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

CIVITAS MAXIMA

# 2023 ANNUAL REPORT

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# Foreword

Alain Werner, Director of Civitas Maxima

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The year 2023, like the three years before it, was no stranger to momentous and dramatic developments for civilians and world stability. We don't know how the rest of the decade will unfold, from one year to the next - whether we will see more wars, or face another pandemic.

In this world of uncertainty, we, at Civitas Maxima, do not falter with our indestructible conviction that one – of the many! – challenges that this and future generations face is bringing to justice those suspected of committing some of the gravest crimes, wherever and whenever possible.

The vast majority of international crimes – genocide, crimes against humanity, war crimes, torture – go unprosecuted, despite the explicit commitments made by states in signing international conventions to investigate and punish them. It would be dangerous and irresponsible of us to allow a pervasive sense of impunity to carry forward to future generations.

For 12 years, Civitas Maxima has been one of the only non-governmental organizations in the world which, without receiving state funding, has dedicated all its resources to one goal: to accompany victims of international crimes in their quest for criminal justice. Like previous years, 2023 has been rich with developments for us, and these pages are dedicated to them.

Importantly, two appeal proceedings of international crimes unfolded, each ending quite differently.

In June 2023, the Swiss Federal Criminal Court confirmed the guilty judgement of former Liberian rebel commander Alieu Kosiah. This case, which started in 2014 when Ebola was raging in Liberia and saw court proceedings first taking place in 2020 during the Covid-19 pandemic, made legal history. It represents many firsts, both for Switzerland and for Liberia.

The appeal proceedings, in addition to confirming the conviction for war crimes, also constituted the first-ever conviction in Switzerland – and only the second one worldwide when it comes to the Liberian wars – for crimes against humanity. A section of this annual report has been dedicated to this. We propose an analysis on the legal importance of the Kosiah case; a researcher's ethnographic analysis of the appeal proceedings; and direct quotes from my own pleadings in court on behalf of some of the Liberian victims as well as what the defendant – Alieu Kosiah – said in his defense.

In the second case, after 9 months of hearings in proceedings initiated in Finland against Gibril Massaquoi, the Court of Appeal confirmed, in January 2024, the acquittal handed down in the first instance. This was clearly not the outcome the victims had hoped for.

The Finnish judges did, however, recognize that the crimes had been committed. This is therefore the very first time that Liberian victims have been heard and believed by a court of law on the reality of the crimes suffered during the second civil war, between 2001 and 2003. This is no small victory.

In December 2022, the case led to the development of international law in Finland, as analyzed in this annual report. Finnish journalist Anu Nousiainen, who followed the Gibril Massaquoi trial from its investigative phase, wrote a book about her experience and insights, available only in Finnish so far. We decided to translate and publish an extract.

Trials are complex events in which the legal process is not the only significant component. A quest for justice is not defined exclusively on its outcome. It is also defined by the integrity of the victims' approach and our own. While the victims were defenseless when the crimes were being committed, in court they are heard and listened to by judges in a fair and impartial process that guarantees the rights of all. Ultimately, whether the trial results in a conviction or an acquittal is precisely the hallmark of an international justice system that works.

On our website, Civitas Maxima offers both a short daily recap and a lengthier day-to-day account of both proceedings, the Swiss and the Finnish, through trial monitoring. Since 2017, we have strived to offer a neutral and detailed account of all procedures in which we are involved, to help everyone understand these procedures and get an objective idea about them. Fellow NGO Syria Justice Accountability Center, who has also carried out extraordinary trial monitoring for trials dealing with the Syrian civil wars, shares their thoughts and perspective in this report on the practice.

We understand that disrupting the status quo of impunity brings its own challenges, and because of what we do and the context in which we work, it is inevitable that we encounter obstacles along the way. In 2023, we, alongside our Liberian sister organization the GJRP, its director Hassan Bility, and myself, were sued for USD 15,000,000 in a civil claim in Liberia on legal grounds that defy logic.

Strategic Lawsuits Against Public Participation (SLAPP lawsuits) - legal actions initiated by individuals and organizations to deter their critics from generating further negative publicity - are unfortunately a growing trend. This annual report discusses this issue and includes contributions on this topic by two respected organizations facing SLAPP lawsuits, Swissaid and Sherpa.

All of this and more, including developments made public in the United States and through our Knowledge and Training Center, can be found in this edition of the annual report. The report recounts our public work, which is itself only a fraction of what our staff and our partners do every day.

This work would not be possible without the trust victims place in us, and without our donors, who give us the means to carry out our mission in total independence. To all of you, we are immensely grateful. We will not relent.

CIVITAS MAXIMA
Independent Legal Representation of Victims of War Crimes and Crimes against Humanity

GJRP
Global Justice and Research Project

# Attempt to Silence Victims' Quests for Justice: Agnes Reeves Taylor Sues Civitas Maxima and the GJRP in Liberia

*Press Release - March 10, 2023*

Ms. Agnes Reeves Taylor, ex-wife of Charles Taylor, was charged in the United Kingdom (UK) with seven counts of torture and one count of conspiracy to commit torture in relation to her involvement with the rebel group National Patriotic Front of Liberia (NPFL) during the First Liberian Civil War. The UK prosecution authorities proceeded under s. 134 of the Criminal Justice Act of 1988. This provision implements certain obligations imposed on State Parties to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (UNCAT). Arrested in June 2017, her case was later dismissed in December 2019, as the UK Crown Prosecution Service (CPS) failed to prove that the NPFL had the requisite authority – i.e., exercising official or quasi-official functions, as opposed to mere military control – over the relevant territory at the time that the crimes in question were committed. Establishing this authority over territory is necessary – according to a decision made by the UK Supreme Court – to be able to try a member of a non-State armed group with torture. The Central Criminal Court therefore dismissed the case. Since her return to Liberia, Ms. Reeves Taylor has attempted to make false portrayals of the case brought against her by the British Metropolitan Police and has engaged in historic revisionism. She has claimed that the case was dismissed because the Court determined that she did not commit any acts of torture.

This could not be further from the truth. The ruling rendered by Judge Sweeney on 6 December 2019 reads on paragraph 20 as follows: "*For the purposes of the application it was not disputed by the defendant* (Agnes Reeves Taylor) *that there is prima facie evidence (all dates in 1990) that*: « (1) *She held high rank in the NPFL and, when dressed in military clothing and armed carried out, whether personally, or by giving orders, or by acquiescing in, the acts of torture the subject of Counts 2-5, 7 & 8 – all of which took place in, or on the border of, Nimba County*. (…) ».

The allegations of torture brought by victims against Agnes Reeves Taylor were considered credible enough by UK judicial authorities to issue the initial indictment and arrest her. Then, by acknowledging that there was prima facie evidence of acts of torture, the Court accepted that "*at a first glance*", these acts were established. Despite this, the legal test relating to the territorial authority of the NPFL posed the obstacle to the case progressing to trial. It was for this reasonthat Ms. Reeves Taylor did not face trial and the prima facie evidence against her would not be decisively assessed in a UK court of law.

In July 2020, taking advantage of impunity prevailing in Liberia, Ms. Reeves Taylor declared in a press conference held in Monrovia that the work of Hassan Bility and the Global Justice and Research Project "*ha[d] to stop*". Following up on her threats, Ms. Reeves Taylor then filed a civil claim before the sixth judicial circuit of the civil law court of Montserrado County, Liberia. Through this lawsuit, Ms. Reeves Taylor claims "*malicious prosecution and wrong*" against the GJRP, Civitas Maxima, Hassan Bility (Director of GJRP) and Alain Werner (Director of Civitas Maxima). She has also requested 15,000,000 USD in general damages to "*restore her prestige and reputation and compensate her for the injury against her person*". Civitas Maxima and GJRP provided initial information to the UK relevant authorities in this case. The Metropolitan Police conducted its own lengthy investigations – separately and independently from Civitas Maxima and GJRP – and decided to arrest and charge Agnes Reeves Taylor. A case against Civitas Maxima and the GJRP for the incarceration of Agnes Reeves Taylor in the United Kingdom between 2017 and 2019 should not stand in any independent court of law with fair and due process.

We echo the words of U.S ambassador-at-large for global criminal justice Beth Van Schaack, which she wrote after her recent visit to Liberia in 2022: "*Liberia faces many challenges when it comes to justice and accountability, not only for the terrible war crimes committed during two consecutive civil wars, but also for ordinary crimes and corruption. Impunity is corrosive; when it is allowed to flourish in one sector, it will undermine the foundations of peace and the rule of law across an entire society. […] Liberians can be proud of the work of their compatriots in the GJRP who are working hard to support war crimes accountability. They should also be concerned, as am I, that the GJRP's work has resulted in threats and intimidation against their staff members*."

People like Agnes Reeves Taylor may find our work troublesome, but we will continue to be on the side of those who have suffered heinous crimes and want justice.



# Ramifications of Impunity

## *Agnes Reeves Taylor's SLAPP lawsuit*

Leah Sade Olasehinde

Legal Consultant, Civitas Maxima

In 2022, Agnes Reeves Taylor filed a strategic lawsuit against public participation (SLAPP) against Civitas Maxima (CM) and its Liberian partner organisation the Global Justice and Research Project (GJRP), as well as their directors, Alain Werner and Hassan Bility. The case is pending trial before the Civil Law Court of Montserrado County, Liberia.

Agnes Reeves Taylor's story has many chapters. In 1990s Liberia, she was a high-level government official and was married to President Charles Taylor. During the country's civil war, she served as Liberia's Permanent Representative to the International Maritime Organization. After the civil war, her name figured on a United Nations Security Council travel ban list, from which it was removed some years later. After moving to the UK, she was granted refugee status and taught as a university professor.

In 2017, Agnes Reeves Taylor was arrested and held in pre-trial detention on charges of torture for a suspected involvement with the National Patriotic Front of Liberia (NPFL), the rebel group led by Charles Taylor that initiated the First Liberian Civil War in December 1989. Civitas Maxima had provided some initial information to Scotland Yard in 2013.

**"INFLAMMATORY LANGUAGE AND STRETCHED-AT-BEST CLAIMS ARE CHARACTERISTIC OF SLAPP LAWSUITS."**

Her case, one of the first universal jurisdiction cases in the UK, made legal history, mounting to the Supreme Court to address an untested point of law. Applying the 1984 Torture Convention as implemented into UK law, the Supreme Court had to address how non-state armed groups could be considered as '*exercising governmental authority*'.

The criminal case against Agnes Reeves Taylor was dropped soon after. Once the Supreme Court had established a legal standard of 'administrative control', it sent the case back to the Central Criminal Court to apply the test to the facts. The Central Court considered that the evidence relating to the NPFL did not sufficiently prove that the group exercised administrative control at the time of the alleged crimes. Agnes Reeves Taylor was released from detention. She left the UK and returned to Liberia, where she has since revived her career as a university professor.

Each element of Agnes Reeves Taylor's story is reflected in her SLAPP lawsuit. Her high-level position in Liberian society and politics fed into the media storm that followed her return to the country and filing the case. As for her life in the United Kingdom, according to her lawsuit, her professional career and reputation had '*all eroded in one day*'. Her arrest and time in detention led to her suffering injury to her physical and mental health, which she claims was '*based on malicious lies for mercenary purposes*'.

Inflammatory language and stretched-at-best claims are characteristic of SLAPP lawsuits and distinguish Agnes Reeves Taylor's suit from a legitimate civil claim for malicious prosecution.

Liberian law is clear on civil claims of malicious prosecution. Claims for malicious prosecution have 4 cumulative legal criteria, meaning that if any one of them is not satisfied, the entire case must be dropped.

Here, the first element is that the claimant (here, Agnes Reeves Taylor) was prosecuted by the respondent(s) (here, the GJRP, Hassan Bility, Civitas Maxima, and Alain Werner). Agnes Reeves Taylor will be hoping that the court finds that two individuals and two non-governmental organisations, by passing information to the British prosecutorial authorities, are the ones that prosecuted her.

As for the other three elements (the prosecution was determined in the defendant's favour, the prosecution was without reasonable and probable cause, the prosecution was malicious), she will be hoping that the court rules that

these individuals and non-governmental organisations (NGOs) prosecuted her for little reason other than malice.

While the case is pending before the Sixth Judicial Circuit, the Civil Law Court for Montserrado County, it has been widely circulated in the local media.

The way in which Agnes Reeves Taylor has presented her case to the media is a clear demonstration of the real purpose, and the potential impacts, of SLAPP lawsuits.

## SLAPP lawsuits: a double-edged sword

The main purpose of SLAPP lawsuits is two-fold: on the side of the claimant, it is an instrument to protect their reputation after an event which they claim has ruined it; and on the side of the respondent(s), it is used to damage their image and potentially destroy the organisations themselves.

In her lawsuit, Agnes Reeves Taylor claims that the respondents '*inflicted untold sufferings and pain*' on her, destroyed her family and reputation, and '*thereby ruined her life*'. The 15,000,000 dollars which she has asked as compensation is to '*restore her prestige and reputation and compensate her for the injury against her person*'. Outside of her lawsuit, Agnes Reeves Taylor has appeared numerous times in the press, appearing on radio shows, giving interviews, and holding press releases. Each time, she reminds the public of her academic and professional career, details her arrest, and expresses her shock and dismay at her treatment.

**"SLAPP LAWSUITS CAN ENHANCE A CLIMATE OF IMPUNITY IN ENVIRONMENTS WHERE INDIVIDUALS WHO HAVE BEEN ACCUSED OF COMMITTING ATROCITIES ARE ABLE TO COME OUT AS UNTOUCHABLE."**

It should be noted that in general, it is standard practice for civil lawsuits to claim such damages. What characterizes SLAPP lawsuits is the offensive strategy that goes the other way – the intention of tarnishing the reputation of the people that the claimant feels responsible for their alleged fall from grace. Agnes Reeves Taylor has not made any claim to her innocence without pairing it with accusations of corruption and witness tampering by Civitas Maxima and the GJRP.

In her lawsuit, Agnes Reeves Taylor claims to be a victim of 'persecution' instigated by the respondents. She claims that the criminal case against her was a '*well-orchestrated scheme perpetrated for personal gratification and financial gains to operate "war crimes persecution theatres" outside of Liberia by machinations, mischief, lies, deceit, and blatant falsehood under the guise of war crimes advocacy*'. The claim even goes so far as to describe Hassan Bility and Alain Werner as '*mercenaries of fortunes*'. In her media appearances, Agnes Reeves Taylor designates them both, by name, as the orchestrators of these schemes. Such claims against individuals and organisations working in human rights, when paired with a real lawsuit before a court, can have the desired effect of destroying their image and reputation.

## Further ramifications: impunity and deterrence

Further than being media battles, SLAPP lawsuits can have much further-reaching consequences. When they are built by strategies of self-victimisation and deliberate misinformation, they can surround a claimant with an aura of vindication. Such lawsuits can therefore contribute to a climate of impunity.

SLAPP lawsuits can enhance a climate of impunity in environments where individuals who have been accused of committing atrocities are able to come out as untouchable. The rhetoric used by Agnes Reeves Taylor so far portrays her as a victim of persecution. However, the fact that she has managed to return to Liberia and regain her high status in Liberian society and politics has also likely allowed her to build an aura of vindication.

This, alone, is not problematic as such. The law functions on the presumption of innocence. For as long as an individual has not been proven guilty by a court of law for a crime, they cannot and should not be considered a criminal. NGOs in the field of international justice should be held to the highest legal and ethical standards when doing their work. The repercussions that an individual may face when accused of committing atrocity crimes can be significant, so organisations should proceed with caution and be held accountable for their work.

It should be noted, though, that the criminal case against Agnes Reeves Taylor before the British courts, while it did not establish her guilt, does not determine her innocence either.

The criminal case against Agnes Reeves Taylor was dismissed before the evidence against her could be tested. The dismissal of the case was based on evidence related to the legal requirement of the control of the NPFL as an armed group on Liberian territory in 1990. The court even ruled that there was *prima facie* evidence that Agnes Reeves Taylor had in fact committed the acts of torture in question.



This does not, of course, conclusively establish that Agnes Reeves Taylor is guilty of the crimes she was accused of. However, by continuously stating that the case was dismissed because the court determined that she did not commit any acts of torture, Agnes Reeves Taylor has engaged in misinformation and historic revisionism. She has effectively demonstrated that she has escaped having to answer for her alleged crimes and that she most likely never will.

**"AGNES REEVES TAYLOR HAS ENGAGED IN MISINFORMATION AND HISTORIC REVISIONISM."**

In addition, a tarnished personal and institutional image of Hassan Bility, the GJRP, Alain Werner, and Civitas Maxima, can have concrete effects on their organisations. The GJRP and Civitas Maxima operate based on the trust they build with prosecutorial authorities. Through her SLAPP lawsuit, Agnes Reeves Taylor has attempted to destroy such trust between the organisations and the authorities. She has personally accused Hassan Bility of hiring people to lie, coaching witnesses, and fabricating evidence. She has accused Alain Werner of scamming Western authorities and donors, to '*profit off the victimhood and justice-less status of Liberian war victims*'.

These accusations have also made it into the defence strategies of other criminal cases in which the GJRP and Civitas Maxima have been involved. In 2023, courts in Switzerland, France, and Finland have been confronted with similar theories. The defendants in each case have cited Agnes Reeves Taylor's 'success' as a prime example of such corruption. Yet, neither the Swiss nor the French criminal courts found any convincing evidence of wrongdoing by the GJRP or Civitas Maxima, while the Finnish court, in its appeal decision, did not see it pertinent to address such accusations.

From an operational perspective, the time, energy, and resources that go into countering SLAPP lawsuits can often be overwhelming for small organisations. Seeking legal support, adopting media and communications strategies, and endeavouring to maintain institutional relationships can drain such organisations of their limited resources. It also turns their attention away from their important work as they battle to counter the effects of such onslaughts. As such, allegations of what amounts to criminal misconduct, beyond damaging reputations, can have concrete effects on the very existence of small human rights organisations.

## SLAPP lawsuits need not be an obstacle to justice

SLAPP lawsuits have the potential to ruin reputations and destroy organisations. However, their impact can be mitigated.

In general, SLAPP lawsuits are not new to the humanitarian world. Once they have been identified, there are concrete ways that have been developed to counter them. There are specialised organisations which support targets of SLAPP lawsuits. These organisations can provide tailored advice and can even help raise funds to cover legal fees.

For an NGO, becoming a target of a SLAPP lawsuit need not be the cause of its end. However, the wider impact of such lawsuits, in contributing to impunity, is harder to mitigate. It goes without saying, though, that every small NGO that resists and overcomes a SLAPP lawsuit is moving a step in the right direction to ending impunity for atrocity crimes.

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# Criminal Prosecution Following an NGO Report: the Swiss Case of Valcambi vs Swissaid

Thaïs In der Smitten

SWISSAID media spokesperson

On July 16, 2020, SWISSAID published a report on the gold industry entitled "*Détour doré. The hidden face of the gold trade between the United Arab Emirates and Switzerland*". The study reveals to the public the relationships between the various companies involved in this trade.

In particular, it sheds light on the commercial activities of the Valcambi refinery in Ticino, which belongs to the Rajesh Exports Limited group. In Switzerland, Valcambi is the main importer of gold from the United Arab Emirates (UAE). Multiple testimonies, access to numerous documents, and extensive research carried out in Dubai enabled SWISSAID to establish in the report that Valcambi buys gold from the Dubai-based company Kaloti. Between 2018 and 2019, 83 tons of gold, worth more than 3 billion Swiss francs, were acquired from Kaloti and a trading company owned by it or closely related to it (T1FS). The activities of Kaloti - a UAE-based group operating internationally - are highly controversial within the industry. In particular, the multinational has been implicated in scandals involving illegal gold shipments and money laundering, which led to its exclusion from the "*best practice*" standard in Dubai. The investigation also shows that, even after this media hype, Kaloti continued to buy gold considered problematic, including alleged conflict gold from Sudan.

SWISSAID's investigation has provoked many reactions within the Swiss industry itself. For example, the President of the Swiss Association of Manufacturers and Traders in Precious Metals (ASFCMP) criticized Valcambi for its business practices. In particular, he told the Swiss press, "*The SWISSAID report highlights weak points that need to be corrected, and we don't question it.*" (Le Temps, August 4, 2020). Antoine de Montmollin - CEO of Metalor, another major Swiss gold refinery - also declared in the Swiss press (24 Heures, September 23, 2020): "*For us,* [Kaloti] *is what we call a red flag. Given their reputation, we could never work with them*". Still in this country's press, we can read: "*To appease his colleagues, the Balerna refiner* (Kaloti Valcambi) *has assured that he will no longer take gold from Kaloti from November 2019. But the industry's umbrella association, ASFCMP, wants a public commitment to sever all relations, including with other companies that would act as a front for Kaloti*" (24 Heures, September 21, 2020). Thus, put under pressure, Valcambi then directly declared to the press that it had ended its relationship with Kaloti, without however giving details of its commercial relations, notably with T1FS (Tages Anzeiger, 24.10.2020). However, a Swiss TV report (Mise au Point) and another press article (NZZ am Sonntag, September 2023) cast doubt on Valcambi's statements.

**"THE MEASURES TAKEN BY THE MULTINATIONAL ARE EXTRAORDINARILY AGGRESSIVE AND DISPROPORTIONATE."**

During field research and before the publication of the report, SWISSAID gave Valcambi the opportunity to comment on the allegations made. In addition, the sources used in the report can be consulted and verified on the Internet. Despite this, the refinery has decided to take legal action against SWISSAID because it believes that the study has damaged its reputation.

As a first step, Valcambi has given SWISSAID "*until October 30, 2020, to confirm that it has indeed modified or withdrawn the text*", under threat of filing a lawsuit. As SWISSAID saw no reason to withdraw its report, Valcambi initiated two procedures:

- In October 2020, the refinery from Ticino filed a criminal complaint (art. 3, para. 1 of the Federal Law against Unfair Competition) against the author of the report and against unknown persons.
- At the same time, it initiated a conciliation procedure with SWISSAID. In May 2021, as no agreement could be reached, Valcambi launched another lawsuit, this time civil, against SWISSAID and the author of the report for breach of personality and data protection.

The main hearing of the civil suit was originally scheduled for September 20, 2023. However, two days earlier, it was cancelled by the judge. The plaintiff, the refinery from Ticino, Valcambi, had failed to properly file a petition with the court. The new hearing date is not yet known. The criminal proceedings have been suspended until the civil proceedings have been concluded. Three years have passed since Valcambi filed its complaint. During this period, SWISSAID had to deploy considerable staff resources to defend itself, resources which were consequently not available for substantive work or new reports. The financial costs - in particular legal fees - are already considerable at this stage, but the total sum is still difficult to determine: this will depend on the length of the trial.

**"VALCAMBI CLEARLY WANTS TO INTIMIDATE, BLOCK AND SILENCE SWISSAID AND THE AUTHOR OF THE REPORT THROUGH LENGTHY PROCEEDINGS."**

Valcambi clearly wants to intimidate, block and silence SWISSAID and the author of the report through lengthy proceedings.

The Coalition against SLAPPs in Europe (CASE) also interprets Valcambi's complaint against SWISSAID as a SLAPP procedure, for the following reasons:

- The report deals with a topic of public interest which at the same time concerns an international group.
- A public watchdog is being attacked.
- Given the financial situation of the plaintiff and the means at his disposal, this is by no means an equal fight.
- Before the report was published, SWISSAID invited the multinational in good faith to take a position or provide explanations, but Valcambi only gave a partial response to these requests.
- The measures taken by the multinational are extraordinarily aggressive and disproportionate.
- The complaints are not only directed against the organization, but also against individuals.

*Thaïs In der Smitten is SWISSAID's media spokesperson, and a former journalist. She keeps in touch with the media in order to showcase the issues of SWISSAID, which are also the issues of the less fortunate people in the global south, in particular the women.*

Access the "*Détour doré. The hidden face of the gold trade between the United Arab Emirates and Switzerland*" report here (French only).

# Calling a Spade a Spade: SLAPPs are a Threat to Democracy

*Sherpa

Sherpa, NGO

French organization

What does a colossal conglomerate such as the Bolloré group have in common with French waste management companies such as Sepur or Valgo? They have all been called out in recent years for engaging judicial proceedings bearing the hallmark of strategic lawsuits against public participation (SLAPPs).

## The issue with SLAPPs

SLAPPs, which are on the rise throughout the entire European continent, can be defined as "*abusive lawsuits filed to shut down acts of public participation, including public interest journalism, peaceful protest or boycotts, advocacy, whistleblowing, academic comments, or simply speaking out against the abuse of power. SLAPPs target anyone who works to hold the powerful to account or engage in matters of public interest: so-called "public watchdogs"*."

**"THE GOAL (...) IS NOT TO VINDICATE A LEGITIMATE RIGHT, BUT TO INTIMIDATE (...) A SUBSTANTIAL AMOUNT OF SLAPP CLAIMS IS WITHDRAWN BEFORE REACHING ITS CONCLUSION."**

The goal of such proceedings is not to vindicate a legitimate right, but to intimidate and silence critical voices. SLAPP authors do not seek to win their case – a substantial amount of SLAPP claims is withdrawn before reaching its conclusion – but rather to put pressure on the targets, who will have to spend time and money to defend themselves instead of focusing on the original public interest issue at stake. By smothering public debate, SLAPPs are an insidious threat to democracy.

These proceedings often involve a misuse of judicial instruments. In addition to multiplying lawsuits on the ground of defamation, SLAPP claimants have increasingly been resorting to other legal fields, in particular business law. This allows them to bypass the stringent provisions protecting freedom of expression contained in the law on defamation, and to bring cases to commercial courts, which are not accustomed to protecting freedom of expression and public watchdogs.

## Our confrontation with SLAPPs in France

France, which is known as a SLAPP-friendly jurisdiction, provides several examples of these practices in recent years. For instance, in October 2022, the telecoms group Altice obtained a publication ban from the Nanterre Commercial Court against the website Reflets.info, on the grounds of the French law protecting business secrecy. In May 2023, TotalEnergies sued Greenpeace France over a report in which the NGO questioned TotalEnergies's carbon footprint accounting: the latter alleged that by publishing this report, Greenpeace France had committed the corporate criminal offence of "*spreading false and misleading information*". TotalEnergies claimed a symbolic 1 euros in damages but was also asking the court to order Greenpeace France to remove the report from all platforms under a penalty of 2,000 euros per day.

Sherpa and its employees have also been targeted by lawsuits bearing the hallmark of SLAPPs. In March 2015, Sherpa filed a complaint for forced labor against entities of the Vinci group in relation to their construction activities in Qatar. In response to publications concerning the complaint, Vinci filed a defamation suit against Sherpa and two of its employees in April 2015, and also initiated civil proceedings based on an alleged infringement of the presumption of innocence. Faced with the growing importance of these SLAPP suits in the public debate, the company, which initially asked for hundreds of thousands of euros in damages, lowered its demand in 2018 to a symbolic one euro, but maintained its demands regarding judicial publications. The latter consist in asking the court – if Sherpa was to be convicted – to order us to publish the decision in ten newspapers, for an estimated amount of 10.000 euros per publication, which would represent a cost of 100.000 euros for Sherpa, e.g. one tenth of our annual budget. A stay of the proceedings has been ordered, pending the outcome of the criminal proceedings concerning working conditions on construction sites in Qatar.



Sherpa has also repeatedly faced SLAPP suits filed by entities of the Bolloré group since 2011, which never ended with a conviction, either because the plaintiffs withdrew their complaints or appeal, or because the courts ruled in our favor. For instance, Bolloré S.A. filed a defamation suit against Sherpa in 2011 after our NGO had seized the National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises in relation to the activities of Socapalm, a Cameroonian company belonging to the Bolloré group. The claim was then withdrawn by Bolloré S.A. in 2013. In 2015, Sherpa – as well as several French media – reposted an article published by the French NGO ReAct on the land grabbing carried out in Cameroon by Socapalm. In reaction, the latter as well as its holding company based in Luxemburg – Socfin – filed another defamation suit against Sherpa, ReAct and the three media – Mediapart, L'Obs, Le Point – that relayed the content. We were acquitted in March 2018, a decision that Socfin and Socapalm initially appealed, before withdrawing their appeal in February 2019. Just like Sherpa, dozens of journalists and NGOs have been sued by entities of the Bolloré group for more than a decade over increasingly sophisticated grounds. The latest innovation being the use of labor law against journalists, with media companies controlled by the Bolloré group using "*non-disparagement clauses*" to prevent criticism from journalists even after they left the company.

## Civil society's efforts against SLAPPs

Faced with this alarming threat, Sherpa and thirteen other organizations, including journalists' unions, created the French network against SLAPPs "*On Ne Se Taira Pas!*" in 2017. This interdisciplinary collective intends to raise awareness and advocate for legislative reforms to put an end to SLAPPs, through legal research and mobilization in support of SLAPPs victims.

Following the assassination of Maltese journalist Daphne Caruana Galizia, who was facing 47 libel cases at the time of her death, civil society organizations across Europe also joined forces and created the Coalition Against SLAPPs in Europe (CASE) in 2021. Bringing together more than 40 organizations, including Sherpa, CASE calls on the European institutions to take action against SLAPP suits, including through the adoption of a directive. It is also working to strengthen the resilience of SLAPP victims through the provision of legal resources. Lastly, the coalition is seeking to map the extent of the phenomenon in Europe to improve its understanding and visibility in the public debate.

**"(...) IN FEBRUARY 2024 THE EUROPEAN PARLIAMENT ADOPTED A DIRECTIVE "ON PROTECTING PERSONS WHO ENGAGE IN PUBLIC PARTICIPATION FROM MANIFESTLY UNFOUNDED CLAIMS OR ABUSIVE COURT PROCEEDINGS"."**

## Promising first steps

CASE's endeavors have been successful, with the adoption in February 2024 by the European Parliament of a directive "*on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ("Strategic lawsuits against public participation")*".

Despite some shortcomings due to the limited competence of the European Union to legislate and to the wording of some provisions which could have been more compelling, this is clearly a step in the right direction. The text contains groundbreaking measures, such as an early dismissal mechanism that allows courts to simply dismiss manifestly unfounded claims, saving time, money and energy for SLAPP victims. It also allows Member States to provide compensation for SLAPP victims and to establish penalties against SLAPP authors. It is worth noticing that the directive contains a minimal requirements clause, encouraging Member States to go further than what it entails. Thus, a lot will come down to transposition: in this regard, governments may be able to build on the European Commission's Recommendation of 27 April 2022, which contains more ambitious provisions that are meant to supersede the limits of the EU's legal basis to enact binding legislation.

Lastly, perhaps one of the most telling indicators of the growing recognition of SLAPPs is that French case law has progressively started to acknowledge the concept by using the French translation of the term – "*procédure-bâillon*" – and by sentencing SLAPP authors to penalties.

Once the EU directive is published – which should happen around spring 2024 – it will be up to the French lawmakers to meet the challenge, and address SLAPPs through an ambitious transposition of its provisions. To do so, they may rely on the "*États généraux de la presse indépendante*": in the past months, more than a hundred civil society organizations and independent media have collaborated to elaborate concrete propositions to safeguard freedom of expression and of the press, including anti-SLAPP measures such as specific immunities for journalists. It will be crucial to meet these expectations, because after all, nothing less than democracy is ultimately at stake.

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*Sherpa - Founded in 2001, Sherpa brings together a team of lawyers and jurists who use the law as a tool to fight the impunity linked to the globalisation of economic and financial exchanges and to defend the victims of economic crimes.*

Following the assassination of Maltese journalist Daphne Caruana Galizia who was facing 47 libel cases at the time of her death, the Coalition Against SLAPPs in Europe (CASE) was created. © 2018 Matthew Mirabelli/Getty Images

# Switzerland: Federal Prosecutor's Office opens Investigation into attack of Swiss Journalist in Ukraine

*Press Release - March 29, 2023*

On March 26, 2023, the spokesperson for the Office of the Attorney General of Switzerland (OAG), confirmed in a press article that criminal proceedings were being initiated for the attack against Swiss press reporter Guillaume Briquet by an alleged Russian commando, and that further investigation will be carried out. Mr. Briquet was injured as a result of the attack, as he was driving from Kropyvnytsky to Mykolaïv (Ukraine).

Mr. Briquet stated that the vehicle in which he was travelling – which had Geneva license plates and had "PRESS" written on both sides – was shot twice on the driver's side, and twice on the passenger's side. According to the journalist, when he dismounted the vehicle, the soldiers, which identified themselves as Russian, stole, amongst other things, 3'000 euros in cash and his passport.

In 2022, Truth Hounds, with the assistance of Civitas Maxima, filed a denunciation to the Swiss authorities regarding the attack against Mr. Briquet. Civitas Maxima had provided in 2021 a training to Truth Hounds in Ukraine on international crimes documentation through its Knowledge and Training Center.

In early 2022, OAG created a working group dedicated to the preservation of evidence related to potential crimes committed in Ukraine, since Swiss authorities are competent to deal with these crimes through the principle of universal jurisdiction. Nevertheless, in this particular case, Mr. Briquet's Swiss nationality extends Switzerland's jurisdiction to prosecute, based on the passive personality principle, which recognizes the jurisdiction of states over offences committed abroad against its own citizens, independently from the nationality of the alleged perpetrator.

According to Reporters without Borders (RSF), Russian forces have been deliberately attacking journalists in Ukraine. In 2022 alone, 13 journalists were killed as they were reporting on the war. The systematic attack against journalists has mobilized RSF to refer these attacks to the Office of the Prosecutor of the International Criminal Court (ICC).

Since 2014, Truth Hounds has documented international crimes committed in the country and received in 2023 the Sakharov Freedom Award by the Norwegian Helsinki Committee. For Dmytro Koval, its legal Director, the decision of the Swiss OAG is important: "*We welcome the OAG's decision and Truth Hounds is ready to assist the Swiss authorities on their ongoing investigations*".



# The Importance of Extra-territorial Cases for Ukraine

Dmytro Koval | Zera Kozlieva

Legal Director | Senior Legal Advisor, Truth Hounds

On 24 February 2022, Ukraine was hit by a large-scale invasion by the Russian Federation, which dramatically changed the nature of the international armed conflict that had been going on between Russia and Ukraine since 2014. From the very beginning, the invasion was accompanied by hundreds of reports of war crimes committed by Russian troops in Ukraine. As a result, Ukraine's justice system has had to cope with an unprecedented number of grave breaches of international humanitarian law and gross human rights abuses: attacks on civilian objects and civilians, torture and killings of civilians in the occupied territories, sexual violence, and others.

Under the Geneva Conventions of 1949, the primary responsibility for investigating these crimes lies with national judicial authorities. Accordingly, the majority of proceedings for alleged war crimes will take place in Ukraine. Since 2014, Ukraine has already gained some experience in investigating war crimes. In addition, since the beginning of the large-scale invasion, international partners have been actively investing in strengthening the capacity of Ukraine's national institutions to respond to the challenges of investigating alleged war crimes.

**"ONE OF THE MECHANISMS THAT CAN RELIEVE THE UKRAINIAN JUSTICE SYSTEM AND MITIGATE ITS PARTIAL UNSUITABILITY FOR INVESTIGATING INTERNATIONAL CRIMES IS EXTRA-TERRITORIAL JURISDICTION, BUT ALSO UNIVERSAL JURISDICTION."**

Despite the experience gained by 2022 and the support of the international community, there are still significant challenges to ensuring justice for international crimes in Ukraine. These challenges include, in particular: shortcomings and gaps in national legislation, insufficient preparedness of the national justice architecture, a significant number of registered alleged crimes, ongoing hostilities in some Ukrainian territories, the occupation and annexation of certain regions, the departure of some witnesses and victims from Ukraine, and many others.

In response to such challenges, after 24 February 2022, Ukraine has significantly intensified its cooperation with the International Criminal Court, used the capabilities of Eurojust to exchange information with EU jurisdictions on alleged war crimes, and established joint investigation teams (JITs) to investigate international crimes in Ukraine. The latter, in particular, are created in cases where a foreign citizen becomes a victim of a war crime.

One of the mechanisms that can relieve the Ukrainian justice system and mitigate its partial unsuitability for investigating international crimes is extra-territorial jurisdiction, but also universal jurisdiction, which allows individual countries to investigate and try cases of international crimes regardless of the place of their commission, and of the nationality of the victim or the alleged perpetrator.

Given the scale of the crimes committed (between 24.02.2022 and 02.02.2024, 120,882 war crimes have been registered by Ukrainian law enforcement agencies), as well as the fact that Ukraine is a party to the armed conflict and its impartiality will be always questioned, the value of extra-territorial cases is particularly increasing.

According to the official website of the Office of the Prosecutor General, more than 20 countries have opened their own investigations into war crimes and other international crimes in Ukraine. These include Belgium, the Czech Republic, France, Germany, Ireland, Slovenia, Norway, the United States, Canada, Switzerland and others. Some countries have launched such investigations to collect testimonies from Ukrainians who were forced to leave Ukraine, others - because their citizens have suffered - have done so on the basis of appeals from non-governmental organisations.

The considerable potential of the principles of extra-territorial jurisdiction in the fight against impunity for crimes in Ukraine streams at least from the following considerations:

First, the legislation of a foreign state may be better suited to prosecute international crimes than the national legislation of Ukraine. Typical examples of the legislative shortcomings on the Ukrainian side are the absence of crimes against humanity or command responsibility in Ukrainian law (although the latter is still a matter of debate among international lawyers).

Secondly, some foreign countries have previous experience in investigating and prosecuting international crimes, and sometimes have specialised investigators and prosecutors who are well versed in complex multi-episode cases. Their involvement may contribute to the quality of the investigations and affect the credibility of the reached conclusions.

**"PROCEEDINGS IN A FOREIGN JURISDICTION ALLOW THE TRUTH TO BE TOLD TO FOREIGN AUDIENCES ABOUT THE WAR IN UKRAINE."**

Thirdly, foreign judicial authorities sometimes have greater opportunities than Ukraine to collect or legitimise evidence of international crimes. For example, victims or witnesses of a crime may reside in the foreign state. Or the state may already have successful experience in using open-source evidence in criminal cases, which Ukrainian courts are still not very open to. In addition, some countries have more sophisticated systems for tracing and seizing assets from which victims may receive compensation. These foreign states may also have greater capacity to put alleged criminals on the international wanted list.

Fourthly, proceedings in a foreign jurisdiction are often justified from the perspective of victim-centred justice. Thus, in some jurisdictions, standards of witness and victim protection may be more developed and ingrained in the practices of the judiciary than in Ukraine. They may also provide for the possibility of compensation for victims of crimes. Foreign jurisdictions may not be overburdened with cases from Ukraine and can therefore communicate with victims in a more meaningful and qualitative way, thereby better satisfying the victims' demand for justice.

Fifthly, proceedings in a foreign jurisdiction allow the truth to be told to foreign audiences about the war in Ukraine. This is extremely important in the context of the demand for the explanation of the causes of the war and the possible consequences of peace on the terms of the aggressor, who, as numerous reports and investigations demonstrate, is deliberately destroying the civilian population of Ukraine and will be, at most, paused with a truce, but not stopped.

Finally, the involvement of foreign justice authorities and courts in cases of alleged war crimes in Ukraine increases the credibility of the findings of Ukrainian courts, which are objectively closely related to the conflict in terms of territory, time and personal experience.

Despite a number of advantages associated with the involvement of foreign justice actors in the investigation of alleged international crimes in Ukraine on the basis of the principles of extra-territorial jurisdiction, there are also risks that need to be taken into account. For example, it is necessary to consider the existing national investigations in Ukraine into similar episodes that are planned to be brought to foreign jurisdiction. An acquittal in a foreign state simply due to insufficient evidence will call into question the results of Ukrainian national investigations or investigations in other states. Of course, this could create risks of perpetrators' impunity.

However, Ukrainian hopes for assistance in restoring justice through the application of the principles of extra-territorial jurisdiction are high. We are looking forward to seeing how the coming years will bring at least partial confirmation of this hope. One tangible example of this reliance on the emerging global trend of extra-territorial litigation for Ukraine is the denunciation that Truth Hounds launched with support of Civitas Maxima in Switzerland. This denunciation concerns a Swiss national and speaks about the alleged crime committed by the Russian armed forces against him. But it also tells a wider story about the war, atrocities that are being committed by the aggressor state, patterns of violations of international humanitarian law, and recognition of the suffering of the Ukrainian population. We welcome the decision of the Swiss prosecutor to look into this denunciation and are ready to collaborate with the Swiss authorities further.

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*Dmytro Koval is a lecturer at the National University Mohyla Academy in Kiev, and an expert for the NGO Truth Hounds, which received the Sakharov Freedom Award in 2023. He has a PhD in International law from the National University of Kyiv-Mohyla Academy. Zera Kozlieva is a Senior Legal Advisor at Truth Hounds and worked as a lawyer in local governments, the Parliament and the Cabinet of Ministers of Ukraine. She has held various positions in the Prosecutor's Office working on investigation of crimes in the occupied territories, reforms and international legal cooperation.*



# Indirect Impact as a Force for Systemic Change

Odin Mühlenbein

Partner, Ashoka Germany

In a world where change is often a collaborative effort, indirect impact is a powerful force. Indirect impact is the direct impact that you enabled others to have. It's the kind of impact that cascades from one entity to another, amplifying change across systems and communities.

The beauty of indirect impact lies in its exponential potential – and Civitas Maxima knows how to realize it. For example, with their Knowledge and Training Centre (KTC), Civitas Maxima trains local NGOs in human rights and collaborates with lawyers globally. This enhances the capabilities of these organizations to pursue justice independently. They also set legal precedents, particularly in war crimes, which significantly influenced global legal practices. And they raised awareness and stimulated informed debates around human rights issues, which influences public opinion and policy.

If you enable others to have more impact, interesting partnerships tend to emerge. For example, in 2021, Civitas Maxima trained leading Ukrainian NGO Truth Hounds, which documents war crimes and crimes against humanity. The two organizations then collaborated in filing a denunciation in Switzerland for crimes committed in Ukraine during the war against a Swiss journalist.

At Ashoka, we elect social entrepreneurs whose ideas have the potential to transform entire social systems - like Alain Werner, the Director at Civitas Maxima. This transformative change is primarily achieved through indirect impact. This is why we focus so much on helping Ashoka Fellows spread their ideas (as opposed to growing their organizations). We want their initiatives to reach far beyond their immediate scope, influencing broader societal changes. We understand that real change often happens indirectly, as empowered individuals and organizations create waves of impact that resonate throughout the system.

We celebrate Civitas Maxima's emphasis on indirect impact. It is a testament to the organization's deep understanding of the interconnected nature of global challenges and the solutions they require. Civitas Maxima's strategy of empowering others to create change not only amplifies the reach of its initiatives but also ensures a sustainable and far-reaching transformation. We hope that many other organizations will follow this example.

Congratulations to 12 years of global impact!

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*Odin Mühlenbein is a Partner at Ashoka Germany. Before AI took over his life, he developed impact strategies with over 100 leading social entrepreneurs and published widely on the topic of systems change.*
*Ashoka is the world's oldest and largest network of social entrepreneurs.*

A man pushes his bike through debris and destroyed Russian military vehicles in Bucha, Ukraine, northwest of Kyiv, on April 6, 2022. Numerous apparent war crimes by Russian forces during their occupation of Bucha in 2022 were documented.
© Chris McGrath/Getty Images

CIVITAS MAXIMA
Independent Legal Representation of Victims of War Crimes and Crimes against Humanity

GJRP
Global Justice and Research Project

# First Conviction in Switzerland for Crimes Against Humanity

*Press Release - June 1, 2023*

Bellinzona, Switzerland – Seven plaintiffs write a page of Swiss and Liberian history as Alieu Kosiah is convicted for crimes against humanity and war crimes.

Today, June 1, 2023, after 4 weeks of hearings between January and February 2023 – the Appeals Chamber of the Swiss Federal Criminal Court (FCC) found Alieu Kosiah, former Liberian commander of the rebel faction ULIMO (United Liberation Movement of Liberia for Democracy), guilty of multiple counts of war crimes and multiple counts of crimes against humanity. He was also handed down a prison sentence of 20 years.

Alieu Kosiah is the first person to be convicted of crimes against humanity in Switzerland. This ruling will set a precedent by establishing that crimes against humanity committed before 2011 can be prosecuted in Switzerland, as it was the first time the Court of Appeal had to rule on this question.

The Court of Appeal also confirmed the FCC's initial decision. In 2021, the FCC handed down Switzerland's first ever war crimes conviction, as the first time a Liberian citizen was convicted for such crimes.

Mr Kosiah already spent over 8 years in prison during the trial, which will be deducted from his sentence. It was also decided that Mr Kosiah must pay reparations to each plaintiff.

The conviction relates to crimes committed during the First Liberian Civil war (1989-1996), between 1993 and 1994. These acts include: ordering the killing of 13 civilians and 2 unarmed soldiers; murdering 4 civilians; raping a civilian; ordering the cruel treatment of 7 civilians; infringing upon the dignity of a deceased civilian; repeatedly ordering the cruel, humiliating, and degrading treatment of several civilians; repeatedly inflicting cruel, inhuman, and degrading treatment on several civilians; repeated orders to loot and using a child soldier in armed hostilities.

The confirmation of the first conviction for an act of rape committed during Liberia's First Civil War is of great importance in light of the scale of the sexual violence committed during the country's conflicts. It is also an immense testament to the victim of this act who had the courage to testify, as well as to all the countless other victims of sexual violence linked to armed conflicts around the world.

Civitas Maxima and the Global Justice and Research Project (GJRP) also pay tribute to the incredible resilience and courage of all the Liberian plaintiffs. They pursued their quest for justice with great dignity and determination, despite intimidation, threats and obstacles, including the Ebola epidemic at the start of the proceedings (2014-2015) and the Covid-19 pandemic in 2020-2021.

These Liberian victims have obtained justice in Switzerland thanks to the principle of universal jurisdiction, recognized under Swiss law, and the fact that Alieu Kosiah has resided in the country for over 20 years. They have consistently expressed their deep gratitude to the Swiss authorities throughout these proceedings, both to the prosecutors and to the judges.

Civitas Maxima and the GJRP in turn salute the work of the Swiss judiciary. According to Alain Werner, lawyer and Director of Civitas Maxima, who, together with Romain Wavre, represented 4 of the 7 plaintiffs in this case: "*The Swiss justice system and administration as a whole have proven that it is possible to prosecute international crimes in Switzerland, and to do so in a fair and effective manner even for acts committed over 7,000 kilometers away. This gives great hope for the development of universal jurisdiction, in Switzerland and elsewhere.*"

So far, all the victims of the atrocities committed during the Liberian civil wars have had to leave their country to search for justice abroad – such as in Switzerland, the United States, France, Finland, Belgium and elsewhere. It is high time that the Liberian government listened to this quest for justice and finally set up its own justice mechanism, where the crimes were committed, in Liberia.

Hassan Bility, Director of the GJRP, stated from Monrovia: "*This historic judgment is a testament to the incredible resilience and tenacity of the victims of the wars in Liberia. They have been completely forgotten by their own government, which has still not set up a justice mechanism, almost 35 years after the start of the first civil war. The Liberian government must finally comply with the recommendations of the 2009 Liberian Truth and Reconciliation Commission and put an end to impunity for crimes committed during the war, before it's too late*".

# Legal Perspectives on the Alieu Kosiah Case

Robert Roth

Honorary Professor, University of Geneva

If ever an illustration were needed of the merits of Civitas Maxima's work, the Alieu Kosiah case would be the perfect example. In this case, which is not yet concluded- the Federal Court, Switzerland's highest court, has yet to give its judgement* - the work of Civitas Maxima and its lawyers has enabled the victims' voices to be heard, their rights to be recognized, and the law to progress towards an appropriate classification of the crimes suffered by these victims.

Alieu Kosiah, a Liberian national, is a warlord accused by numerous victims of having committed or ordered atrocities during the first Liberian civil war between 1989 and 1996. Most of the crimes of which Mr. Kosiah is accused took place in 1993-1994. Mr. Kosiah has a Swiss residency permit, following his marriage to a Swiss national which lasted from 2004 to 2012. In 2014, he was denounced by fellow Liberians who were represented at trial by Civitas Maxima and by lawyers who are not members of the organization.

**"IF EVER AN ILLUSTRATION WERE NEEDED OF THE MERITS OF CIVITAS MAXIMA'S WORK, THE ALIEU KOSIAH CASE WOULD BE THE PERFECT EXAMPLE."**

The wars that shook English-speaking West Africa from 1989 onwards were particularly bloody and cruel. The international community supported both reconciliation processes and a special court, the Special Court for Sierra Leone, which sentenced the main commanders who had acted on Sierra Leonean territory. Liberia, also devastated by conflict, has not, for various reasons, been able to benefit from the same treatment. This is why criminal proceedings - such as the one opened in Switzerland against Alieu Kosiah, and those underway in other countries against other protagonists of the Liberian civil war - are extremely important and fill a void for the affected communities.

For the first instance proceedings, the Federal Criminal Court delivered its judgment on the merits on June 18, 2021. Alieu Kosiah was found guilty of extremely serious violations of the laws of war, such as the use of a child soldier, homicides, rape, numerous orders to treat many civilians cruelly, the infliction of cruel, humiliating, and degrading treatment, and repeated orders to pillage. The court sentenced him to twenty years' imprisonment. On May 30, 2023, following an appeal by Mr. Kosiah, the Court of Appeal, established within the same Tribunal, confirmed the conviction and added an additional sentence for various crimes against humanity. The sentence remains the same (twenty years' imprisonment), the maximum sentence under Swiss law for war crimes at the time the acts were committed. However, the Federal Criminal Court suggests that, had the acts been committed today, a sentence of life imprisonment could have been considered. The publishing of reasons for the appeal judgment are expected sometime in 2024.

The way in which the Federal Criminal Court conducted its hearings and allowed the victims to express themselves is exemplary, especially if seen from the point of view of victim rights. Indeed, under Swiss law, victims enjoy "*plaintiff*" status. With the support of the authorities and Civitas Maxima, the Court encouraged these plaintiffs to speak out, and heard important testimonies from plaintiffs and witnesses - both for the prosecution and the defense - from Liberia by videoconference as they were unable to travel. This required patience and imagination; fundamental in a trial taking place thousands of kilometers from where the crimes were committed. So, the extra-territorial jurisdiction is not a off the ground jurisdiction.

The procedural status of Civitas Maxima was also clarified by the Court during the first instance. Mr. Kosiah's lawyer had challenged the independence of Alain Werner and Romain Wavre, members of Civitas Maxima, to participate in the trial as lawyers. The Court found, firstly, that belonging to a non-profit organization does not entail a lack of independence and, secondly, that as Werner and Wavre's activity as lawyers was in line with the organization's goal, there was no risk of a conflict of interest between those of their clients and that of the organization. The Court also ratified the evidence-gathering work carried out by Civitas Maxima and its sister organization in Liberia – the GJRP - while retaining the prerogative of determining whether this evidence is convincing, of course.

All the evidence gathered by the Public Prosecutor's Office, Civitas Maxima and the GJRP, and above all by the Court during the hearings in first instance, led the latter to consider the majority of the charges brought against Alieu Kosiah to be well-founded, and to classify them as war crimes. On the other hand, the Court did not accept the qualification of crimes against humanity proposed by Raphaël Jakob, one of the plaintiffs' lawyers and himself not part of Civitas Maxima, on the grounds that the indictment did not contain the facts required for such a qualification. This qualification is important, even if, in this particular case, it only supplements the qualification as a war crime. But words have a meaning, and Civitas Maxima and the plaintiffs' lawyers were convinced that Kosiah's actions did indeed constitute crimes against humanity. They won their case before the Court of Appeal.

**"THE WAY IN WHICH THE FEDERAL CRIMINAL COURT CONDUCTED ITS HEARINGS AND ALLOWED THE VICTIMS TO EXPRESS THEMSELVES IS EXEMPLARY."**

Civitas Maxima and Mr. Jakob have thus contributed to a significant development in Swiss law, and in international law in general, a development which is still subject to final approval by the Federal Court, which is expected to rule in 2024 or 2025. The problem was legally complex: to put it simply, Swiss law has only had a standard on crimes against humanity since January 1, 2011. However, the acts of which Alieu Kosiah is accused predate this date. Civitas Maxima and Mr. Jakob succeeded in convincing the Public Prosecutor's Office, and then the Court of Appeal, that if the facts were not time-barred on January 1, 2011, the new Swiss standard could apply to them. At first glance, this approach is contrary to the principle of non-retroactivity of criminal laws, a key element of the principle of legality. The decisive argument developed by Mr. Jakob in another case tried at the same time (the assassination of Iranian opposition leader Kazem Rajavi in Switzerland), and then in the Kosiah case, is that, if the acts qualified as ordinary crimes under Swiss law (murder or even assassination, rape, sequestration) were not time-barred on January 1, 2011, they can be qualified as crimes against humanity after that date, on the understanding that, like war crimes, crimes against humanity are not time-barred, in Switzerland as in most countries of the world.

In the hope that this small revolution in the world of international human rights law, will be endorsed by the Federal Court, the case of Alieu Kosiah will have not only brought justice to the victims of acts of unprecedented violence and cruelty, but will also have advanced the law.

Other victims will undoubtedly benefit from this revolution, particularly when the atrocities were committed outside the context of an international armed conflict or civil war, and therefore cannot be classified as war crimes.

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*Robert Roth is an Honorary Professor of International and European Criminal Law at the University of Geneva. He previously served, inter alia, as a judge of the Special Tribunal for Lebanon in The Hague (2011-2013) – chairing the Trial Chamber for two years – and as a judge at the Court of Cassation of the Canton of Geneva (1992-2011). Professor Roth was Dean of the Law Faculty, University of Geneva (2003-2007), and contributed, in this capacity, to the creation of the Geneva Academy of International Humanitarian Law and Human Rights.*

# Alieu Kosiah Appeal: Final Pleadings

***Extracts from Alain Werner's pleadings during the Alieu Kosiah appeal in 2023. Mr Werner, Director of Civitas Maxima, represented in Court, alongside Roman Wavre, four plaintiffs. The original language of the pleadings is French.***

### Terror in Lofa, Liberia, by ULIMO

The complete ordeal of the people of Lofa in 1993 and 1994 has been documented in real time by the world's most reputable and credible journalistic sources and humanitarian organizations.

This documentation is extensive and is largely included in the dossier, but let me go through some of these dispatches and reports with you, so we can assess their meaning in its totality: you have mentioned some of them yourselves in past days:

Agence Reuters of late December 1993 mentions the withdrawal of humanitarian organizations after attacks and looting by ULIMO, and also mentions that according to humanitarian workers, ULIMO commanders are running the county like their own "*private fiefdoms*", terrorizing villagers with summary executions and forced labor: (10-01-0334, Dc 2/94. Agence Reuters dispatch, 27/12/93) (...)

[...]

I could have read you (...) 60 dispatches and reports which, from mid-1993 to the end of 1994, tell you that: a relentless attack by the ULIMO group against these defenseless and unarmed civilians throughout Lofa county, for over 18 months. In these documents, the following crimes keep on being reported:

- Summary executions;

- Torture;

- Looting;

- Forced labor;

- Acts of terror;

Liberian newspapers from the same period, which we found ourselves in microfilms in the US Congress Library in Washington, tell the same story in the file.

All this documentation was published at the time of the events, in 1993-1994.

Some 15 years after the publication of all this material, the report of the Liberian Truth Reconciliation Commission (TRC) came out, and its conclusions were published after several years of work.

This TRC report fully corroborates the existence and the course of this relentless attack by the ULIMO group against the civilian population in Lofa in 1993 and 1994.

The TRC report makes it clear that this systematic and widespread ULIMO attack against the civilian population of Lofa in 1993 and 1994 did not take place in a historical vacuum, nor was it an isolated and unique phenomenon of the Liberian civil war.

[...]

On the contrary, this attack took place in a context of 2 simultaneous civil wars in Liberia, with all factions attacking the civilian population (...) Massacres of civilians in 14 different counties. All over Liberia. And all the armed factions - without exception - are involved in these massacres.

(...) In this war in Liberia, the enemies were the civilians, and they were attacked relentlessly.



### The Lion analogy

If we compare Lofa County between 1993 and 1994 to an apartment, with three or four rooms representing the main towns in Lofa, then the systematic and widespread ULIMO attack on civilians during the first civil war could be compared to the presence of a lion in that apartment.

Anyone who lives in that apartment for even 3 or 4 days, and no matter in which room that person sleeps in, they can't not see or hear the lion, they cannot not know that there's a lion in the apartment. It just can't be. A cat, perhaps, but not a lion (...).

And if you take the analogy further, the building is Liberia during the first civil war (1989-1996): each apartment is a county controlled by a different rebel group, and there's a lion in each apartment.

That's what the TRC report tells you. Nothing more, nothing less. This report predates the creation of Civitas Maxima and its sister organization in Liberia.

Two former witnesses from ULIMO were called by the defense in this case and they confirmed the extent of the crimes committed by the ULIMO group, one having directly implicated Alieu Kosiah in the crimes committed.

[...]

At this stage, there is still no possible corruption from Civitas Maxima or its sister organization in Liberia of all the sources I have cited, as none of these sources, testimonies, or documents are coming from us.

So on top of all the other public sources, everyone - from the bottom to the top of ULIMO's hierarchy (...) also knows and speaks in detail about ULIMO's attack - vicious, general and systematic - that has been unleashed for 2 years on the civilians of Lofa.

### Alieu Kosiah's denial

Everyone, that is, except Alieu Kosiah.

Alieu Kosiah, ULIMO commander and floating officer in Lofa in 1993 and 1994, saw nothing of the attack on Lofa's civilian population that everyone is talking about.

He didn't see it. With his own eyes, he saw almost nothing of this attack (...).

He didn't see any forced labor in Lofa.

He saw no looting in Lofa.

He saw no forced executions in Lofa.

He saw no acts of terror in Lofa, no skulls on stakes, no intestines on fences in Lofa.

Alieu Kosiah's lawyer pleaded yesterday: "Alieu Kosiah lived an almost normal life in Lofa."

[...]

Going back to the simplistic analogy of the Lion, in an attempt to show how unimaginable and insulting Mr. Kosiah's absolute denial is to the plaintiffs:

Alieu Kosiah is said to have lived in the apartment for over 2 years, and he tells you he has never seen the Lion (...).

**Alain Werner and Roman Wavre, Alieu Kosiah's appeal proccedings, 2023. © JP Kalonji/Civitas Maxima**

## Why doesn't Alieu Kosiah recognize the crimes committed by the ULIMO group?

The truth is that Alieu Kosiah will never admit to having seen the Lion until his death.

He will never admit to ULIMO's general and systematic attack on the civilian population of Foya, which lasted for months, and months, and months (...).

For our clients, these proceedings were the last opportunity to receive even just a word of compassion for the victims of Lofa from Mr. Kosiah.

That word did not come.

That word will never come.

We don't have compassion for objects, and that's how civilians were treated by ULIMO and Alieu Kosiah in Lofa.

So if Mr. Kosiah is incapable of acknowledging the existence of the attack on civilians in Lofa, it is obvious that he will never accept any responsibility for the general and systematic attack on civilians by ULIMO forces.

[...]

How is this total and absolute denial of the crimes committed by ULIMO possible, an irredentist denial, without nuance, implausible, which obviously mines its credibility? Denial even for the crimes committed by the other commanders or soldiers of his armed group.

Mark Twain once said: "*The two most important days of your life are the day you are born and the day you find out why*".

Alieu Kosiah told you here in audience on Monday that the only important work he had done during the war had been after his time in Lofa, in 1996, as Director of the Criminal Investigation Division in Monrovia, because according to him when he was fighting in Lofa he was treated like an animal.

Of course, Mr. Kosiah is projecting, because it was he who treated civilians like animals in Lofa.

But beyond this projection, one of many we'll come back to, I think on the contrary that joining ULIMO - Alieu Kosiah was not forcibly conscripted but freely joined ULIMO - and fighting Charles Taylor for several years, arms in hand, is a founding act, the heroic act, of which is the proudest in Alieu Kosiah's life to this day.

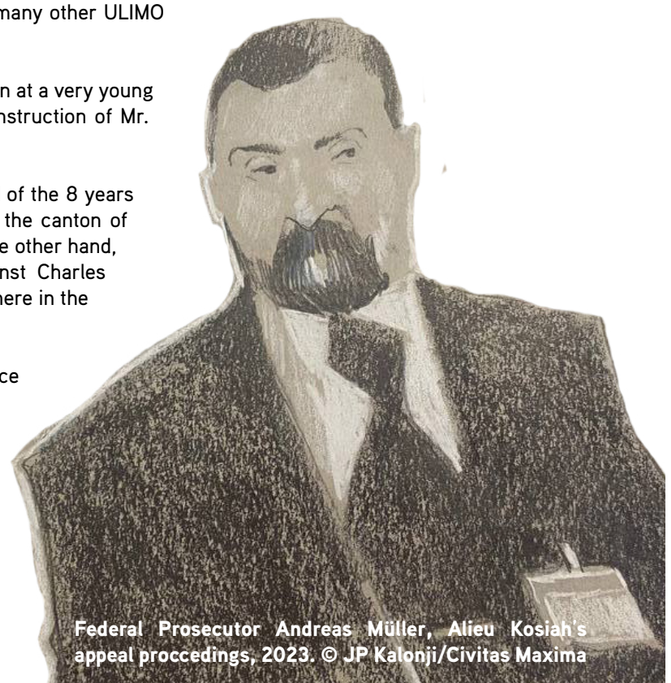
And in my opinion, this heroic act has also cemented the respect his ethnic group has for him, and among the close-knit ULIMO veterans. Because Alieu Kosiah stood up and defended his people against the NPFL's mass killings, because Alieu Kosiah also survived the war when so many other ULIMO commanders died.

This admiration and respect of his people, which he won at a very young age, was and still is, I think, very important in the construction of Mr. Kosiah's inner self, since the war.

I've never felt that Alieu Kosiah was particularly proud of the 8 years he spent as a tanker repairman between Geneva and the canton of Vaud, a period during which he earned his living. On the other hand, his pride in having been a ULIMO commander against Charles Taylor is always perceptible and is to be found everywhere in the case file (...).

Mr. Kosiah is seen by his family as a hero, a Resistance fighter, an African Jean Moulin, and now it's being said that this heroic resistance - the foundation of his identity - was in fact made up of highly criminal acts: war crimes and crimes against humanity.

I think this is unbearable for Mr. Kosiah. And that's why he's tipped over into limitless projection. It's the others that are criminal, not him.



**Federal Prosecutor Andreas Müller, Alieu Kosiah's appeal proccedings, 2023. © JP Kalonji/Civitas Maxima**



## The conspiracy theory

The plaintiffs, in part through me, accuse Mr. Kosiah of criminal acts. For Alieu Kosiah, we are in fact the criminals, because we manufacture evidence.

And he demonstrates this through his actions: Mr. Kosiah has filed a criminal complaint against me, a criminal complaint against Mr. Bility, and against several of the plaintiffs.

And then things get out of control: Civitas Maxima and Alain Werner have committed criminal acts, and evidence is being fabricated not only against him, but also against his former mortal enemies in the NPFL: Gibril Massaquoi, Agnes Taylor.

[...]

The civil parties are motivated by money, as Mr Kosiah said again in court on Monday ("*when you are poor, you compromise your dignity*"): but it was the defense witnesses who asked the court for money in these proceedings (...).

The civil parties hate the Mandingo: but it's Mr Kosiah, who left Liberia almost 25 years ago, and who is stuck in a '90s software program of ethnic hatred of the civil war. This no longer corresponds in any way to the Liberia of 2023, and there is no trace in this case of ethnic motivations on the part of the plaintiffs. None whatsoever.

2 years ago, I argued in court in this very case that Alieu Kosiah was in a state of war, stuck in his head in the middle of the civil war in Liberia in the 90s (...).

Over the past 2 years, the front has shifted significantly, with sustained dialogue between the former NPFL and ULIMO in particular, against whom proceedings are or have been underway, and the common enemy is now Hassan Bility and myself.

Mr Kosiah was candid about this, his aim, clearly stated, is to take any moral or legal action possible until I stop operating: "*I will attack Alain Werner legally and morally until he stops*" he declared on Tuesday morning in this courtroom.

The words Mr Kosiah uttered on Tuesday resonated with me and my entire team, and have a very uncanny similarity to the words uttered in 2020 at a press conference in Monrovia by Agnes Taylor Reeves, who had just returned to Liberia, and who had these words to say about Hassan Bility: "*What Mr Bility does has to stop*" (...).

## Former enemies united to stop justice

Let me emphasize the bitter and cruel irony of the current situation.

During the civil war, a great many civilians were held hostage between the NPFL and ULIMO, who fought mercilessly against each other, each group also mercilessly exploiting the population, with cruelty, purely out of lust for power and profit.

And as you know, each group took ruthless revenge on civilians who had previously had to co-habit with the other enemy rebel group, civilians then accused without proof of being enemies of the new group and often executed.

Yet today, victims of both NPFL and ULIMO crimes are seeking justice as best they can, and they see yesterday's former sworn enemies - whose war inflicted so much suffering on them - today forming a holy alliance to prevent them from obtaining justice, and to attack those who assist the victims in their quest for justice.

And when you consider the extent to which civilians have suffered as a result of the ULIMO-NPFL conflict, I must admit that it's a bit strange to see Alieu Kosiah today become the ardent proclaimer - without knowing their criminal record - of the judicial innocence of Agnes Taylor, Gibril Massaquoi, even Martina Johnson, all former NPFL (...).

## How coaching victims would look like

The defense tells you that the plaintiffs are recruited, prepared, coached and paid by the plaintiffs' lawyers, and it is clear that I am the first person to be targeted in this process.

The defense also spent several hours in its pleadings listing the differences, inconsistencies and supposed

implausibilities between each plaintiff's initial complaint and their subsequent statements, and pointing out numerous inconsistencies, differences and supposed implausibilities between the various statements in the file.

The defense obviously takes me (...) for a moron or an idiot.

For if, as a lawyer, I recruited, prepared, coached and paid Liberian actor-witnesses, one would hope that for my money I would obtain initial statements to the Swiss Prosecutor's Office that corresponded exactly to the complaints. And also that each complainant would recognize Alieu Kosiah both on the photo lineup of the time and the one used shortly before the hearings, and that there would be little or no difference between all the statements given throughout the proceedings.

You can't assert everything and its opposite.

Beyond the defense's arguments, which taken together make no sense, I think that Mr. Kosiah's projections interfere here again, in a spectacular way.

## Victims are not objects

In 1993 and 1994, Alieu Kosiah and the other ULIMO members used civilians as objects: under the terror, civilians were made to do whatever they wanted, just as we do what we want with objects: they helped ourselves to their belongings, they used them to carry loads, they used them to fetch food, they used them to do housework, they used them to have sex.

So necessarily in Mr. Kosiah's understanding of things and the world and his own projections, it's not him who has taken people for objects as he is accused of doing, but it's us who are doing that: it's us who are using the plaintiffs as animated objects and making them say what we want, or whatever is necessary to obtain the conviction of Alieu Kosiah.

And on Tuesday, Mr Kosiah told you that he didn't blame the plaintiffs, but the Prosecutor, Hassan Bility and myself.

Of course he did. It makes sense: if I hit you with an object, say a stick, you'd blame me, not the object I hit you with.

I think Mr. Kosiah – who, as a rebel commander, had absolute power over people - still sees plaintiffs as objects.

But they are no longer objects.

We can no longer do whatever we want with human beings.

The war is over (...).

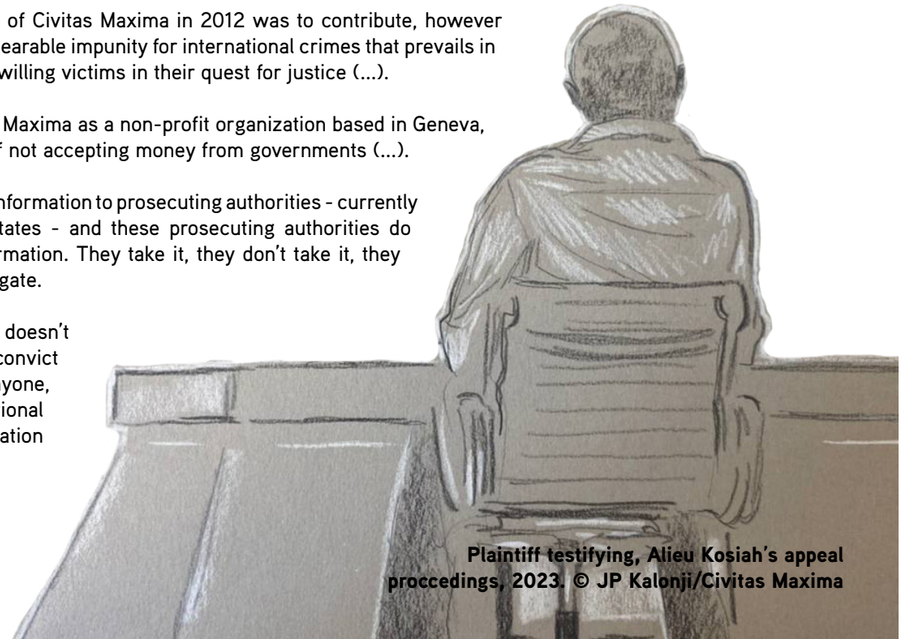
## The Civitas Maxima model, its limits, and the integrity of evidence

The idea behind the creation of Civitas Maxima in 2012 was to contribute, however modestly, to reducing the unbearable impunity for international crimes that prevails in the world, by accompanying willing victims in their quest for justice (...).

Hence the creation of Civitas Maxima as a non-profit organization based in Geneva, with the founding principle of not accepting money from governments (...).

So Civitas Maxima transmits information to prosecuting authorities - currently in Europe and the United States - and these prosecuting authorities do what they like with this information. They take it, they don't take it, they investigate, they don't investigate.

Of course Civitas Maxima doesn't arrest anyone, doesn't convict anyone, doesn't prosecute anyone, it just tries to convince national prosecutors to take information and investigate themselves.



**Plaintiff testifying, Alieu Kosiah's appeal proccedings, 2023. © JP Kalonji/Civitas Maxima**



To ensure the reliability of the information we provide, we don't directly collect information ourselves from victims or witnesses in the field, but collaborate with local Liberian players, whom we train in investigations at what I believe is the world's best training center in the field of international criminal law, the International Institute for Criminal Investigations (IICI).

[...]

Hence the creation in 2012 of the GJRP, our sister organization in Liberia, the training of Hassan Bility and then all the GJRP's investigators in training courses given by the IICI in the Hague, and trainers from this same organization having also gone to Liberia several times for GJRP group training courses on the ground.

In addition, Civitas Maxima's team of lawyers and jurists, all of whom have years of experience in international tribunals, continue to provide ongoing training to the GJRP team.

However, the model that Civitas Maxima represents has certain limitations, and in 10 years I haven't found the antidote to these limitations, which I think are inherent to our line of work. Because once we have given the initial information to a prosecuting authority (...) our involvement can only be limited (...).

At Civitas Maxima (...) the only thing that counts for us in our cases are the court decisions, what you – Judges - decide, the rest is just noise.

Noise like the endless monologues of Alieu Kosiah who has been repeating over and over since 2015 that Hassan and I are criminals. (...) Noise like certain newspaper articles that denigrate us. Noise from Alieu Kosiah's new friends, the fraternity of ex-rebel commanders and their affiliates, who attack us relentlessly.

It's all noise, nothing else.

[...]

The victims are undeterred and will pursue their quest of justice.

# Alieu Kosiah Appeal: Mr Kosiah's Words

***Extracts from the trial monitoring of the Alieu Kosiah appeal in 2023. The original language of the proceedings is French.***

### On his character and actions

"(...) So, what I did: all the guys who wanted to go to school, I put them all in school. More than twenty of them. No commander did that. I bought them uniforms, paid the school fees and paid a teacher to come and teach them at home. I didn't put any money in the bank. I used it for the guys who needed help. I have no regrets about doing that".

### On who is really responsible for the crimes committed during the war

"(...) What the lawyers [for the plaintiffs] are doing is trying to defend the indefensible, and defend what their clients say. But, as I say over and over again, it's not the person in the war who's on trial here - I'm not Alhaji Kromah [ULIMO's leader] or Charles Taylor [NPFL's leader] - it's the person of Alieu Kosiah who's on trial here. I didn't bring the war to Liberia. I wasn't even 15 when the war broke out. I'm not responsible for what happened during the war. I'm responsible for what I did. What is on trial is not everything that happened during the war, but what Alieu Kosiah did during the war (...)".

### On the fact that his own ethnic group, the Mandingo, were not considered full citizens before the war in Liberia

"(...) they laughed at us (...) Samuel Doe [former President of Liberia] did not declare Mandingo to be citizens of Liberia in 1990. It was the newspapers that changed his words and attributed these words to him. After he allegedly said that, the newspapers started referring to the Mandingo as "citizens of 1990". The Mandingo started getting booed in the streets. They were told: "*If you consider yourselves citizens of this country, why are you fleeing the country?*" (...) For example, before the war, if you arrived at a checkpoint and your name was Mamadi or Lasana or a Mandingo-sounding name, you were made to sit down and you had to wait up to two or three hours before you could pass through the checkpoint. If you didn't have such a name, you'd pass through the checkpoint in ten minutes".

### On the massacre of his own ethnic group, the Mandingo, during the war in Liberia

"In 1990, the NPFL [Charles Taylor's group] killed Mandingo wherever there was no one to defend them. Mandingo were killed everywhere. If you were Mandingo, you could be killed".

### On his alleged crimes and the fact that they took place in Africa

"(...) We must be wary of this kind of hearsay, and I can only invite you to visit Africa to better understand the area, and that would give you a better picture of what wars in Africa have been like (...) Yes, there is a lack of respect for Africa. There seem to be two different approaches depending on whether the war is being waged in Europe or Africa. As soon as a war happens in Africa, it's as if we weren't human there. But we're just as human. What I saw during the war didn't correspond at all to the image people try to portray during these proceedings (...)".

"Yes, the reason I said I could forgive the plaintiffs is that I'm African. I know that when you're poor, you lose your dignity (...)".

### On being tried in Europe

"The question I'm raising here is that I don't see in this room, among the people dealing with this case, a single black person. None of you know Africa and what goes on there, whether it's the people in charge of the prosecution, the police in charge of the investigation, all that. Only white men have been involved in this case. I have nothing against you in particular, but my great fear is that this case will be handled by people who know nothing about Africa".

### On the role of Civitas Maxima and the GJRP and the veracity of the allegations

"(...) Moreover, if you look closely, the only people who describe Alieu Kosiah as a monster are those who went through the NGO [Civitas Maxima and GJRP], whereas over seventy people were heard in total, between those heard in the context of the asylum application or civilians who came to testify. You can also see this in the letters from my Swiss ex-wife. Everyone agrees that I'm not a bad person (...)".

"The only thing I can tell you, to give you the facts, is that I have never met this person [a plaintiff]. The only connection between this man and myself is Mr Alain Werner. Without the NGO, there is zero chance that this man knows me. If I'm here, it's because of this particular operation. I know it's hard to understand, but you have to understand that none of these people, the plaintiffs, none of them have ever met me (...)".

"(...) There's a historian who said that the first casualty of war is truth. There must be some truth there".

"Because everything hinges on the credibility of the plaintiffs. There are no bodies. So it all depends on whether he (a plaintiff) is credible or not".

### On the crimes against civilians, and why civilians died in the war

"Within ULIMO, wherever and whoever killed a defenseless person had to be held responsible for his actions, as long as he killed a person who had no weapon and could not defend himself. So I didn't support that kind of thing. There's absolutely no doubt about that".

"(...) If you ask me, in my experience, two-thirds of civilian casualties during the war were due to hunger and disease. I agree with that. In Monrovia, people have been killed by stray bullets. There are also bad people who have executed people. We've talked about that too. That may have happened. But as for having seen a greater number of civilians killed by bullets, no, I haven't experienced that. Compared to the number of soldiers".

### On cannibalism

"(...) I was four years old the first time I heard stories that Kissi-Americans in Liberia had been killed and cut up and sent to India to be eaten. These were stories I grew up with, and we believed them until we were older. (...) It's all fiction, but we were told that they ate human beings from the back. It was only when I grew up that I found out for myself that what was being said wasn't true".

### On the recruitment and use of child soldiers

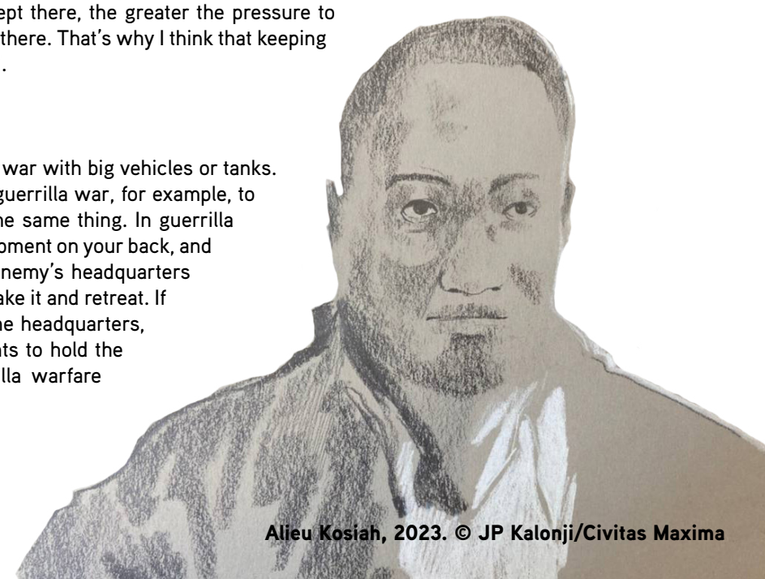
"(...) I believe that what the (trial) judges (during the trial in first instance) said, if I understand correctly, is that Alieu Kosiah did not show any intention to not to teach a child under the age of fourteen or fifteen how to kill. I didn't explicitly say that I wasn't aware of this situation. According to the Prosecutors, having trained with the AFL (the regular governmental army), I should have known that taking a child under the age of fifteen or fourteen to war is a crime (...). But if the AFL itself was able to recruit someone under the age of fifteen, or even fourteen, how could the AFL tell me that I had no right to go to the front line with someone under the age of fifteen? I myself was under fifteen when I was recruited. In such an environment, how am I supposed to know, even at thirteen? I'm not a lawyer (...)".

### On the role of the Public Prosecutor in the proceedings

"(...) the Public Prosecutor is not supposed to be the State's lawyer, but a lawyer who works for and against me. He should normally seek the truth, not promotion. That's my question: what are you really after with this case? In my judicial system, which is somewhat similar to that of the United States, the Public Prosecutor plays a key role. The problem here is that once someone is in prison, the longer they are kept there, the greater the pressure to justify and prove that it was right to put them there. That's why I think that keeping me in prison is more political than objective".

### On guerrilla warfare

"We mustn't imagine that we were fighting a war with big vehicles or tanks. It was a guerrilla war. You can't compare a guerrilla war, for example, to what's happening in Ukraine now. It's not the same thing. In guerrilla warfare, you carry your ammunition and equipment on your back, and your first objective is always to attack the enemy's headquarters to see if there's ammunition and food there, take it and retreat. If you feel strong enough once you've taken the headquarters, then you stay put and wait for reinforcements to hold the position. That's how it was done in guerrilla warfare (...)".



**Alieu Kosiah, 2023. © JP Kalonji/Civitas Maxima**


Entrance of the zone held by ULIMO-J fighters.
Monrovia, Liberia, April 1996. © Patrick Robert

# Disentangling a Transnational Trial through Courtroom Ethnography

Flavia Keller

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The practice of the law is often reduced to its culmination in a verdict and sentence. The happenings in a courtroom that lead to these outcomes remain hidden and marginalised from the wider public. Proceedings are portrayed as formal and even boring processes. This perception, however, negates a crucial aspect of trials: they provide a space to negotiate societal norms in a mediated discussion and hence contribute to the progression and nuancing of the law according to social conceptions. And while they might be delimited by formal rules, they create room for communicating multi-layered understandings. This is particularly relevant in transnational justice processes that bring different geographies into conversation.

It is these societal norms that are negotiated in courtrooms that caught my attention as a social scientist. I was intrigued by their apparent neglect, or their being taken for granted by practitioners of the law. In essence, their marginalisation in favour of the rules and procedures that enjoy primacy in legal discussions. I decided to counterwork that tendency by putting social happenings in the courtroom centre stage in my master thesis project. I was a second-year master's student in Development Studies at the Geneva Graduate Institute when I embarked on this project. I have always been fascinated by questions of justice and injustice and have been following the work in the field of universal jurisdiction globally for some years. I was thus delighted to learn that the appeal trial of Alieu Kosiah (11 January – 3 February 2023) would fall in the timeframe of my thesis.

I decided to scrutinise the social elements of the first appeal trial under the principle of universal jurisdiction in Switzerland since the judicial reform of 2011 from four analytical angles. First, I was interested in how the built environment of the Federal Criminal Court in Bellinzona impacts the proceedings. How do actors move in the building and the courtroom itself? Second, and guided by feminist theory, I paid particular attention to the power dynamics re/produced in the courtroom. I wanted to understand how gender, race, and class come to matter in the trial. Third, I explored the transnational character of the legal proceeding and contemplated how the occurrence of the crimes in another geographical and temporal context alters the nature and trajectory of the trial. Finally, I shed light on the central actors of the trial: the plaintiffs and the alleged perpetrator. What roles are ascribed to them in the courtroom and how do they perform these roles? And, very importantly, what does it mean to be a 'victim' of a crime in a transnational trial?

**"WHAT DIFFERENT UNDERSTANDINGS OF JUSTICE COLLIDE IN THE COURTROOM? AND HOW ARE THEY ENTANGLED WITH BROADER QUESTIONS OF POWER AND HIERARCHY?"**

I studied the appeal trial of Alieu Kosiah using courtroom ethnography. Ethnographic methods are particularly well-suited for the study of justice processes because they allow researchers to reveal nuances that do not find their way into the official outputs of trials that prioritise legalistic information, such as court transcripts and press articles. I attended all the court days in the public gallery, observed the proceedings, and created detailed transcripts in which I recorded the spoken words alongside bodily positioning, tone, and loudness to capture the full meaning of what was being said. I complemented my observations with interviews with actors who participated in the trial.

Given the ethnographic character of my research, this thesis project would not have been possible without the generous support of many actors involved in the trial, including members of Civitas Maxima. The knowledge, analysis, and personal opinions they shared with me form the basis upon which my thesis has come to materialise. I am deeply grateful for their trust and openness to speak with me for this project.

The following extract is taken from the concluding chapter of my thesis in which I weave together the four strands of my analysis that I introduced above. Its title (Justice) highlights the central questions I aimed to tackle: What different understandings of justice collide in the courtroom? And how are they entangled with broader questions of power and hierarchy?



## Justice

***What do you hope for from this trial? Justice.***

When called to give their testimony for the first time, the private plaintiffs are asked what they expect and hope for from the proceedings. All of them say, in one way or another, that they travelled to Bellinzona to get justice. The defendant, Alieu Kosiah, also refers to justice but argues that everyone wants justice and "*for all*". What justice means remains undefined. "*Somehow it doesn't need to be explained. Because we all know what justice means. You know, it's like one of the fundamental cornerstones of what life is*". The goal of this ethnographic account never was to consolidate the different meanings and conceptualisations of justice into one all-encompassing definition. Instead, I embarked on this project to shed light on the (sometimes irreconcilable) differences in the approaches to justice and justice mechanisms.

[...]

Alieu Kosiah: There is only one root of justice: truth. I have never asked for justice. The only thing I ask of you is to establish the truth.

**"FOR THE PLAINTIFFS TO BE BELIEVED AND TO SEE THEIR STORY REFLECTED IN THE SENTENCE ALSO ENTAILS A SENSE OF CONFIRMATION OF A FEELING OF INJUSTICE THAT THEY WERE LONG DENIED."**

Every justice process relies on certain fundamental convictions about the ways our world works. In a time structured by the predominance of Euro-American schools of thought, many of them reproduce and reinforce positivist notions about reality and truth that sustain that there is an absolute Truth surrounding us (Hawkesworth, 2006; Schatz, 2009), which is to be discovered to make a fair judgement. Evidence, thus, lies at the heart of justice mechanisms that are guided by these convictions. Evidence, particularly evidence that is considered to be scientific, such as DNA, is imagined to lead the actors to the Truth, step by step, piece by piece. And while scientific evidence is the most highly regarded, witness testimony is an alternative source of knowledge that is, however, considered to be flawed and potentially manipulated. Therefore, testimonies need to be scrutinised and mined for the truth within them. Individual victims and survivors, then, are simultaneously actors in their own quest for truth – and, as a result of it, justice – and tools in the eyes of the process. Their legitimacy and credibility are constantly questioned and re/assessed to classify the evidence that they provide. This is particularly the case for crimes in which they are the only witnesses. The classification is a binary one, between truth and non-truth. Dimitri Gianoli, for example, maintains: "*Quand on ment, on ment. Il n'y a pas de l'alternative.*" In alignment with positivist thought, the Federal Criminal Court in Bellinzona valorises eyewitness testimony (knowledge generated through observation) (Hawkesworth, 2012) and de-valorises alternative forms of knowing. Plaintiffs and witnesses are repeatedly asked if they saw the scenes that they are retelling "*with their own eyes*". Answering with anything but a straightforward 'Yes' diminishes their standing on the continuum between being believed and being disregarded. Inherent in these discourses is the perception that the Truth relevant to this case is found in the past, unconnected to the happenings in the courtroom in early 2023. There is, however, an instance in the courtroom when this hegemonic narrative is relegated to the margins: Federal Attorney Andreas Müller argues in his final plea that "*the only Truth is that there is none*" and that the search for justice reveals that the violence is still ongoing. He, thus, proposes an alternative perception of the truth that emphasises its being as an ever-evolving thing instead of a clearly delimited phenomenon.

"*If you have someone who has authority say that what they've been through is not correct, this was not fair*. (...) *To say that what these people did, this unlimited power they had, the power over life at the time, that this was not right*."

Going further into this direction, the proceedings in Bellinzona maintain that justice is an ongoing process that cannot be pinned down to a certain result. Instead, it is partially produced through the practices that fall both within and outside of the search for truth. First and foremost, justice is about recognising and acknowledging the presence of human beings, particularly in a case in which no "*scientific*" evidence is available, and all legal decisions are necessarily based on testimonies.

[...]

Being seen is deeply connected to the feeling of being heard, understood, and finally, believed. The three subjective sentiments follow from one another but also intertwine at certain nodes. At the beginning stands the impression that attention is given. Attention, especially during a long trial with hour-long proceedings without breaks, is a valuable good. Awarding attention can, thus, be conceived as doing justice to the actors in the courtroom. Denied attention,

in turn, is a form of denying justice and communicates that one's opinion has already been formed. (...) However, given the setup of the courtroom, the actors whose attention matters the most are the judges. Sitting at the stand-alone table right in front of the bench and being in a position to tell their story to the court is potentially cathartic for plaintiffs, witnesses, and the defendant, irrespective of whether the people seated behind them actively listen.

The central position of the judges also finds its way into the final words of the plaintiffs and the defendant, all thanking the judges for giving them the room to tell their stories. Nevertheless, being heard probably does not provide them with a subjective feeling of justice or fairness unless they sense that what they are saying is being understood. Displaying understanding, either through verbal reactions or non-verbal gestures such as nodding, communicates acknowledgement of the reality that they are painting with their sentences. However, such gestures and facial expressions may also reveal tendencies of partiality. (...) To be understood might be a necessary step on the way to being believed since it is easier to believe a story that is comprehended in its entirety. Being believed is, in the end, the goal for all sides participating in a justice process as they aim to have their version of reality established as a legal truth in the verdict, a document that represents an authoritative account of what has happened. In the context of Liberia and the civil wars in the country, the fact that atrocities were committed is broadly acknowledged internationally. It is uncontested that the ULIMO embodied power and the law, that they were making the rules and applying them. Growing up and living in this reality for years might lead civilians to accept it as normality. Therefore, for the plaintiffs to be believed and to see their story reflected in the sentence also entails a sense of confirmation of a feeling of injustice that they were long denied. Being believed is, thus, deeply interwoven with the process of becoming subject, a subject whose reality is valued. Further, it is also directly connected to the sentence, the final outcome of the proceedings.

[...]

**"THE PROCESS HAS ALREADY GONE ON FOR MORE THAN EIGHT YEARS, A GROUND ON WHICH THE SWISS LEGAL SYSTEM IS CHALLENGED FOR ITS INABILITY TO TRY THE ACCUSED IN A REASONABLE TIME."**

An important element that the verdict reveals is the court's consideration of crimes against humanity. The plaintiffs and their legal representatives argue that recognising the crimes in question as constituting crimes against humanity would do justice to the fact that they are by no means separate, individual moments of violence but compound mass crimes against the civilian population which affected many beyond the victims and survivors testifying in the courtroom in Bellinzona. In fact, it "*symbolically resonates*" with the plaintiffs and legally with their legal representatives, Alain Werner argues. The court follows this interpretation in its verdict and acknowledges the "*generalized attack against the civilian population*" that the crimes constitute (Bundesstrafgericht, 2023).

Another aspect of the final judgement that is meaningful in the proceeding is the responsibility of the Swiss process in relation to socio-economic justice. (...) the post-colonial reality of poverty in Liberia is consistently raised by the different actors in the courtroom. Louis Z., for instance, reveals his frustration and his sense of injustice with the fact that Alieu Kosiah has left the country behind to seek a better life for himself instead of taking responsibility for rebuilding Liberia. The impunity and connected concealment are thus a central concern that justice processes are expected to address. On the other side of the bench, the judges specifically ask about the impact of the war on the plaintiffs' professional lives and whether they understand that they were granted compensation from the accused (which they will, however, probably never receive due to the financial situation of the defendant). Strategies that aim at socio-economic mitigation are a central aspect of transformative justice as they acknowledge historical wrongs and repair them, at least partially (Lambourne, 2009). However, it is difficult, if not impossible, to restore the position and condition that victims and survivors were in before the crimes were committed. "*There will always be a before and an after. And you can kind of minimise and mitigate the consequences of what has happened. But, of course, it will never be like before. So, the idea is just to create a new after, like an after that is not a destructive after*".

I would like to close this set of reflections with a consideration of the procedural reality in the courthouse. A central argument that I put forth in this text is that process matters. My ethnography in Bellinzona has unveiled that the process of "*doing*" justice is itself productive and gives space to both marginalising and empowering instances. Marginalising are, for example, the gendered and racial narratives referenced in the courtroom but also the fact that, for administrative reasons, a limited number of court days were scheduled, which resulted in long trial days of up to twelve hours. Recognising the emotional and physical limits of actors is difficult in such an efficiency-oriented surrounding. At the same time, the process has already gone on for more than eight years, a ground on which the Swiss legal system is challenged for its inability to try the accused in a reasonable time. Dimitri Gianoli also points out that this aspect might play a role in the judges' decision since it could be seen as troublesome to admit that the system needed close to nine years to understand that Alieu Kosiah is innocent. On the other hand, the appeal proceedings allow for empowering and counter-balancing actions. For instance, the plaintiffs are recognised as knowledgeable of their context and their help is regularly sought to clarify misunderstandings that stem from the decontextualised-ness of the court in Switzerland.



These competing tendencies exist side by side, turning the courtroom into a miniature version of global structures writ large. In fact, I sometimes find myself sitting in the public gallery, imagining the web of power growing through the thick walls of the courthouse and out through the glass ceiling into the sky. The happenings in this space are so deeply entwined with the world outside that they only rarely surprise. The spatial allocation of the courtroom reinforces notions of state-centred power and control, including over individuals that partake in the proceedings. Their movements are channelled and regulated, and their positions in the room correspond to their role in finding "*the truth*". For instance, testimonies are heard in the middle of the room, unmasked and unprotected, communicating that everything will be revealed. Furthermore, notions of in/security label certain persons as dangerous and, therefore, separated from the public, while others are positioned as accessible to it. These material boundaries thus demarcate the possible performances of the actors in the courtroom. Their practices and procedural habits uphold the ideal of an impartial and unpolitical process, thus disregarding the systems of power in which the trial is embedded at least partially. While most actors recognise the hierarchies impacting the proceedings in follow-up interviews, their performances in the courtroom itself only mirror that awareness to a limited extent. In particular, the prioritisation of procedural and legalistic arguments encloses the non-legal significance of the case. This strategy is, of course, favourable when considering the legal outcome of the case in isolation. However, it implicitly bolsters the social hierarchies and inequalities that underlie the crimes instead of challenging them.

**"THE PLAINTIFFS ARE RECOGNISED AS KNOWLEDGEABLE OF THEIR CONTEXT AND THEIR HELP IS REGULARLY SOUGHT TO CLARIFY MISUNDERSTANDINGS THAT STEM FROM THE DECONTEXTUALISED-NESS OF THE COURT IN SWITZERLAND."**

[...]

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*Flavia Keller is a PhD student in Political Science at the University of Lausanne. She uses feminist theories and methodologies to study international organizations and the United Nations Security Council in particular.*

CIVITAS MAXIMA

Independent Legal Representation of Victims of War Crimes and Crimes against Humanity

GJRP

Global **Justice** and Research Project

# Alleged Former NPFL Commander Charged in France for Crimes Against Humanity

*Press Release - September 18, 2023*

Saturday T. was charged in France on Wednesday 13th September 2023 for his alleged involvement in crimes against humanity committed during the First Liberian Civil War (1989-1996) where he is believed to have been acting as a commander for the National Patriotic Front of Liberia (NPFL).

The NPFL, led by Charles Taylor during the First Liberian Civil War, was responsible for at least 63,800 documented human rights violations, according to the Liberian Truth and Reconciliation Commission's Final Report.

Through its lawyers Simon Foreman and Sabrina Delattre, Civitas Maxima filed a complaint in France in May 2018 against Saturday T. for his alleged commission or command of multiple crimes against humanity. As anyone involved in a criminal process, Saturday T. is presumed innocent at this stage – this investigation phase is designed to establish the facts.

This is the eleventh publicized criminal case on which Civitas Maxima and its sister organization in Liberia, the Global Justice and Research Project (GJRP), have collaborated in one way or another with national authorities, in 6 different countries, over 2 continents.

Since 2012, Civitas Maxima has been working with the Monrovia-based GJRP to document crimes committed during the wars by all warring factions and find avenues for accountability for Liberian victims.

This charge follows that of Kunti Kamara in 2018, who has since been found guilty of complicity in crimes against humanity and the commission of simple and aggravated acts of torture and barbarism. Kunti Kamara was sentenced to life imprisonment by the Paris "*Cour d'assises*" on 2nd November 2022. The appeal hearings will take place in Paris in March 2024 for four weeks.

There has yet to be domestic accountability in Liberia for the crimes committed during its back-to-back civil wars, which in 14 years claimed over 150 000 lives, most of them civilian.



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

CIVITAS MAXIMA

Independent Legal Representation of Victims of War Crimes and Crimes against Humanity

GJRP

Global Justice and Research Project

# Massaquoi Case: Finnish Appeals Court Confirms the Acquittal Decision

*Press Release - January 31, 2024*

(Finland) – Today, January 31, 2024, the Turku Court of Appeal issued its judgement and confirmed the acquittal of Gibril Massaquoi – former Revolutionary United Front (RUF) commander and spokesman – for war crimes, crimes against humanity, torture, and murder that he was accused of committing in Liberia during the country's second civil war (1999-2003).

According to the judgement, the Tampere District Court did not err when applying the "*beyond reasonable doubt*" standard. The court held that most of the witnesses' testimonies established that the crimes and events occurred, but, for each charge, found that it was not shown that Gibril Massaquoi was involved in the acts described. The Appeals Court ruled that the evidence presented was not sufficient to establish his guilt and therefore acquitted him of all charges.

The appeal proceedings, which began in January 2023 and ended in September 2023, saw 100 of people testifying over 60 days. The court heard the majority of them in Monrovia, Liberia, where it relocated for most of its hearings, just like the Tampere District Court had done in 2021.

It was an especially delicate case for both Civitas Maxima and its Liberia-based sister organization the Global Justice and Research Project (GJRP) as GJRP's director Hassan Bility was himself a witness in the case. Mr Bility had testified at the Special Court of Sierra Leone during Charles Taylor's trial in January 2009 and had named Gibril Massaquoi as one of his torturers from his detention in 2002. During the Gibril Massaquoi trial he testified both in the first instance and in the appeal proceedings, respectively in 2021 and 2023.

The court of appeal does not dispute that Mr Bility had been tortured during the war. However, the judges did not consider his testimony was enough to establish that the defendant was involved in the torture. A defence witness that had attempted to discredit Mr Bility by claiming he had engaged in criminal conduct, was deemed not credible.

This case was not the first time that Finnish courts have travelled abroad to conduct hearings in the country where international crimes have been committed abroad and hopefully, it will not be the last. As universal jurisdiction is becoming one of the most used tools to tackle impunity related to international crimes, this case will surely become an important reference when it comes to the practice of this legal principle.

This acquittal decision will surely come as a disappointment to the many who had the courage to testify. Civitas Maxima and the GJRP, as the Finnish prosecutors – who strongly argued for their case during the appeal phase – believe the account of the victims but nevertheless we respect today's decision.

In the upcoming weeks, Civitas Maxima will publish an in-depth analysis of the judgement, and provide additional information, count by count, as to how the court reached its decision.



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# ACQUITTAL OF MASSAQUOI: REALITY CHECK FOR FINNISH JUSTICE

*By Thierry Cruvellier- April 29, 2022*

This April 29, on the last day of the deadline they had given themselves to release their judgment, the four judges of the court of Tempere, in Finland, unanimously pronounced the acquittal of Gibril Massaquoi, a former Sierra Leonean rebel commander prosecuted for war crimes and crimes against humanity committed in Liberia between 1999 and 2003. Since Massaquoi's release on February 16, this outcome had been expected, even though the court never gave any indication of its analysis of the case. According to sources who had direct access to the 850-page judgment in Finnish language and according to an online translation of the court's initial findings, judges dismissed all charges and found that there was "*reasonable doubt*" about Massaquoi being the person identified by witnesses on the crime scenes.

There is no English version of the judgment, nor a summary - this was considered too costly. The details of the court's conclusions and analyses are therefore difficult to grasp at once for observers who do not read Finnish. But some of the questions raised by this extraordinary trial can already be retained.

## JUSTICE BOTH CLOSE TO AND DISCONNECTED FROM REALITIES

By multiplying investigations in the field and moving the entire court to Liberia twice, for about three months, as well as to Sierra Leone for a month, the Finnish justice system seemed to have given itself unprecedented means to make this trial more relevant for the victims - and Liberian society in particular - and to familiarize itself with the realities of the sub-region. In doing so, the Finnish model certainly made things much more comfortable for the victims and witnesses, who did not have to travel to Europe to testify. Judges, prosecutors and lawyers were also able to have first-hand experience. But they failed to open this trial to national and regional expertise, as none of the parties requested the appearance of Liberian or Sierra Leonean experts. And they failed to open their hearings to the public. Above all, the investigation department and the prosecutor's office were deaf to the multiple alarm bells that went off in the early days of the trial about the contradictions in the prosecution's case.

Historical expertise, the intimate knowledge of the context of events, is always the Achilles heel of international tribunals and national courts practicing universal jurisdiction. The trials of Rwandans prosecuted for the Tutsi genocide in 1994 before the International Criminal Tribunal for Rwanda, created by the UN, as well as before Belgian, French, Canadian and other courts, have often highlighted this difficulty. But never has a trial so far departed from the research of historians, from known and documented facts. In this sense, the Massaquoi case has more increased the gap of geographical distance that marks off courts judging distant facts with which they are not familiar, than it has filled it.

## SERIOUS DOUBT ON THE INVESTIGATIONS' INTEGRITY

In fact, the investigators and the prosecutor's office have taken it upon themselves to radically emancipate themselves from the historical, political and even judicial realities that were common knowledge about the actors in Liberia and Sierra Leone during the years 2001-2003. In the midst of the trial, the prosecution finally put forward an extravagant thesis according to which the accused would have left his UN-protected residence in Freetown in July or August 2003 for several days to go to Monrovia in the middle of the rainy season to fight and commit massacres alongside Liberian President Charles Taylor and, in particular, his key deputy, Benjamin Yeaten, even though he had betrayed them before an international court, and then to return to Freetown without anyone noticing the exploit.

On this point, the acquittal of Massaquoi saves the Finnish justice system from embarrassment in the eyes of historians. But this trial profoundly questioned the functioning of its investigative services and the influence of the chief investigator, Thomas Elfgren, both before the trial and throughout its duration, where he remained a sort of omnipresent mastermind of the logistical organization of the hearings, of access to witnesses and of relations with the media.

Scripted witness accounts, fluctuating dates that sought to be compatible with the alibi of the accused or, on the contrary, with the crimes alleged, especially in Monrovia, the mystery of the appearance of the nickname "*Angel Gabriel*" that Massaquoi had allegedly given himself but that no one had heard of before this trial: from the very first testimonies in court, obstacles and doubts appeared regarding the accusations against Massaquoi and, more seriously, the integrity of the investigation. With a cruel situation: there is no doubt about the crimes committed in Lofa province in 2001, the victims of which testified in court and which were documented at the time by Human Rights Watch, among others; there is also no doubt about the atrocities committed between June and August 2003 in the center of the Liberian capital, when the rebels were about to overthrow Taylor. Except that witnesses were mistaken, or misled, about the presence and responsibility of Massaquoi, a.k.a. "*Angel Gabriel*," in these events.

**WHAT IMPACT ON OTHER LIBERIAN CASES?**

Two organizations - the Swiss NGO Civitas Maxima and its Liberian partner, the Global Justice Research Project (GJRP) - have been holding out hope for justice for the crimes committed in Liberia during the two civil wars between 1990 and 2003 for the past ten years. They are the only actors who have been actively engaged in ensuring that Liberian warlords do not continue to enjoy total impunity for the past two decades. Their investigations are central to the prosecutions in the United States, Great Britain, Belgium, France and Switzerland of notorious commanders from those dark years. They are also at the origin of the proceedings against Massaquoi in Finland.

In the Massaquoi case, the initial investigations by the two NGOs concerned only the Lofa region, where the presence of the accused was plausible. It was the Finnish investigation that expanded the case to include crimes in Monrovia, causing an overreach and a rush to conviction that would eventually undermine the entire prosecution's case. But the personal involvement of Hassan Bility, director of the GJRP, as an alleged victim of Massaquoi and a witness in the trial, and the original link between this case and the work of Civitas Maxima, may clearly be in danger of being used by their resentful critics to oppose national and international prosecutions of Liberia's former killers.

**WARLORD TURNED VICTIM**

This may be the ultimate paradox of this criminal case: Massaquoi, who has been accused by many, including a Truth and Reconciliation Commission, for crimes committed in Sierra Leone during the civil war, should be compensated by the Finnish justice system, notably for his two years of detention, according to the standards of this country which is very concerned with individual rights. Asked about this last February, his lawyer Kaarle Gummerus did not reveal the amount of damages he would ask for his client, but it should be in the hundreds of thousands of euros. It is possible that this request is delayed if an appeal is filed by the prosecutor. This compensation is well defined in Finnish law, but it may be even more bitter for victims of crimes committed in both Liberia and Sierra Leone.



# A Case of Paradoxes

## *The Gibril Massaquoi Case*

Rebecca-Paris Senior

Head of Communications and Outreach, Civitas Maxima

The Gibril Massaquoi case stands out as a remarkable and multifaceted legal process, marked by several unique aspects that have set it apart from other Liberian cases we worked on.

From the decision by Finnish authorities to prosecute a former insider for the Special Court of Sierra Leone (SCSL), to the extraordinary step of relocating the majority of hearings to Liberia, this case – both in the first instance proceedings and in the appeal phase – has truly set a mark. The extensive number of testimonies, and the several countries where the hearings took place - further underscored the complexity and significance of the proceedings.

It is also unique as – in juxtaposition to other cases that captured media attention, for people far less notorious than of Mr Massaquoi - these proceedings garnered complex reactions, despite their profound implications for accountability and reconciliation in Liberia.

Some of the language employed to describe Massaquoi's proceedings veered from disappointment to condemnation, with terms like "*failure*," "*embarrassment*," "*fake and false*", and "*fiasco*" peppering the discourse.

Thierry Cruvellier, one of the few western journalists that followed the first instance proceedings assiduously, pointed out the paradox of the "*warlord turned victim*". Mr Massaquoi is no stranger to accusations: in 2004, the Sierra Leonean TRC's final report held him responsible for very grave crimes, which included torture and summary executions – more than that, the TRC found that he shares responsibility for the deteriorating security situation in Sierra Leone around the time of the peace talks (the Lomé Accord). Mr Massaquoi, who has been described by Alan White, former Chief Investigator of the Office of the Prosecutor of the SCSL, as "*well educated, mostly self-taught, but a very dangerous man*" now being compensated by Finland for the two years detention he was subjected to.

But in this entanglement of surprising words used to describe legal processes, through these oddities and these firsts, another paradox becomes apparent: organisations like CM and GJRP – two of the main players when it comes to ensuring justice for Liberians abroad – becoming "*tormentors*."

**"IN THIS CASE, AN ACQUITTAL IS NOT A FAILURE AS THE ACCUSATION WAS NEVER CONSIDERED FRAUDULENT BY THE DIFFERENT JUDGES. CONTRARY, A NON-TRIAL WOULD HAVE BEEN A FAILURE."**

We are no strangers to this narrative: often accused by defendants of some sort of conspiracy where we would be benefitting and scamming millions at their expense, we never experienced this theory really leaving the courtroom - at least with this degree of concerted attacks over so many months – theory that was never indulged on by judges of any nationality, and this also includes the 6 different judges that presided the Gibril Massaquoi case in both proceedings.

Even before the trial begun, the news of his arrest was met with a disarray of negative reactions by very high-profile personalities. And whilst a diverse and vivacious press is a great fabric for any functioning democracy, some of these articles were peddling misinformation to incite the masses, and spread seeds of discontent: affirming that a Finnish domestic court was forcing a war crimes court on Liberians, and that these proceedings against a "*patriotic citizen of the Republic of Sierra Leone*" were "*a moral and deadly sin against the nation and people of Liberia*" is just an example of what was published.

The call to not prosecute Mr Massaquoi came in stark contrast with the fact that the Finnish police had independently investigated the facts for months and heard dozens of people who all accused the former RUF commander of heinous crimes.

Fundamental to the rule of law is that alleged crimes are investigated, and, if sufficient evidence exists, suspected

perpetrators are tried and, if appropriate, prosecuted. Mr Massaquoi stood accused of some of the most serious crimes of international concern - over 100 alleged victims and witnesses testified at each of the proceedings. And whilst the judges established that the crimes the witnesses testified about did occur, it was ruled that this evidence was not enough to establish without a doubt the identity of the perpetrator.

Yet another incongruity that characterises this case: Mr Massaquoi is considered a victim of conspiracy – and when acquitted of all charges, the judges saved Finland from embarrassment "*at the eyes of historians*". But at no stage did the judges find that investigations were conducted in any other way but with due diligence, and if a judgement had found Mr Massaquoi guilty on some of the counts, it is difficult to comprehend how this would have embarrassed the Finnish judiciary.

In a context where there are currently no local justice mechanisms for the crimes committed during the 14-year-long period of civil conflicts, and only a handful of cases have been tried abroad, not prosecuting someone without testing the evidence against them would have been a failure – and, if you allow me to use the same words used to describe the work of the Finnish authorities, it would have been "*a moral and deadly sin against the nation and people of Liberia*".

It was Finland's duty to investigate and prosecute if they felt the evidence was strong enough. But no accusation was spared, and the intention of certain pieces was to ridicule, embarrass, and confabulate. Strong words, again, echo: "*failure*", "*suicidal*", "*misguided*" or "*fiasco*".

The acquittal of a rebel commander, a controversial figure, can be deeply distressing and demoralising for victims and survivors of the alleged crimes – more than that, it can be distressing for anyone who sought justice, even in other cases. It may reinforce feelings of injustice and betrayal, exacerbating trauma and hindering efforts towards reconciliation and healing. And whilst no proceeding should be immune from feedback, criticism, and observation, what was reserved to this case was nothing short of a lambast. It seemed that many were united when it came to the Gibril Massaquoi trial: it should have never happened. Some civil society organisations, renowned for their advocacy on behalf of victims and survivors, appeared reticent, in this instance, to champion the cause of justice.

Paradox, again: was this the same sentiment when other, less notorious, warlords were being tried? Where were their doubts about passage of time, about memory, about cultural differences? Where was the call for dismissal, even before the evidence was tested in a court of law? Nobody ever called the Swiss Federal Tribunal, or the Paris Cour d'assises misguided, for their proceedings against Alieu Kosiah and Kunti Kamara, both former ULIMO commanders. It seems that the only difference between all other cases related to the Liberian wars and the Gibril Massaquoi's case was the latter's involvement with the SCSL, for which no immunity was granted. I believe it is important to note that only one of the three crime bases in the Massaquoi case concern events allegedly happened at a time the SCSL was fully functioning.

It is easy to be affected by the harshness that surrounded the Gibril Massaquoi case, by its constellation of complexities – especially if these have not relented, even after both the first instance proceeding and the appeal ended in acquittal, and Mr Massaquoi is now a free man.

The biggest failure remains how no one in Liberia has yet been prosecuted for the crimes that left half a million displaced, a quarter of a million dead. We have been trying to mend to this very failure for 12 years. Those who have described the acquittal of Gibril Massaquoi a "*reality check*" seem to want to pick and choose those who get tried.

Acquittals are a necessary part of a fair and functional criminal justice system that ensures that everyone may defend themselves in a court of law. In this case, an acquittal is not a failure as the accusation was never considered fraudulent by the different judges. Contrary, a non-trial would have been a failure.

All of these paradoxes truly leave one certainty: that the Massaquoi case serves as a sobering reminder of the complexities and moral imperatives inherent in the pursuit of justice. This acquittal underscores the ongoing struggle to confront the past, reckon with the present, and build a future grounded in truth, accountability, and collective healing.

And as the dust settles, I echo the words of UN expert Dr. Lansana Gberie, who suggested to Mr Massaquoi – considering his past and own admissions – to donate part of his compensation to the many victims of the civil conflict in Sierra Leone.

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**Artistic impression of Gibril Massaquoi, 2021. © JP Kalonji/Civitas Maxima**


Young people outside a house in Liberia, February 2018. © Nathaly Leduc/Civitas Maxima

# The Case of Gibril Massaquoi

*A new avenue for universal jurisdiction in Finland*

Juri Huttunen

Finnish Lawyer

On the last day of January 2024, the Turku Court of Appeal rendered its judgment in the case of Gibril Massaquoi.

The judgment, delivering a full acquittal on all charges, concluded the appeals phase of a truly extraordinary trial in Finnish history, with both the Court of Appeal and the Tampere District Court having travelled to Liberia to hear witness testimonies relating to war crimes and crimes against humanity alleged to have taken place over two decades ago. The Massaquoi case was only the second time a Finnish court had relocated abroad in its entirety to conduct hearings, and is among the very few instances Finnish universal jurisdiction cases. Working as a trial monitor for Civitas Maxima, I had the opportunity to follow the appeals phase in person between January 2023 and September 2023. From a Finnish lawyer's perspective, the trial showcased the challenges related to the complex universal jurisdiction cases being tried under Finnish law.

**"FROM A FINNISH LAWYER'S PERSPECTIVE, THE TRIAL SHOWCASED THE CHALLENGES RELATED TO THE COMPLEX UNIVERSAL JURISDICTION CASES BEING TRIED UNDER FINNISH LAW."**

In my mind, perhaps the single most interesting detail for any future proceedings concerning international crimes in Finland was the practical application of Finland's jurisdiction to facts occurring abroad. Mr. Massaquoi was charged with multiple murders and aggravated rapes. He was also charged with an aggravated war crime and an aggravated violation of human rights in exceptional circumstances – these counts encompassed the other counts including various additional aspects, such as an alleged act of torture. The counts of murder and aggravated rape against Mr. Massaquoi were brought under Finland's regular criminal jurisdiction. He was equated to a Finnish national under Finnish law due to his residency in Finland at the beginning of the trial. In relation to these counts, the courts' jurisdiction was further based on the acts being penalized in both Finland and Liberia at the time of their commission.

The counts of an aggravated war crime and an aggravated violation of human rights in exceptional circumstances (an earlier criminalization of a crime against humanity under Finnish law), on the other hand, were brought solely on the basis of universal jurisdiction. This jurisdiction did not require any connection to Finland or for the acts to have been penalized in both Finland and Liberia at the time of their commission. As the acts alleged against Massaquoi took place between 2001 and 2003, during the Second Liberian Civil War, the provisions governing the use of universal jurisdiction in force in Finland today were not applicable in this case. The current provisions based on the International Criminal Court's Rome Statute were not enacted until 2008 and instead, the courts had to apply national statutes originally enacted in the 1990s.

The applicable statutes in the Massaquoi case limited the application of universal jurisdiction under Finnish law to war crimes and crimes against humanity qualifying as 'grave breaches' of the 1949 Geneva Conventions. These 'grave breaches' form a special group of war crimes that carry not just a right, but a duty under international law to investigate, prosecute or extradite the suspected perpetrator. However, they are only applicable to international armed conflicts. The Second Liberian Civil War was acknowledged by the parties to be a non-international armed conflict, so Mr. Massaquoi argued that Finland's universal jurisdiction did not extend to the facts.

This jurisdiction argument was raised only towards the end of the District Court proceedings in 2021, with the court having already travelled to Liberia and Sierra Leone to hear numerous witnesses. This did not affect the practicalities of the case all that much, but it managed to produce an interesting legal development due to the Finnish translation of the Geneva Conventions and a lack of international law expertise among the Finnish authorities involved in the case.

The texts of the Geneva Conventions were translated into Finnish in the 1950s when the Conventions were ratified by Finland. The word used to denote the "*grave breaches*" in the official Finnish translation is unfortunately the exact same term that is used to denote any aggravated crime under the Criminal Code ("*törkeä rikos*"). The translation of the word was not modified in 1980, when Finland ratified the Additional Protocol I to the 1949 Geneva Conventions. The charges against Mr. Massaquoi were based on various provisions applicable in non-international armed conflicts. However, the charges also included provisions from the Fourth Geneva Convention of 1949, a treaty applicable only in international armed conflicts. Despite the concept of "*grave breaches*" being only applicable in international armed conflicts and the conflict in Liberia being a non-international one, the District Court seemed to miss the difference between the two types of armed conflict. It found that the acts alleged against Massaquoi in the indictment qualified as "*grave breaches*" of the Fourth Geneva Convention under its article 147, therefore allowing for the court to exercise universal jurisdiction under Finnish law to examine the charges.

Neither the District Court's reasoning, nor the summary of the prosecution's arguments included in the District Court judgment, specifically touched upon the misleading wording in the Finnish translation of the Geneva Conventions. However, the role of the translation in misleading the prosecution's jurisdiction argument was highlighted during the preparatory phase of the appeals proceedings.

**"MR. MASSAQUOI ARGUED THAT FINLAND'S UNIVERSAL JURISDICTION DID NOT EXTEND TO THE FACTS."**

After the District Court had acquitted Mr. Massaquoi on all charges in 2022, the prosecution sought an appeal from the Turku Court of Appeal. In his response to the appeal, Mr. Massaquoi repeated his claim that Finnish courts lacked jurisdiction to examine the charges, as universal jurisdiction could only be exercised in relation to "*grave breaches*" or to acts committed during an international armed conflict. The prosecution responded by arguing that the Common Article 3 to the Geneva Conventions applies to non-international armed conflicts and prohibits conduct that is "*graver*" than that prohibited in the provisions setting out "*grave breaches*" of the Conventions. The prosecution therefore assumed that any violation of Common Article 3 would qualify as a crime without examining the concept of war crimes in non-international armed conflicts. It was argued that where such crimes are committed in non-international armed conflicts, if also "*grave*" in nature, they should be considered as "*grave breaches*" of the Geneva Conventions.

In essence, the prosecution's argument as to what qualifies as a "*grave breach*" of the Geneva Conventions was based on, or entangled with, the concept of an aggravated crime under Finnish law. They were arguing that every "*grave*" or aggravated breach or violation of the Conventions based on Finnish legal standards would automatically also qualify as a "*grave breach*", in essence a qualified war crime. In fact, only a limited group of violations are specifically defined as "*grave breaches*" of the Geneva Conventions. While one of the defining criteria of a war crime is a serious violation of international humanitarian law, the technical relationship between war crimes in general and "*grave breaches*" of the Geneva Conventions is not as straightforward as the prosecution claimed.

Although easier to understand when considering the unfortunate Finnish translation used with the Geneva Conventions, this primary argument brought forward by the prosecution demonstrated a lack of understanding of the rules of international law applied in the case. What allowed the case to advance on appeal, past the jurisdiction stage, was a new secondary argument presented by the prosecution: in addition to the written provision under the Finnish Criminal Code, it was argued that customary international law permits all states to investigate and prosecute certain international crimes without the support of written national statutes, such as war crimes and crimes against humanity committed in non-international armed conflicts. Thus, the fact that Finland's universal jurisdiction under the Criminal Code was limited to "*grave breaches*" would not prevent the court from exercising universal jurisdiction in the matter.

In its separate decision on jurisdiction issued on 28 December 2022, before the beginning of the oral hearings, the Turku Court of Appeal partially accepted this novel approach to universal jurisdiction under Finnish law. Instead of basing the proceedings completely on customary international law, the court used the rules of customary international law cited by the prosecution to interpret the written jurisdictional statute, to extend to war crimes committed in non-international armed conflicts in addition to "*grave breaches*".

While this extension of the jurisdictional provision is only relevant to situations between approximately 1996 and 2008, due to the subsequent amendments to the Finnish Criminal Code, its exceptional character should not be downplayed.

Indeed, this was the first time the criminal jurisdiction of a Finnish court was based on provisions of customary international law and most likely the first time customary international law was given direct applicability to a Finnish court without the support of an explicit national statute. The Massaquoi case was also one of the few national cases discussing rules of international humanitarian and international criminal law in relation to war crimes and crimes against humanity. What makes the jurisdiction decision truly exceptional is the fact that the scope of Finland's universal jurisdiction was extended beyond the scope of a written national statute, a move which will certainly be criticized

by many as the traditional approach in Finnish criminal law has emphasized the role of written criminal statutes in fulfilling the requirements of the principle of legality. It is noteworthy that the European Court of Human Rights has approved the use of customary international law as a basis of criminal jurisdiction or even individual criminalizations, duly noted by the Turku Court of Appeal in its decision.

At the time of writing this piece, the final outcome of the Massaquoi case is still open as the prosecution has the option to seek appeal with the Supreme Court. Given that the charges were successfully refuted in both instances, it is possible that the decision of the Turku Court of Appeal remains the final word on Finland's jurisdiction in this matter.

**"WHAT MAKES THE JURISDICTION DECISION TRULY EXCEPTIONAL IS THE FACT THAT THE SCOPE OF FINLAND'S UNIVERSAL JURISDICTION WAS EXTENDED BEYOND THE SCOPE OF A WRITTEN NATIONAL STATUTE."**

As mentioned above, while the direct practical relevance of this decision may be somewhat limited, the exercise of creatively using rules of international law and customary law is significant and certainly a welcome one, as Finland will most likely see itself facing more and more trials with a connection to international crimes.

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# Insider Witness

## *Chapter Nine*

Anu Nousiainen

Finnish Journalist

The following is an extract from "*Tehtävä Afrikassa: Rikosylikomisarion viimeinen juttu*" (*Mission in Africa: the last case of a detective inspector*). The book is originally published in Finnish by Helsingin Sanomat. The translation was done by Civitas Maxima, and it is not an official translation of the book.

[...]

After the end of the civil war in Sierra Leone, the UN had set up a special court to try war criminals. The new court was supposed to be better and more effective than its predecessors, which had investigated war crimes in Yugoslavia and Rwanda. This time, the court would sit in the country where the crimes had taken place. To avoid years of work, the UN decided to prosecute only those "*who bore the greatest responsibility*". David Crane, an American lawyer, was chosen as chief prosecutor. Mr Crane had worked for the US Department of Defense and brought to Freetown a number of Americans with military or defence backgrounds. One of them was Alan White. Crane wanted White to head the investigation because they were old colleagues.

Alan White had worked as a criminal investigator for the US Department of Defense for fifteen years. There he had investigated corruption, bribery and sexual harassment. He had never been to Africa. But he believed that investigating war crimes in West Africa was like investigating crime anywhere.

[...]

And so in August 2002, the American woman arranged a meeting at a hotel, where she introduced Gibril Massaquoi and Alan White to each other. Then she left them alone and left.

**"THIS MAN HAD KILLED THOUSANDS OF PEOPLE, BUT FOR TWO WEEKS IN A ROW I INTERVIEWED HIM IN A HOTEL ROOM IN A SECRET LOCATION" ALAN WHITE SAID (...) THAT COMMANDER WAS MASSAQUOI."**

Alan White later said that he had heard "*from a source*" that a senior RUF commander had been concerned about what White was going to do. The commander had enquired whether White wanted to meet him. "*This man had killed thousands of people, but for two weeks in a row I interviewed him in a hotel room in a secret location,*" White said. According to him, the commander opened up to him the RUF command structure, "*the whole operation*" and also showed him a link to Liberian President Charles Taylor. That commander was Massaquoi.

"*He was well-educated, mostly self-taught,*" White said. "*But he was a very dangerous man, a senior commander in the RUF.*" When White later travelled in rural Sierra Leone and visited crime scenes, one of the places he visited was a village with Go away Massaquoi written on the buildings. "*And that meant Gibril Massaquoi.*"

"*He was very cruel, but he was afraid of going to prison for the rest of his life. But when I met him, I had the authority to tell him that if he cooperated, he would not be prosecuted.*"

What did Alan White discuss with Gibril Massaquoi in the hotel room during those two weeks? According to White, the atmosphere was tense and stiff. Once in the restaurant, when Massaquoi was talking about RUF operations, he took a knife and stabbed the table with it, showing how the RUF was here (bang), here (bang) and here (bang). White followed the knife nervously. Gradually, however, the rebel commander and the American investigator began to get used to each other's company. "*He trusted me,*" White said. He asked Massaquoi to draw the RUF command structure

on paper, and Massaquoi did so. "*Fortunately, he spoke very good English. He was literate and could write very well.*"

According to White, it was thanks to Gibril Massaquoi that the prosecution's work got off to a fast start. "*He opened up the whole picture, told us who was involved, right down to Taylor*." After that, other witnesses were heard.

[...]

According to Alan White, Gibril Massaquoi was the prosecution's first inside witness. Massaquoi seemed like a perfect collaborator. But he had two conditions: he wanted witness protection, and he also wanted immunity from prosecution. The Chief Prosecutor, David Crane, agreed to the deal, but there was no written agreement for immunity. That would not have been possible. The Special Court could not promise a witness immunity that went beyond its own mandate. The only agreement on witness protection for Massaquoi in Sierra Leone that the court has in its files, is signed on 23 October 2002.

Chief Investigator Alan White and Chief Prosecutor David Crane were confident, quick-witted and experienced American public servants. They conducted war crimes investigations in the American way. [...] According to Crane, their small team assembled a better intelligence network than MI6 or the CIA. Crane left it to Chief Investigator White to decide how the insider witnesses were questioned. White was also responsible for negotiating financial support and resettlement with the insider witnesses.

**"THE TRUTH AND RECONCILIATION COMMISSION HELD MASSAQUOI RESPONSIBLE FOR THE TORTURE AND SUMMARY EXECUTION OF UP TO 25 RUF MEMBERS IN THE PUJEHUN REGION IN 1993."**

Later, the defendants' defence [note: at the SCSL] criticised the Crane-led prosecutor's office for procedural errors and questionable interrogation methods. For example, White's investigators had not taken notes on the progress of the investigation. Witnesses had been taken out to dinner at Freetown's most expensive restaurants. [...] Massaquoi also benefited from the advantages offered to the witnesses. In March 2003, the court rented a house in Freetown for him and his family and hired security guards in case someone tried to take revenge on Massaquoi. The family's livelihood was supported and health care was provided, improving the family's standard of living considerably. On Sundays, Massaquoi was taken "*on outings*" and at least once at Franco's, the best restaurant in Freetown, which served lobster. Chief Prosecutor Crane later admitted that that's what it was like, "*dancing with the devil*". For him, the war was black and white and the aftermath straightforward. He wanted spectacular results quickly. He wanted the Special Court for Sierra Leone to be more effective than its predecessors in Yugoslavia and Rwanda.

[...]

The Court's mandate did not begin until the end of November 1996. The prosecution could not prosecute events prior to that. Thus, Massaquoi told much more about the events of the early 1990s than about what he did after Freetown was taken over and he was released from Pademba Road prison in January 1999.

It was also possible, of course, that the prosecution investigators did not want to put too much pressure on the insider witness. He was important, at least at the time. Perhaps they never investigated his part in the case very vigorously.

"*Okay Gibril, we've talked about almost every single person in Sierra Leone so far, so now we have to talk about you. Your role. Remember before Christmas when I said that the time has come?*"

"*Yes.*"

"*The witness protection agreement that we signed on 23 October is still in force. We can help you, we can protect you, but we need all the cards on the table.*"

Now the interrogator was an experienced Canadian police officer, Gilbert Morrisette, Alan White's deputy.

"*Then when you are in court as a prosecution witness,*" Morrisette said. "*If something comes up that you have not told us, then we will not be able to protect you. Then you and we in the prosecutor's office will lose all credibility.*"

There was only a week before prosecutor David Crane would sign the charges, but Massaquoi did not know that. The interrogator continued:

"*We can protect you and your family. But if you hide something from us and we find out about it in the middle of a trial in front of all the lawyers and judges, then everything falls apart, okay?*"



"*Yeah,*" Massaquoi said. Then he started again, about Pujehun and teaching and his mother and the RUF coming across the border. But again, this time he said nothing that made him look guilty.

"*Wait. Wait a minute. Slow down a little bit.*"

According to Massaquoi, when the RUF was chopping off people's fingers, he was sick at the base - he had an ulcer, he was constantly belching bad smelling burps. When the others fired, he had no weapon with him. When the others were planning the next attack, he had no part in it. Once, when Superman [note:another RUF rebel commander] asked him to take part in an attack, he refused because he had a sore spot on the bottom of his foot.

Yes, "*a sore spot*". Those were the exact words he used.

Once an interrogator asked:

"*And you yourself, you never witnessed it, when the limbs were hacked off?*"

"*No, not one day,*" he replied.

Interrogators recalled that he was still a suspect. They asked about his wife, they implied things.

"*Who are you living with at the moment? How many children?*"

"*If you don't tell the truth, you'll be just as bad off as everyone else. Do you understand?*"

"*Yes*" Massaquoi replied.

"*And I'm not threatening you in any way.*"

And then the interrogator tried one more time and asked:

"*What is the worst thing you have done?*"

Gibril Massaquoi replied that he had killed government soldiers and given orders to kill. He said he knew that his troops were looting villages. He told of the killing of white journalists in an ambush.

Everything he discussed had happened in Sierra Leone. Liberia was never asked about.

[...]

French journalist Thierry Cruvellier had arranged to meet Massaquoi at a bar in Lumley Beach in early March 2003. The Special Court Prosecutor's Office had been questioning Massaquoi throughout the winter. Lumley Beach is located on the west side of Freetown in Aberdeen and was known as one of the capital's wealthiest residential areas. The bar was expensive, the sort of place former RUF commanders liked to frequent. Massaquoi arrived an hour late. He seemed nervous and had a small radio with him. He left it on in the bar to listen to the news.

Massaquoi told Cruvellier that he feared he would be arrested by the Special Court. But he said his "*conscience was clear*". Cruvellier believed Massaquoi was among the accused. He thought it was obvious. Diplomatic sources speculated as to who was on the list. There was talk of a couple of dozen names. It was rumoured that the first arrests would be made soon by the Court. Cruvellier wanted to interview all the main commanders before they were taken into custody.

The first arrests were made a week later, on Monday 10 March 2003. Massaquoi played an important role on that day. He lured former RUF commanders Issa Sesay and Moris Kallon to the Freetown police station to handle a financial matter for the RUF party. It was a trap, of course. Sesay and Kallon had no idea. When they entered the building, they were handcuffed and arrested. Massaquoi was also handcuffed. No one was to suspect him of being a snitch, because no one outside the prosecutor's office knew that he was collaborating with the prosecutor and that was not to be made public. However, Sesay later told the court how he saw Massaquoi's hands being uncuffed and Massaquoi released.

Why was Gibril Massaquoi not charged? The UN Security Council and the Government of Sierra Leone had limited the mandate of the Special Court to those who bore the "*greatest responsibility*". Such a limitation had not previously been used in international criminal law. What did "*greatest responsibility*" mean? The greatest was not the same thing

as *great*, and the *greatest* was not explained anywhere. Where was the borderline between the *great* and the *greatest*? David Crane, the Chief Prosecutor, could interpret the distinction as he wished, the line was entirely artificial. When the first indictments were made public, it was seen that for Crane, *"greatest responsibility"* meant just over a dozen people. The person he most ardently wanted to bring to justice was Liberian President Charles Taylor.

Charles Taylor was "*the greatest*".

[...]

In the end, Chief Prosecutor David Crane brought charges against only thirteen people. From the RUF, he chose five: movement leader Foday Sankoh, Sankoh's successor Issa Sesay, and military commanders Mosquito, Morris Kallon and Augustine Gbao. If Crane would have decided on one or two more, would Massaquoi have been next on the list? At least in journalistic and diplomatic circles, people were certain that he would be.

[...]

In the end, the general public was left wondering why some were blamed and others not. Even the prosecutor's office wondered about how the Chief Prosecutor worked . One employee compared the prosecutor's office to a ship without a rudder: "*It just sort of floated*."

[...]

There were a lot of people in Sierra Leone who also thought that Gibril Massaquoi should have been prosecuted. That was also the opinion of Sierra Leone Truth and Reconciliation Commission, which collected its own witness statements at the same time. The Sierra Leone Truth and Reconciliation Commission was not a court, its model was taken from South Africa. It was set up to help Sierra Leoneans better understand what had happened during the war. Its mission was to help the nation recover and reconcile.

**"THE SPECIAL COURT FOR SIERRA LEONE HAD DECIDED TO TRY THE WAR CRIMES IN THREE SEPARATE TRIALS. MASSAQUOI WAS HEARD AS A WITNESS IN ONLY ONE OF THEM."**

The TRC recorded more than eight thousand eyewitness testimonies. However, fewer people turned up for the public hearings than expected. Only a few former combatants and soldiers agreed to speak. The TRC's most important achievement was the archive of thousands of eyewitness accounts it collected and the final report it wrote.

Gibril Massaquoi was also interviewed by the TRC. This was in July 2002, before Massaquoi met Alan White. Massaquoi failed to convince the TRC that he had no significant role in the RUF. His name is mentioned several times in the Commission's final report. According to the TRC, Gibril Massaquoi killed several rival commanders early in the war. The Commission held him responsible for the torture and summary execution of up to 25 RUF members in the Pujehun region in 1993, two years after he joined the RUF. Several commanders of the RUF's First Battalion were killed in the executions. Many of them were Liberians.

According to the Commission, Massaquoi played a key role in the RUF chain of command. He fuelled tensions after the RUF kidnapped UN peacekeepers. As a spokesman for the RUF, he was duplicitous and dishonest. According to the Commission, Massaquoi was therefore responsible for the "*deterioration of the security situation*".

The Commission treated the Massaquoi's statement with "*extreme caution*". Its conclusions in the final report were stark :"*Massaquoi was unique in the RUF in that he remained an enigma to all those around him throughout the war*."

Massaquoi dodged questions about his role in the fighting. He managed to convince the outside world that he had only played an administrative role alongside *Papay* Sankoh, especially after the 1999 peace agreement. In reality, he had been fighting on the front line whenever he was out of the public eye - as numerous former RUF fighters had testified. During the civil war he had served as a military commander. Since 1999, he had been involved in building the RUF's military and political strategy alongside the movement's leader, Sankoh. As a spokesman for the RUF, he was often dishonest. During the abduction of UN peacekeepers, he deliberately misrepresented the situation to the public. He was on bad terms with many other RUF commanders. He manipulated his way into Papay Sankoh's inner circle and deliberately created discord between Sankoh and other commanders to improve his own position. He took diamonds from the commanders in the mining fields and took them to the Sankoh - a fact that Massaquoi himself admitted. All communication between *Papay* Sankoh and the commanders passed through him. In practice, he became the second most important person in the RUF hierarchy after Sankoh when Mosquito moved to Liberia.

[...]



The Special Court for Sierra Leone had decided to try the war crimes in three separate trials. Massaquoi was heard as a witness in only one of them: the one in which the accused were commanders of the military junta that had seized power. Massaquoi was familiar with the relations between the RUF and the junta. He had, after all, been a member of the Supreme Council of the AFRC military junta.

[...]

Once again, he was asked about his own role in the war. The defence during the trial wanted to show that Massaquoi himself had been involved in the war crimes he was reporting.

"*In fact, are you aware that when you were involved in ambushes, there were government soldiers or other people killed?*"

"*I know that in any war where there is gunfire, people on both sides die.*"

"*So is it fair to say that because you were in command, people died, especially in ambushes?*"

"*Of course.*"

"*Do you have any idea how many people died because of you as a commander?*"

"*I can't say. Most of the time I wasn't on the front line, and I can't say how many people on the other side died in the crossfire.*"

"*But is it fair to say more than one?*"

[...]

"*If I personally committed atrocities, it may be because I was given orders," he said. "But I don't remember personally killing someone on the basis that I wanted to kill them.*"

The defence reminded the court that Massaquoi had for a long time been questioned as a suspect. In the defence's view, this showed that Massaquoi only agreed to testify for the prosecution in order to avoid prosecution. The defence reminded the court of the special treatment offered to Massaquoi: family accommodation in a safe house, alimony, medical care, visits to restaurants. How much money had Massaquoi received from the court in total? Massaquoi could not or did not want to answer this question.

Liberia was touched on in passing during the three witness days of Massaquoi. Massaquoi said he was only in Liberia at the beginning of the war in the early 1990s, when the RUF was forced to withdraw. There was not a single mention of Lofa or its villages.

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Access Anu's Book here (Finnish only)


**A traditional Sierra Leonese Kamajor huntsman with a rifle in May 2001 in Kono District. The Kamajor people fought the rebels of the Revolutionary United Front (RUF) - backed by Charles Taylor - during the civil war in Sierra Leone.**

# Breaking the Court Room Walls

*Civitas Maxima Trial Monitoring as Outreach*

Rebecca-Paris Senior

Head of Communications and Outreach, Civitas Maxima

Since 2017, Civitas Maxima has engaged in trial monitoring practices. We have always strived to provide accounts of what is going on – day after day – in the courtroom of the cases we are involved with. Through the years, we have fine-tuned this practice to what is now the flagship of our outreach department.

It all started with the landmark case of Mohammed Jabbateh, aka Jungle Jabbah, who faced trial in Philadelphia, US, on counts of perjury and immigration fraud. This was the first time that a case we worked on proceeded to court. The hearings, which lasted 9 days, took place in 2017. It was also the first time ever that victims of the First Liberian Civil War had the opportunity to share, in a court of law, what they had suffered at the hands of their perpetrator. The historical significance of this trial called for far more than a few press releases. The proceedings, which affected the broader Liberian community as a whole, could not, and should have not, be confined to the courtroom.

We therefore continued with this practice, and since 2017 we monitored the Thomas Woewyiu trial (2018) in the US, the Alieu Kosiah trial and appeal (2020-2023) in Switzerland, the Gibril Massaquoi trial and appeal (2021-2023) in Finland, Liberia, and Sierra Leone, and the Kunti Kamara trial and appeal (2022-2024) in France.

As of April 2024, Liberia shows promising developments on the horizon. Following the Senate's endorsement of a resolution to establish a war crimes court, all eyes are now on President Boakai, whose commitment to accountability for wartime crimes was highlighted in his inaugural address.

**"WE REMAIN COMMITTED TO THE PAINSTAKING – AND YET INDISPENSABLE - TASK OF TRIAL MONITORING, KNOWING THAT THE PRESERVATION OF THIS INFORMATION IS VITAL FOR UPHOLDING THE PRINCIPLES OF TRUTH, ACCOUNTABILITY, AND RECONCILIATION, IN LIBERIA AND BEYOND."**

We don't use the term "*forgotten victims*" lightly. Since the end of the Second Liberian Civil War in 2003, and the absence of a local criminal accountability mechanism, countless individuals were denied justice, left to grapple with the weight of impunity. Amidst this void, only a handful of organisations, notably CM and GJRP, persisted: holding onto the belief that justice is attainable and that these individuals have not been abandoned, at least not by us. Liberian history is worth remembering, also abroad, and that justice should not be only obtainable for victim of conflicts under geo-political spotlight. The journey has been arduous, but if any of the cases we've pursued have helped kindle local political resolve toward establishing a war crimes court, then every step of our efforts has been justified.

Moreover, the work of organisations like CM and the GJRP can provide a valuable foundation for the future workings of a possible war crimes court, and our trial monitoring can offer valuable insights, lessons, and resources to contribute to its effectiveness.

## Getting the Framework Right

As the organisation had more and more cases that it worked on, operations became resource intensive, often spanning months, and involving dozens of people. In 12 years of existence, CM has done trial monitoring of 8 legal processes, and I had the privilege of leading 6 of them.

Because of the very nature of the work of CM, our role within each case varies differently: for some, we only provide initial information to investigative authorities, in others, our staff directly represent the plaintiffs in court, or the organisation itself is a civil party in the case. It is for this reason that it was imperative for us to adopt a model of trial monitoring that would be applicable to all our public cases and our shifting role within each one.



In order to engage in this activity in a transparent and neutral fashion, we chose to divert from the classic understanding of trial monitoring – usually an analysis and a summary of what is going on in a court room – and opted for lengthy, detailed, day to day accounts, with no commentary or notes on what is being said during hearings. Our monitors take verbatim notes, and we transform that back-and-forth dialog into digestible reports. We maintain information as it is, without any corrections, often including direct quotes when a sentence is particularly impactful. Ensuring meticulous accuracy is paramount - particularly when the defendant and their defence may attempt to challenge the organisation's credibility and integrity. By producing an exhaustive record of all proceedings, we not only demonstrate our commitment to transparency but also, we withstand any attempts to undermine our reputation: our trial monitoring includes all accusations made against us, which are reported scrupulously.

One of the fundamental challenges of universal jurisdiction lies in the geographic distance between the courtroom and the site of the crimes. In the case of Liberia, where there has been no local judicial accountability mechanism following the civil wars, trials conducted abroad represent a crucial avenue for seeking justice. However, this distance also means that affected communities often lack direct access to the proceedings and the opportunity to participate in the pursuit of justice. And even when the physical distance was not the main challenge, for example in the case of Gibril Massaquoi where part of the judicial proceedings took place in Liberia and Sierra Leone, the limited access to the courtroom only allowed for a handful of local journalists to attend.

**"IMMORTALISING THESE EVENTS ALSO SHIELDS AGAINST ATTEMPTS OF REVISIONISM AND THE PROMOTION OF MISINFORMATION, ESPECIALLY IMPORTANT IN A CONTEXT WHERE DIFFERENT NARRATIVES OFTEN CLASH."**

These trials transcend the traditional defendant-victim binary and hold profound significance for Liberia as a whole. The scars of the civil conflicts run deep, impacting the nation psychologically, socially, and economically. Those who participate in these proceedings, whether as witnesses, plaintiffs, or observers, symbolise the countless individuals who may never have the opportunity to share their stories in a court of law. For a nation where a quarter of a million lives were lost to conflict, these trials serve as symbolic markers of remembrance and accountability, resonating with every Liberian touched by the legacy of war.

Therefore, these legal proceedings are more than just vehicles for justice; they represent potential catalysts for social change and historical reckoning. They offer local communities the opportunity to confront the past, demand accountability, and shape the trajectory of their nation's future. As cornerstones of contemporary history, these trials have the power to foster dialogue, reconciliation, and healing on a national scale. They serve as a symbol that justice can be achieved – that impunity should not be tolerated.

It is therefore paramount to fit our outreach work within this framework: how can an organisation like CM, whose entire mission statement is firmly set that victims of international crimes hold the keys to their own quest for justice, keep true to this value?

## For Posterity

To serve those whom we set ourselves to assist, we ensure that all the proceedings we are involved in are recorded for posterity. We believe that immortalising these moments is crucial, granting anyone with an interest in them access to accurate, complete, and neutral information.

While it's challenging to measure the long-term impact of such work when it's done for the future – perhaps for a youth who does not yet exist – it has already proven useful to contemporary actors such as journalists, counsels, and scholars. To our knowledge, material from our trial monitoring has been used for pleadings, for news articles, and by those who were seeking for relevant evidence for other possible Liberian cases.

For many of these proceedings, our trial monitoring serves as the only publicly available complete record of the hearings. The aim of this work is to function like a historical archive, documenting the truth of what transpired and preserving the memory of those who suffered. Immortalising these events also shields against attempts of revisionism and the promotion of misinformation, especially important in a context where different narratives often clash.

## More than just words

To ensure the most accurate information, our trial monitors strive to take notes as close to verbatim as possible. For instance, if a 9-day trial produces hundreds of pages of information, a 62-day trial spanning a year, like in the case of Gibril Massaquoi, will yield thousands of pages worth of information. The process of transcribing everything typically takes several months – this is to ensure the highest quality result, and to include every little detail.

The Jungle Jabbah trial. Philadelphia, US, 2017.
© Chase Walker/Civitas Maxima

Because of this, in 2022, we introduced short daily snippets that, in one or two paragraphs, succinctly recap what is being debated in court. These snippets are posted on the day of the hearing and are accompanied by audio files, read out by celebrated Liberian journalists, thus enhancing accessibility.

Given that photographs and recordings are prohibited during hearings, we always ensure that an artist sits in court for several days to create court sketches that capture the essence of the proceedings. Dozens of drawings and visual art pieces have been produced, often serving as the sole visual representation of the proceedings that have unfolded over the years.

By "*breaking the courtroom walls*", everyone has access to what is being said and see what those in court see.

Trial monitoring has directly inspired many other outreach projects within Liberia and abroad: from the pages of Musu's Diary, a comic published in collaboration with renowned artist JP Kalonji that recounts the tale of a young Liberian girl grappling with the culture of impunity; Justice in Action, a participatory theatre project that toured rural Liberia; Cartooning for Justice, drawing workshops in collaboration with LivArts that aimed to engage Liberian youth in discussions about justice through the means of cartooning; and mock trials, both in Liberia and abroad, a group dynamic exercise where students are confronted with the complexities of a war crimes trial through simulation. Through comics, theatre, art, and interactive simulations, trial monitoring has propelled projects that engage diverse audiences in meaningful dialogue and reflection on the importance of upholding human rights and fighting impunity.

### One piece of the puzzle

This endeavour is not a solitary pursuit. While we preserve information and ensure that detailed records of these proceedings exist, collaboration with local actors is paramount. Alongside trial monitoring, the invaluable work of organisations like New Narratives ensures that Liberians have access to quality Liberian journalism directly from the courtrooms, enriching the understanding and dissemination of these critical legal processes. This is especially important as the impact of legal proceedings extends beyond the courtroom and deeply affects local communities – their work ensures that what is being discussed in court is accessible and relevant to those directly impacted – beyond the digital landscape. New Narratives journalists ensured that reports from court were disseminated through radio, allowing for further reach. Their work also serves as a work of translation: legal discourse is transformed into language that resonates with those whose stories form the very essence of legal proceedings. Whilst New Narratives fellows are often directly present in court, our trial monitoring has been used to complement their work by providing a broader perspective, further understanding on technical legal issues, and thus enhancing the depth of coverage.

Within this collaboration, each party retains its autonomy and uses its specialised knowledge to contribute to the overarching goal of promoting access to justice. Unity is not uniformity, and independence is the core of this relationship.

### Commitment to preservation

While the efforts involved in trial monitoring are undoubtedly time-consuming, we firmly believe that having an accessible record of courtroom proceedings is essential for any future endeavor in the Liberian quest for justice. By meticulously documenting what is said and done in court, we ensure that a comprehensive historical record is preserved.

This record not only serves as a testament to the pursuit of accountability for the crimes committed during the wars in Liberia, but also provides future generations with a valuable resource for learning, understanding, and advocating for justice. Without such a record, the legacy of conflict and the efforts to seek redress for victims' suffering risk being lost or distorted over time.

Therefore, we remain committed to the painstaking – and yet indispensable - task of trial monitoring, knowing that the preservation of this information is vital for upholding the principles of truth, accountability, and reconciliation in Liberia and beyond.

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# Commitment and Impartiality

## *The Value of SJAC's Trial Monitoring*

Teresa Quadt

Trial Monitor, Syria Justice Accountability Centre

### Doctors in War Times

The Syria Justice and Accountability Centre (SJAC) is currently monitoring the criminal trial against a Syrian doctor in Frankfurt am Main, Germany. Alaa M. is charged with multiple counts of torture, forced sterilization, and killing as crimes against humanity allegedly committed in a military hospital in Homs. The trial has been ongoing for over two years with more than 115 trial days as of February 2024. SJAC covered every single hearing since the first day on January 19, 2022.

**"WITHOUT TRIAL MONITORING PROJECTS COVERING SUCH TRIALS AND OTHER RELATED ACTIVITIES, WEAKNESSES IN THE LEGAL FRAMEWORK AND THEIR PRACTICAL APPLICATION WOULD REMAIN OBSCURED."**

Crimes by the Syrian government and ISIS are widely acknowledged however the lack of meaningful accountability persists. The charges against Alaa M. reflect another significant dimension of the systematic torture and abuse of civilians: the use of hospitals as sites of grave crimes and the complicity of medical staff in operating them. Several reports have revealed that the health system has become complicit in the culture of abuse contrary to the basic principle of medicine and ethical standards. SJAC aims to comprehensively capture the gross violations against civilians and decided to monitor the trial against Alaa M. to reveal this horrific dimension of the conflict reflected in the charges against the former doctor.

Previously, SJAC has monitored the internationally noted trial against two former intelligence agents, Anwar R. and Eyad A. in Koblenz, Germany (known as the Al-Khatib trial) and several cases against ISIS affiliates in other jurisdictions. Although the case before the International Court of Justice on the compliance of Syria with the Torture Convention is a welcome step forward, domestic prosecutions remain the only avenue to individual criminal liability of perpetrators. Since Syria is not a state party to the Rome Statute, the International Criminal Court lacks jurisdiction over crimes committed in Syria. In addition, a United Nations Security Council referral to established jurisdiction has been vetoed by the permanent members Russia and China. While the UN mandated International, Impartial, and Independent Mechanism (IIIM) gathers evidence and investigates serious crimes committed in Syria, and shares such evidence with relevant jurisdictions, it is not a tribunal or court. These obstacles to international prosecution render the domestic trials of paramount importance for victims and survivors.

### General Importance of Trial Monitoring

In 2020, SJAC decided to start its trial monitoring project to ensure documentation and preservation of the historical record. It has since produced comprehensive and accurate monitoring reports and analyses, and made them available to victims, families, and the public in English and Arabic. Besides the creation of a historic judicial record for the future, trial monitoring fulfils a range of purposes.

The mere presence of trial monitors in a public gallery reinforces adherence to substantive and procedural law. Observations made during hearings can generate valuable information on whether the right to a speedy and fair trial for the public, victims and witnesses, but also for the accused is complied with. By continuously monitoring the development of the proceedings, strengths and weaknesses can be revealed, assessed, and recommendations for improvement formulated. The role of civil society organizations in this process of reciprocal influence and control can lead to meaningful advancements beyond the individual case. In addition, the data collected from monitoring trials, which are ideally conducted in trials in a variety of judicial systems exercising universal jurisdiction, allows for the identification of areas for reform.

The international attention on the Al-Khatib trial in Koblenz, Germany is a success that can be ascribed to the diligent work of several civil society organizations. SJAC monitored all 110 hearings, published 58 summary reports which are publicly available in English and Arabic on SJAC's website and preserved 1341 pages of transcripts which are stored safely in its open-source data management tool, Bayanat. The European Center for Constitutional and Human Rights (ECCHR) also published a number of the most important legal submissions and rulings from the trial in multiple languages.

## A Commitment: Lessons from Koblenz and Frankfurt

Comprehensive and purposeful trial monitoring comes with responsibilities. SJAC was able to identify several areas that require a high level of due diligence. The aforementioned data management tool, Bayanat, has been created to preserve and verify open-source information as potential evidence. It gives users the ability to collect, store, and analyze large amounts of data. SJAC has further authorized the IIIM to conduct searches and supported several human rights organizations in creating their own data collection on the respective atrocities via Bayanat. Before the invasion of Ukraine, the Syrian conflict saw the highest internal and international coverage producing massive amounts of digital information. Based on a transparent methodology including peer-reviewed verification and the highest standards of data security, information preserved through Bayanat contributes to the increasing awareness and value of creating digital records.

By using Bayanat, the storage of 1341 pages of unredacted trial reports from Koblenz and thousands of additional pieces of data, the highest standards of secure and accessible archiving are maintained, and the usability of the database is continuously being improved. Due to a lack of audio and video recordings and written transcripts by the German judiciary, the records SJAC has created from Koblenz and is currently creating for the Alaa M. trial in Frankfurt are the only existing complete and accurate historical documentation of the proceedings.

SJAC's role in filling the gap left by the national authorities requires commitment and resources. Complete and accurate documentation can only be achieved by consistent coverage. The nature of international trials during ongoing conflict is complex which renders the proceedings lengthy. The Alaa M. trial is estimated to take approximately three years which means that resources must be allocated reasonably. Personnel, travel, and translations must be considered sometimes within different projects. Trial monitoring is therefore a resource intensive endeavor taken on by civil society actors due to the reluctance of bridging the gap by relevant states.

In addition to the historical dimension, complete and consistent coverage is indispensable for drawing meaningful conclusions from substantive and procedural law matters and court practices. Trial monitoring thus ensures that criticism and recommendations are based on substantiated arguments and profound analysis. The purpose of identifying weaknesses in the judicial systems is complemented by a process of self-reflection. Based on observations from several criminal trials in which (survivor) witnesses were heard, SJAC was able to adopt sophisticated policies to protect the victims and witnesses. The experiences from Koblenz and Frankfurt have revealed that several victims were interviewed repeatedly, by civil society organizations, by UN mechanisms, and by national asylum and investigative authorities before finally testifying before a competent court. This process can lead to the prolongation of the trial and unnecessary, but under such circumstances common, contradictions. More importantly, re-traumatization of victims is likely, and a lack of international standards exacerbates the issue (see however the Guidelines by the ICC and Eurojust for CSOs). To protect the victims, SJAC adopted a policy of refraining from re-interviewing any individual who has already given his/her account and thereby aims to foster the wellbeing of the witnesses in the present case and the willingness to testify in future cases.

Witness protection has received more and more attention in the past years. The shift from a mere witness role of survivor witnesses to a participating civil party with rights during the procedure has enhanced the sensitivity for the individual's physical and mental integrity. Trial monitoring exposes the gaps within this protection system and suggests areas for reform to the respective national legislator. One encouraging example can be observed in Germany. A reform of the German Code of Crimes against International Law (CCAIL) is currently underway addressing the shortcomings within the transposed international criminal law. The relentless work of several civil society actors, including SJAC, and legal scholarship resulted in improvements in the realm of witness protection, access to the right to join the proceedings as plaintiff, access to psycho-social support, access to language interpretation, and the recognition of further crimes as sexual and gender-based violence (SGBV). In addition, SJAC is currently in the process of creating comprehensible witness protection guides for Germany, France, Belgium, and the Netherlands to make this information accessible to the Syrian community and potential witnesses. Without trial monitoring projects covering such trials and other related activities, weaknesses in the legal framework and their practical application would remain obscured.



## Impartiality as an Imperative

The term "*monitor*" originates from the Latin verb monére and means to remind, admonish, advise, warn, or instruct. This etymological reference also reminds organizations of the very basic principles of trial monitoring. The purpose of identifying weaknesses and strengths in the legal systems or in a particular case, traces back to the historical meaning of a "*monitor*" as someone who oversees and guides. Monitoring must be conducted in good faith with the intention of contributing to improvements to the current system and in compliance with the rule of law which requires a high level of impartiality.

Respecting the very principles of a criminal trial such as the presumption of innocence is imperative to meaningful monitoring. The same applies to the privacy rights of the accused and witnesses, especially with regards to witness protection. Striking the balance between the public nature of the proceedings and the integrity of the trial is therefore of utmost importance. The integrity of the trial may be at stake when sensitive details are published that may create insecurity for witnesses or otherwise influence them. In the Alaa M. trial, SJAC has made the decision to withhold publications of detailed testimonies until a witness has been fully dismissed to meet the concerns of the Frankfurt court. Similarly, the reports with full details will only be published after the trial has been completed to ensure security during the trial and beyond as well as confidentiality of private data. Not only trial monitors, but also interpreters, who exclusively serve to translate the spoken word, are obliged to remain impartial. In the Alaa M. case, trial monitoring revealed issues related to the objectivity of one interpreter which resulted in the replacement with a more suitable candidate which improves the quality and fairness of the trial.

The integrity of the trial is not only a concern of the judges, neither SJAC nor the Syrian community has an interest in jeopardizing the truth-finding process. There is also no contradiction between high standards of impartiality and a victim-centered approach, which SJAC is pursuing. Maintaining a high level of transparency, a clear methodology, and accurate and objective reporting guarantees that victims and witnesses are informed and at the same time represented. Affected communities are not only interested in the acknowledgement of their suffering and accountability, but likewise the prosecuting authorities, in meaningful justice. This can only be achieved when the rule of law is complied with – the very principle that has been profoundly violated in the states in conflict. The respect for the rights of all parties involved and the integrity of the trial overall, is thus in the interest of everyone.

As the origin of the term suggests, monitoring can reveal and expose shortcomings and remind the parties involved to respect fair trial rights, publicly admonish when misconduct occurs, offer advice from a civil society perspective and local expertise, and warn about harmful implications of certain conduct, practices, or laws.

## SJAC's Future Engagement in Trial Monitoring

Comprehensive justice for Syria requires addressing the multidimensional nature of the conflict and crimes committed. Actors include Syrian government officials, affiliates of ISIS and other terrorist organizations. Charges include crimes under international law, i.e. crimes against humanity, war crimes, and genocide, but also terrorism-related crimes. SJAC's aims to capture the multilayered and multi-actor setting which also means to consider a gender balance. The prosecution of female ISIS affiliates will not only receive more attention by the domestic authorities but also in SJAC's future engagement in trial monitoring.

The ability to select valuable cases to monitor requires a detailed understanding of the current and future prosecution practice of the national war crime units. SJAC tracks all Syria-related criminal cases worldwide and makes them available to the public in a searchable database. It contains over 300 cases providing a range of details about the prosecutions such as the accused's affiliation, nationality, and gender, the length of the trial, the charges and the sentence. Based on this wealth of information, SJAC published a quantitative study scrutinizing the state of justice and accountability for Syria-related crimes providing reliable key findings and recommendations to states.

The meticulous tracking of cases allows SJAC to substantiate its future trial monitoring decisions. When and where will an arrested suspect be indicted, and the case be heard? What are the charges and what are the implications for the approximate length of the trial? Which resources will be necessary to consistently cover the trial? The overview of the case landscape and the sound conclusions drawn from the tracked details results in meaningful selection

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*Teresa Quadt works for the Syria Justice and Accountability Centre on universal jurisdiction cases and is currently monitoring the trial against Alaa M. in Germany. She is also a PhD Student at the University of Malta researching crimes against humanity in the context of migratory flows and a member of the expert commission on asylum at Amnesty International, Germany.*

Residents of the besieged Palestinian camp of Yarmouk, queuing to receive food supplies, in Damascus, Syria, in 2014. © United Nation Relief and Works Agency/Getty Images

# Philantrophy and Outreach

*How to engage young students in the quest for justice*

Paola Genovese

Philanthropic Adventures, Founder

Philanthropic Adventures strongly believes that there is no age requirement to become a philanthropist. Kids need to have access to philanthropic education and opportunities to take action and experience philanthropy. Philanthropy is more than "*just*" money, it is about giving back, with time, skills, and creativity.

Giving back is essential in order to grow empathy. Being empathic is being able to actively listen to others, to be open minded, and ready to accept the fact that there are different perspectives depending on cultural background, past experiences, and age. Giving back becomes a way to practice empathy.

Having the privilege to give back goes with having the responsibility to give back well. Philanthropic Adventures embarks kids aged 10-18 on the journey to become a *philanthropic adventurer*.

**"CIVITAS MAXIMA IS TOTALLY ALIGNED WITH GIVING THE YOUNG GENERATION AN OPPORTUNITY TO EXPLORE PHILANTHROPY THROUGH THEIR WORK AND HOPEFULLY IGNITE VOCATIONS."**

However, it is important to have the right tools to take action – at any age. Learning for example how to build a fundraising strategy, to evaluate projects, to define a mission, to truly understand what kind of impact one might have and have the openness to always improve. Exploring and educating oneself on a cause that is close to us is essential and a first step in a philanthropic journey. Becoming knowledgeable on the cause, building the narrative needed to convince people to support a social or environmental project. Another pilar of good philanthropic education is being inspired by amazing people who fight every day for something bigger than us all. Once the fundamentals are established, philanthropic experiences become action: a pathway full of lessons, which will help define philanthropic identities and journeys.

Thanks to Alain Werner and his amazing team, Civitas Maxima is totally aligned with giving the young generation an opportunity to explore philanthropy through their work and hopefully ignite vocations.

Since 2019 we are very honoured to collaborate with them. Every year a group of Ecolint students participate in our Step into the Shoes program, a 5-sessions workshop meant to educate students about Civitas Maxima's mission and vision, and to allow students to explore and discover subject matters and causes they might not be familiar with.

Throughout these workshops, the students engage in a variety of activities, including meeting staff members which introduce the organisation, and why and how they do what they do. We always try to include the students, so often this first introduction session is followed by a group discussion about justice, international criminal law, and so forth.

For the very nature of the legal work of Civitas Maxima, most of the trials it contributes to take place very far away from where the crimes were committed: this is why accurately reporting what is going on in a court of law becomes part and parcel of the work of the organisation. We educate the students in the importance of outreach, and how fundamental it is to work with local organisations to make sure affected communities are aware that trials are indeed taking place. Civitas Maxima's original ways to engage local communities within its mission allowed the students to discuss and ask further questions. This is usually facilitated by the vision of a short documentary, Beyond Impunity, which follows one of Civitas Maxima's outreach projects.

Once the students have a better understanding of the context, and the mission of the organisation, they are ready to move on to Step 3: taking action. More precisely, raising awareness through a mock trial. Following a script written by the head of communications, Rebecca, the students got to play different roles within a war crimes trial: a prosecutor, the defendant, and a jury member.



Stepping into the shoes of the protagonist of a trial is a powerful immersive experience. For students who are usually interested in studying law at university, this is a particularly important experience. Moreover, the mock trial becomes a powerful tool we can use to raise awareness.

An event is organised at Ecolint to showcase the mock trial. Students work on a pitch to convince friends and family to join them. Alain and members of the team work closely with the students to rehearse the mock trial, sharing their experiences and empowering them. Students are driven by the mission to raise awareness on the fundamental right for access to justice and Civitas Maxima's model: collaborate on the ground, always. Following this, the students seize the opportunity to share personal reflections on how their participation in the event has impacted and inspired them. An informal Q&A wraps up the session, fostering debate discussions and broader conversations.

**"THE MOCK TRIAL BECOMES A POWERFUL TOOL WE CAN USE TO RAISE AWARENESS."**

A workshop at Civitas Maxima is a unique experience for students aged 14-18 to explore what justice means today and take action to support victims of war.

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*Paola Genovese founded Philanthropic Adventures in 2016, with the goal to empower young people to take action. Paola holds a BA in International Relations and Psychology, and has extensive experience working for NGOs.*

Access "Beyond Impunity" documentary.

# A Student's Experience

*A student's perspective after participating in the workshops*

Ioannis Sistovaris

Student, International School of Geneva

*This article was first published on LGB Express, a student-run newspaper, in November 2023*

### What is Civitas Maxima?

Let's start by asking ourselves: "*How would I feel if I were one of the many forgotten victims of international crimes?*" Meaning that you are a person who has to live with the constant thought that the people who caused your trauma are free, living a normal life, forgetting about the pain they have inflicted on you or your surroundings. This is why Civitas Maxima exists: to make sure that this scenario never happens and that all victims finally get a voice of their own in order to be freed from their daily nightmares. This could finally allow those individuals to move on and be able to live at peace once more.

### Why did I join this?

Well, as someone who would like to pursue a career in the field of law, when I went to the CAS fair and realized there was a service opportunity in relation to law, I was immediately intrigued. This service project lasted from October 12th until November 16th, 2023. Over the sessions, I interacted with Civitas Maxima, which enabled the documenting of international crimes and seeked remedy on behalf of victims who lack access to justice. As a final goal, we participated in a mock trial as part of Civitas Maxima's outreach activities to raise awareness about impunity for war crimes and crimes against humanity. In addition of being a fun experience, it was more importantly enlightening.

### What did we do?

During this workshop, I learned a lot. Not only about law but also about international wars that are ongoing in our world. This includes the Israeli-Palestinian war, the Russian-Ukrainian war, and more importantly, the war crimes that have occurred in a small country called Liberia. It was very interesting as I learned a lot about personal cases that occurred but also about the process of how it is possible for Civitas to aid the victims of those war crimes. This includes the processes of starting a case, the rules occurring within the trial, and what people have to do in order to aid them post-trial.

### What did I enjoy the most?

The thing I enjoyed most is that it was very interactive and we were able to learn a lot about each other's perspective of the world and understand how people can come together in order to fight the ongoing injustice. Another thing that I really enjoyed was the fact that we performed a mock trial. I was assigned the role of judge. The trial was about a man convicted of many war crimes in a war occurring in a made-up country called Ucanda. This was a very fun and interesting experience as it taught me a lot about how a judiciary trial works but also how war crimes are evaluated in court.

### In other words...

I really did enjoy this workshop and would definitely recommend it to you if you are interested in fields of law, politics, or humanitarian issues. It is not only an entertaining experience but you also end up learning a lot about the world and issues that you may sadly not yet be aware of.

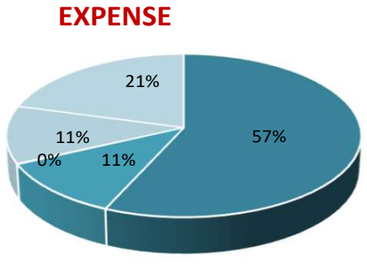


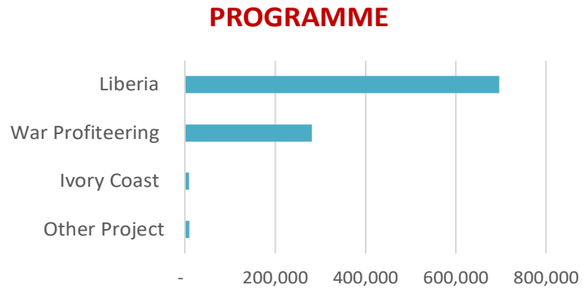
**Civitas Maxima's staff with the students during the preparation of the mock trial, 2023. © Civitas Maxima**

# Financials

## Operating statement for the year ended December 31, 2023*

| | 2023<br>CHF | 2022<br>CHF |
|---|---|---|
| INCOME | | |
| Grants & donations** | 1,774,719 | 1,565,072 |
| Other income | 53,400 | 243,862 |
| TOTAL INCOME | 1,828,119 | 1,808,933 |
| | | |
| EXPENSE | | |
| Programme | -997,010 | -967,935 |
| Outreach & Communication | -197,518 | -198,944 |
| Knowledge & Training Center (KTC) | -2,651 | -9,016 |
| Fundraising | -200,616 | -282,817 |
| Management & General | -363,600 | -206,519 |
| TOTAL EXPENSE | -1,761,396 | -1,665,232 |
| | | |
| EARNINGS BEFORE FINANCIAL RESULT | 66,723 | 143,702 |
| | | |
| Financial expense | -50,646 | -25,964 |
| Financial income | 11,161 | -78,482 |
| | | |
| **RESULT FOR THE FINANCIAL YEAR** | 27,238 | 39,256 |




*Provisional results

**This figure includes allocation to and use of the restricted funds.



# 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

Bijl Advocaat, The Netherlands

Courrégé Foreman, France

Dehtho Law Firm, Liberia

Fondation Philanthropia, Switzerland

Garcés y Prada abogados, Spain

Geneva Academy of International Humanitarian Law and Human Rights, Switzerland

Global Diligence Alliance, U.S.

Human Rights Watch,

International Justice Program, U.S.

Humanity United, U.S.

Inoks Capital SA, Switzerland

Jacquemoud & Stanislas, Switzerland

King Baudouin Foundation, U.S.

Legal Action Worldwide (LAW)

Lenz & Staehelin, Switzerland

Liberia Visual Arts Academy, Liberia

New Narratives, U.S.

Oak Foundation, Switzerland

Ochsner & Associés, Switzerland

Open Society-Africa, Kenya

Other foundations which requested anonymity

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Private Donors

PricewaterhouseCoopers (PwC), Switzerland

Rumsey Cartier Foundation, Switzerland

Santamaria & Jakob, Switzerland

Schellenberg & Wittmer, Switzerland

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

Swiss Incorp, Switzerland, Switzerland

Swiss Philanthropy Foundation, 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

TRIAL International, Switzerland

Truth Hounds, Ukraine

Waging Peace, UK

Walleyn & Blanmailland, Belgium

Washington University in St. Louis, U.S.

Wellspring Philantropic Fund, U.S.

White and Case LLP, Switzerland

Zennström Philanthropies, UK

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

CIVITAS MAXIMA

## Civitas Maxima in 2023





# Acronyms

- **AFL: Armed Forces of Liberia**
- **AFRC: Armed Forces Revolutionary Council**
- **ASFCMP: Swiss Association of Manufacturers and Traders in Precious Metals**
- **CARL: Centre for Accountability and Rule of Law**
- **CAS: Creativity, Action, Service**
- **CASE: Coalition Against SLAPPs in Europe**
- **CCAIL: Code of Crimes Against International Law**
- **CIA: Central Intelligence Agency**
- **CJA: Center for Justice and Accountability**
- **CM: Civitas Maxima**
- **CPS: Crown Prosecution Service**
- **ECCHR: European Center for Constitutional and Human Rights**
- **FCC: Federal Criminal Court**
- **GJRP: Global Justice and Research Project**
- **ICC: International Criminal Court**
- **IICI: International Institute of Criminal Investigation**
- **IIIM: International, Impartial and Independent Mechanism**
- **ISIS: Islamic State of Iraq and the Levant**
- **JIT: Joint Investigation Team**
- **KTC: Knowledge and Training Center**
- **LAW: Legal Action Worldwide**
- **SLAPP: Strategic Lawsuit Against Public Participation**
- **MI6: Secret Intelligence Service**
- **NCP: National Contact Point**
- **NPFL: National Patriotic Front of Liberia**
- **NGO: Non-Governmental Organization**
- **OAG: Office of the Attorney General of Switzerland**
- **RISJ: Reuters Institute for the Study of Journalism**
- **RSF: Reporters sans frontières**
- **RUF: Revolutionary United Front**
- **CSO: Civil Society Organizations**
- **SCSL: Special Court of Sierra Leone**
- **SGBV: Sexual and Gender-Based Violence**
- **SJAC: Syria Justice and Accountability Center**
- **TRC: Truth and Reconciliation Commission**
- **ULIMO: United Liberation Movement of Liberia for Democracy**
- **UN: United Nations**
- **UNCAT: United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**
- **UNVFVT: United Nations Voluntary Fund for Victims of Torture**

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**Cover picture: Plaintiff testifying at the Kunti Kamara Appeal proceedings, Paris, 2024.**