criminal Tribunal for Rwanda, Ignace Bagilishema, the ex-mayor of the municipality of Mabanza in the West of Rwanda, I, like all lawyers, became familiarized with the allegations against him. The accused assured me of his innocence.

To my surprise, I discovered that the Tribunal followed a common law procedure. I formed my team and we went to find exonerating evidence on multiple trips to Rwanda, as such is the role of the defense in these adversarial proceedings. Quickly, we were convinced by the testimonies we collected that our client did not seem to have committed the crimes he was accused of – genocide and crimes against humanity. In fact, he had put his life on the line to oppose Hutu extremists.

At the end of a long journey, the ICTR acquitted my client on the 7th of June 2001, and found that not only did the Prosecution fail to provide evidence of his guilt, but that the evidence proved that he did all that he could to prevent massacres and save lives. Upon the prosecutor's appeal, the Court of Appeal unanimously confirmed the judgement on July 3rd 2002.

During our investigations, we had discovered a scarred country, traumatized by genocide, and also a torn country, where all the Hutus who had not fled were stigmatized and universally suspected of being guilty.

In September of 2002, I was officially appointed by the same tribunal to defend Vincent Rutaganira, councilor of the municipality of Mubuga in West Rwanda. He turned himself in to the Tribunal after years of hiding as a fugitive in the forests of the Congo. He was sick and walked with a cane. Adamant of his innocence, he wanted to be acquitted of his crimes like Ignace Bagilishema. Once again, we returned to Rwanda to investigate. Witnesses told us that while Vincent Rutaganira did not participate in the massacre of Tutsis, he didn't use the power of his position to stop the massacres, probably because of fear, cowardliness facing Hutu extremists, or to save his family.

"At least three times in my life as an international criminal lawyer, I stood up and took the floor for a defendant who pleaded guilty. Each time, this moment was the result of a long journey."

I decided to encourage Vincent Rutaganira to recognize his responsibility. It would be a long road for him, supported by his family and friends, and with me alongside him as his spokesperson. I had the conviction that he would be liberated by taking responsibility for his inaction. He came to it slowly, changed his mind, and then came back to it again taking the firm decision to take full responsibility, conscious of the importance of his testimony for the people of Rwanda. The next step was a long negotiation with the Prosecutor. I was aided by multiple testimonies and I knew what he had done and what he hadn't done. We reached an agreement in which Vincent Rutaganira fully confessed: complicity in crimes against humanity by failing to act.

On the day of the trial, there was a small and symbolic moment. When the President invited Vincent Rutaganira to testify, we all watched him get up from the witness bench and walk across the floor for the first time without the help of his cane, to stand up straight in front of his people and take responsibility. He would be convicted and sentenced to 6 years in prison, in other words the better end of the deal that the prosecutor and I had agreed upon to submit to

the Court (between 6-8 years of prison).

Some time later I was contacted by another accused who immediately asked me to accompany him in pleading guilty because he also wished to acknowledge that he had done something wrong, despite his position as a businessman and sports leader in his village. He considered that he and others, benefiting from authority due to their social position, had failed to intervene to prevent the massacres.

Joseph Nzabirinda was also convicted of complicity in crimes against humanity, after, once again, tough negotiations with the Prosecutor to find the balance between the crimes that the Prosecutor absolutely wanted to impute to him and those that the accused refused just as absolutely to endorse.

The lawyer's action in these situations is absolutely decisive. Particularly thanks to the investigations that he is able to carry out in the field and beyond the most detailed knowledge of the case, it is the bond of trust that he manages to establish with the accused that enables him to find the right balance by showing alternately firmness and flexibility with the Prosecutor.

Joseph Nzabirinda was sentenced to 7 years in prison by the Court.

Here I must pause.

Why are guilty pleas "negotiated" with the Prosecutor?

Is it a tactic to obtain an "acceptable" punishment as is common practice in the United States, especially when the defendant cannot afford a 'big', well-paid lawyer, and especially when he or she faces the death penalty?

Certainly, avoiding a heavy sentence for a client can be a motive. That is not surprise.

That said, I believe that my role and responsibility as a lawyer goes above and beyond mere calculations of a punishment in the context of the tragedies of mass crimes like genocide, crimes against humanity, and war crimes. The echo of Vincent Rutaganira's guilty plea, in Hutu as well as Tutsi populations in Rwanda, went far beyond such a calculation. A guilty plea such as Rutaganira's advances the reconciliation of a traumatized population, like a truth and reconciliation commission would do.

The lawyer as an actor of justice says the European Court. I believe like Gandhi that "Peace is the fruit of Justice". Thus, by being an actor of Justice, the lawyer brings his stone, however small, to the construction of Peace.

I persist in thinking that if, like Jean Boudot, the great French lawyer, pertains, "*defense is taking nothing for granted that has not been subjected to the sieve of the contradictory*," then the work of the lawyer before international criminal tribunals is also the service of justice, of discovering the truth, at least the legal truth, and of peace. And so, a lawyer's analysis of the contradictory, their habit of considering that the accused is not innocent of the crimes of which he is accused, or at least for some, their role is not just a game with the Prosecutor, but they can, on the contrary, by the trust that only they can establish with the accused, accompany the accused on the road of taking responsibility, and maybe even of apologizing.

It was this road that I traveled with Douch, the former director of the sinister S 21 prison in Cambodia. Officially appointed as his defense counsel in August 2007, I immediately visited him in his prison cell. He told me, "*I want to apologize to my people, I was simply a police officer, and only obeying the orders of a criminal regime.*"

We were in Phnom Penh, facing the Extraordinary Chambers in the Courts of Cambodia, following romano-germanic legal procedures, with one investigatory judge (actually, two, because all the Judges, Prosecutors, and lawyers were in pairs with their Cambodian counterparts). I explained to Douch that since the Nuremberg trials, the invocation of obeying orders was no longer a cause for the exoneration of responsibility but was simply a mitigating circumstance, and that this defense would not resonate with the investigation judges. Douch was very intelligent. He fully understood this legal nuance, but he had difficulty in detaching himself from the justification that allowed him to survive the enormous weight of his guilt.

"Defence lawyers can, by the trust that only they can establish with the accused, accompany him on the road of taking responsibility, and maybe even apologising."

My work with Douch consisted of accompanying him on the route of acceptance and recognition of his own guilt and responsibility. It was not an easy road for him, and I often asked myself how he could survive this recognition. To encourage him, I notably went to meet Desmond Tutu and asked him to dedicate his book to Douch. When I returned with the book, there was an incredible moment: Douch called his fellow detainees (Khieu Samphân, Nuon Chea, Ieng Sary) into the corridor, brandishing the book and Desmond Tutu's message of encouragement for his recognition of guilt.

Throughout the entire investigation, Douch cooperated with the Co-Judges of the investigation, bringing them a myriad of information about S21, and even self-incriminating evidence. To the astonishment of the Anglo-Saxon jurists and journalists who couldn't conceive of such self-incrimination, at my suggestion Douch agreed to participate in a reconstruction of the crimes. It was a major and unique act of justice for the international criminal court: 30 years after the fact, an accused went back to the scene of the crimes escorted by two policemen, and accompanied by the Prosecutors who were investigating him, the investigation judges who conducted the case, and of course by his lawyers.

Douch had asked the judges for two things: to have a moment to bow in front of the victims' portraits that are exposed in the S21-turned-museum, which he did, and for the opportunity to speak to the surviving victims. He apologized to the victims in a poignant declaration, ending by saying, "*I apologize, I'm not asking you to forgive me, but only to leave the door open.*" Two of the survivors took the floor and said to the judges: "*honorable judges, I have been waiting to hear these words for 30 years. I am now in peace. Justice will do what it needs to do but I am in peace.*"

The investigating judges mentioned Douch's confessions and major cooperation with justice in their referral order sending the case to the tribunal.

Alas, before a Court largely influenced by a New Zealand judge and her common-law culture, the Prosecutor (Canadian, later succeeded by an American prosecutor) did not consider the referral order of the investigation judges, and led a trial solely focused on incriminating evidence, not even allowing a viewing of the film of Douch's crime scene reconstruction (above mentioned), which was nonetheless an important piece of evidence.

At the same time, and perhaps under this influence, the victims became radicalised, closing the door to any expressed and repeated contrition.

"My work with Douch consisted of accompanying him on the route of acceptance and recognition of his own guilt and responsibility."

And his Cambodian lawyer, Kar Savuth, for whom I have great respect because he was himself a former Khmer Rouge prisoner, thought he was doing the right thing by pleading *in fine* that the Tribunal was not competent to judge Douch, who was not one of the highest Khmer Rouge leaders for whom this Tribunal had been created. He may have been legally right, but psychologically, sociologically and historically wrong since Douch himself had very early on recognised the competence of this Tribunal and had chosen, through it, to ask for forgiveness from his people. And so this called into question the sincerity of Douch's confession and the trial ended in a terrible misunderstanding, despite Douch's final admission of guilt, as shown in the trial videos.

Douch was sentenced to 35 years in prison, and then given a life sentence upon his appeal. What can be taken away from Douch's story?

What remains is Douch's cooperation with justice, even after his sentencing when he agreed to testify for the Prosecutor, against his peers in the Khmer Rouge. Meanwhile, these peers, notably among them Khieu Samphân, defended by Jacques Vergés, remained silent throughout their investigations and proceedings, depriving all of us of a major historical record.

Beyond the unexpected ending to his trial, all the information that Douch shared will shed light on the sinister period of the Khmer Rouge, which will remain in the historical record.

I ardently believe that this was worth more than silence and I absolutely have no regrets about being a lawyer infatuated with justice, favouring the approach I took and encouraging contrition all along this procedure.

To conclude I give the floor to Gibran Khalil Gibran, the great Lebanese poet:

"*All of you who want to understand justice, how could you without looking at all things in the s hining light? So only you will know that the just and the fallen are but one man standing in the twilight between the night of his insignificant self and the day of his divine self, And that the cornerstone of the temple is not superior to the bottom stone in its foundations.*"

François Roux *has been a lawyer at the Bar of Montpellier (France) for nearly 40 years. He defended Polynesian and Kanak independence fighters in the Pacific (French Polynesia, New Caledonia). He has intervened several times before the European Court of Human Rights and the United Nations Human Rights Committee in Geneva. He worked in the American defence team of the Frenchman Zacarias Moussaoui in the USA who was involved in the September 11 attacks. Since 1999 he has appeared before the International Criminal Courts, first as defence counsel in various cases at the International Criminal Tribunal for Rwanda and then in Cambodia. In March 2009 he was appointed by the UN Secretary General as Head of the Defence Office at the Special Tribunal for Lebanon. His adage as a lawyer: there can be no Peace without Justice, no International Justice without a Lawyer.*

François Roux with his client, Kang Kek lew, alias Douch, in court in Phnom Penh, 2009. - © François Roux

Universal Jurisdiction as the Harbinger of Local Accountability?

Res Schuerch

PhD in International Criminal Law, University of Amsterdam

Universal jurisdiction legitimizes the prosecution of perpetrators of international crimes in countries that have no link whatsoever to the crime in question. It is a ground-breaking concept of international law based on the *erga omnes* logic and grounded in the idea that certain crimes are of such egregious nature that every country is eligible to prosecute and punish perpetrators of these crimes. Along these lines, Valery Pratt has depicted the exercise of universal jurisdiction in last year's annual report through a cosmopolitical lens, associating therewith "*a new type of sovereignty, an open sovereignty, one that makes sense only if it protects the fundamental rights of its citizens, and – by extension – of all humans as citizens of the world*".

The existence of core crimes with a sovereignty-transcending and universal character has been confirmed by various international criminal tribunals and state practice in many parts of the world. The latter includes proceedings initiated by Civitas Maxima in Switzerland, Finland, France, and Belgium, all of which address crimes committed during the two Liberian Civil Wars between 1989-2003. On the African continent, affirmative examples include the accession of 33 (out of 55) African states to the Rome Statute of the International Criminal Court; the trial of former Chadian President, Hissène Habré, by the Extraordinary African Chambers in Senegal 2015/2016; and Art. 4 (h) of the Constitutive Act of the African Union which stipulates "*the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity*".

"The prosecution of perpetrators of international crimes is sometimes even accompanied by fear of neocolonialism."

Despite a common understanding about the underlying values, the prosecution of perpetrators of international crimes is still infused with scepticism, and sometimes even accompanied by a fear of neocolonialism. One reason for this perception – which is epitomized by Valery Pratt's previous statement – is that universal jurisdiction allows a country to pierce the veil of sovereignty and overleap the monopoly in criminal matters of the state where the crime was committed. The sovereignty of a state is pivotal in (post-)colonial discourse, as it has been the central element of emancipation from colonial rule and therewith associated dependency relationships. This has also been emphasised in the famous Arrest Warrant case, where Congolese ad hoc Judge Bula-Bula labelled Belgium's attempt to exercise universal jurisdiction over the then incumbent DRC minister of foreign affairs a "serious disregard for the sovereign equality of States", and "*the continued expression* [...] *of the neocolonial chaos imposed upon it* [the Congolese People] *on the morrow of decolonisation.*"

Although international criminal law is unambiguous that perpetrators of international crimes should not go unpunished, universal jurisdiction is, by default, a highly selective approach. This is because only a handful of perpetrators will ever be tried on its basis – the vast majority of perpetrators continue living an ordinary life at home, possibly in close proximity to their former foes and victims. Recent COVID-19 prevention measures have unfolded additional obstacles to the exercise of universal jurisdiction, with travel restrictions limiting victims' ability to attend trials abroad, or field missions to gather evidence and testimonies in third countries made impossible.

For all those reasons, a sustainable and all-encompassing solution after a violent conflict can only be a local one. In an African context, this logic is expressed by the catchall phrase *"African solutions to African problems*", which was famously coined by Ghanaian political economist George Ayittey. However, the decision of how to deal with past atrocities is a complex one and the way to reconciliation is paved with hurdles. In some cases, ending a war and allowing for political transition is only possible if amnesties are granted to those who are most responsible for the commission of international crimes; in other cases, the pursuit of individual accountability is not considered a priority or there is simply a lack of financial, personal, and/or institutional capabilities to implement such mechanisms. What is more, local tribunals are also prone to one-sided justice against political opponents. This entails the risk that a narrative of guilt is produced that does not necessarily reflect the historical realities, and which likewise may pose a challenge to sustainable reconciliation.

Considering these challenges, one should recall that all these problems, to varying degrees, are characteristic of criminal law enforcement systems worldwide, domestic and international, and they should not serve as an excuse for not taking action. Rather, the previously mentioned duty of a state "*to protect the fundamental rights of its citizens*"

requires states to strive for sustainable reconciliation and address past human rights violations in a credible, transparent, and accountable manner for the sake of the victims, the survivors, and the community at large.

"The very nature of international crimes prosecution is that not one country, region, religion or colour sits in the dock, but cruelty itself."

Examples that follow the "*African solutions to African problems*" logic include the Rwandan Gacaca trials, the previously mentioned Hissène Habré trial, or, with some limitations, the domestic/international hybrid Special Court for Sierra Leone. Non-judicial truth and reconciliation mechanisms have, among many others, been implemented in post-apartheid South Africa, post-Taylor Liberia, and more recently in post-Jammeh Gambia. Of course, it is also possible that judicial and nonjudicial approaches are combined, or that accountability is established as a follow-up to truth, reconciliation, and rehabilitation instruments.

Also, only a local approach ensures that justice becomes truly universal, as this is the only way that the manifold expectations of local communities can become reality in the course of overcoming a traumatic violent conflict. In this sense, universal jurisdiction and international criminal courts can only be a starting point, and not the final solution. They are but a small piece of the puzzle that eventually has to be solved at a domestic level. However, this small piece may facilitate a local solution by contributing information and evidence that has already been gathered about the conflict in question and the crimes committed.

While local approaches are less likely to evoke fears of neo-colonialist imposition, suppression, and external control, one should always bear in mind that it is the very nature of international crimes prosecution, at a domestic or international level, that not one country, region, religion, or colour sits in the dock, but cruelty itself. It is this line of argument that should help to prevent that the prosecution of international crimes is posited as a "*hero-villain movie*" that is marked by an "*ideological chasm*", as Dire Tladi once vividly noted.

Res Schuerch, *PhD in international criminal law (University of Amsterdam), and former managing director of the Centre for Human Rights Studies of the University of Zurich (until 2021). He is the author of "The International Criminal Court at the Mercy of Powerful States: An Assessment of the Neo-Colonialism Claim Made by African Stakeholders" published by Asser Press/Springer 2017.*

August, 1994, Padhore Davis, Liberia - An armed child fighter with the LPC, a pro-government militia group lead by Georges Bolley, poses with a gun and red beret at a check point in a military training facility during the Liberian Civil War. - © Patrick Robert

Accolades

In November 2020, Ashoka - the world's largest network of social entrepreneurs - recognised Alain Werner's work as Civitas Maxima's Director with a fellowship.

Welcoming Alain Werner into Ashoka

Social change doesn't just happen. Progress towards a more equitable, inclusive and sustainable society, such as voting rights for women or marriage equality, is pushed by large popular movements, supported by coalitions of politicians, activists and other actors, or driven by major institutions. But how do they start?

At Ashoka, we believe that the world's most powerful force for change is a new idea in the hands of the right person. Our experience tends to show that, more than public authorities or large corporations, those who succeed in truly disrupting the status quo are often individuals who combine a deep understanding of a social or environmental issue, hypertrophied entrepreneurial qualities, and an ability to adopt a collective, systemic approach to resolving the issue in question. These incredible leaders are social entrepreneurs, and Alain Werner is one of them.

For the last 40 years, Ashoka has been working to identify and support women and men who are profoundly transforming systems - economic, political, education, health, justice, food, agricultural, etc. – while influencing mindsets and representations. We call these individuals 'Fellows'. But before being social entrepreneurs, these people are farmers, street educators, nurses, teachers, doctors, journalists – and sometimes lawyers. Very often, they have been affected first-hand by the human and ecological injustices they fight, and have observed dysfunctions from up close. Their names include Jimmy Wales, who founded Wikipedia and redefined who could create and have access to information, Nobel Peace Prize Laureate Kailash Satyarthi whose fight against child slavery and trafficking is thought to have saved 80 million children, and Mary Gordon who showed that teaching empathy at a young age significantly reduces bullying in schools.

Civitas Maxima's work to fight impunity and rethink international justice is equally important, and we are therefore delighted to welcome Alain into our global Fellowship. As Marie Ringler, Member of Ashoka's Global Leadership Group, puts it: "*Alain is one of those rare individuals, who combine conviction to do what's right, passion to empower those who far too often don't find justice, and a brilliant mind. Ashoka is the world's largest support network for social entrepreneurs, and we are honored to welcome Alain as one of its distinguished members. Alain's work is incredibly important not only for the victims and witnesses he serves, but for all of us and our common humanity.*"

Why Alain & Civitas Maxima?

Every year, we receive thousands of applications and nominations from around the world. So, what made Alain stand out amongst so many candidates? First, his systemic approach. Alain identifies flaws in the system of international justice and finds creative ways to overcome them, for instance with the use of universal jurisdiction. This tool allows judicial authorities and lawyers to gain experience and set precedents, which in turn strengthens this key, yet under-utilized, international legal mechanism, to try a large number of perpetrators of international crimes and therefore complement the work of the International Criminal Court. Second, his impressive evidence of impact – three convictions in less than 10 years – and the potential he has to transform the whole judiciary system. Alain is looking at scaling his impact without necessarily growing his organization, by building the capacity of local judiciary systems and partner organizations. And third, his strong ethical fiber and leadership. He is passionate about his cause, and burning with the entrepreneurial fire necessary to move mountains, and recover from setbacks.

Beyond that, Alain and Civitas Maxima also embody the vision Ashoka stands for: a world where everyone positively contributes to society, where everybody is a changemaker. Through his work, Alain creates new spaces for stakeholders of the international criminal justice system, such as victims, NGOs, investigators, and lawyers, to work together with the aim of building the competency of, and ultimately strengthening, domestic judicial systems across the world to undertake international crimes prosecutions. By doing so, he is not only paving the way for impunity to be a thing of the past, and for justice to be served, but he also empowers victims and other groups of society who were previously excluded. He gives them the opportunity to be agents of change.

Behind every broken system, there is a broken mindset

Humanity is confronted with an urgent need to find and support transformative solutions at a much faster pace. The current health crisis makes the fragility of our societies more visible than ever, with heightened risks facing the most vulnerable populations in particular. Alongside efforts to address the pandemic and its consequences, we will need to work together on the root causes that put us there in the first place, by challenging and rethinking existing systems. Because, as we like to say withing Ashoka, behind every broken system, there is a broken mindset.

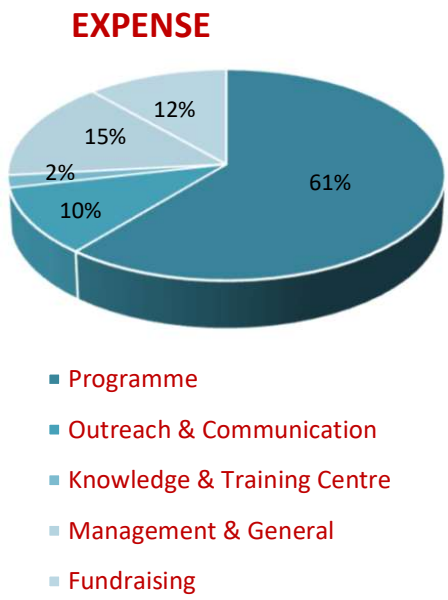
There is no doubt that many of these solutions lie with social entrepreneurs. Let's support them, they need us. And we need them.

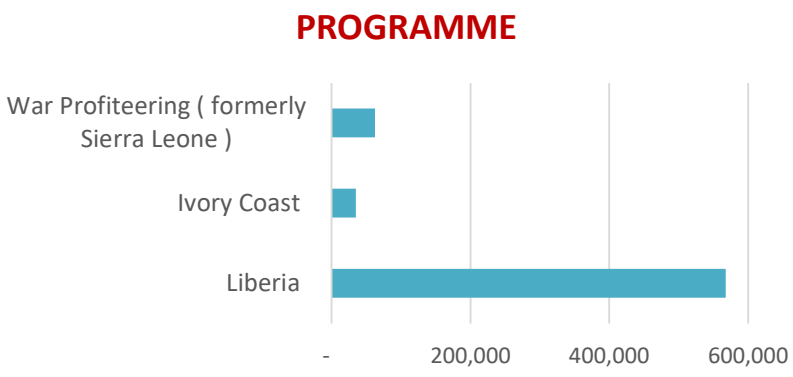
Welcome into the family Alain! We're looking forward to our journey together.

By Emilie Romon, Co-Director of Ashoka Switzerland, and Jean-Claude Gottraux, member of the Ashoka Support Network.

Operating statement for the year ended December 31, 2020*

	2020 CHF	2019 CHF
INCOME		
Grants & donations**	1,111,453	1,046,761
Other income	-	44,208
TOTAL INCOME	1,111,453	1,090,969
EXPENSE		
Programme	-665,748	-640,043
Outreach & Communication	-114,129	-107,473
Knowledge & Training Centre	-20,610	-
Management & General	-165,175	-205,106
Fundraising	-125,719	-92,073
TOTAL EXPENSE	-1,091,381	-1,044,696
EARNINGS BEFORE FINANCIAL RESULT	20,072	46,274
Financial expense	-7,364	-9,480
Financial income	6,610	1,192
RESULT FOR THE FINANCIAL YEAR	19,318	37,986





*Based on audited accounts by PriceWaterhouseCoopers (PwC)

Donors & Partners

Civitas Maxima is extremely grateful for the support received from the following donors and partners who have contributed towards the advancement of our vision and mission:

Our sister organization, the Global Justice and Research Project, Liberia

Akin Gump Strauss Hauer & Feld LLP, U.S.

Ashoka, International

Centre for Civil and Political Rights (CCPR), Switzerland

Comité de Familiares de Víctimas del Caracazo (COFAVIC), Venezuela

Courrégé & Foreman, France

Garcés y Prada, Spain

Geneva Academy of International Humanitarian Law and Human Rights, Switzerland

Human Rights Watch, International Justice Program, U.S.

Humanity United, U.S.

Inoks Capital SA, Switzerland

International Committee of the Red Cross (ICRC), Law and Policy Forum, Switzerland

Jacquemoud & Stanislas, Switzerland

King Baudouin Foundation, U.S.

Lenz & Staehelin, Switzerland,

Liberia Visual Arts Academy, Liberia

New Narratives, U.S.

Oak Foundation, Switzerland

Ochsner & Associés, Switzerland

Office of the United Nations High Commissioner for Human Rights, Liberia and Switzerland

Other foundations which requested anonymity

Philantropic Adventures, Switzerland

Private Donors

Private Donors - Patrons' Club

Private Donors - Golden Circle

PricewaterhouseCoopers (PwC), Switzerland

Santamaria & Jakob, Switzerland

Secretariat for the Establishment of War Crimes Court in Liberia (SEWACCOL), Liberia

Swiss Incorp, Switzerland

SwissPeace, Switzerland

The Advocates for Human Rights, U.S.

The Centre for Accountability and Rule of Law (CARL), Sierra Leone

The Center for Justice and Accountability (CJA), U.S.

The Civil Society Human Rights Advocacy Platform, Liberia

The Institute for International Criminal Investigations (IICI), The Netherlands

The Karl Popper Foundation, Switzerland

The Sigrid Rausing Trust, UK

The United Nations Voluntary Fund for Victims of Torture (UNVFVT), Switzerland

The University of Nottingham Human Rights Law Centre, UK

Walleyn & Blanmailland, Belgium

Wellspring Philantropic Fund, U.S.

White and Case LLP, Switzerland

Outreach and informing the local population is at the core of Civitas Maxima's work. -© Glenna Gordon/New Narratives

Independent Legal Representation of **Victims of War Crimes and Crimes Against Humanity**

CIVITAS MAXIMA

Civitas Maxima in 2020

Executive Board: Roland Adjovi, Ivan Agabekov, Christian Chalut, François Canonica, Marion Colombani, Vincent Dufresne, Luc Lamprière, Christopher Santora, Kim Thuy Seelinger, Antonya Tioulong, Robert Troxler

Advisory Board: Olympia Bekou, Andrew Carton, Corinne Dufka, Basil Fernando, Olivier de Frouville, George Kegoro, Maina Kiai, Stephen Mansfield, Nigel Pleming QC, Robert Roth, The Honourable Justice Lesely Taylor, Alex Whiting

Staff and Consultants: Dan Aladjem, Trial Monitor | Nakil Bieri, Institutional Fundraising Coordinator | Nicolas Braguinsky Cascini, Media Consultant | Sarah Brocher, Legal Associate | Alexandre Flahault, Administrative & IT Coordinator | JP Kalonji, Artistic Consultant | Kelsey Guthrie-Jones, Legal Counsel & Capacity Building Coordinator | Felix Lüth, Legal Counsel | Emmanuelle Marchand, Head of Legal Unit | Leonard Maue, Institutional Fundraising Coordinator| Jeanette Rouvinez, Finance & Administration Manager | Lisa-Marie Rudi, Deputy Head of Legal Unit | Irina Saminskaya, Communications Assistant | Thomas Seghezzi, Consultant | Amanda Seilern, Private Fundraising Manager | Dalila Seoane, Senior Legal Counsel & War Profiteering Project Coordinator | Rebecca-Paris Senior, Communications & Outreach Manager | Abraham Tewelde, Caretaker | Romain Wavre, Legal Counsel | Alain Werner, Director

Interns and Volunteers: Chamsi Diba, Legal Intern | Sarah Fontaine-Pagé, Legal Intern | Annabel Kling, Intern | Shiva Jada Raju, Communications Intern | Juana Munoz Quintero, Legal Intern | Felix Vogel, Volunteer

Special Thanks for this Annual Report to: Martin Aubert, Kelsey Guthrie-Jones, Phoebe Kennan, Manouchehr Rimer, Amanda Seilern, Rebecca-Paris Senior

Civitas Maxima
www.civitas-maxima.org
info@civitas-maxima.org
Place Longemalle 1
PO Box
1211 Geneva 4
Switzerland
+41 22 346 12 43

Cover picture: A LURD fighter sits beside a hand grenade in Tubmanberg, Liberia. June 2003. - © Tim Hetherington/Imperial War Museum