



**Brief *Amicus Curiae* of the Center for Justice and Accountability
and other international human rights and torture treatment
organizations in the case of Jean-Claude Duvalier
before the Court of Appeals of Port-au-Prince, Haiti**

May it please the Court:

1 Introduction

- 1.1 The Center for Justice and Accountability (“CJA”) wishes to thank the Court of Appeals of Port-au-Prince for this opportunity to submit observations on several questions of international law in this historic case. As in 1804, the year of Haitian independence, the world looks to Haiti in its quest for justice.
- 1.2 CJA is an international human rights organization dedicated to deterring torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress. CJA uses litigation to hold perpetrators individually accountable for human rights abuses, develop human rights law and advance the rule of law in countries transitioning from periods of abuse.
- 1.3 The interest of CJA and *amici* flows from the international nature of the crimes for which Jean-Claude Duvalier stands accused. Crimes against humanity harm more than individuals; they assault all nations and offend universal values of human dignity. Because humanity is itself a target, all of humanity shares an interest in preventing and punishing these acts. As Immanuel Kant noted in 1795, “a violation of law and right in one place is felt in all others.”¹
- 1.4 This case raises important questions on: (1) the punishment of crimes against humanity under customary international law in force during Duvalier’s reign from 1971 to 1986; (2) the non-applicability of domestic statutes of limitations to international crimes such as crimes against humanity; and (3) the doctrine of command responsibility under international criminal law.
- 1.5 Jean-Claude Duvalier became the head of state and “President for Life” of Haiti on April 21, 1971, stepping into the role of his father, the former “President for Life” François Duvalier. Jean-Claude Duvalier’s rule lasted 15 years, until he was overthrown on February 7, 1986. He then spent the next 25 years in exile in France.

¹ Immanuel Kant, “Eternal Peace”, reproduced in *The Philosophy of Kant: Immanuel Kant’s Moral and Political Writings*, C.J. Friedrich (ed.), (The Modern Library, New York, 1949), p.448; *see also* Prosecutor v. Erdemovic, IT-96-22-A, Joint Separate Opinion Of Judge McDonald and Judge Vohrah, para. 21 (Int’l Crim. Trib. For Former Yugoslavia Oct. 7, 1997).

- 1.6 This exile ended on January 16, 2011, when Duvalier returned to Haiti. Two days later, on January 18, 2011, Commissioner Harycidas Auguste opened a criminal investigation against Duvalier and assigned the matter to the Examining Magistrate Carvès Jean. Duvalier was questioned on allegations of political corruption and embezzlement and placed under house arrest.
- 1.7 In addition to these allegations of financial crimes, numerous victims and surviving families of those tortured, arbitrarily detained, extrajudicially killed or forcibly disappeared brought complaints against Duvalier and his accomplices for crimes against humanity. These complaints were communicated by Commissioner Auguste to Examining Magistrate Jean.
- 1.8 However, in his January 27, 2012 Order, Judge Jean of the Examining Chamber of the Tribunal of First Instance of Port-au-Prince declined to prosecute Duvalier for crimes against humanity and other violent crimes.² Judge Jean reasoned that claims against Duvalier for crimes against humanity committed between 1971 and 1986 were time-barred by article 466 of Haiti's Code of Criminal Examination, as modified by the Decree of June 18, 1986.³ Judge Jean also concluded that Duvalier could not be prosecuted retroactively for crimes against humanity because Haiti did not sign the Rome Statute of the International Criminal Court until 1999.⁴ These decisions were based on erroneous interpretations of international law, which now risk placing Haiti in violation of its international law obligations.
- 1.9 To clarify this point, this brief advances six basic arguments:
- First, crimes against humanity have been universally recognized under customary international law since 1945—decades before the reign of Duvalier between 1971 and 1986; since this law was in force at the time of the acts, there is no risk of retroactivity.
 - Second, Haiti's constitution declares that international law takes primacy over national law; Haiti's statutory limitations for domestic crimes must therefore cede to international law, which specifically holds that crimes against humanity do not expire.
 - Third, under customary international law, there is no statute of limitations for crimes against humanity, regardless of when they were committed.
 - Fourth, under the American Convention on Human Rights, as incorporated into Haitian law, Haiti has a duty to investigate and prosecute torture, extrajudicial killings, forced disappearances, and crimes against humanity: This duty overrides any domestic statute of limitations.

² *Duvalier Case*, Tribunal de Première Instance de Port-au-Prince, Chambre d'instruction criminelle, Ordonnance non paginée du Juge d'instruction Carvès Jean du 27 Janvier 2012 (Haiti).

³ *Id.* The combined effect of these laws—which Judge Jean did not explain in the Order—was to extinguish, on June 18, 1996, civil and criminal claims for crimes arising under Haiti's penal code that were committed under the regimes of Duvalier *père* and *fils*. See *infra* Section 3.4.

⁴ *Id.*

- Fifth, for continuous crimes such as forced disappearance and false imprisonment, statutory limitations cannot run until the fate of the victim is discovered.
- Finally, in international law, civilian and military leaders are held criminally responsible for failing to prevent or punish crimes committed by their subordinates.

2 Crimes against humanity have been punished under customary international law at all times and in all territories since 1946; Haiti can therefore prosecute Duvalier-era crimes without applying *ex post facto* law.

- 2.1 Whereas the prosecution of Duvalier for human rights crimes is grounded in a consensus reached by the international community in the aftermath of World War II—that crimes that shock the conscience of the world are *crimes against humanity*, punishable in national and international courts.
- 2.2 Whereas this consensus has been enshrined in customary international law since 1946; it has been reaffirmed in international treaties and has hardened into a peremptory norm; and it now provides the legal basis for this prosecution.
- 2.3 Whereas the Examining Magistrate failed to recognize the correct international law basis for this prosecution. In fact, the crimes against humanity alleged in this case arise under customary international law in force between 1971 and 1986. The charges do not arise, as Judge Jean assumed, under the Rome Statute of 1998, which merely codified longstanding custom. This first error led Judge Jean to his second, when he concluded erroneously that the prohibition of *ex post facto* law barred the case against Duvalier.
- 2.4 Whereas the *ex post facto* principle holds that “[no] one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national *or international law*, at the time when it was committed.”⁵
- 2.5 Whereas the relevant inquiry in Duvalier’s *ex post facto* challenge must be whether crimes against humanity were punishable under customary international law between 1971 and 1986. And the answer is “yes.” These crimes were defined and punished by international law long before Duvalier rose to power in 1971. This fact alone resolves the question of retroactivity put before the Court—and this section will demonstrate the historical basis for this claim.

⁵ International Covenant on Civil and Political Rights, art. 15(1), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976, ratified by Haiti on Feb. 6, 1991; *see also* American Convention on Human Rights, art. 9, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978; Constitution of the Republic of Haiti, Mar. 29, 1987, art. 51.

- 2.6 Whereas, it bears recalling that a rule of customary international law is a “general practice accepted as law,”⁶ based on two elements: (1) state practice and (2) *opinio juris*, *i.e.*, a sense of legal obligation.⁷ These elements can be proved through a range of sources, including: treaties, resolutions of the United Nations Security Council and General Assembly, diplomatic communications, and the jurisprudence of international and national courts.⁸
- 2.7 Whereas state practice and *opinio juris* demonstrate the customary status of crimes against humanity since their inception. These crimes were first codified in the Statute of the Nuremberg Tribunal, annexed to the London Charter of August 8, 1945,⁹ and unanimously adopted by the U.N. General Assembly in 1946.¹⁰ Crucially, Haiti was one of the original 19 states to ratify the Nuremberg Statute and recognize crimes against humanity in 1945.¹¹
- 2.8 Whereas since 1946, the prohibition of crimes against humanity has been reaffirmed numerous times in international treaties, including the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.¹²
- 2.9 Whereas the U.N. General Assembly adopted five resolutions between 1967 and 1976—resolutions 2338 (1967), 2583 (1969), 2712 (1970), 2840 (1971) and 3074 (1973)—which confirmed the customary status of crimes against humanity and called on member states to investigate and prosecute them.
- 2.10 Whereas between 1971 and 1986, customary international law defined a crime against humanity as (1) the commission of murder; extermination; slavery; deportation; imprisonment; torture; rape; persecution on political, racial, or religious grounds; and other inhuman acts; (2) as part of a widespread or systematic attack against a civilian population; (3) with knowledge of the attack.¹³

⁶ Statute of the International Court of Justice, art. 38(1)(b), June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993.

⁷ *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark and Netherlands)*, 1969 I.C.J. 3 (Feb 20), ¶ 77.

⁸ *See id.*

⁹ Charter of the International Military Tribunal at Nuremberg, Annex to the London Agreement, art. 6(c), Aug. 8, 1945, 82 U.N.T.S. 279 (hereinafter Nuremberg Statute).

¹⁰ U.N.G.A., Resolution 3(I), Feb. 13, 1946, Concerning the Extradition and Punishment of War Criminals, and Resolution 95(I), Dec. 11, 1946, Affirmation of the Principles of International Law Recognized by the Charter of the Nurnberg Tribunal.

¹¹ Haiti ratified the Nuremberg Statute on March 11, 1945. *See* Int’l Comm. of the Red Cross, <http://www.icrc.org/dih.nsf/INTRO/350?OpenDocument>

¹² *See* Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. res. 2391 (XXIII), annex, 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968), *entered into force* Nov. 11, 1970; Statute of the International Tribunal for Rwanda, art. 3, 33 I.L.M. 1598, 1600 (1994); Statute of the International Tribunal for the Former Yugoslavia, art. 5, 32 I.L.M. 1203 (1993); Rome Statute of the International Criminal Court, art. 7, 2187 U.N.T.S. 90, *entered into force* July 1, 2002.

¹³ *See* Nuremberg Statute, *supra* note 9, art. 6(c) (dating to 1945); Loi relative à la création de chambres extraordinaires au sein des tribunaux cambodgiens [“ECCC”] pour la poursuite des crimes

- 2.11 Whereas international jurisprudence has held that these elements were sufficiently defined since 1946 to put offenders on notice. As a result, states looking to prosecute historical crimes from the vantage point of the late 20th and early 21st centuries could proceed without running afoul of the ban on *ex post facto* criminal laws.¹⁴
- 2.12 Whereas, for example, the Inter-American Court of Human Rights, in the 2006 case *Almonacid Arellano v. Chile*, recognized that crimes against humanity were clearly defined in international law in 1973, when agents of the Pinochet regime extrajudicially killed a perceived dissident.¹⁵ Not only did the Court find that crimes against humanity predated the act in question, the Court also held that general principles of international law barred Chile from invoking the “statute of limitations [or] the non-retroactivity of criminal law . . . to decline its duty to investigate and punish those responsible.”¹⁶
- 2.13 Whereas, the European Court of Human Rights (hereinafter “ECtHR”) similarly held in *Kolk and Kislyiy v. Estonia* that defendants who committed crimes against humanity in 1949 could be tried and convicted in 2003, without violating their human rights.¹⁷ The fact that the Russian Criminal Code did not criminalize crimes against humanity at the time did not give the defendants a viable *ex post facto* claim, since the Nuremberg Statute of 1945 clearly announced the international prohibition of these crimes.¹⁸
- 2.14 Whereas, in a situation very close to the one before the Court, the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) faced the same question of retroactivity when it undertook the prosecution in 2010 of crimes against humanity committed by the Khmer Rouge in the 1970s. In Case 001 against *Kaing Guek Eav, alias Duch*, the ECCC held that the prohibition of crimes against humanity was deeply entrenched in customary international law in the period spanning 1975 and 1979; as a result, the threat of criminal sanction was entirely foreseeable for Duch, a notorious Khmer Rouge torturer.¹⁹

commis durant la période du Kampuchéa Démocratique, du 2 janvier 2001, N° NS/RKM/0801/12 KRAM, art. 5 (hereinafter ECCC Statute) (recognizing the customary definition of crimes against humanity between 1975 and 1979).

¹⁴ See, e.g., *Case of Kaing Guek Eav, alias Duch*, Trial Chamber, n°001/18-07-2007/ECCC/TC, Judgment, July 26, 2010, ¶¶ 283-296 (hereinafter Case 001 (“Duch”).

¹⁵ *Almonacid-Arellano v. Chile*, Judgment of Sept. 26, 2006, Inter-Am. Ct. H.R., Ser. C No. 154, ¶¶ 96-99. (observing that customary international law prohibited crimes against humanity since at the very latest the Nuremberg Statute of 1945, and that a single act of murder, committed under Pinochet as part of a widespread or systematic attack on civilians could constitute such a crime); see also *Castro v. Peru*, Judgment of Nov. 25, 2006, Inter-Am. Ct. H.R., Ser. C No. 160, ¶ 160 (concluding that acts of torture and murder committed in 1992 constituted crimes against humanity).

¹⁶ *Almonacid-Arellano*, *supra* note 15, ¶ 151.

¹⁷ *Case of Kolk and Kislyiy v. Estonia*, Judgment of January 17, 2006, Applications No. 23052/04 and 24018/04 (unpaginated).

¹⁸ *Id.*; see also *Korbely v. Hungary*, Judgment of Sept. 19, 2008, ¶ 86 (holding that crimes against humanity were sufficiently defined under international law in 1956, the year a Hungarian officer participated in the summary execution of democracy activists).

¹⁹ Case 001 (“Duch”), ECCC, *supra* note 14, ¶¶ 283-96.

- 2.15 Whereas, national courts across Latin America and the world have recognized that the non-retroactivity of criminal law does not apply to crimes against humanity committed after 1946.
- 2.16 Whereas this conclusion rests on two observations. *First*, as Colombian, Peruvian, and other Latin American courts have held, violations of customary international law—especially of *jus cogens* norms, for which no derogation is permitted—are enforceable in national legal systems.²⁰ *Second*, as long as an act is clearly criminalized under customary international law at the time of its commission, it can be prosecuted by national jurisdictions without violating the *ex post facto* principle.²¹ The following cases confirm this view:
- *Chile*. In the *David Urrutia Galaz Case* (2009), the Chilean Supreme Court noted that “under international criminal law, non-retroactivity cannot be construed in a strictly formal sense, that is, as a principle that requires a written criminal definition at the time of commission.”²² Instead, the Court held, crimes against humanity could be charged under the “unwritten principles of customary law” in force in 1975, the year Pinochet’s agents murdered the victim.²³
 - *Argentina*. In *Arancibia Clavel* (2004), the Supreme Court of Argentina held that the 1974 assassination of a former general by Pinochet’s agents amounted to a crime against humanity, as recognized in customary international law since World War II.²⁴ Further, neither the delayed prosecution of the crime, nor the lifting of statutory limitations ran afoul of the *ex post facto* principle, because crimes against humanity had been punished—and exempted from statutory limitations—long before 1974.²⁵
 - *Spain*. The Spanish Supreme Court reached the same conclusion in *Scilingo* (2007), when it affirmed the conviction of an Argentine naval officer for crimes against humanity committed in the 1970s and 1980s; Spain’s domestic principle of non-retroactivity was no bar, the Court reasoned, because any interpretation of domestic law must take into

²⁰ See, e.g., Constitutional Ct. of Colombia, *Remedy of Unconstitutionality*, Sentencia C-291, Expediente D-6476, Apr. 25, 2007 (holding that rules of customary international law are binding on Colombia and “constitute per se the basis for the international criminal liability of those who commit war crimes”—and by implication crimes against humanity); Supreme Ct. of Chile, *Case of David Urrutia Galaz*, Sup. Ct. Chile, Judgment of Jan. 18, 2009, Rol N° 4691-07, ¶¶ 6-8 (Spanish only); Constitutional Tribunal of Peru, *Habeas corpus submitted by Juan Nolberto Rivero Lazo* — Expediente 4677-2005-PHC/TC, Aug. 12, 2005, ¶ 17 (holding that the customary international law of war crimes was “automatically applicable” without formal validation).

²¹ Supreme Ct. of Chile, *Case of Molco de Choshuenco (Paulino Flores Rivas, et al.)*, n° 559-04, Dec. 13, 2006, ¶ 25° (holding that the prosecution of 1973, Pinochet-era assassinations as crimes against humanity was not retroactive, since the conduct was already criminalized under international law).

²² *Case of Urrutia Galaz*, *supra* note 20, at ¶ 7.

²³ *Id.*

²⁴ *Case of Enrique Lautaro Arancibia Clavel*, Judgment Confirming the Non-Applicability of Statutes of Limitations to Crimes Against Humanity, Sup. Ct. Argentina, n° 259, Aug. 24, 2004, ¶ 28.

²⁵ *Id.* at ¶¶ 27-31.

account preexisting international criminal law, especially as concerns crimes against the “core of human rights.”²⁶

- *France*. The *ex post facto* principle was also no bar in the 1983 *Barbie* case concerning atrocities committed by the Nazi Gestapo. The French Court of Cassation directly applied the customary prohibition of crimes against humanity in force during World War II. Again, since the criminal law was in force at the time of the acts, there was no question of retroactivity.²⁷
- *United States*. Similarly, in *Demjanjuk* (1985), a U.S. Court of Appeals approved the extradition of a former Nazi concentration camp guard to Israel.²⁸ The court had no doubt that the extraditee could be prosecuted in 1985 for crimes against humanity committed in 1942, since the universal prohibition of the crime had entered into domestic law.²⁹

2.17 Whereas, in short, world opinion confirms that customary international law penalized crimes against humanity during Duvalier’s reign from 1971 to 1986. There is therefore no risk of retroactivity in this prosecution.

3 The Haitian constitution declares that international law takes primacy over national law; Haiti’s statutory limitations for domestic crimes must therefore cede to international law, which holds that crimes against humanity do not expire.

3.1 Whereas international law is the supreme law of the land in Haiti and preempts contrary domestic law, by virtue of Article 276.2 of Haiti’s constitution of March 29, 1987.³⁰

3.2 Whereas the concept of crimes against humanity entered into Haitian domestic law through international custom and binding treaties, notably: (1) the Statute of the Nuremberg Tribunal—which incorporated the definition of crimes against humanity into Haitian law in 1945;³¹ (2) the International Convention on the Suppression and Punishment of the Crime of Apartheid—which declares that apartheid is a “crime against humanity”;³² and (3) the ICCPR, which provides that states may prosecute acts, which at the time of their

²⁶ *Case of Scilingo*, Sup. Ct. Spain, Decision of July 3, 2007, n° 10049/2006-P, Fundamentos, ¶¶ 5-6 (2007).

²⁷ *Case of Klaus Barbie*, Judgment of Dec. 20, 1985, Ct. of Cassation of France, GP 1986, p. 247.

²⁸ *Demjanjuk v. Petrovsky*, 776 F.2d 571, 582 (6th Cir. 1985).

²⁹ *Id.*

³⁰ Constitution of the Republic of Haiti, Mar. 29, 1987, art. 276.2 (“Treaties and international agreements, once approved and ratified as provided for in the Constitution, are part of the law of the land and abrogate any conflicting statute.”).

³¹ Nuremberg Statute, *supra* note 9; Haiti ratified the Nuremberg Statute on March 11, 1945. *Supra*, note 11.

³² International Convention on the Suppression and Punishment of the Crime of Apartheid, art. 1, G.A. res. 3068 (XXVIII), 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974), 1015 U.N.T.S. 243, entered into force July 18, 1976, ratified by Haiti on December 19, 1977.

commission were “criminal according to the general principles of law recognized by the community of nations.”³³

- 3.3 Whereas, in addition, the Vienna Convention on the Law of Treaties, ratified by Haiti on August 25, 1980, requires that states respect their international obligations in good faith and that domestic law may not be invoked to justify breaching international obligations.³⁴
- 3.4 Whereas the Examining Magistrate, despite this duty, refused to recognize the customary prohibition of crimes against humanity. Instead, he invoked Haiti’s domestic statute of limitations to justify breaching Haiti’s international obligations to prevent and punish grave human rights abuses.³⁵
- 3.5 Whereas, moreover, the Examining Magistrate ignored the supremacy of international law, by time-barring international crimes under domestic rules of prescription, specifically: Article 466 of Haiti’s Code of Criminal Examination, which sets a 10 year statute of limitations on serious statutory felonies,³⁶ and the Decree of June 18, 1986, which extended the limitations period for Duvalier-era violent crimes until June 18, 1996.³⁷
- 3.6 Whereas the supremacy clause enshrined in Haiti’s constitution limits the prescriptive power of Article 466 and the June 18, 1986 Decree to ordinary crimes arising under the Haitian Penal Code. It does not permit domestic rules of prescription to prevail over international rules of prescription.
- 3.7 Whereas it follows that because crimes against humanity are international crimes, the Court must look to international law to determine whether such crimes are susceptible to statutory limitations. And international law—based on custom and the jurisprudence of the Inter-American Court—holds that such crimes do not expire.³⁸

4 Under customary international law, crimes against humanity may not be time-barred, regardless of when they were committed.

- 4.1 Whereas state practice and *opinio juris* demonstrate that the non-applicability of statutory limitations to crimes against humanity is a rule of customary international law. These crimes were “born” free from statutory limitations when they were defined in the 1945 Statute of the Nuremberg Tribunal.³⁹ This

³³ ICCPR, *supra* note 5, art. 15(2).

³⁴ Vienna Convention, *supra* note 46, arts 26, 27, 23.

³⁵ See *Ordonnance*, *supra* note 2; Haiti’s duty to prevent and punish human rights violations is discussed *infra* in Section 5.

³⁶ Haitian Code of Criminal Examination, art. 466.

³⁷ Décret, *Le Moniteur*, 141ème Année No. 51, June 26, 1986.

³⁸ See *Kononov v. Lettonie*, ECtHR, Judgment of May 17, 2010, n°36376/04, § 230 (observing that there is no statute of limitations for crimes against humanity under international law since neither conventional or customary law has ever provided for one).

³⁹ See U.N. Secretary-General, Question of the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, UN Doc. E/CN.4/906, 15 Feb. 1966, ¶¶ 62-100 (noting absence of statutes of limitations for crimes against humanity in certain states); see also *Touvier Case*, Court of

foundational statute of international criminal law provides no limitations period for crimes against humanity.⁴⁰ And the Nuremberg Statute has always been understood to enshrine “norms of customary international law that bind all States.”⁴¹

- 4.2 Whereas international instruments following Nuremberg continue to reflect the customary status of this rule, including the U.N. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity⁴² and the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes;⁴³
- 4.3 Whereas even states like Haiti who have not ratified these treaties are still bound by the customary principles they reflect, as the Inter-American Court of Human Rights has observed.⁴⁴
- 4.4 Whereas the Inter-American Court has also held that crimes against humanity are not subject to statutes of limitation “irrespective of the date of their commission,”⁴⁵ because such crimes are *jus cogens*—a peremptory norm “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.”⁴⁶
- 4.5 Whereas the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission”) reaffirmed that crimes against humanity cannot expire in its communication on Haiti’s duty to investigate and punish human rights abuses committed under Duvalier.⁴⁷

Appeal of Paris (First Chamber of Accusation), Apr. 13, 1992, ¶ 388, 100 I.L.R. 337, 342, *affirmed on this point*, Court of Cassation (Criminal Chamber), Nov. 27, 1992, ¶ 1115, 100 I.L.R. 337, 363.

⁴⁰ Nuremberg Statute, *supra* note 9; *see also Barbie Case*, Judgment of January 26, 1984, Court of Cassation of France (Criminal Chamber) 1984 J.C.P. II G, No. 20, 197 (Note Ruzié), J.D.I. 308 (1984), ¶¶ 18-19 (observing that French law abolishing statutory limitations for crimes against humanity merely codified preexisting customary international law).

⁴¹ ECtHR, *Kolk and Kislyiy v. Latvia*, *supra* note 17 (stating that “the rule that [crimes against humanity] cannot be time-barred was laid down by the Charter of the Nuremberg International Tribunal”); *see also*

⁴² Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, G.A. res. 2391 (XXIII), annex, 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968), *entered into force* Nov. 11, 1970.

⁴³ European Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, art. 1 [Council of Europe] 1974, RTE n° 82, Strasbourg (Jan. 25, 1974), *entered into force* June 26, 2003.

⁴⁴ *Almonacid Arellano v. Chili*, *supra* note 15, ¶ 153.

⁴⁵ *Id.* at ¶ 152.

⁴⁶ Vienna Convention on the Law of Treaties, art. 53, 1155 U.N.T.S. 331, *entered into force* Jan. 27, 1980. Haiti ratified the Vienna Convention on Aug. 25, 1980.

⁴⁷ IACHR, *Statement on the Duty of the Haitian State to Investigate the Gross Violations of Human rights Committed during the Regime of Jean-Claude Duvalier*, May 17, 2011, ¶ 7, <http://bit.ly/X6KUbm>.

- 4.6 Whereas the same rule on the non-applicability of statutory limitations is enshrined in the jurisprudence of the ECtHR in the *Papon* and *Touvier* cases, among others.⁴⁸
- 4.7 Whereas the Rome Statute of the International Criminal Court confirms that the non-applicability of statutes of limitations is part of customary international law: Article 29 states that international crimes do not expire.⁴⁹ And with its 138 signatories and 122 parties (out of 193 total UN member states) this treaty provides strong evidence that the rule exempting crimes against humanity from any time-bar is a “general practice accepted as law.”⁵⁰
- 4.8 Whereas this same rule is reaffirmed in the statutes of the Khmer Rouge Tribunal and the Special Panels for Serious Crimes in East Timor. These statutes are organic laws of national courts that were specially constituted for international crimes; both declare that crimes against humanity are subject to no statute of limitations.⁵¹
- 4.9 Whereas numerous Latin American courts have held that crimes against humanity may not be time-barred, for example:
- The Supreme Court of Argentina, in *Arancibia Clavel* (2004), held that crimes against humanity committed in 1973 were not susceptible to statutes of limitations for three reasons. First, customary international law in 1973 already recognized that such crimes do not expire.⁵² Second, the Inter-American human rights system requires states to investigate and punish such crimes, and that duty overrides domestic limitations.⁵³ Finally, the public policy behind statutory limitations does not apply to crimes against humanity. Because of their magnitude, these crimes still offend society, despite the passage of time⁵⁴; moreover, a statute of limitations would perversely reward former officials who abused state institutions to hamper investigations.⁵⁵
 - The Supreme Court of Chile reached the same conclusion in *Molco de Chochuenco* (2006). The Court reversed a lower court’s decision that had time-barred the prosecution of a 1973 assassination.⁵⁶ Noting that the non-

⁴⁸ *Papon v. France* (no. 2) (dec.), no. 54210/00, ECtHR 2001-XII, ¶ 5; *Touvier v. France*, no. 29420/95, Commission decision of 13 January 1997, Decisions and Reports 88-B, p. 161.

⁴⁹ Rome Statute, *supra* note 12, art. 29 (“The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.”).

⁵⁰ ICJ Statute, *supra* note 6, art. 38.

⁵¹ ECCC Statute, *supra* note 13, art. 5; Regulation on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences, art. 17.1, UNTAET/REG/2000/15, June 6, 2000.

⁵² *Arancibia Clavel*, *supra* note 24, ¶¶ 27-33; *see also Ekmekdjian v. Sofovich* [Extradition of Erich Priebke], Sup. Ct. Just. Argentina, [CSJN], Fallos (1992-315-1492), July 7, 1992 (choosing to apply international law barring limitations for crimes against humanity, instead of domestic statute of limitations).

⁵³ *Id.* at ¶¶ 35-36.

⁵⁴ *Id.* at ¶¶ 20-21.

⁵⁵ *Id.* at ¶ 23.

⁵⁶ *Molco de Chochuenco*, *supra* note 21.

applicability of statutory limitations to crimes against humanity was a “universally accepted principle” in 1973, the Supreme Court held that this international rule on prescription preempted the statute of limitations set out in Chile’s Penal Code.⁵⁷

- 4.10 Whereas this rule has gained widespread acceptance in national legislation: 154 out of the 193 member states of the United Nations have enacted laws that abolish statutory limitations on international crimes, or exempt all felonies from statutory limitations—whether they consist of international or domestic crimes—in short, 80% of the world’s nations do not subject crimes against humanity to any statute of limitations.⁵⁸
- 4.11 Whereas, more profoundly, almost every state that has actually experienced crimes against humanity has abolished the statute of limitations for these crimes. As the International Court of Justice noted in the *North Sea Continental Shelf* cases, the participation of these “specially affected states” is vital to the crystallization of a rule in customary international law.⁵⁹
- 4.12 Whereas the following “specially affected states”—those touched by crimes against humanity and tasked with prosecuting them—have abolished their statutory limitations:
- *European states occupied by Nazi, fascist, or communist regimes:* Austria, Belgium, France, Germany, Poland, Russia, and Spain, among others;⁶⁰
 - *Latin American states formerly ruled by military juntas:* Argentina, Bolivia, Chile, and El Salvador, among others;⁶¹
 - *Other states that endured major civil wars, genocide, or apartheid:* Bosnia-Herzegovina, Cambodia, Iraq, Israel, Rwanda, South Africa, and Vietnam; among others.⁶²

⁵⁷ *Id.*

⁵⁸ See RUTH A. KOK, STATUTORY LIMITATIONS IN INTERNATIONAL CRIMINAL LAW, 38 (T.M.C. Asser Press, The Hague, Netherlands, 2007) (noting that in 2007, 146 states has adopted laws exempting serious international or national crimes from statutes of limitations); Jan Arno Hessbruegge, *Justice Delayed, not Denied: Statutory Limitations and Human Rights Crimes*, 43 GEO. J. INT’L L. 335, 353 (2012) (noting that since Kok’s 2007 study, eight more states had banned statutes of limitations on international crimes bringing the total in 2012 to 154 states).

⁵⁹ *North Sea Continental Shelf*, *supra* note 7, ¶ 73.

⁶⁰ *Germany*: Law of Sept. 1 1964 on the Non-Applicability of Statutes of Limitations to Nazi Crimes and War Crimes, n°127 (1964); *Austria*: Law of March 31, 1975 on the Non-Applicability of Statutes of Limitations to War Crimes and Crimes Against Humanity, Off. Journal Off. n° 28, Apr. 23, 1965 (1965); *Spain*: Criminal Code of 1995, Art. 131(4); *France*, Loi n° 64-1326 the Non-Applicability of Statutes of Limitations to Crimes Against Humanity (1964) ; *Belgium*: Loi du 16 juin 1993 telle que modifiée par la loi du 10 février 1999 relative à la répression des violations graves du droit international humanitaire (1999) ; *Poland*, Constitution of 1997, Art. 43 ; Law of Apr. 22, 1964, n°15, 86 (1964); *Russia*: Code pénal de la Fédération de la Russie du 1996, Art. 78(5). For a complete list, see KOK, *supra* note

⁶¹ *Argentina*: Law of 1995 on the Non-Applicability of Statutes of Limitations to War Crimes and Crimes Against Humanity (1995); *Bolivia*: Code of Crim. Proc. of 2001, art. 34 ; *Chile*, Code of Crim. Proc. of 2000, art. 250 ; *El Salvador*, Code of Crim. Proc. of 1996, Art. 34 ; see also KOK, *supra* note 58.

4.13 Whereas in sum, a wealth of evidence shows that state practice and *opinio juris* since 1946 has recognized the non-applicability of statutes of limitations to crimes against humanity. This norm of customary international law supersedes Haiti’s domestic statute of limitations.

5 The American Convention on Human Rights requires Haiti to investigate and punish torture, extrajudicial killings, arbitrary detention, and forced disappearance: This duty prevails over domestic statutes of limitations.

5.1 Whereas Haiti ratified the American Convention on September 27, 1977. By virtue of Article 276(2) of the Haitian Constitution, this treaty is part of Haitian law and supersedes any contrary domestic rule.

5.2 Whereas the American Convention imposes on Haiti a legal duty to investigate serious human rights violations and punish their perpetrators.⁶³ And that same affirmative duty to prevent and punish human rights abuses is also imposed on Haiti by the ICCPR.⁶⁴

5.3 Whereas the Haitian judiciary is, in the words of the Inter-American Commission, “bound by the American Convention and has an obligation to ensure that the Convention’s provisions are not undermined through enforcement of laws that are contrary to its object and purpose.”⁶⁵ To this end, the Commission has called on the courts of Haiti to “remove all obstacles standing in the way of compliance with the obligation to investigate and punish” crimes against humanity allegedly committed under Duvalier.⁶⁶

5.4 Whereas, moreover, Haiti recognized the mandatory jurisdiction of the Inter-American Court on March 20, 1998. That court, whose judgments bind Haiti, has held time and again that statutory limitations on human rights crimes perpetuate impunity and produce, in effect, a double violation: one of *commission*—from the underlying torture, disappearance, or killing; and the second of *omission*—from the state’s failure to prevent or punish the abuse.⁶⁷ This means that Haiti’s treaty obligation to prosecute torture, extrajudicial

⁶² *South Africa*, Law Implementing the Rome Statute, art. 29 (2002); *Bosnia-Herzegovina*, Law of Apr. 5, 1965 on the Non-Applicability of Statutes of Limitations to War Crimes and Crimes Against Humanity, and Genocide, art. 134 (1965); *Cambodia*, ECCC Statute, *supra* note 13; *Iraq*: Statute of the Iraqi High Tribunal, art. 10 (2003); *Israel*: Law on Crimes Against Humanity (abolition of statutes of limitations), n° 5723 (1966); *Rwanda*, Loi organique n°08/96 du 30 aout 1996, art. 37; *Vietnam*, Code Pénal n°15/1999/qh10, art. 24 (1999); *see also* KOK, *supra* note 58.

⁶³ *See Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4, ¶ 166 (1988).

⁶⁴ ICCPR, *supra*, note 5.

⁶⁵ IACHR, *Statement on Duvalier Case*, *supra* 47.

⁶⁶ *Id.* at ¶ 14.

⁶⁷ *See Almonacid Arellano*, *supra* note 15, ¶¶ 105 - 152; *Case of Barrios Altos v. Peru*, Inter-Am. Ct. H.R., Judgment, March 14, 2001, Series C No. 75, ¶ 41 (“all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.”).

killings, and forced disappearances cannot be extinguished by the mere passage of time.⁶⁸

5.5 Whereas it follows that extinguishment and other procedural bars to prosecuting human rights crimes breach the American Convention to the extent that they frustrate victims' rights to a fair trial and effective judicial remedies, as guaranteed by Articles 8 and 25.⁶⁹

5.6 Whereas, in sum, Haiti's international obligation to investigate and prosecute grave human rights violations overrides any domestic statute of limitations, including Article 466 and the Decree of June 18, 1986: these laws must not block the prosecution of crimes against humanity committed under Duvalier.

6 In the alternative, for forced disappearances, the statute of limitations cannot run until the fate of the victim is discovered.

6.1 Whereas under international law and French law—which shares a common root with Haitian law—continuous crimes, such as false imprisonment and forced disappearance, are not subject to a statute of limitations until the crime is complete. And these crimes are only complete when the victims are freed, their whereabouts are revealed, or their bodies are found.

6.2 Whereas in the view of the French Court of Cassation, false imprisonment is a continuous crime whose limitations period cannot run until all elements of the crime are realized.⁷⁰ Thus, in the case of French nationals “disappeared” by the Pinochet regime in Chile, the Paris Tribunal of First Instance rejected the notion that the crimes were time-barred; indeed, the clock on the statute of limitations could not begin to run until the fate of the victims was known.⁷¹

6.3 Whereas international law has an analogous offense: forced disappearance, defined in the International Convention for the Protection of All Persons from Enforced Disappearance, to which Haiti is a party, as:

the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁷²

⁶⁸ *Case of Bulacio v. Argentina*, Inter-Am. Ct. H.R., Judgment, Sept. 18, 2003, Series C No. 100, ¶¶ 110-19.

⁶⁹ American Convention, *supra* 5, art. 8, 25; *Bulacio*, *supra* note 68, at ¶ 116

⁷⁰ See *Juris classeur procédure pénale*, Action publique, prescription, Art. 7 à 9, n° 25.

⁷¹ Tribunal de Grande Instance de Paris, ordonnance du 2 Novembre 1998, AM. J. INT'L L., Vol. 93, n°3 (July 1999).

⁷² International Convention for the Protection of All Persons from Enforced Disappearance, art. 1, G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006), *adopted* Dec. 20, 2006.

- 6.4 Whereas international jurisprudence holds that the crime of forced disappearance is not complete until “the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.”⁷³
- 6.5 Whereas, in *Velásquez Rodríguez*, the Inter-American Court recognized that “the forced disappearance of human beings is a multiple and continuous violation” of human rights,⁷⁴ and held that the state’s duty to investigate persists as long as the victim’s fate remains unknown.⁷⁵
- 6.6 Whereas the principle announced in *Velásquez Rodríguez* has taken root in national jurisprudence across Latin America. The courts of Chile,⁷⁶ Mexico,⁷⁷ Peru,⁷⁸ Uruguay,⁷⁹ and Venezuela,⁸⁰ among other countries, all hold that disappearance is a continuous crime that stays the limitations clock from running.
- 6.7 Whereas, in light of this international and national consensus, the charges of forced disappearance and false imprisonment levied against Duvalier and his accomplices cannot be time-barred. The clock on Haiti’s domestic statute of limitations—if it applies at all—cannot begin to run until the families of those “disappeared” under Duvalier between 1971 and 1986 learn the fate of their loved ones.
- 7 Under customary international law in force from 1971-1986, civilian and military leaders are criminally responsible for failing to prevent or punish crimes committed by their subordinates.**
- 7.1 Whereas Duvalier—as Supreme Commander of the Haitian Army and Commander in Chief of the Tonton Macoutes—may be held criminally liable under the international law doctrine of “command responsibility.”⁸¹

⁷³ UN Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, ¶ 39, “General Comment on Enforced Disappearance as a Continuous Crime,” ¶ 1, A/HRC/16/48, Jan. 26, 2011, <http://bit.ly/YTzW5Q>.

⁷⁴ IACtHR, *Velásquez Rodríguez*, *supra* note 63, § 155.

⁷⁵ *Id.* at ¶ 181.

⁷⁶ See *Case of the withdrawal of immunity from Pinochet*, Plenary of the Supreme Court of Chile, Judgment of Aug. 8, 2000, ¶ 5; *Case of Caravana*, Criminal Chamber of the Supreme Court of Chile, judgment of July 20, 1999; 3; *Case of Sandoval*, Court of Appeal of Santiago, Chile, judgment of January 4, 2004 (all declaring that the forced disappearance is a continuous crime, and a crime against humanity that is not susceptible to amnesties or statutes of limitations).

⁷⁷ Supreme Court of Justice of Mexico, *Thesis*: P./J. 87/2004.

⁷⁸ *Case of Castillo Páez*, Peru Supreme Court of Justice, (Crim. Ch.), No. 0012-2006-HC/TC, Judgment of Dec. 18, 2007, ¶ 3(v). (declaring that a forced disappearance continues to occur until the location of the victim is established).

⁷⁹ *Case of Juan Carlos Blanco and Case of Gavasso*, Supreme Court of Uruguay, Judgments of Oct. 18, 2002, and Apr. 17, 2002.

⁸⁰ *Case of Marco Antonio Monasterios Pérez*, Supreme Court of Justice of the Venezuelan Bolivarian Republic, Judgment of Aug. 10, 2007, <http://bit.ly/13iKX7E> (describing the continuous character of forced disappearance).

⁸¹ Rome Statute, *supra* note 12, art. 28; see also *Prosecutor v. Kajelijeli*, ICTR 98-44A-A, Appeals Chamber, ¶ 85 (Int’l Crim. Trib. for Rwanda May 25, 2005).

7.2 Whereas this mode of liability is essentially a form of “crime by omission”⁸² based on three elements:

- The existence of a *de jure* or *de facto* superior-subordinate relationship between the defendant and the physical perpetrators of a crime;
- The superior knew or should have known, in light of circumstances at the time, that subordinates had committed, were committing, or were about to commit a crime; and
- The superior failed to take all reasonable and necessary measures to prevent the commission of the crime or to punish the perpetrators after the crime’s commission.⁸³

7.3 Whereas the principle of command responsibility is enshrined in Haitian national law. Indeed, Haitian courts relied on this doctrine to convict military and paramilitary leaders responsible for the 1994 Raboteau Massacre, including Raoul Cédras and Emmanuel “Toto” Constant.⁸⁴ And Haiti was not alone: U.S. courts also relied on the command responsibility doctrine to find Emmanuel Constant and Colonel Carl Dorélien liable for crimes against humanity committed during the 1991-1994 *junta*.⁸⁵

7.4 Whereas command responsibility has long been enshrined in customary international law: in the aftermath of World War II, civilian and military leaders of Germany and Japan were convicted under this doctrine by the Nuremberg and Tokyo Tribunals.⁸⁶ In the decades that followed, the UN Tribunals for Rwanda and for the former Yugoslavia⁸⁷ applied command

⁸² *Raboteau Massacre Case*, Ordonnance de Jean Sénat Fleury, juge et juge d’instruction près le tribunal de première instance des Gonaïves, Aug. 27, 1999, p. 97.

⁸³ See *Prosecutor v. Delalic*, ICTY, No. IT-96-21-T, Trial Chamber Judgment, ¶ 347, Nov. 16, 1998.

⁸⁴ *Raboteau Massacre Case*, *supra* note 84, at 42: “Whereas, as a general principle of law and of military custom, a military superior who exercises command is responsible for and obligated to ensure the proper conduct of his subordinates. In the same vein, after issuing an order, a commander must remain vigilant and make any necessary adjustments as required by the evolving situation. In addition, a commander is responsible if he knows that his troops or others under his command committed or were committing a crime, and he fails to do what is necessary and reasonable to ensure that the law is respected.” Note that the Raboteau convictions of 53 officers were overturned in 2005 on other grounds, namely that the trial should not have been conducted before a jury. *Raboteau Case (Cenafils et al.)*, Court of Cassation of Haiti, Apr. 21, 2005.

⁸⁵ *Doe v. Constant*, No. 04 Civ. 10108, at 12 (S.D.N.Y. Oct. 24, 2006) (stating that Constant’s “direction – or at a minimum, approval – of FRAPH’s state-backed campaign of violence constitutes an inexcusable violation of international law”); *Jean v. Dorelien*, No. 03-20161-CIV, Jury Instructions, at 16 (S.D. Fla. Feb. 27, 2007).

⁸⁶ See *United States v. Wilhelm von Leeb et al. (High Command Trial)*, TRIALS OF WAR CRIMINALS BEFORE THE NURENBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, 171, 121 (1950), Vol. XI, p. 462 ; *Cases of Hideki Tojo (Prime Minister) and Mamoru Shigemitsu (Minister of Foreign Affairs)*, *The Complete Transcripts of the Proceedings of the International Military Tribunal for the Far East*, reprinted in THE TOKYO WAR CRIMES TRIAL, Vol. 20, R. John Pritchard and Sonia Magbanua Zaide (eds.) (New York & London 1981), pp. 49,791, 49, 831.

⁸⁷ See, e.g., *Delalic*, *supra* note 83.

responsibility, as has the International Criminal Court⁸⁸ and national courts, including those of the United States.⁸⁹

7.5 Whereas the doctrine of command responsibility was a core pillar of customary international law in force between 1971 and 1986, as recognized by the statute of the Khmer Rouge Tribunal.⁹⁰ Throughout that period, command responsibility applied to both civilian and military leaders with control over armed groups.⁹¹ In short, there is an unbroken international consensus that civilian and military leaders can be held responsible for crimes against humanity committed by their subordinates. Therefore, the command responsibility doctrine provides a strong legal basis to prosecute Duvalier for directing or tolerating the crimes against humanity committed by his military, police, and paramilitary forces between 1971 and 1986.

8 Conclusion

8.1 Whereas, in sum, customary international law penalized crimes against humanity before and during Duvalier's tenure in office. These crimes by their nature cannot be extinguished by a domestic statute of limitations. And Haiti is obligated under international law to investigate these crimes and prosecute their perpetrators, be they the henchmen or the leaders who command them.

8.2 In a profound way, statutes of limitations and other procedural bars are stripped of their justifications when applied to crimes against humanity. The usual rationales—the loss of evidence and the need to “forgive and forget”—do not apply.⁹² To the contrary, the evidence only grows as archives are unearthed and victims muster the strength to come forward. As for forgiveness: officials like Duvalier, who delayed justice through flight or the abuse of power, should not be able to force the law to “forgive” them by invoking a time-bar. In the end, statutes of limitations are laws that require us to forget—and this violates the survivors' need to remember. For many, healing is only possible with the closure of a trial: a rite that “permits victims to come to terms with their grief.”⁹³

8.3 For the above reasons, the Court should correct the errors made below and ensure that crimes against humanity committed under the Jean-Claude Duvalier regime are investigated and punished, as international law requires.

⁸⁸ See Prosecutor v. Jean-Pierre Bemba Gombo, Confirmation of charges, n° ICC-01/05-01/08, June 15, 2009, ¶ 402.

⁸⁹ *In re Yamashita*, 327 U.S. 1, 15–16 (1946).

⁹⁰ See ECCC Statute, *supra* note 13, art. 29 (recognizing the existence of the command responsibility doctrine under customary international law between 1975 and 1979).

⁹¹ See *Tojo and Shigemitsu*, *supra* note 86.

⁹² See J.O., Parliamentary Debates, National Assembly (France) Dec. 16, 1964, pp. 6142-47; Vladimir Jankelevitch, *L'imprescriptible*, 18 REVUE ADMINISTRATIVE 37, p. 37-38 (1965); Leila Sadat Wexler, *The Interpretation of the Nuremberg Principles by the French Court of Cassation: From Touvier to Barbie and Back Again*, 32 COLUM. J. TRANS. L. 289, 321 (1994).

⁹³ *Pour un droit de la prescription moderne et cohérent*, Report n° 338 (2006-2007) prepared by Senators Hyst, et al., for the Legislative Commission of the French Senate, June 20, 2007, p. 2, available at <http://bit.ly/12PjQ4b>.

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Appendix I: List of Signatories as *Amici Curie*

Signed:

1. **Advocates for Survivors of Torture and Trauma (ASTT)** is a U.S. based non-governmental organization which provides comprehensive, holistic services for survivors of torture and war trauma. ASTT is dedicated to fostering a process of healing that enables survivors to rediscover their sense of hope for the future.
2. **Asian Americans for Community Involvement Center for Survivors of Torture (AACI)** is a U.S. based non-governmental organization that provides rehabilitative services to survivors of politically motivated torture and refugees; educates the public, legislators, and service professionals; and publishes research to increase the body of knowledge about refugees and torture survivors.
3. **The Asociación Pro Derechos Humanos de España (APDHE)** is a Spain based organization working for the prevention and prosecution of human rights violations around the world.
4. **Asociation Pro Derechos Humanos (APRODEH)** is a Peruvian human rights organization established in 1983 by a group of professionals who had been providing information to Peruvian congressmen involved with the Congressional Human Rights Commission. The group supported legislative work in view of the growing human rights violations during the internal conflict in Peru. APRODEH now works with many organizations both within and outside of Peru to bring about accountability for human rights violations.
5. **The Canada Haiti Action Network** was founded in 2004 as an advocacy network for social justice and human rights in Haiti. Their work consists of informing the Canadian public and elected representatives of the political and economic and social conditions in Haiti and advocating for meaningful assistance. They direct interested Canadians to the most effective human development projects by Haitians, including the agencies promoting human and political rights for Haiti's poor majority.
6. **Canadian Centre for International Justice** is a non-profit organization that works with survivors of genocide, torture and other atrocities to seek redress and bring perpetrators to justice. CCIJ's main objectives are to: provide information and assistance to survivors of human rights violations while facilitating research and participating in the creation of files that will be brought to the attention of the Government of Canada and other competent authorities; provide information and training to lawyers, the community and the general public about impunity as an issue linked to fundamental human rights; act as a resource center for Canadian initiatives in the field of the fight against impunity, including access to Canadian and international jurisprudence; and provide support to the efforts of legislative reforms aimed at strengthening the legal remedies available to victims of serious violations of human rights.

7. **The Center for Justice and International Law (CEJIL)** is a non-profit organization that protects and promotes human rights in the Americas through the strategic use of the tools offered by international human rights law. CEJIL offers advice and free legal representation to victims of human rights abuses—and to organizations that defend their causes—when justice proves impossible to achieve in their own countries.
8. **Centro para Accion Legalen Derechos Humanos (CALDH)** is a Guatemala-based legal organization created to hold government officials accountable for their roles in Guatemala's military campaign against the Mayan population.
9. **Colombian Commission of Jurists (CCJ)** is a Bogotá based organization that serves as an affiliate of the International Commission of Jurists (based in Geneva) and the Andean Commission of Jurists (based in Lima), and has consultative status to the United Nations. CCJ collects and analyzes information on human rights and humanitarian law; litigates nationally and internationally to demand the realization of the right to truth, justice and reparations for victims of human rights violations and humanitarian law; and coordinates advocacy activities conducted within Colombia to promote awareness and development of human rights and humanitarian law in Colombia and worldwide.
10. **Center for Constitutional Rights (CCR)** works to advance and protect the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.
11. **Center for Survivors of Torture and War Trauma (CSTWT)** facilitates healing for refugee and immigrant individuals and families who have survived torture and war, and helps them move toward healing and self-empowerment. This is accomplished by providing culturally appropriate, holistic mental health services in an atmosphere of professional, therapeutic support. In addition to various forms of counseling and therapy, CSTWT offers survivors and their families an extensive youth program as well as casework services including asylum documentation and referrals to address further social service or personal care needs.
12. **Earth Rights International (ERI)** is a nongovernmental, nonprofit organization that combines the power of law and the power of people in defense of human rights and the environment, which they define as "earth rights." ERI specializes in fact-finding, legal actions against perpetrators of earth rights abuses, training grassroots and community leaders, and advocacy campaigns. Through these strategies, ERI seeks to end earth rights abuses, to provide real solutions for real people, and to promote and protect human rights and the environment in the communities where we work.
13. **European Center for Constitutional and Human Rights (ECCHR)** is an independent, non-profit legal organization that enforces human rights by holding state and non-state actors responsible for egregious abuses through innovative

strategic litigation. ECCHR focuses on cases that have the greatest likelihood of creating legal precedents in order to advance human rights around the world.

14. **International Federation of Human Rights Leagues (FIDH)** is an international NGO which represents 164 organizations defending human rights on five continents. FIDH works in the legal and policy fields to strengthen the international protection of human rights and fight against impunity. FIDH uses a wide range of policy instruments including international missions of investigation, trial observation and defense policy dialogue, advocacy, litigation, and public awareness campaigns. It relies on a network of international volunteer project leaders and promotes the exchange of experience between defenders around the world to strengthen the collaborative effort.
15. **The Global Justice Clinic, New York University School of Law (GJC)** provides high quality, professional human rights lawyering services to individual clients and non-governmental and inter-governmental organizations around the world. Working on cases and projects that involve cross-border human rights violations, the deleterious impacts of extraterritorial activities by state and non-state actors, and emerging problems that require close collaboration between actors at the local and international levels, the Clinic engages in human rights advocacy in domestic and international settings. The GJC has a long-standing interest in advancing human rights in Haiti and it advocates for an end to impunity for rights abusers. The Global Justice Clinic is operated by New York University School of Law, but this brief does not purport to present the school's institutional views, if any.
16. **The Haiti Action Committee** is a U.S. based network of activists who have supported Haiti's struggle for democracy since 1991.
17. **Human Rights Law Foundation (HRLF)** is a non-profit organization created to support people and groups that are involved in lawsuits with the Chinese Community regime, the Chinese Community Party or Party officials, or other persons involved in the persecution of the Falun Gong.
18. **Human Rights Litigation and International Advocacy Clinic, University of Minnesota Law School** instructs students in human rights litigation and international human rights advocacy, and thus has an interest and expertise in legal efforts to enforce international human rights. The Human Rights Clinic works closely with the other human rights institutions at the University of Minnesota, including the University of Minnesota Human Rights Center which was inaugurated in December 1988 to help train effective human rights professionals and volunteers, and assist human rights advocates, monitors, students, and educators.
19. **Human Rights Institute of the Universidad Centroamericana (IDHUCA)** is a San Salvador based human rights organization affiliated with the Universidad Centroamericana.
20. **International Trauma Studies Program (ITSP)** is a U.S. based organization committed to enhancing the natural resilience and coping capacities in individuals, families, and communities that have endured and/or are threatened by traumatic

events, including domestic and political violence, war and natural disaster. ITSP pursues its mission through providing professional training, conducting innovative research, offering technical assistance to international organizations, and helping build a global learning community in mental health and human rights.

21. **Other Worlds** is a women-driven education and movement-building collaborative. Other Worlds compiles and brings to light political, economic, social, and environmental alternatives that are flourishing throughout the world, with the aim of inspiring and helping the public throughout the Americas to open up new pathways.
22. **The Program for Torture Victims (PTV)** is a U.S. based non-governmental organization that rebuilds the lives of torture survivors from over 65 countries who have stood up for freedom, democracy, and human dignity.
23. **The Quixote Center** is a multi-issue social justice organization with programs in Haiti, Nicaragua, and the United States. The Quixote Center is currently working on criminal justice reform, focusing on post-incarceration re-entry in the U.S., organizing a food justice network in the D.C. area, and supporting community development initiatives in Managua, Nicaragua and Gros Morne, Haiti. The Quixote Center has been working in solidarity with groups in Haiti since 1991.
24. **Survivors of Torture International** is a U.S. based nonprofit organization dedicated to caring for survivors of politically motivated torture and their families. Since 1997, SURVIVORS has helped survivors to recover from their traumas through a holistic program including medical, dental, psychiatric, psychological, and social services.
25. **TransAfrica Forum** is the oldest and largest African American human rights and social justice advocacy organization in the United States. It promotes diversity and equity in the foreign policy arena and justice for the African World. TransAfrica envisions a world where Africans and people of African descent are self-reliant, socially and economically prosperous, and have equal access to a more just international system that strengthens independence and democracy.
26. **TRIAL** is a Geneva-based human rights organization that offers legal support to victims of international crimes in their quest for truth, justice and reparations and fights against the impunity too often enjoyed by the perpetrators of such acts, by resorting to existing national or international legal mechanisms.